

# Annexure to directors report 2019

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In the High Court At Calcutta  
Civil Appellate Jurisdiction  
In Appeal from the order of Ordinary Original Jurisdiction  
Original Side

APO 34 of 2016  
GA 4026 of 2000  
AC 32 of 2000  
GMB Ceramics Ltd.  
-Vs.-  
Neycer (India) Ltd.  
With  
APOT 42 of 2016  
Neycer (India) Ltd.  
-Vs.-  
GMB Ceramics Ltd.

Before : The Hon'ble The Chief Justice Jyotirmay Bhattacharya  
&  
The Hon'ble Justice Arijit Banerjee

For the appellant : Mr. Ranjan Deb, Sr. Adv.  
Ms. Suparna Mukherjee, Adv.  
Mr. Meghajit Mukherjee, Adv.  
Ms. Shamayem Fasih, Adv.

For the respondent : Mr. Goutam Chakraborty, Sr. Adv.  
Mr. Reetobroto Mitra, Adv.  
Mr. Prithwiraj Sinha, Adv.  
Mr. S. Dhar, Adv.  
Mr. I karfa, Adv.

Heard On : 02.11.2017, 09.11.2017, 16.11.2017, 23.11.2017,  
30.11.2017, 18.01.2018, 08.02.2018, 02.08.2018,  
16.08.2018, 23.08.2018, 30.08.2018

CAV On : 04.09.2018

Judgment On : 24.09.2018

**Arijit Banerjee, J.:-**

(1) GMB Ceramics Ltd. (in short 'GMB'), the appellant in APO 34 of 2016 entered into a Consultancy Agreement dated 29 November, 1986 with Neycer (India) Ltd. (in short 'Neycer') for setting up a factory for manufacture of vitreous sanitary ware products. The said agreement was converted into a Collaboration Agreement by an addendum dated 26 June, 1987. Disputes and differences arose between the parties in relation to the said agreement. The agreement contained an arbitration clause for resolution of disputes between the parties. The disputes were referred to Joint Arbitrators nominated by each of the parties. In view of disagreement between the Joint Arbitrators, the matter was referred to the Umpire. Learned Umpire published an award dated 23 June, 1999 for Rs. 1169.63 lacs along with interest at the rate of 15 per cent per annum in favour of GMB. Neycer filed an application under Secs. 30 and 33 of the Arbitration Act, 1940 being GA No. 4026 of 2000 for setting aside the said award of the Learned Umpire. The said application was disposed of by the learned Single Judge by a judgment and order dated 14 October, 2015. The learned Judge in effect held that the claim that

GMB referred to arbitration was for a sum of Rs. 2 crores and any award in excess of that sum cannot be sustained.

Being aggrieved by and dissatisfied with the said judgment and order of the learned Single Judge, GMB has preferred an appeal being APO No. 34 of 2016. Neycer has also preferred an appeal being APOT 42 of 2016 contending that the Award should have been set aside in its entirety. Both the appeals are taken up for hearing and disposal together.

**Contention of GMB:-**

(2) Appearing for GMB, Mr. Ranjan Deb, learned Sr. Counsel submitted that the Collaboration Agreement between the parties provided, *inter alia*, as follows:-

*(i) Neycer was to make available to GMB technology, know how expertise including manufacturing process. Engineering data, consumption norms, fire cycles utility requirements and all information necessary for setting up a manufacturing unit for production of vitreous sanitary wares with installed capacity of 7000 tonnes per annum and manufacturing target of 600 tonnes per annum.*

*(ii) Neycer would provide its marketing network and sales infrastructure to GMB.*

*(iii) GMB would have the right to manufacture and sell products using the name of Neycer.*

*(iv) Neycer would train unskilled labour employed by GMB and would help in selection and training of personnel, technicians and supervisory staff.*

*(v) Neycer was to set up the manufacturing unit and business market of GMB's products.*

*(vi) Neycer would jointly set up the factory and assist GMB to obtain guaranteed optimum production in terms of both quality and quantity.*

(3) Mr. Deb submitted that Neycer failed, neglected and/or refused to perform its obligations under the said Collaboration Agreement. As a result, GMB suffered substantial loss and damage. According to Mr. Deb, in view of the breaches committed by Neycer, the said agreement stood terminated.

(4) In September 1989, Neycer invoked the arbitration clause contained in the said agreement and nominated its arbitrator. In October 1989, GMB nominated its Arbitrator. In so far the claim of GMB was concerned, the Joint Arbitrators were in disagreement and consequently they referred the disputes and differences to the Umpire. The Umpire passed an award in favour of GMB as indicated above.

(5) The learned Single Judge while disposing of the application filed by Neycer, set aside the portion of the award in excess of Rs. 2 crores. Mr. Deb submitted that there was no specific reference of disputes to the

Arbitrators. The learned umpire culled out the disputes and differences between the parties from the correspondence exchanged between the parties contemporaneously. On a meaningful reading of such correspondence it would be clear that the parties referred all disputes and differences between them to arbitration. It is not that GMB limited its claim to cost incurred due to overrun of the contract caused by breach of Neycer's obligations under the Agreement. Hence, the learned Single Judge erred in setting aside the portion of the arbitral award in excess of Rs. 2 crores. We will refer to the relevant correspondence between the parties later in this judgment.

(6) Mr. Deb relied on two decisions. The first is a decision of this Court in the case of **Juggilal Kamlapat-vs.-N. V. Internationale Crediet-En-Handels Vereeniging 'Rotterdam'** (alias Rotterdam Trading Co Ltd.), **AIR 1955 Cal 65**. The other decision that Mr. Deb relied on was that of the Apex Court in the case of **State of Orissa-vs.-Asis Ranjan Mohanty**, **(1999) 9 SCC 249**. We will revert back to these judgments later.

**Contention of Neycer:-**

(7) Mr. Gautam Chakraborty, learned Sr. Counsel appearing for Neycer referred to the same correspondence exchanged between the parties prior to reference of disputes to arbitration as were referred to by Mr.

Deb. He submitted that it would appear from the said correspondence that GMB had raised a claim only on account of time overrun. The word 'overrun' has been used in nine different letters written on behalf of GMB. Nothing more than Rs. 2 crores was claimed by GMB on account of time overrun till the date of appointment of Arbitrators. GMB could not reserve any claim for a period beyond the date of appointment of Arbitrators.

(8) Mr. Chakraborty placed the judgment of the learned Single Judge in extenso. He submitted that GMB's claim in Schedule E to the statement of claim which was a claim for loss or profit in the sum of Rs. 396.96 lacs was entirely speculative and should not have been entertained by the Learned Umpire. The learned Single Judge also erred in allowing part of the said claim. According to Mr. Chakraborty, the entire arbitral award should have been set aside by the learned Single Judge since there was no evidence on record to support even an award for Rs. 2 crores in favour of GMB.

**Court's view:-**

(9) The short question that falls for determination by this Court is whether or not GMB's claim before the learned Arbitrators/learned Umpire was restricted to Rs. 2 crores. The Learned Umpire held that the

scope of the reference was not restricted to time overrun for which approximately Rs. 2 crore was claimed by GMB. Learned Umpire analysed the correspondence exchanged between the parties contemporaneously prior to reference of the disputes to arbitration and came to the conclusion that all the disputes as pleaded in the statement of claim both before and after amendment, had been referred to arbitration. He held that there is no merit in the contention of learned Counsel for Neycer that the only claim that GMB had is the claim of overrun cost of Rs. 2 crores.

(10) The Learned Single Judge differed with the Learned Umpire with regard to the aforesaid point. According to the learned Single Judge, GMB's claim was restricted to Rs. 2 crores. Thus, it is necessary for us to analyse the pre-reference correspondence between the parties to decide whether the learned Single Judge was justified in coming to the conclusion as stated above.

(11) A letter dated 9 August, 1989 was written by the Managing Director of GMB to the Managing Director of Neycer which reads as follows:-

*"Dear Sir,  
On my return from Madras after having discussions with you on 7<sup>th</sup> and 8<sup>th</sup> August, 1989, I received your letter dated 30<sup>th</sup> July, 1989 in regard to Mr. Umatosh Sarkar.*



*As mutually discussed and agreed in our meeting at Madras, we will not offer him employment on our Roll but take his advice to run the show of the factory until you depute a senior technician of general supervisory level to stay at our factory until the optimum level of production is achieved.*

*In order to avoid delay we would be thankful if you inform us whom you are intending to send so that we may discuss with Mr. R. M. Mehra, one of our Board Members to assess the suitability of the person. Since Mr. Mehra was president of your company for many years, it will be very easy for him to judge the suitability and acceptability of such a person as because it is implied that the person you intend to send will be of your company only having all technical knowledge and competency for general supervision.*

*As informed to you, we have already come to the stage of trial production and your quick action on the matter will be of great help to us to come out with our production in the market as because the delay is causing a lot of overrun in the form of interest, depreciation and overheads.*

*During our meeting with Mr. Kale, the Managing Director of NCRL on 03.12.88 and 05.12.88 it was decided then also that a senior technician as described above will be deputed immediately but was not deputed with the result that such delay as already been caused to us to come out with the production which we were contemplating sometime around March, 1989 end."*

(12) This was followed by a letter dated 28 August, 1989 written by the Managing Director of GMB to the Managing Director of Neycer complaining

that with regard to deputing a senior level man for general supervision of setting up of GMB's factory, the same had still not been done resulting in overrun cost of Rs. 2 crores. It was also stated that with regard to sale assistance, it was not clear about the help that Neycer would extend to GMB and Neycer was requested to inform GMB as to what sales infrastructure Neycer has got and how Neycer intended to assist GMB.

(13) In response Neycer wrote a letter dated 29 August, 1989 stating therein that it was in no way responsible for the cost overrun and that Neycer had fulfilled its obligations under the Collaboration Agreement.

(14) By a letter dated 4 September, 1989 GMB again complained of non-performance of Necyer's obligations under the Collaboration Agreement.

The material statements in the said letter are as follows:-

*"..... IS IT NOT REALLY VERY SURPRISING THAT A AMAN FOR GENERAL SUPERVISION SHOW YOU HAD AGREED TO BE SENT FOR OUR FACTORY AFTER OUR MEETING ON 3<sup>RD</sup> AND 5<sup>TH</sup> DEC., 1988 COULD NOT BE SENT UNTIL NOW. .... IT WAS EXPECTED THAT YOU WOULD TAKE NECESSARY CARE TO FULFIL YR OBLIGATION AS PER THE COLLABORATION AGREEMENT. I THEREFORE STILL STAND ON MY VIEWS THAT THE COST OVERRUN SHOULD DEFINITELY BE CLAIMED FROM YOU BECAUSE IN ABSENCE OF YOUR POSTING A SENIOR LEVEL PERSON FOR OUR GENERAL SUPERVISION OUR PRODUCTION HAS BEEN DELAYED CONSIDERABLY. MOREOVER, Mr. U. SARKAR HAS BEEN COMING WITH A STOP GAP ARRANGMENT AND YOUR OTHER TECHNICIANS COMING TO BALASORE FREQUENTLY HAVE*

*NOT RELINQUISHED YOU FROM THE OBLIGATION FROM PUTTING UP A SENIOR LEVEL PERSON FOR YOUR GENERAL SUPERVISION TO HAVE PROPER CONTROL ON THE DAY TO DAY WORKING. I THEREFORE STILL HOLD NCRL RESPONSIBLE FOR THE OVERRUN..... WITH REGARD TO SALES ASSISTANCE SINCE YOU DO NOT HAVE ANY SALE INFRASTRUCTURE OF NEYCER AND HAVE NOT MADE ANY PROPOSAL TO US..... WE ARE GOING AHEAD ORGANIZING SALES AND HERE ALSO WE FEEL THAT YOU HAVE NOT BEEN ABLE TO PERFORM AS PER CONTRACT AND THEREFORE YOU ARE NOT ELIGIBLE TO GET 2 PER CENT COMMISSION AND ALSO FOR CLAIM OF DAMAGE CAUSED TO US....."*

(15) This was followed by a letter dated 7 September, 1989 written by Neycer to GMB making counter allegations. It was inter alia stated in the said letter that GMB was entirely responsible for the delay in arrangement of general supervisor. Further, regarding use of brand name GMB would not be entitled to use Neycer's brand name in view of the numerous breaches made by GMB and obstructions caused in implementation of the contract. In conclusion, it was stated that the best course of action would be to have a meeting to discuss and settle all matters amicably.

(16) In response, GMB wrote a letter to Neycer reiterating that the time overrun and other damages had been caused by Neycer's breach of obligations under the Collaboration Agreement. It was also stated in the said letter that Neycer had failed to perform its obligations under the

Collaboration Agreement and therefore, GMB would definitely have a claim against Neycer for time overrun apart from the damages which had been caused to GMB by not providing any sales assistance. It was further stated in the said letter as follows:-

*"WHILE OUR CLAIM FOR DAMAGES AND OVERRUN IN THIS RESPECT STILL STAND, WE ARE DENINITELY ENTITLED TO USE YOUR BRAND NAME. LASTLY, A STAGE AS COME WHERE WE ARE COMPELLED TO MENTION THAT YOU HAVE ALWAYS ULTERIOR MOTIVE TO SEE HOW GMB DO NOT COME UP FOR WHICH WE HAVE CONVINCED NOTIONS WITH FACTS N FIGURES....."*

(17) On 19 September, 1989 Neycer wrote a letter to GMB stating therein inter alia as follows:-

*"as you are aware, certain disputes have arisen between our company and yourselves regarding the respective rights and obligations under the aforesaid Collaboration Agreement read with the addendum thereto.....from the exchange of such correspondence and your action, including entertaining of an ex-employee or ours, we have to conclude that you are not interested in honouring your commitments under the agreement, but, on the other hand, you only want to secure and utilize the licence which we had agreed to grant you to use our logo as part of the mark of you product for marketing the same. You cannot expect us to grant such a licence in view of your breaches of the Collaboration Agreement and your attempt to claim the right only to the use of the logo as a licensee while giving a go-by to the rest of the agreement....."*

*Inasmuch as the contract between the parties provides for a reference of all disputes to arbitration, we hereby invoke the said clause and we have appointed Retd. Justice P. Rama Rao as one of the Arbitrators and call upon you to nominate an Arbitrator within 15 days from the date of receipt of this notice.....the dispute referred to the said Arbitrators will be the compensation payable to us for the breaches of Collaboration Agreement committed by you and your disentitlement to any licence or permission to use the logo. You are also hereby put on notice that failure on your part to nominate an Arbitrator to decide the said disputes and any other dispute that may be raised between the parties will result in our nominee being nominated as sole arbitrator to proceed with the arbitration .....” (emphasis is ours)*

(18) On 6 October, 1989 GMB wrote a letter to Neycer, the material portion whereof is as follows:-

*“.....WE WILL HENCEFORTH NOT PUT YOUR BRAND NAME ON OUR WARE. THIS WILL CREATE A LOT OF HURDLES FOR US BUT WE WANT TO MINIMIZE THE AREA OF CONFUSION COMPLICATIONS. REG. OTHER PICTORIAL PREPRESENTATIONS ON STATIONARY WE WILL USE IT UNTIL OUR NEW STATIONARY RE PRINTED, AND WHATEVER WARES HAVE BEEN MANUFACTURED SO FAR (WHICH ARE NOT VERY MUCH IN QUANTITY) WE WILL SALE THEM WITH YOUR BRAND NAME UNLESS YOU WANT TO STOP SENDING THE SAME TO MARKET. IN WHICH CASE, THE AMOUNT OF THE SAME WILL HAVE TO BE BORNE BY YOU. NOW THE MATTER BOILS DOWN TO OUR CLAIM FOR OVERRUN AMOUNT ONLY FOR WHICH WE WILL DECIDE ABOUT THE NAME OF ARBITRATOR AND LET YOU KNOW IN DUE COURSE.....”*

(19) This was followed by a letter dated 19 October 1989 written by GMB to Neycer intimating that GMB had appointed Mr. O. P. Jhunjhunwala, Advocate, as its nominee arbitrator for adjudication of its claim "for over Rs. 2 crore in respect of all our losses sustained and is being sustained by us due to various breaches committed and still being committed by you under the said agreement."

(20) On 24 October, 1989 GMB wrote a letter to Neycer, the material portion whereof is reproduced hereunder:-

*".....In spite of assurances and discussions held with your Mr. Kale, erstwhile Managing Director, no support or any action was taken by the new management of your company in spite of our repeated reminders and requests.....*

*In view of non-fulfilment and your breaches, as stated aforesaid, the cost of our projects escalated to abnormal high and we were forced to ask for further financial assistance/loan for overrun of over Rs. 2 crores from financial institutions; for which you are solely responsible and for such overrun of our project we are claiming from you.....*

*Due to your indifference and non-cooperative attitude, we are unable to set up a proper sale organization for marketing our products, and, as such, we are sustaining huge monetary losses, and we reserve our right to claim all losses sustained and to be sustained by us on account of this obligation.....*

*We agree not to use your brand name in our products reserving our rights to claim all damages and compensations from you without prejudice to our rights and contentions in the matter.....*

*Due to several breaches of the Collaboration Agreement committed by you, we have sustained huge monetary losses and are still sustaining losses .....*"

(21) In response, Neycer wrote a letter dated 13 November 1989 dealing with all the allegations made in GMB's letter dated 24 October, 1989.

(22) The claims made by GMB in the statement of claim were on six counts as indicated in Schedules A to F to the statement of claim. The statement of claim was subsequently amended. Amended claims are indicated in Schedules A to F to the amended statement of claim. The heads of claim, original amount claimed, amended amount claimed, award given by Learned Umpire against each claim and the findings of the Learned Single Judge regarding each claim may be conveniently summarised in a Tabular form as follows:-

SCHEDULES	Original Statement of Claim	Amended Statement of Claim	Award given by the Ld Umpire	Findings of Learned Single Judge
"A" [Damages for delay in commissioning]	60.27 Lakhs	61.52 Lakhs	39.15 Lakhs	Sustained
"B" [Research & Technology Development Expenditure]	15.00 Lakhs	15.66 lakhs	(Disallowed)	Not Considered
"C" [Damages for preventing GMB to use logo GMB-Neycer]	350.00 Lakhs	350.00 Lakhs	203.43 Lakhs	GMB not entitled to any sum
"D" [Damages for N's failure, neglect & refusal to set up inter alia sales]	199.43 Lakhs	123.61 Lakhs	123.61 Lakhs	Award for Rs. 123.61 Lakhs granted by Ld Umpire accepted

personnel recruitment & dealer's network & dealer's network & guidance for marketing policy]				
"E" [Damage for loss of profit due to delay of 1 year in achieving optimum production which the Company proposed to obtain by Nov. 1990]	187.22 Lakhs	396.96 Lakhs	346.45 Lakhs	Award passed by Ld Umpire for Rs. 346.45 Lakhs accepted.
"F" [Claim for Payment of interest on a/c of delay in commissioning plant]	70.81 Lakhs	770.82 Lakhs	456.99 Lakhs	Learned Single Judge did not give any finding as according to the Learned Single Judge the claim of GMB was already satisfied

(24) In the award the learned Umpire observed that there can be no doubt that when the terms of reference are clear and specific, the Arbitrator has no jurisdiction to act beyond the terms of reference. As regards the scope of the reference, i.e., whether it was restricted to GMB's claim on account of cost overrun or whether it encompassed all the claims made by GMB, in the statement of claim as amended, after analysing the pre-reference correspondence exchanged between the parties which we have adverted to above, the learned Umpire held as follows:-

(i) In the instant case, there was no clear or specific reference of disputes. Neither party has produced any letter addressed to the



Arbitrator nominated by it referring disputes. The disputes between the parties which were referred to arbitration have to be culled out from the correspondence exchanged between the parties.

(ii) The expression 'overrun amount' is not specific but very wide. Under the agreement between the parties, the collaborator (Neycer) was required to endeavour to commission GMB's plant within 18 calendar months from the date of sanction of term loan by financial institutions.

(iii) The term loan was sanctioned on 19 May, 1987. Hence, the plant should have been commissioned by 19 November, 1988 which was extended by mutual agreement up to 31 January, 1989. Even by the extended date Neycer failed and neglected to commission the plant which could only be commissioned on 7 December, 1989. Hence, there was a delay of about 11 months in commissioning the plant. During the overrun time period GMB must have incurred overrun costs and suffered damages. The expression 'overrun amount' includes within it both costs incurred and damages suffered.

(iv) With reference to GMB's letter dated 19 October, 1989 referred to above, the learned Umpire held that the disputes mentioned in the said letter relate to all losses sustained and were being sustained by GMB due to various breaches committed and still being committed by Neycer. The

disputes enumerated in the said letter embraced all claims and disputes as pleaded in the statement of claim including the claim on account of GMB's deprivation of the use of the brand name or logo.

(v) With reference to GMB's letter dated 24 October, 1989 the learned Umpire held that by the said letter GMB had reserved its right to claim all losses sustained by it on account of breach of Neycer's obligations under the Collaboration Agreement.

(vi) The learned Umpire concluded that all the disputes and claims appearing in the statement of claim, both before and after amendment, had been referred to arbitration.

(25) Accordingly, the learned Umpire proceeded to consider each claim of GMB and made his award in respect thereof as would appear from the tabular statement set out above.

(26) The learned Single Judge, however, disagreed with the learned Umpire. His Lordship held as follows:-

*"I have considered the submissions of the learned Sr. Counsels and the relevant documents as well as the Award. The message sent by GMB appointing Mr. O. P. Jhunjhunwala as its nominee arbitrator for adjudication of claim for over Rs. 2 crores in respect of all the losses sustained and was being sustained by it due to various breaches including those committed and still being committed by Neycer under the agreement. The letter is absolutely clear and specific. There is no*

*scope to put any meaning other than the one that appears from a plain reading of the letter itself. The effort to interpret the words 'all the losses sustained by GMB' as embracing all the claims and disputes as pleaded in the claim petition is a rather laboured one. Consequently, it is an error on the face of the Award and an impermissible one. When this message had been sent in October, 1989, the statement of claim was not filed. Therefore, there was absolutely no scope to refer to all the disputes subsequently raised as being covered by the disputes referred to in the earlier letter.*

*.....*  
*Reading these communications both together and separately, the Court is left with no other alternative but to agree with, even keeping in mind the parameters and scope of restricted interference, the contention of the petitioner that the scope of reference could not be extended beyond what was mentioned in the letter dated October 19, 1989, i.e., Ext. G/71, more so, as it was by this letter that the claimant had appointed its nominee Arbitrator. It is by this letter that the Arbitrator was nominated by the respondent herein for adjudication of their claim for Rs. 2 crores due to various alleged breaches on the part of the petitioner and Rs. 2 crores was quantified as the losses suffered by GMB on all counts.*

*Therefore, there was hardly any scope for the Umpire to exceed the jurisdiction or scope of reference beyond the same. The other claims that the Umpire entertained were obviously outside the scope of the reference and, therefore, beyond his jurisdiction.*

*.....*  
*Thus, from the discussion I hold that claim of the respondent should have been restricted to Rs. 2 crores as the overrun cost. The Umpire exceeded his jurisdiction in entertaining the claims beyond it....."*

(27) Thus, the learned Single Judge came to the conclusion that GMB was not entitled to raise any claim in excess of Rs. 2 crores before the Arbitral Tribunal. The learned Judge sustained the learned Umpire's Award of Rs. 39.15 lacs on account of damages for delay in commissioning GMB's plant. GMB's claim of Rs. 15.66 lacs on account of Research and Technology Development expenditure which had been disallowed by the Learned Umpire was not considered by the learned Single Judge. The Learned Umpire's award of Rs. 203.43 lacs on account of damages for Neycer preventing GMB to use the logo GMB-Neycer was set aside by the learned Single Judge. The Learned Umpire's award of Rs. 123.61 lacs on account of damages for Neycer's failure, neglect and refusal to set up, *inter alia*, sales personnel recruitment and dealers' network and guidance for marketing policy was upheld by the learned Single Judge. As regards GMB's claim on account of damages for loss of profit due to delay of one year in achieving optimum production, the learned Umpire had awarded Rs. 346.45 lacs. However, the learned Judge held that the said amount in its entirety cannot be allowed under Schedule E since Rs. 1,62,75,910/- (Rs. 39,14,910+123.61 lacs) has already been allowed under Schedules A and D respectively. 'Therefore, the remaining portion of the total permissible claim of Rs. 2,00,00,000 minus Rs.1,62,75,910 i.e., Rs.

37,24,090/- is allowed under Schedule E'. Thereafter, the learned Judge went on to hold:- 'After finding the total amount of damages that can be awarded in favour of the claimant has been satisfied, the other claims need not be gone into.'

(28) Before we proceed further, it may be helpful to recount the law laid down by the Apex Court in relation to an application under Secs. 30 and 33 of the Arbitration Act, 1940. The said Sections are set out hereunder:-

*"S.30. Grounds for setting aside award.\_An award shall not be set aside except on one or more of the following grounds, namely:*

- (a) That an arbitrator or umpire has misconducted himself or the proceedings;*
- (b) That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;*
- (c) That an award has been improperly procured or is otherwise invalid.*

*S. 33. Arbitration agreement or award to be contested by application.\_Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:*

*Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."*

In the case of **Puri Construction Pvt. Ltd.-vs.- Union of India AIR 1989 SC 777**, the Apex Court held that when a court is called upon to decide the objections raised by a party against an arbitral award, the jurisdiction of the Court is limited, as expressly indicated in the Arbitration Act, and it has no jurisdiction to sit in appeal and examine the correctness of the award on merits. A Court while examining the objections taken to arbitral award is not required to examine the correctness of the claim on merits. It is not open to the Court to examine the correctness of an award on a reappraisal of the evidence.

In the case of **M/s. Sudarsan Trading Co.-vs.-The Govt. Of Kerala & Anr., AIR 1989 SC 890**, Sabyasachi Mukharji, J., speaking for the Division Bench observed that an Arbitrator in deciding a dispute under a contract is surely bound by the contract. However, the court cannot substitute the decision of the arbitrator as to what was meant by the contract, once that decision is conceded to the arbitrator. At paragraphs 35 and 36 of the reported judgment it was held as follows:-

*"35. In the instant case, the High Court seems to have fallen into an error of deciding the question on interpretation of the contract. In the aforesaid view of the matter, we are of the opinion that the High Court was in error. It may be stated that if on a view*

*taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view through perhaps not the only correct view, the award cannot be examined by the court in the manner done by the High Court in the instant case.*

*36. In light of the above, the High Court, in our opinion, had no jurisdiction to examine the different items awarded clause by clause by the arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator."*

In **Associated Engineering Co.-vs.-Government of Andhra Pradesh & Anr.**, AIR 1992 SC 232, the Apex Court observed that an Arbitrator's function is to arbitrate in terms of the contract. He cannot act arbitrarily, irrationally, capriciously or independently of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it. If the Arbitrator commits an error in the construction of the award, that is an error within its jurisdiction. In the facts of that case, however it was held that the Umpire had out-stepped the confines of the contract and had decided the matter strikingly outside his jurisdiction.

In **Paradip Port Trust & Ors.-vs.-Unique Builders**, (2001) 2 SCC 680, the Apex Court observed that from several decisions of the Apex Court and the provisions contained in the Arbitration Act, 1940, it is clear that generally an award passed by the Arbitrator is considered binding between the parties for the reason that the parties select the arbitrator and powers of the Court to set aside the award are restricted to cases set out in Sec. 30 of the Act. The jurisdiction of Courts including High Courts is not independent of the statute. The arbitrator's award is final both on facts as well as law. There is no appeal from his verdict. However, an award can be set aside only in situations specified in Secs. 30 and 33 of the Act.

In **Bharat Coking Coal Ltd.-vs.-Annapurna Construction**, (2003) 8 SCC 154, the Apex Court observed, *inter alia*, that if an arbitrator has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record.

(29) Let us first take the point of scope of the arbitral reference. It is not in dispute that there was no specific reference of disputes by either of the parties when they nominated their respective Arbitrators. In



other words, specific heads and amounts claimed under each head were not enumerated in the letters whereby Arbitrators were nominated. Hence, in our opinion, the learned Umpire rightly held that the disputes that formed the subject matter of the reference would have to be gathered from the pre-reference correspondence exchanged by and between the parties. We have set out the relevant portions of such correspondence in this judgment for the sake of convenience. We have no doubt in our mind that the scope of the reference was not restricted to overrun amount of Rs. 2 crores. To that extent, we are in disagreement with the learned Single Judge and His Lordship's finding to that effect is set aside.

(30) In our view, all the disputes and differences between the parties were referred to arbitration. This would be clear from Neycer's letter dated 19 September, 1989 referring '*the said disputes and any other dispute that may be raised between the parties*' to arbitration. Further, we agree with the learned Umpire that the term 'overrun amount' is one of very wide connotation. It would include within its ambit all kinds of loss and damage sustained by an aggrieved party by reason of overrun of a contract caused by breach of obligation of the other party to a contract. As aforesaid, the way we read the pre-reference

correspondence exchanged between the parties is different from the way in which the learned Judge read the same. Our reading is the same as that of the learned Umpire. Further, the way in which the learned Umpire construed the correspondence between the parties, cannot be said to be perverse or arbitrary or unreasonable. It is surely a plausible manner of reading the correspondence between the parties as a whole. It is trite law that so long as the meaning given by an Arbitrator/Umpire to a document or a series of documents is a plausible one, the Court will not interfere and substitute such meaning with its own understanding of such documents even if the Court differs from the Arbitrator or Umpire. The Court in exercise of an application under Secs. 30 and 33 of the Arbitration Act, 1940 does not act as an Appellate Court.

(31) Although a point was taken by Neycer in the pleadings filed by it before the Arbitral Tribunal that GMB's claim in excess of Rs. 2 crores is not within the scope of the reference, Neycer resisted the entire claim raised by GMB on merits by adducing evidence before the Arbitral Tribunal. Having contested all the claims raised by GMB on merits, in our view, it is not open to Neycer to contend that GMB's claim was restricted to Rs. Crores.

(32) Hence, we are of the firm view that there was no reason for the learned Judge to restrict the award under Schedule E to Rs. 37,34,090/- while in principle upholding the learned Umpire's award of Rs. 346.45 lacs on that count.

(33) We also find no justification in the learned Judge disallowing the learned Umpire's award of Rs. 203.43 lacs on account of damages for preventing GMB to use the logo GMB-Neycer. The learned Umpire has discussed the said claim in great details and analysed the evidence, both oral and documentary in respect of the said claim with great care. A Court hearing an application for setting aside an arbitral award does not have the power to reappraise the evidence before the Arbitrator/Umpire. So long as there is some evidence on the basis of which an award has been made, the Court shall not go in the sufficiency or otherwise of such evidence. Only if an award is based on no evidence at all, the court would be justified in interfering. We have carefully gone through the award of the learned Umpire and we are of the considered view that the same is supported by evidence. It is not for the court to enquire into the veracity or adequacy of such evidence.

(34) Mr. Deb relied on the Apex Court decision in the case of **Juggilal Kamlapat-vs.-N. V. Internationale Crediet-En-Handels Vereeniging**

‘Rotterdam’ (alias Rotterdam Trading Co Ltd.), (supra). It was held in that case that where no specific sum is claimed and the particulars of the claim are not given in the statement of claim the arbitrators may be guilty of misconduct if they make an award for a definite sum of money without calling for particulars of the claim and without giving opportunity to the other party to meet the specific case. In that case the petitioner who was challenging the arbitral award before the High Court had contended that there was no pre-existing dispute with regard to the quantum of damage prior to the date of reference before the arbitral Tribunal and the Arbitrators had no jurisdiction to decide the quantum of damage. Such contention was negated by the Learned Judge. It was held that the correspondence exchanged between the parties prior to the reference showed that there was a dispute between the parties with regard to breach of contract and consequently damages. The jurisdiction of the Arbitrator was therefore attracted and the Arbitrator was competent to assess the damages. The claim for a definite sum of money is not a condition precedent to the exercise of jurisdiction of the Arbitrator. Indeed, on a general submission the Arbitrator could determine and assess even prospective damages arising after the date of the submission.

(35) In *State of Orissa-vs.-Asis Ranjan Mohanty (supra)*, it was held that if subsequent claims raised by the claimant pertain to the disputes which were in existence at the time when the arbitration clause was invoked and were within the scope of arbitration clause and reference, the same can be raised. Additional claims raised by the claimant subsequently could be considered by the Arbitrator.

(36) These two decisions support the view we have taken regarding arbitrability of all the disputes and claims raised by GMB in the arbitration proceeding.

(37) In view of the aforesaid, we find no reason to interfere with the award of the Learned Umpire. Mr. Chakraborty, Learned Sr. Counsel, appearing for Neycer argued in his appeal that even the sum of Rs. 2 crores should not have been sustained by the learned Single Judge as there was no evidence to support such claim. We are unable to accept such submission as we have already indicated that in our view the learned Umpire's award cannot be said to be based on no evidence.

(38) No case has been made out by Neycer that the Learned Umpire misconducted himself or the arbitral proceedings or that the Arbitral Award has been improperly procured or is otherwise invalid. No ground for interference with the Award has been made out.

(39) In the result, GMB's appeal succeeds. The impugned judgment and order is set aside to the extent it interferes with the award of the Ld. Umpire. The Ld. Umpire's award is upheld. Neycer's appeal stands dismissed.

(40) APO 34 of 2016 and APOT 42 of 2016 are accordingly disposed of. There will, however, be no order as to costs.

(41) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I Agree.

(Jyotirmay Bhattacharya, CJ.)  
Banerjee, J.)

(Arijit

**Later:**

After the judgment is delivered, prayer is made on behalf of Neycer for stay of operation of this judgment and order for a period of three weeks. To give an opportunity to Neycer to approach the higher forum, let the operation of this judgment and order remain stayed for a period of three weeks from date.

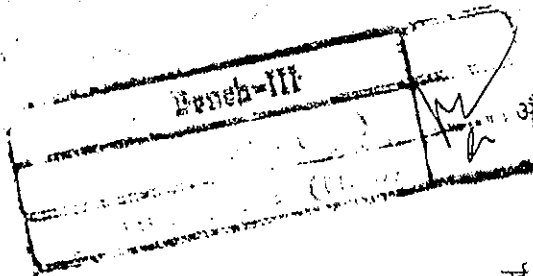
(Jyotirmay Bhattacharya, CJ.)

(Arijit

Banerjee, J.)



सत्यमेव जयते



भारत सरकार

वित्त मंत्रालय

आर्थिक कार्य विभाग

औद्योगिक और वित्तीय

पुनर्निर्माण बोर्ड

जवाहर व्यापार भवन

1, टालस्टाय मार्ग,

नई दिल्ली - 110 001

Page 31 of 205

Ministry of Finance

Department of Economic Affairs

Board for Industrial

and Financial Reconstruction

Jawahar Vyapar Bhawan

1, Tolstoy Marg,

New Delhi - 110 001

No.

88/92

Dated :

16/5/2000

The Registrar,  
Hon'ble High Court of Orissa  
Kanika Bldg., Ganga Mandir  
Cuttack-753 001

Sub: Case No.88/92 - M/s.GMB Ceramics Ltd.  
Regd. Office: Rajgangpur-770017  
Distt. Sundergarh, ORISSA.

Under the provisions of Sick Industrial Companies  
(Special Provisions) Act, 1985

Sir,

Having conducted an enquiry under Section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 in accordance with the procedure laid down in the said Act, the Bench of the Board for Industrial and Financial Reconstruction consisting of S/ Shri T.R. Sridharan, Member and N.R. Banerji, Member has recorded an opinion under Section 20(1) of the said Act that it is just and equitable that M/s. GMB Ceramics Ltd. should be wound up and has directed me to forward the aforesaid opinion of the Board to the Hon'ble High Court of Orissa for further action under the law vide enclosed order dated 02.05.2000. Copies of the other orders dated 5.1.93, 03.01.94, 9.3.94, 11.4.94, 23.9.94, 28.12.94, 14.3.95, 30.5.95, 12.6.96, 8.1.98, 29.6.98, 14.9.98, 2.6.99, 7.9.99 and 3.1.2000 also enclosed.

Yours faithfully,

Rupa Dutta  
REGISTRAR

Encl: as above

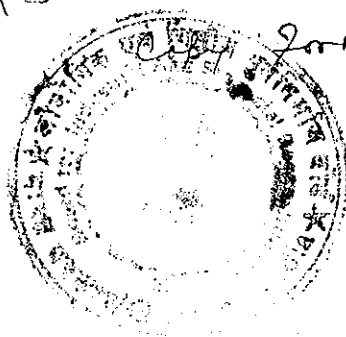
Copy to the Official Liquidator of High Court of Orissa, Cuttack alongwith the abovementioned documents for information and record.

Rupa Dutta  
REGISTRAR

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19/5/20

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Bench-III



Forwarded as per Exp. enclosed.

CERTIFIED TO BE TRUE COPY

Rupa Dutta  
2.4.2002  
Registrar

Board for Industrial and  
Financial Reconstruction

Signature  
B.O. 11/1



1. The Chairman  
M/s. GMB Ceramics Ltd.  
Rajgangpur-770017,  
Distt. Sundergarh,  
Orissa
2. The Secretary,  
Industries Deptt.,  
Govt. of Orissa,  
Bhubaneshwar
3. The Chairman,  
Indian Bank,  
31, Rajaji Road,  
P.B. No. 1304,  
Madras - 600 001
4. The Chairman.  
IDBI, IDBI Tower,  
Cuffe Parade,  
Bombay
5. The Chairman,  
IFCI,  
IFCI Tower (10th Floor),  
61, Nehru Place,  
New Delhi 110 019
6. The Chairman & MD,  
ICICI,  
163, Backbay Reclamation,  
Bombay - 400 020
7. The President,  
GMB Workers Trade Union,  
Somnatnpur Industrial Estate,  
Balasore,  
Orissa



APPELLATE AUTHORITY FOR INDUSTRIAL & FINANCIAL RECONSTRUCTION  
NEW DELHI

.....  
Appeal No.249/2000

ENCL-2

Appellant: M/s G.M.B. Ceramics Ltd. & Anr.  
Respondents: BIFR & Others  
Date of Hearing: 17.10.2000  
Date of Order: 17.10.2000

(Appeal against BIFR's Order Dated 2.5.2000 in Case No.88/92)

P R E S E N T

Appellant

Mr.Biplab Sinha, C.A.

Respondents

I.F.C.I.

Mr.K.Kalyansundaram, A.G.M.

Indian Bank

Mr.T.R.Jayasankaran, Manager

Govt. of Orissa

Mr.G.N.Pegu, Resident Commissioner

O R D E R

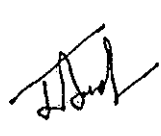
This is an appeal against BIFR's order dated 2/5/2000 in case No. 88/92.

2. On 12/6/98, while reviewing the progress of implementation of the sanctioned scheme, BIFR observed that the performance of the company, both in physical and in financial terms, had been below the projected level and the scheme had not been fully implemented. The performance of the company had been affected by its own lack of planning, inadequate market efforts, delay in bringing requisite funds and poor quality of production. BIFR, therefore, declared the sanctioned scheme as having failed and by an order dated 8/1/98, the Operating Agency (OA) was directed to initiate action for change in management of the company. The OA however, reported

that even though advertisement was released, no concrete proposal was received by them. As such, there was no viable rehabilitation proposal. In view of the above developments, the BIFR ordered show cause notice to be issued with a view to winding up of the company. However, inspite of sufficient opportunity and considerable time having been given, there was no response. BIFR, therefore, came to the conclusion that the company was not likely to become viable in the future and that it was just, equitable and in public interest that the company was wound up u/s 20 (1) of the Act. BIFR directed that this opinion should be forwarded to the concerned High Court.

3. In the appeal petition, the various reasons for the company's sickness have been elaborated and the background of the company's problems have been highlighted. A deal of collaboration agreement dated November 29, 1986 was entered into between the applicant and the Neycer India Limited (NIL) to impart technical know-how and expertise including the manufacturing process, engineering data etc., necessary for the purpose of establishment and setting up and deputation and retention of expert technicians for manufacture and production of vitreous sanitaryware products.

4. The financial institutions sanctioned the required loan to the company on or about 19/5/87 and as per the terms NIL was to commission the plants within the 18 calender months from the date of sanction of the term loans. Because of considerable delay, the company had to take the step to complete the commissioning of the factory and completed it on 7th December 1989. Because of non-fulfilment of the obligation at the part of NIL, the matter went into arbitration and the arbitrators appointed by both the parties differed in their opinions after prolonged proceedings lasting from 8 to 9 years. Finally, however, at the intervention of retired Supreme Court judge, who was appointed by the Calcutta High Court, the company was given an award of Rs 11.70 cr. In view of such funds coming, the company was hopeful that they would be able to meet the required expenditure.



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5. The representative of the appellant company pleaded that the judgement of the Calcutta High Court was expected on the 8th of November 2000 and they should be given time for 3 to 4 months. The representative of IFCI stated that the dues of secured creditors as on 31/3/99 amounted to Rs 29 cr (rounded off). The representative of the Indian Bank stated that NIL is also a sick industrial company, that its liability to the appellant company is treated by NIL as contingent liability, and that even if the award of Rs 11.70 cr is confirmed by the Hon'ble High Court, the recovery of the amount from NIL is uncertain. The representative of the appellant company states that the principals of NIL have undertaken to discharge the contingent liability of NIL.

6. Considering the huge debt of the appellant company, it is obvious that even if the award is confirmed by the Hon'ble High Court and the amount paid by the principals of NIL, this amount will only partly discharge the appellant company's financial obligations and it will not be possible to rehabilitate the appellant company.

7. The appeal is, therefore, dismissed.

( DR. J. K. BAGCHI )

Member

New Delhi

October, 17, 2000.

( M.S. DAYAL )

Member & Actg. Chairman

CERTIFIED COPY

NEW YORK (SHORE)

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Arbitration as clause 24 at page 109. Annex 11

## COLLABORATION AGREEMENT

DEED OF COLLABORATION AGREEMENT entered into at Madras on Saturday the 29<sup>th</sup> day of the November 1986 between Messrs. NEIVELI CERAMICS AND REFRACTORIES LIMITED (hereinafter referred to as the CONSULTANTS); a company registered under the Companies Act, 1956 and having its registered office at 109, Nungambakkam High Road, Madras. 600034 and Messrs. GMB Ceramics Limited (hereinafter referred to as GMB), a Company registered under the Companies Act, 1956 and having its registered office at Rajanapur 770017 Distt Sundergarh, Orissa.

WHEREAS the COLLABORATION have the necessary know how expertise and experience in the manufacture of vitrcout sanitaryware products of different kinds suitable to Indian Market.

WHEREAS GMB has obtained registration to produce annually 8000 M T of sanitaryware products under SIA Registration No. R-213 (87) dt. 6.2.87 from the Secretariat of Industrial Approvals (LA 111 Section), Department of Industrial Development. Ministry of Industry, Government of India.

WHEREAS, at the request of the said GMB, the COLLABORATORS have agreed to impart technical know how and ~~render technical~~ and assistance and also financially collaborate to ~~enable GMB to~~ establish and achieve production of sanitaryware products, the varieties of which are broadly described in ~~APPENDIX I~~ hereto.

AND WHEREAS, in consideration of the CONSULTANTS imparting such know how and rendering such service as aforesaid GMB have agreed to pay CONSULTANTS, know how and Technic Services Fee of Rs. 20 lakhs (Rupees Twenty lakhs only) and to meet the costs and out of pocket expenses that will be incurred by the CONSULTANTS in discharging the services as hereinafter provided.

IT IS NOW HEREBY MUTUALLY AGREED between the CONSULTANTS on the ONE HAND and GMB on the OTHER as follows:-

1. The Collaborators hereby agree to impart to GMB technical know how and expertise including manufacturing processes, engineering data, consumption norms, firing cycles, utility requirements and all such information as is necessary for establishing a vitreous sanitaryware manufacturing unit with 7000 TPA installed capacity and manufacture of 64000

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Tonnes of sanitaryware products per annum in the proposed factory to be built and established in the state of Orissa as per APPENDIX 2.

The CONSULTANTS further agree to share updated technical information in the body composition and/or in the manufacturing process which they may develop during the currency of this agreement.

2. The CONSULTANTS shall undertake study of the raw materials that are proposed to be employed by GMB for manufacturing the aforesaid sanitaryware products and advise on the basis of the quality of the said raw materials, the body or mass composition as well as glaze composition to be employed in proposed GMB factory in Orissa. The cost and expense for undertaking such study by the CONSULTANTS shall be borne by CONSULTANTS themselves for the first body and matching glaze composition. The glaze composition will relate to OCEAN BLUE, YELLOW TURQUOISE BLUE GREEN and PINK colours besides WHITE. As and when the colour glazers acquire sufficient proficiency the range of colours will be increased and new pleasing colours introduced as required by the market.
3. Having due regard to the present market conditions and the ability to absorb training by the unskilled labour that are proposed to be employed by GMB in their factory at Orissa, GMB will in consultation with the CONSULTANTS select the range of 18 articles of sanitaryware products for development of Master and Working Moulds to start with. These items, as stated aforesaid, are set out in APPENDIX 3 hereto. However during the course of the Agreement period the CONSULTANTS will assist in developing the master/working moulds for the entire range of product proposed to be manufactured as given in APPENDIX and/or other designs to suit the market trends.
4. CONSULTANTS will have no objection in GMB's adopting other models/design and colours of sanitaryware products, which are not within the range of manufacture of CONSULTANTS.
5. The concerned senior execution/exsiccate ... as determined by the COLLABORATION shall as made available for discussions in the office/at factory site of GMB whenever it is found necessary to do so and as may be agreed to between the parties hereto to advise GMB on the design of the factory buildings and manufacturing facilities that are to be built and established. The COLLABORATORS will further assist GMB in

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6. The CONSULTANTS shall advise on the items of machinery that are available indigenously which can be advantageously procured and will further advise on items of machinery which are desirable to be procured from abroad (imported). In selecting the items of plant and machinery, the COLLABORATORS will render necessary advise on the design features and technical specification of the related items to machinery that are to be procured either in Indian or abroad. In the event of procuring any machinery abroad GMB will pay to and fro air ticket expenses travelling and stay expenses abroad if the representatives of the COLLABORATORS are requested by GMB to undertake such visits to tender advice on the selection of machinery intended to be the procured from abroad.

The advice of the CONSULTANTS in respect of the equipment to be procured shall be final unless GMB has a valid reason for disagreeing with the same.

7. On the basis of the requirements as determined under para 5 supra, the COLLABORATORS shall prepare and furnish detailed drawings related to the factory layout on the basis of which the detailed design and civil construction of the factory shall be undertaken by GMB.

8. The COLLABORATORS shall also assist GMB on the following:-
- a) In the preparation, evaluation and finalisation of tenders and in obtaining quotations for all items of plant and machinery whether procured indigenously or imported.
  - b) In the procurement of adequate information and instruction and drawings from suppliers for expeditious erection of the items of machinery and equipment proposed to be installed in GMB factory at Orissa.
  - c) In arranging at GMB's cost supervision and erection of the said items of plant and machinery and obtaining adequate performance guarantee from supplier of such equipment or group of them to the level of performance agreed to between the supplier and GMB.

Rs. 1 lakh will be paid at the time of commissioning of the kiln and the balance Rs. 3 lakhs (Rupees three lakhs only) will be paid on prorata basis only on achieving the guaranteed optimum production levels as mentioned in clause No. 12.

For the purposes of releasing the payment to the COLLABORATORS, the optimum production in a year shall be deemed to have been achieved when the plant produces at rated capacity as mentioned in clause No. 12 for one calendar month.

To enable the COLLABORATORS to receive whatever benefits that may be extended to the equity shareholders during the period of guarantee performance under reference the equity share as equivalent of Rs. 3 Lakhs will be issued to the COLLABORATORS but the same will be pledged and released as and when the prorated payment under this clause because due and payable.

Here again, as mentioned already the COLLABORATORS financial institutions approved investment of the funds under reference in the preference shares and only on the approval from the financial institutions this amount can be instead invested in equity shares:

9. The CONSULTANTS will assist GMB in selection of personnel. The CONSULTANTS shall also arrange for inplant training of GMB technicians, not exceeding in all 50 employees, including supervisory staff and officers, in convenient balances as determined by the CONSULTANTS in coordination with GMB in the different sections in the factory of the CONSULTANTS at Vadlur. The period of training of respective groups shall be primarily decided by the CONSULTANTS and shall generally extend to a period upto six months and upto one year for Block and Case makers. The cost of traveling boarding and lodging salaries and wages insurance and such other expenses for such trainees shall be borne by GMB.

10. Soon after the erection of items of plant and machinery is completed at GMB factory premises, the COLLABORATORS shall depute expert technicians upto but not exceeding five in number for supervising and assisting in the start up of production in GMB factory. The period of their stay will depend upon the speed of progress in the start up operations. But, in any event their stay shall not exceed a total of 50 man-months. If optimum production is reached earlier than presently anticipated by the parties hereto, the COLLABORATORS may withdraw any or all of their expert technicians in consultation with GMB. The COLLABORATORS shall have further right to withdraw any or all expert technicians sent earlier and replace them with substitutes or in consultation with GMB withdraw them if the COLLABORATION are satisfied that they are no longer needed at the factory premises of GMB. Cost of replacement will be borne by GMB. Notwithstanding the foregoing, the COLLABORATION Hereby agree that they shall retain at site atleast one expert technician who is of general supervisory level till optimum production is reached with a right to replace or substitute such a person with an expert technician of similar competence



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and at administrative level the CONSULTANTS discretion. However the COLL... will also consider GMB's view on the suitability of the technician posted as above.

11. GMB shall meet the boarding and lodging expenses of the expert technicians and skilled workers whenever deputed for GMB work by the COLLABORATION under paras 5, 8 (c) and 10 supra in conformity with their status. In addition, GMB shall pay the COLLABORATIONS following fees:-

- a) Rs. 200/- per day per skilled worker
- b) Rs. 300/- per day per Jr Officer/Technician
- c) Rs. 500/- per day per Ser. Officer/Technician
- d) Rs. 600/- per day per Sr. Technical and Administration Executives

so deputed by the COLLABORATIONS.

The personnel deputed will also be entitled to an out of pocket allowance to be paid to them direct by GMB as under :-

	Rs./day
a) Skilled workman	30
b) Supervisory Technician	40
c) Jr. technical Officer	50
d) Sr Technical Officer	60
e) Sr Technical Executives	100

The Boarding facilities will be of the standard of 3 star hotel for categories (a) & (b) above, 4 star hotel for categories (c) & (d) above and 5 star hotel for category (e) above. However in case Guest House facilities (provided they are of reasonable standard) are available with GMB the same should be utilised first.

The personnel covered under (a), (b) & (c) above will be entitled to First Class or II Airconditioned class Railway fare and categories (d) & (e) will be entitled to Airfare and where air transport is not available by Air conditioned Railway transport and/or car transport.

All fees pertaining to the technicians/personnel deputed by the machinery, equipment or kiln suppliers for ... and commissioning including their travelling board... And lodging and daily allowances are payable by GMB.

12. Optimum production shall be deemed to have been achieved if the plant produces 60% of the installed capacity of 7000 TPA in the first year, 70% in the second year and 85% (6000 TPA) in the third year. Such production shall be based on the general norms for materials and utilities (with 10% tolerance) of which not less than 50% of the finished product shall be of quality comparable to the present India 'A' Class quality

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sold in the market. Rejection in the Kiln shall not exceed 20%./

Until optimum production has been achieved, weekly fortnightly reports giving analysis of green and fired by GMB to the COLLABORATORS. During this period, advice of the COLLABORATIONS in respect of the body and glazes composition will be strictly followed.

13. TERMS OF COLLABORATION:

The collaborations and their Associate Companies agree to invest in the project by way of their capital as promoters' contribution subject to a maximum of Rs. 18 lakhs (Rupees eighteen lakhs only) or 60% of the equity participation of GMB whichever is lower.

The contribution of the collaboration will be from the fees payable by GMB for implementation of the project.

The following paragraph will be deleted only on receipt of the approval from the Collaboration assure that, there property built, erected and correctly operated the plant. will reach the guaranteed production and quality levels as set out above.

The financial institutions approved investment of Rs.18 lakhs by the COLLABORATORS in GMB in the form of equity of participation instead of preference shares of which approval has been obtained.

It is clearly understood that the collaboration and their Associate Companies shall not be called upon to find ways and means or provide additional funds in the event of over-run arising from whatsoever causes there may be and that it will be the sole responsibility of GMB for procuring additional funds that may be needed.

14. TERMS OF PAYMENT

In consideration of the collaboration having undertaken to transfer Technical know-how and for rendering technical services spelt out in the foregoing paragraphs GMB hereby agree to pay the collaborations a Know-how and Technical Services fee of Rs. 20 lakhs (Rupees Twenty lakhs only) and the said fee shall be paid in the following manner, namely:-

- a) Rs. 1 lakh (Rupees one lakh only) at the time of execution of this agreement.
- b) Rs. 5 lakhs (Rupees Five Lakhs only) within two months from the date of communication issued by one or the other financial institutions approving in principle to grant term loan assistance to GMB in relation to this

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project. The CONSULTANTS agree to assist GMB in the preparation of Project Report and during the discussions with the financial institutions, GMB however, shall bear the travelling, boarding and lodging and out-of-pocket expenses of the representatives of the CONSULTANTS on the terms mentioned in Clause 11 supra to enable them to participate during the discussions with the financing institutions.

- c) Rs. 5 lakhs (Rupees five lakhs only) at the time of submission of details/specifications of all the equipment required for the project along with the general layout for the factory and individual department.
- d) Rs. 5 lakhs (Rupees five lakhs only) as soon as the construction of the buildings, installation of the equipment and the construction of the tunnel kldo etc have been completed.
- e) Out of the balance Rs. 4 lakhs (Rupees Four lakhs only) of the know how fees payable.

The payments, except for the payment mentioned in (e) out Rs. One Lakh out of (e) above, will be made by transfer of funds to the collaborations who will then immediately deposit the same with GMB as advance towards issue of shares. GMB will endeavour to issue the shares as early as possible.

For the purpose of this clause, the period will be reckoned with from the date of the actual commercial production.

15. The CONSULTANTS further hereby agree to grant the right to GMB for employing the said now-how and undertake manufacture of items of sanitaryware productions mentioned in Appendix 1 hereto. As requested by GMB, the CONSULTANTS also agree to licence GMB to use the legend "GMB NEYCER" to cover further periods with mutual consultations on the same terms and conditions as applicable now subject to renewal of clause 16 hereunder:

In consideration of the said licence to employ the said legend, GMB hereby agree to pay the CONSULTANTS royalty at the rate of 2% on the net sales value realised by GMB on the products manufactured by GMB during the period of the agreement.

The expression 'net sales value' means the ex-factory value less normal trade discount given to the traders by GMB and exclusively of all Government duties and taxes

16. The CONSULTANTS also agree to help GMB in organising the marketing and sales department and further render advice in sales promotion for which GMB will pay the CONSULTANTS

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at the rate of 2% on the net sale value i.e., ex-factory sales exclusive of all Government duties and taxes and the normal trade discount to the traders of GMB.

The CONSULTANTS will advise on the sales or marketing policy, advertisement etc which will help not only in the effective sale of the product but also help in building up a good image of GMB NEYCER product in the market.

For the purpose of this clause and clause 15 supra, the period of five years will be reckoned with from the date of the actual commercial production.

17. The period of this know-how and technical Assistance Agreement between the parties shall commence from the date of execution of this agreement coupled with advance payable under para 14 supra and shall ~~en\*\*~~ for five years reckoned from the date of this agreement. During the currency of this agreement the CONSULTANTS shall share with GMB the advances and developments in the know-how and technology, if any, achieved or acquired by the CONSULTANTS in relation to the sanitaryware products covered under this agreement.
18. It is further expressly agreed between the parties hereto that each party will fulfil his respective obligations in a timely manner to achieve desired objectives as set forth in the feasibility report.

19. This Agreement shall not prevent the CONSULTANTS from entering into similar know-how or Technical Services Agreements with any other parties in India or abroad.

## 20. TIME SCHEDULE

Subject to the delivery of the equipment, the consultants shall endeavour to commission the plant within 18 calendar months from the date of sanction of term loan by financial institutions.

## 21. FORCE MAJEURE

If performance of any of the obligations or services undertaken by the CONSULTANTS under this Agreement should be prevented or delayed by FORCEMAJEURE such as floods, earthquake, civil commotion, strikes or lock out etc. their duties and obligations shall remain suspended so long as the said circumstances continue to exist and for the period of any delay occasioned thereby. In such event, the CONSULTANTS shall not be responsible for any loss which

(9)

36

may sustain by reason of failure to perform or delay in the performance of the said services undertaken by the CONSULTANTS.

## 22. PRELIMINARY AND PREOPERATIVE EXPENSES

It is understood that GMB has incurred expenditure on the incorporation of GMB and on the implementation of the project so far under various accounting heads as indicated by the accounts for the period from the date of incorporation. Similar expenditure is continuing and it is agreed that the expenditure which has already been incurred and such future reasonable expenditure should be capitalised as preliminary and pre operative expenses and the same will be taken in account in the project feasibility Report to be prepared by the CONSULTANTS.

## 23. PUBLIC ISSUE

For raising a portion of the equity of the project, public issue of shares will be resorted to. Representative of the consultants will be invited to be present at the time of the meeting/meeting that may be convened to solicit public support for the issue.

## 24. ARBITRATION

All disputes arising out of or in connection with this Agreement shall be settled by arbitration in accordance with the provisions of the Indian Arbitration Act of 1940. Each party shall nominate an arbitrator ~~for and on their behalf~~ and the said two arbitrators shall select an umpire before they enter upon their reference to arbitration. The unanimous opinion of the two arbitrators and where they differ, the decision of the umpire thereon shall be final and binding on the parties hereto. The City Civil Court, Madras, shall be the only Court which shall have jurisdiction to enforce the Arbitration Award obtained under this Clause.

IN WITNESS WHEREOF the parties hereto execute and sign this Agreement on the day, month and year first above written.

For GMB CERAMICS LIMITED

(10) 37  
For NEVELI CERAMICS AND  
REFRACTORIES LIMITED.

Sd/-

Sd/-

(R.A. JALAN)  
(CHAIRMAN)

(S. VISWANATHAN)  
(VICE CHAIRMAN)

Signed in the presence and  
Witness thereof

signed in the presence on  
witness thereof

Sd/-

Sd/-

(Y.N.S.MURTHY)  
Director

(R M MEHRA)  
Executive Director

Sigma Consultants Pvt Ltd.  
11, Camac Street, Calcutta 700 011  
Camo: Neveli Ceramics and  
Refractories Limited

Madras

Dated: 29<sup>th</sup> November, 1986.

PRODUCTION OF 1000 PER ANNUAL

(1)	(2)	(3)	(4)	(5)	(6)
ITEMS	Sl No as per NEYCE Catalogue	Wt. per pc Kg	Sta-bility pro-portionately in Pcs	Total Wt. Kg	Total Wt on 4000 Tonnes proportionately Tonnes
<b>Indian Water Closet</b>					
18" (450 mm)	1	5.9	17	100.30	349.00
22" (500 mm)	2	6.6	9	59.40	206.71
23" (580 mm)	3	9.6	4	38.40	133.60
Flap	-	3.7	15	55.50	193.14
P. Rest	-	0.9	14	12.60	43.86
Cerise Pan 23" (580mm)	4	14.7	3	44.10	153.46
<b>TOTAL A</b>			62	310.30	1075.81
<b>English Water Closet and Cistern</b>					
P. Anglo Ind	5	17.5	9	157.50	546.10
S. Anglo Ind	6	10.7	7	130.90	455.53
Cistern Lid	7	17.1	7	17.10	59.50
	8	17.4	1	17.40	60.50
	9	8.8	9	79.20	275.62
<b>TOTAL B</b>			27	402.10	1397.31
<b>Wash Basin</b>					
6" x 12" (450 x 300)	10	7.0	6	42.00	147.00
10" x 16" (500 x 400 x 265)	11	12.1	2	24.20	84.22
12" x 16" (550 x 400 x 265)	12	13.0	14	182.00	633.36
15" x 18" (630 x 450)	13	15.1	3	45.30	157.64
Corner (530 x 430)	14	9.3	2	18.60	64.73
pedestal (580 x 200 x 195)	15	6.5	3	19.50	67.88
<b>TOTAL C</b>			30	336.40	1175.97
<b>Sinks</b>					
3 Small (470 x 300 x 315)	16	7.0	3	21.00	73.50
3 Big (600 x 400 x 375)	17	17.0	3	51.00	178.50
Corner Stand	-	0.1	1	0.50	1.75
1. Small (450 x 350 x 100)	18	0.5	1	0.50	1.75
1. Big (600 x 350 x 100)	19	11.1	1	11.10	38.85
Drainage Plate (680 x 315)	-	-	1	23.400	81.43
<b>TOTAL D</b>			5	86.00	295.83
<b>Plates</b>					
18" x 10"	20	9.2	3/4	6.900	23.775
18" x 6"	21	9.3	1	9.300	32.05
18" x 8"	22	10.5	1	10.500	36.75
18" x 10"	23	22.3	1	22.300	78.05
<b>TOTAL E</b>			3	49.700	172.575
<b>GRAND TOTAL</b>			127	1105.70	3878.465

(12)

Note: (1) Not less than 50% of the above production shall be Indian 'A' class quality.

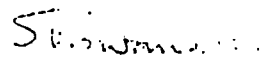
(2) It will be endeavoured to produce the maximum quantity of colouredware which can be absorbed by the market. for GMB Ceramics Limited for NEIVELI CERAMICS AND REFRACTORIES LTD 50.

  
R. A. JALAN  
(CHAIRMAN)


Signed in the presence of  
and witness thereof

*Y.N.S. Murthy*

(Y.N.S. MURTHY)  
Director  
Sigma Consultants Pvt Ltd  
11, Camac Street, Calcutta 700 011  
Camp: Neiveli Ceramics and  
Refractories Limited  
Madras  
Dated: 29th November 1986

  
S. VISWANATHAN  
(VICE CHAIRMAN)

Signed in the presence  
and witness thereof

  
R. H. MEHRA  
EXECUTIVE DIRECTOR



(13)

## APPENDIX 2

(13)

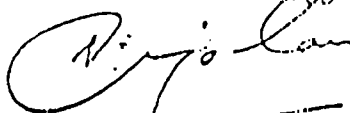
1. To assist in preparation of Project Report for a 4000 IPA/modern Sanitaryware Plant.
  2. To assist GMB to prepare Application to Financial Institutions for Term Loans.
  3. To attend meetings and discussions with Financial Institutions.
  4. To provide adequate specifications for all machinery and equipments required to be purchased or fabricated by GMB.
  5. To provide detailed layout drawings for the entire factory.
  6. To provide detailed layout drawings showing arrangement of machinery and equipment for Mill House, pumping of slip, Casting Section, Glazing Section, Glaze Spraying and Kiln Section etc.
  7. To test the raw materials in the CONSULTANTS laboratory to provide GMB with suitable body compositions and glaze formulations.
  8. To advise on the setting of suitable chemical and physical laboratory for testing raw materials, body compositions and glazes, finished products.
  9. To assist in selection of personnel and to provide training to Officers, Staff and workers of GMB including Officers in marketing.
- In the event of having to do start-up of the factory kiln, to provide detailed start-up drawings.

(14)

(11)

- ... (amount two lakhs only) but ...  
 ... the charges for the drawings ...  
 ... as per the foreign suppliers' quotations.
11. To supervise construction of the factory, more particularly the Mill House, Casting Section, Glazing Section, Tunnel Driers, if required, Tunnel Kilns etc.
  12. To provide suitable composition for body or mass and formulations for colored and white glazes.
  13. To advise on suitable Ventilations and disposal of effluents.

For CHB CERAMICS LIMITED


R.A. JALAM  
(CHAIRMAN)Signed in the presence of  
and witness thereof

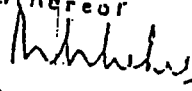
(Y. S. MURTHY)

Sigma Consultants Pvt Ltd  
 11, Colaba Street, Calcutta 700 011  
 Co. of Nelveli Ceramics and  
 Refractories Limited

11/11/86  
 Dat 1: 29th November 1986

For NEVELI CERAMICS AND  
REFRACATORIES LIMITED

S. VISWANATHAN

S. VISWANATHAN  
(VICE CHAIRMAN)Signed in the presence of  
witness hereof

R. H. MEHRA  
EXECUTIVE DIRECTOR

APPENDIX 3

S.No.	Pattern No	Item	Size
1	HP 00143	Madura Pan	18" or 450mm
2	DI 12430	Double Inlet Pan	20" or 500mm
3	DI 08858	Double Inlet Pan	23" or 580mm
4	OP 00758	Orissa Pan	23" or 580mm
5	AP 00856	Anglo Indian Pan	
		'P' Trap	38" or 465mm
6	PI 00900	'P' Trap Sealed Vent	
7	FR 01100	Fool Rests (Pair)	270x135x23mm
8	U 05000	Flut Back Wall Urinal	
		SPREE	450x300x315mm
9	U 05400	Partition Plate Small	680x315mm
10	WB 01245	Indigo	450x300mm
11	WB 09655	Sonia II	550x400mm
12	WB 01855	Carmen Std.	550x400mm
13	WB 10575	Sheraton (Oval)	570x425mm
14	P 02600	Saule Pedestal	
15	E 22000	EWG 'P' Trap Zurich VII	
16	E 23600	EWG 'P' Trap Zurich VIII	
17	LL 14100	LLC Alisa 12.5 litres	
18	LL 14200	Lid for LLC 12.5 lit	

For NEVELI CERAMICS AND  
REFRACTORIES LIMITED

S. Viswanathan

S. VISWANATHAN  
(VICE CHAIRMAN)

Signed in the presence of  
and witness thereof

R. H. MEHTA  
EXECUTIVE DIRECTOR

For GMB CERAMICS LIMITED

R.A. JALAY  
(CHAIRMAN)

Signed in the presence of and  
witness thereof

(Y.N.S. MURTHY)  
Director  
Sigma Consultants Pvt Ltd  
11, Connaught Street, Calcutta 700 011  
Camp: Neveli Ceramics and  
Refractories Limited  
Madras

Madras  
dated 29th November 1986

In the light of the discussions the representatives of M/s GHB Ceramics Limited had with the representatives of the financial institutions, it is now mutually agreed that the following deletions and additions will be effected in the Collaboration Agreement entered into on 29th November 1986 between M/s Neveli Ceramics and Refractories Limited (hereinafter referred to as the COLLABORATORS) and M/s GHB Ceramics Limited (hereinafter referred to as GHB).

1. M/s Neveli Ceramics and Refractories Limited will be referred to as the COLLABORATORS instead of CONSULTANTS wherever the word CONSULTANTS appears in the Agreement.

2. On page 2, the first para reading as under,

"WHEREAS Mr R A Dahan, Director of GHB, has obtained registration to produce about 11,000 MT of sanitaryware products under GHB Registration No. R-943/85 dt 27.11.85 from the Department of Industrial Development, Ministry of Industry, Government of India which will be transferred to GHB."

will be deleted and instead the following para will be substituted:-

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(17)

(17)

"WHEREAS GHB has obtained registration to produce annually 8000 Tonnes of Sanitaryware products under SIA Registration No.R-213107) dtd 6 2 87 from the Secretariat of Industrial Approvals (LA III Section), Dept. of Industrial Development, Ministry of Industry, Govt of India."

3. On page 2 in the second para, the following line at the end of the para reading as under:-

upto the 1st stage of implementation of licensed capacity."

will be deleted.

4. On page 2, last para and on Page 3, first para reading as under

✓ "1. The CONSULTANTS hereby agree to impart to GHB technical knowhow and expertise including manufacturing processes, engineering data, consumption norms, firing cycles, utility requirements and all such information as is necessary for establishing, at normal efficiency, manufacture of 4000 M T of Sanitaryware products per annum in the first stage of proposed sanitary to be built and established in the State of Orissa as per Appendix 2."

will be deleted and in its place the following para will be inserted:-

✓ "1. The COLLABORATORS hereby agree to impart to GHE technical knowhow and expertise including manufacturing processes, engineering data, consumption norms, firing cycles, utility requirements and all such information as is necessary for establishing a Vitreous Sanitaryware manufacturing unit with 7000 TPA installed capacity and manufacture of 6000 Tonnes of Sanitaryware products per annum in the proposed factory to be built and established in the State of Orissa as per Appendix-2".

5. On Page 10, the 1st para and 2nd para reading as under

"12. Optimum production shall be deemed to have been achieved if the factory in Orissa achieves 300 MT of gross production in any calendar month. Such production shall be based on the normal norms for materials and utilities (with 10% tolerance) of which not less than 50% of the finished products shall be of quality comparable to the present Indian 'A' class quality sold in the market. Reduction in yield shall not exceed 15 - 20% ✓

Target will be to achieve the optimum

(29) 12 2. (19)

production within 12 months of commissioning of the kiln and towards this end both the CONSULTANTS and CHU will put in earnest efforts."

will be deleted.

In its place, the following paragraph will be substituted:-

"12. Optimum production shall be deemed to have been achieved if the plant produces 60% of the installed capacity of 7000 IPA in the 1st year, 70% in the 2nd year and 85% (6000 IPA) in the 3rd year. Such production shall be based on the general norms for materials and utilities (with 10% tolerance) of which not less than 50% of the finished product shall be of quality comparable to the present Indian 'A' Class quality sold in the market. Rejection in the kiln shall not exceed 20%.

Until optimum production has been achieved, weekly/fortnightly reports giving analysis of green and fired out-turn will

6

up to 1000

(20)

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(20)

be furnished by CHB to the COLLABORATORS.  
During this period, advice of the COLLABORATORS  
in respect of body and glazes composition will  
be strictly followed.

The COLLABORATORS assure that, when properly  
built, erected and correctly operated the  
plant will reach the guaranteed production and  
quality levels as set out above."

6. On Page 10, under 'TERMS OF COLLABORATION' Item  
No.13), the following paragraph will be deleted only on  
receipt of the approval from the financial institutions  
approving investment of Rs.10 lakhs by the COLLABORATORS  
in CHB in the form of equity participation instead of  
Preference Shares for which approval has been received.

"The CONSULTANTS will be allotted REDEEMABLE  
CUMULATIVE PREFERENCE SHARES (10% and 6 years).  
In the event of the equity dividend exceeding  
10% in any year, the preference shares will  
also be eligible for a similar rate of dividend.

At the end of the six years period, the CONSULTANTS  
will have the option to convert the preference  
shares into equity shares (at par) in lieu of  
the redeemed preference shares. However the  
intention to avail the option to convert the



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Preference shares into equity shares will be conveyed by the CONSULTANTS to GMB during the sixth year."

Under 'Terms of Payment' (Item No.14) on Page 12, the following changes will be made:-

In (b), the figure of Rs.5 lakhs (Rupees five lakhs only) will be substituted for the figure of Rs.6 lakhs (Rupees six lakhs only).

In clause (c), the figure of Rs.5 lakhs (Rupees five lakhs only) will be substituted for the figure of Rs.6 lakhs (Rupees six lakhs only).

In clause (d), the figure of Rs.5 lakhs (Rupees five lakhs only) will be substituted for the figure of Rs.6 lakhs (Rupees six lakhs only).

In clause (e), the following will be deleted :-  
"Rs.1 lakh (Rupees one lakh only) as soon as the factory achieves the optimum production as mentioned in clause 12 above."

In its place, the following will be inserted:-

"Out of the balance Rs.4 lakhs (Rupees four lakhs only) of the knowhow fees payable."

: 7 :

Rs.1 lakh will be paid at the time of commissioning of the kiln and the balance Rs.3 lakhs (Rupees three lakhs only) will be paid on prorata basis only on achieving the guaranteed optimum production levels as mentioned in clause No.12.

For the purpose of releasing the payment to the COLLABORATORS, the optimum production in a year shall be deemed to have been achieved when the plant produces at rated capacity as mentioned in clause No.12 for one calendar month.

To enable the COLLABORATORS to receive whatever benefits that may be extended to the equity shareholders during the period of guarantee performance under reference, the equity shares equivalent of Rs.3 lakhs will be issued to the COLLABORATORS but the same will be pledged and released as and when the prorata payment under this clause becomes due and payable.

Here again, as mentioned already, the COLLABORATORS; financial institutions approved investment of the funds under reference in the preference shares and only on the approval from the financial institutions, this amount can be instead invested in equity shares."

(23)

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(23)

(23)

18:

8. On Page 13, the 1st para reading as under will be deleted:-

"The payments, except for the payment mentioned in (a) and (e) above, will be made by transfer of funds to CONSULTANTS who will then immediately deposit the same with GMB as advance towards issue of shares. GMB will endeavour to issue the shares as early as possible."

In its place, the following will be introduced:-

"The payments, except for the payment mentioned in (a) and Rs.1 lakh out of (e) above will be made by transfer of funds to the COLLABORATORS who will then immediately deposit the same with GMB as advance towards issue of shares. GMB will endeavour to issue the shares as early as possible."

9. On Page 13 under item 15, in line 6, the words "GMB-LC NEYCER" are deleted and the words "GMB-NEYCER" are inserted.

10. On Page 14, para 2, delete "GMB-LC NEYCER" and insert "GMB-NEYCER".

# 11. APPENDIX 1

In view of the production capacity having been increased to 6000 IPA from 4000 IPA, the specifications

312

128

24

24

of all the individual patterns shall stand increased by 50%.

12. APPENDIX 2 (1st para)

Delete the 1st para and in its place insert the following:-

"To assist in preparation of Project Report for a 7000 TPA installed capacity modern Sanitaryware plant with optimum production of 6000 Tonnes per annum."

for GHB CERAMICS LIMITED,

R.A. JALAN  
(CHAIRMAN)

Signed in the presence of  
and witness thereof.

Sd/-  
(Y.N.S. MURTHY)  
DIRECTOR

Sigma Consultants Pvt Ltd  
11, Canal Street, Calcutta 700011.  
Cam : Neiveli Ceramics and  
Refractories Limited  
Madras

for NEIVELI CERAMICS AND  
REFRATORIES LIMITED

S. VISWANATHAN  
(VICE CHAIRMAN)

Signed in the presence of  
and witness thereof

R.H. MEHRA  
PRESIDENT

Dated : 26th June 1987

CAL 25646 06.10 20:30

out in

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5366 GMB IN

5.10.89 5.10.89

KINDLY PASS ON THE FLG MSG TO MR VENKATESWARA RAO, MD/NCRL, AS WE  
 INT GTG THEIR TLX LINE

ANNEXURE 4

5.10.89

FM: R A JALAN, MD/GMB

TO: MR VENKATESWARA RAO, MD/NCRL

I HVE RECD YR REGD. LETTER OF 19TH SEPT. IT IS SURPRISING THAT  
 DESPITE OUR REPEATEDLY ASKING YOU WHAT BREACH OF AGREEMENT HAS  
 BEEN DONE BY US U. HVE NOT BEEN ABLE TO MENTION EVEN ONE,  
 WHEREAS WE HVE POINTED OUT THE BREACHES THAT HVE BEEN DONE BY YOU  
 ITEM BY ITEM.

YR SUGGESTION OF NOT USING YR BRAND NAME AGAIN SHOWS THAT HOW YOU  
 WANT TO DEVIATE FROM YR AGREEMENT AND PUT US IN MORE PROBLEMS,  
 BUT, IN VIEW OF KEEPING PLEASANT RELATION FRM OUR SIDE AS FAR  
 AS POSSIBLE, WE WILL HENCEFORTH NOT PUT YR BRAND NAME ON OUR WARE.  
 THIS WILL CREATE A LOT OF HURDLES FOR US BUT WE WANT TO MINIMISE  
 THE AREA OF CONFUSION COMPLICATIONS. REG OTHER PICTORIAL  
 REPRESENTATIONS ON STATIONRY WE WILL USE IT UNTIL OUR NEW  
 STATIONERY ARE PRINTED, AND WHATEVER WARES HVE BEEN MANUFACTURED  
 SO FAR ( WHICH ARE NT VERY MUCH IN QNTY), WE WILL SELL THEM  
 WITH YR BRAND NAME UNLESS YOU WANT TO STOP SENDING THE SAME  
 TO MARKET, IN WHICH CASE THE AMOUNT OF THE SAME WILL HVE TO  
 BE BORNE BY YOU.

NOW THE MATTER BOILS DOWN TO OUR CLAIM FOR OVERRUN AMOUNT ONLY  
 FOR WHICH WE WILL DECIDE ABOUT THE NAME OF ARBITRATOR AND  
 LET U KNOW IN DUE COURSE.

EXCL 55046 19.10 12:29

15-

15 NCRL IN

5366 GIB IN

19.10.89

R A JALAN, MD, GMB CERAMICS LTD

SECRETARY, NEIVELI CERAMICS AND REFRACTORIES LTD, MADRAS

VIRTUE OF CLAUSE 14 OF THE COLLABORATION AGREEMENT DATED  
 1986 MODIFIED BY ADDENDUM DATED 26.6.1987, WE HEREBY APPOINT  
 S.P. JHUNJHUNWALA ADVOCATE, 9 OLD POST OFFICE STREET,

700001, AS OUR NOMINEE ARBITRATOR FOR ADJUDICATION  
 OF OUR CLAIM FOR ~~RS. 2 CRORES (RS. TWO CRORES)~~

IN RESPECT OF ALL OUR LOSSES SUSTAINED AND IS BEING SUSTA-  
 IAINED BY US DUE TO VARIOUS BREACHES COMMITTED AND STILL

BEING COMMITTED BY YOU UNDER THE SAID AGREEMENT.

15 NCRL IN

5366 GIB IN PL ACK+7  
 PL RPT TH'RD LINE?? - OK

**GMB CERAMICS LIMITED**

**VS**

**NEYCER INDIA LIMITED**

**AWARD BY THE UMPIRE**

ARBITRATION  
BETWEEN  
GMB CERAMICS LIMITED  
VS ... CLAIMANT  
NEYCER INDIA LIMITED  
... RESPONDENT

AWARD BY

THE UMPIRE

JUSTICE MURARI MOHON DUTT  
(FORMER JUDGE, SUPREME COURT OF INDIA)



100Rs.



# ARBITRATION

## BETWEEN

GMB CERAMICS LIMITED . . . . . CLAIMANT

- VS -

NEYCER INDIA LIMITED . . . . . RESPONDENT

## AWARD

By an order dated 11th February 1998, passed in A.P. 370 of 1997 (GMB Ceramics Ltd. -Vs- Neycer India Ltd.) the Honourable Mr. Justice Amitava Lala was pleased to appoint

79

50 Rs.



:: 2 ::

me an Umpire inasmuch as the two learned arbitrators could not come to agreed conclusions and, consequently no award was made in the arbitration proceeding. Needless to say, the Arbitration Act 1940 applied to the proceeding and there can be no doubt that the said Act also applies to the proceeding before me as the Umpire.

The case of the claimant, GMB Ceramics Limited, hereinafter called "GMB", as pleaded in the Statement of Claim, may be stated in short as follows :

On or about 26th March 1982 GMB was incorporated as a Company with the object of setting up a factory to manufacture vitreous sanitaryware products, and for that purpose GMB acquired extensive land at Somnathpur, District Balasore, Orissa, at huge costs, charges and expenses. The respondent Neveli Ceramics & Refractories Limited, hereinafter referred to as "Neycer", represented and/or claimed to have the necessary know-how, expertise,

8x

:: 3 ::

experience, goodwill, research and development facilities for manufacture of vitreous sanitaryware products of different kinds suitable for Indian markets as also marketing and sales organisations and net work of dealers for sale of the same.

For the purpose of setting up a factory, GMB procured term loan and financial assistance from Industrial Finance Corporation of India (IFCI) in consortium with IDSI and ICICI on certain terms and conditions. The respondent Neycer at all material time had due notice and knowledge of the aforesaid facts.

A deed of Collaboration Agreement dated November 29, 1986 was entered into by and between the claimant GMB and the respondent Neycer whereby, the respondent agreed, inter alia, to impart to the claimant technical know-how and expertise including manufacturing process, engineering data, consumption norms, fire-cycles, utility requirements and all such information necessary for the purpose of establishment and setting up and deputation and retention at site expert technicians for manufacture and production of a vitreous sanitaryware manufacturing unit with installed capacity of 7000 tonnes per annum and manufacture of 6000 tonnes of sanitaryware products per annum in the said factory to be erected and built for the claimant at Balasore, Orissa, for the consideration and on the terms and conditions as mentioned in the said Collaboration Agreement.

:: 4 ::

GMB agreed to pay to Neycer Rs.20 Lacs on account of know-how and Technical Services Fee and to meet the costs and out-of-pocket expenses that would be incurred by Neycer in discharging the services as provided in the Collaboration Agreement. Some of the services that were to be rendered by Neycer as provided in the agreement are to assist GMB in the preparation, evaluation and finalisation of tenders and in obtaining quotations for all items of plant and machinery, erection and supervision thereof, to depute expert technicians upto but not exceeding five in number soon after the erection of plant and machinery, to retain at site at least one expert technician who is of general supervisory level till optimum production is reached etc.

Under clause 15 of the agreement, Neycer further agreed to licence GMB to use the legend "GMB-Lc NEYCER" to cover further periods with mutual collaborations on the same terms and conditions subject also to renewal of clause 16 of the agreement. In consideration of the said licence to employ the said legend GMB agreed to pay to Neycer royalty at the rate of 2% on the net sales value realised by GMB on the products manufactured by GMB during the period of the agreement.

As recorded in paragraph 16 of the agreement, Neycer agreed to help GMB in organising the marketing and sales department and further render advice in sales promotion for which GMB would pay Neycer at the rate of 2% of net sales

:: 5 ::

value. Neycer would also advise on the sales or marketing policy, advertisement etc. which would not only help in the effective sale of the product but also in building up a good image of GMB-Lc NEYCER product in the market. So far as clause 15 and clause 16 are concerned, it was agreed that the period of five years would be reckoned from the date of actual commercial production.

The agreement was to enure for five years to be reckoned from the date of the agreement. Further, it was expressly agreed between the parties that each party would fulfil its obligations in a timely manner to achieve desired objectives as set forth in the feasibility report.

Clause 20 containing one of the most important terms provides that subject to the delivery of the equipment, Neycer should endeavour to commission the plant within 18 calendar months from the date of sanction of term loan by financial institutions. Thus it is apparent that while GMB would deliver all equipments that might be required by Neycer, the most responsible obligation was imposed on Neycer to commission the plant within 18 calendar months from the date of sanction of term loan.

It is the case of GMB that the financial institutions referred to above sanctioned the loan to GMB on or about 19th May 1987 and, accordingly, Neycer was bound and obliged to commission the plant on or before November 19, 1988. But

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as Neycer failed to commission the plant within the time stipulated in the agreement, GMB had no other alternative than to extend the time to commission the factory upto 31st January 1989. Even then Neycer failed and neglected to commission the factory by 31st January 1989. GMB had no other alternative but to take steps to commission the factory and in spite of best efforts, it was unable to do so until 7th December 1989 but, even then, the factory was unable to achieve production of 60 percent of the installed capacity of 7000 tonnes per annum in the first year.

It is also the case of GMB that had Neycer performed its obligations under the agreement, and imparted GMB technical know-how, expertise and other facilities and deputed and retained expert technicians and/or a technician of general supervisory level as provided in the agreement, the factory could have also been commissioned by 31st January 1989 and achieved optimum production of 60 per cent of the installed capacity of 7000 tonnes per annum by 31st January 1990. In other words, it is the case of GMB that Neycer failed and neglected to discharge its obligations as per the collaboration agreement to the severe loss of GMB.

Thus disputes and differences arose between the parties and the same were referred to arbitration as per the Arbitration Clause contained in the Agreement.

In the Statement of Claim, GMB has claimed a total

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sum of Rs.1,539.93 lacs under different heads in Schedules 'A' to 'F' on account of loss and damages alleged to have been suffered by it for several breaches of contract alleged to have been committed by Neycer. It may, however, be stated that in the Statement of Claim as originally filed, GMB claimed under different heads damages to the extent of Rs.882.73 lacs. Subsequently, by an amendment of the Statement of Claim, the said total amount of damages was enhanced to Rs.1,539.93 lacs with corresponding amendments of the relevant paragraphs of the Statement of Claim. There is considerable dispute between the parties whether the application for amendment of GMB was allowed or not. According to Neycer the application was not allowed and that it could not be allowed. This dispute relating to the application for amendment of the Statement of Claim will be considered at the appropriate stage.

The respondent Neycer filed a counter-statement wherein the allegations of GMB as to the failure of Neycer in performing its obligations under the agreement have been denied. Further, it has been denied that under the agreement Neycer was required to erect or commission the factory of GMB. It has been averred by Neycer that under the agreement its obligation was only to depute expert technicians to assist the claimant in commissioning the plant after GMB had erected the plant and machinery and that Neycer had deputed its expert technicians. Assuming that

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there was any delay in commissioning the plant, it has been alleged that it was solely on account of the various acts of omissions and commissions of GMB. It has been denied that GMB is entitled to the amount of damages as claimed by it or any position thereof. The above is in brief the case of Neycer. It may be mentioned here that the pleadings of Neycer were not placed before me, but elaborate arguments were made on behalf of Neycer, both on facts and law which will be referred to and dealt with hereafter.

Mr. Jalan, the Managing Director of the Claimant GMB argued the case on factual aspects while Mr. A. K. Jhunjhunwala, Advocate, argued on behalf of GMB on points of law.

Before anything else, I may consider the dispute between the parties relating to the application of GMB for amendment of the Statement of Claim. The learned arbitrators, after hearing the parties, passed the following order dated 2nd August 1993 :

"The amendments prayed for are allowed except that amendment in Sch. F is restricted to the period ending 31/3/94. This is without prejudice to all the rights and contentions of Neycer on all aspects."

There was difference of opinion between the learned arbitrators as to whether by the said order the application for amendment was allowed or not. One of the learned



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arbitrators took the view that it was allowed, but according to the other, the application for amendment was left open as the said order allowing amendments was "without prejudice to all the rights and contentions of Neycer on all aspects."

It is, however, submitted by Mr. Raghaban, learned Counsel for Neycer that in view of the provisions of Section 3 read with paragraph 4 of the First Schedule of the Arbitration Act 1940, all questions are to be decided by the Umpire de novo, even questions regarding which there was no difference of opinion between the arbitrators including the question as to the maintainability of the application for amendment of the claim petition. In support of his contention Mr. Raghaban has placed reliance on two decisions, namely State of Madhya Pradesh Vs. M/s. Preconco, Indore, AIR 1987 M.P. 284 and State of Mysore Vs. R. J. Shah & Co. Ltd., AIR 1969 Mys. 237.

Mr. Jhunjhunwala, learned Counsel appearing on behalf of GMB, has no objection if the question as to the maintainability of the application for amendment is decided by me do novo. I am also of the view that instead of interpreting the said order of the learned arbitrators which is not at all clear, it is better to decide the question independently of the said order.

In opposing the application for amendment, Mr. Raghaban submits that the scope of the proceeding before the Umpire is that neither the Arbitrator, nor the Umpire, can

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travel beyond the reference or, in other words, the jurisdiction is derived from the reference. Counsel submits that the original claim as also the amendments sought to be made are beyond the scope of reference and, as such, the amendments as prayed for cannot be allowed. Much reliance has been placed by the learned Counsel on two decisions of the Supreme Court - Union of India & Ors. Vs. Santiram Ghosh, AIR 1989 S.C. 402; and Indian Aluminium Cables Ltd. Vs. Haryana State Electricity Board & Ors. 1996 (5) SCALE 708.

In Santiram Ghosh's case, under the terms of reference the Board of Arbitrators was required to give its finding on the question whether the post of Scientific Assistant of the Botanical Survey of India should be allocated the revised scale of Rs.550-900 in terms of 3rd Pay Commission's recommendations effective from 1/1/1973. The Board of Arbitrators by its award held that all the Scientific Assistants who were continuing as Scientific Assistants since 1/1/1973 and who possessed the prescribed qualification for Level-1, i.e. M.Sc./First Class B.Sc.(Hons.)/Second Class B.Sc. with 3 years' experience should be placed in the scale of Rs.550-900 with immediate effect, i.e. the date of the Award and should be deemed to be automatically absorbed in the grade of Senior Scientific Assistants irrespective of the fact whether there were vacancies or not. It also directed the Government to frame recruitment rules for the posts of Senior Scientific

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Assistants Level-I and Scientific Assistants Level-II. It was held by the Supreme Court that under the terms of reference, the Board of Arbitrators was required to give its finding as to whether the revised scale of pay of Rs. 500-900 should be allocated to the post of Scientific Assistant of Botanic Survey of India, that the terms of reference were very clear and specific and that under the terms of reference there was no scope for prescribing two levels of scale of pay and the minimum qualifications as done by the Pay Commission. It was further held by the Supreme Court that there was also no scope for directing the Government to frame proper Recruitment Rules for the posts of Senior Scientific Assistants- Level-I and Scientific Assistants- Level-II, and that it was, therefore, apparent that in making the Award, the Board of Arbitrators acted beyond the terms of reference. It has been ruled by the Supreme Court that when an Arbitrator acts beyond the terms of reference, the Award is illegal and not binding on the parties.

There can be no doubt that when the terms of reference are clear and specific, the Arbitrator has no jurisdiction to act beyond the terms of reference as laid down by the Supreme Court.

In the other decision, that is, the case of Indian Aluminium Cables Ltd. the Arbitrators entertained a totally different claim from the one mentioned in the notice which

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was the basis of the reference. It was held by the Supreme Court that as the claim was outside the scope of reference, the Arbitrators could not go into it.

It thus follows from the above two decisions of the Supreme Court that when the terms of reference are clear and specific, the Arbitrator cannot travel beyond the reference by entertaining any matter or claim which is totally different from that under the reference.

In the instant case, there was no clear or specific reference of disputes. Indeed, neither the party, has produced any letter addressed to the Arbitrator nominated by it referring disputes. It is, however, contended by Mr. Raghavan that the terms of reference and/or the disputes have to be culled out from the documents on record, which are a few correspondence between the parties. In these correspondence, either party complained of failure of the other party to discharge its obligation under the agreement. For our present purpose, that is, ascertainment of the terms of reference, only the relevant portions of these correspondence will be mentioned.

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Let me start with Ext. G/66 (Vol. G-1) which is a letter dated 11th September 1989 of Mr. R. A. Jalan, Managing Director of GMB and addressed to the Managing Director of Neycer. In this letter, GMB claimed on account of overrun and asserted that damages had been done to it for the failure of Neycer in providing sales assistance.

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Ext. G/67 (Vol. G-1) is a letter dated 19th 20 September 1989 whereby Neycer inter alia informed GMB of the appointment of its arbitrator and that the disputes to be referred to him would be compensation payable to Neycer for the breaches of Collaboration Agreement alleged to have been committed by GMB and its disavowal to any licence or permission to use the logo. It was further stated that failure on the part of GMB to nominate an arbitrator to decide the said disputes and any other dispute that may be raised between the parties would result in its arbitrator as the sole arbitrator to proceed with the arbitration. It is apparent from this letter that disputes raised by Neycer were very wide, namely, compensation payable to Neycer for the breaches of the Collaboration Agreement by GMB and would include any other dispute that might be raised between the parties. ✓

In reply to Neycer's letter dated 19th September, 1989, Ext. G/67 (Vol. G-1), GMB by its letter dated 6th 31 October 1989, Ext. G/68 (Vol. G-1) stated, inter alia, that in spite of repeated asking, Neycer was not able to mention any breach alleged to have been committed by GMB, while GMB had pointed out the breaches that had been done by Neycer item by item. In the second paragraph of the letter, GMB agreed not to put Neycer's brand name on its wares except that the wares that had been manufactured, would be sold with Neycer's brand name. In the last paragraph, it is stated "Now the matter boils down to our claim for overrun ✓

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amount only for which we will decide about the name of the arbitrator and let you know in due course." /

The last paragraph of Ex. G/68 (Vol. G-1) as quoted above has been strongly relied upon by Mr. Raghavan and it is submitted by him that the only dispute that has been referred to therein is the claim for overrun amount. In my opinion, the expression 'overrun amount' is not only not specific but very wide. It may be recalled that under the agreement, the collaborators shall endeavour to commission the plant within eighteen calendar months from the date of sanction of term loan by financial institutions. It is the case of GMB that it was due to the breaches committed by Neycer, the plant could not be commissioned within eighteen months from the date of sanction of the loan, which was, according to GMB, 19th May 1987. Therefore, the plant should have been commissioned by 19th November 1988 which was mutually extended upto 31st January 1989, but still Neycer failed and neglected to commission the same. It is alleged that in view of Neycer's failure, GMB had to take upon itself the work of commissioning the plant and could ultimately commission the same on 7th December 1989. So there was a delay of about eleven months in commissioning the plant. Assuming but not deciding that the allegations of GMB to be true, there can be no doubt that during this overrun period, GMB must have incurred overrun costs and suffered damages. In my view, the said expression 'overrun

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amount' includes within it both costs incurred and damages suffered. ✓

By the next letter dated 19th October 1989, Ext. G/71 (Vol. G-1) GMB informed Neycer of the appointment of its arbitrator "for adjudication of our claim for over Rs.2 crores (Rs.2 crores) in respect of all our losses sustained and is being sustained by us due to various breaches committed and still being committed by you under the said agreement." This letter is important, for by this letter GMB communicated to Neycer the disputes that would be referred to its nominee arbitrator for adjudication as quoted above. The disputes as mentioned in the letter relate to all losses sustained and was being sustained by GMB due to various breaches committed and still being committed by Neycer. The disputes enumerated in this letter embrace all claims and disputes as pleaded in the claim petition including the claim on account of its deprivation of the use of the brand name or logo. It may be that by Ext.G/68 (Vol. G-1) GMB agreed not to put Neycer's brand name on the wares that would be produced by it, but that would not prevent it from claiming damages alleged to have been suffered by it for the deprivation of the use of the logo. Moreover, it has been already noticed from the letter dated 19th September 1989, Ext.G/67 (Vol. G-1) that Neycer informed GMB, inter alia, of referring to its arbitrator GMB's disentitlement to any licence or permission to use the

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logo. So the dispute relating to the use of the logo is very much within the scope of reference in his arbitration proceeding.

The last letter that will be referred to in this connection is that of GMB dated 24th October 1989, Ext.G/72 33 (vol. G-1) whereby GMB accused Neycer of negligence, indifference and breaches committed by it in respect of the agreement. GMB has mentioned as many as seven items of breaches alleged to have been committed by Neycer. Thereafter, it has been alleged by GMB "In view of non-fulfilment and your breaches as aforesaid, the cost of our projects escalated to abnormal high and we were forced to ask for further financial assistance/loan for overrun of over Rs.2 crores from financial institutions, for which you are solely responsible and for such overrun of our project we are claiming from you." In the second sub paragraph of the letter, it has been stated, inter alia, "Due to your indifference and non-cooperative attitude, we are unable to set up a proper sales organisation for marketing our products and, as such, we are sustaining huge monetary losses, and we reserve our right to claim all losses sustained by us on account of this obligation." In the third sub paragraph it has been averred, inter alia, "Since you want us not to use your brand name, we agree not to use your brand name in our products reserving our rights to claim all damages and compensations from you without prejudice to our rights and contentions in the matter." In

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the last but two paragraphs, GMB reminded Neycer about the appointment of its arbitrator to decide the disputes and differences.

It is urged by Mr. Raghavan that in Ext. G/72 (Vol. G-1), as GMB has claimed over Rs.2 crores on account of overrun costs it should be taken that GMB has referred to arbitration their claim to overrun costs only and no other claim. So far as the claim of GMB for all losses sustained and to be sustained by it as stated in sub paragraph (2) of the letter and also claim for damages and compensation arising out of its disentitlement to use the brand name mentioned in sub paragraph (3) are concerned, it is contended by the learned counsel that as the rights to these claims have been reserved by GMB, these claims should not be considered as part of its claim in the arbitration proceeding. The learned counsel has placed reliance on the connotation of the word 'reserve'- given in Black's Law Dictionary, 5th Ed., page 1175 as follows :

"Reserve, n. Funds set aside to cover future expenses, or claims. In insurance law, a sum of money, variously computed or estimated, which, with accretions from interest, is set aside as a fund with which to mature or liquidate by payment or reinsurance with other companies future unaccrued and contingent claims, and claims accrued but contingent and indefinite as to amount or time of payment. Royal Highlanders v. Commissioner of Internal Revenue, C.C.A. 8, 138 F. 2 d. 240, 242, 244."

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I am unable to accept the contention of the learned counsel that GMB's claim is confined to overrun costs only. Apart from the interpretation of the expression 'overrun amount' as given by me in connection with the letter EX.G/68 (Vol. G-1) wherein the expression has been used, namely, that the expression includes within it both costs incurred and damages suffered, in my opinion, the true meaning or connotation of the word 'reserve' should be understood in the context in which it has been used. According to GMB there was a delay of about eleven months in commissioning the plant on account of breaches and failure on the part of Neycer to discharge its obligations under the agreement entailing overrun costs and damages. In the letter Ext.G/72 (Vol.G-1), it has been alleged that the cost of the project escalated to abnormal high and GMB was forced to ask for further financial assistance/loan for overrun of over Rs.2 crores from financial institutions, and that amount has been claimed as overrun amount or cost. It is true that GMB, while it alleged to have suffered damages, did not claim on that account any amount of damages or compensation but reserved the rights to claim the same. This reservation, in my opinion, was for the claim petition as submitted by Mr. Jhunjhunwala, learned counsel for GMB. Indeed, the claim has been made in the claim petition. In Ext.G/72 (Vol. G-1) the dispute has been clearly referred and only the right to claim damages and compensation has been reserved. So if the disputes have to be culled out

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from the correspondence between the parties, it must be held that all the disputes, as pleaded in the claim petition both before and after amendment, have been referred. There is, therefore, no merit in the contention of the learned counsel for Neycer that the only claim that has been referred is the claim to overrun cost of over Rs.2 crores.

At this stage, I may note the contention of Mr. Jhunjhunwala that in the absence of any reference by the parties of specific disputes to the arbitrator, the disputes should appear in specific terms when the arbitrator enters upon the reference, that is, when he applies his mind to the case or, in other words, the disputes must appear from the statement of claim. This contention is not without force. (The disputes and claims must appear either from documents or from the claim petition before the arbitrator enters on the reference.) Of course, this will apply when there is no specific reference by the parties of their disputes to the arbitrator. After the arbitrator enters on the reference, he has to proceed on the basis of the disputes referred to him and no new dispute can be entertained by him at the instance of a party. (Be that as it may, I have already come to the finding that all the disputes and claims appearing in the claim petition, both before and after amendment, have been referred to arbitration.)

The next two objections to the application for amendment of GMB are that (1) it is barred by limitation,

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and that (2) it sets up a new cause of action.

But before I proceed to deal with the said objections raised on behalf of Neycer, it is necessary to state the nature of amendments prayed for.

It is the case of GMB that Neycer has committed breaches of its obligations under the agreement and that accordingly, it (GMB) has suffered damages which have been enumerated in Schedules A to F of the claim petition. The amendments which have been prayed for are enhancement or reduction of the amount of money claimed by GMB as damages as mentioned in Schedules A to F. So far as Schedules A and B are concerned, no objection has been made to the amendment, and no amendment has been made to Schedule C. Thus the objections to the amendments relate to Schedules D, E and F. ✓

The unamended Schedule D related to Neycer's failure, neglect and refusal to set up, inter alia, sales personnel recruitment and dealer's network and guidance for marketing policy. It consisted of a claim for a total sum of Rs.199.43 lacs under clauses (a) and (b). Under clause (b) a sum of Rs.184.43 lacs was claimed on account of discount on sales. Clause (b) has been sought to be amended reducing the claim to Rs.16,33,101/- on that account, the reason being that in the unamended clause (b), it was the estimated discount. But by amendment, the actual discount which is less than the estimated discount has been sought to be incorporated. A new clause (c) has been proposed to be

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introduced claiming damages of Rs.98,28,270/- on account of loss due to lowering of prices of GMB's product vis-a-vis Neycer. The total of the amounts under clauses (a), (b) and (c) is Rs.123.61 lacs which is less than the total amount of unamended clauses (a) and (b) of Schedule D.

So far as Schedule E is concerned, it is the case of GMB that through mistake a sum of Rs.187.22 lacs was claimed as damages for the failure and neglect of Neycer to execute and perform works under the contract. It is averred that in course of the arbitration proceeding when the mistake was detected, the learned arbitrators permitted GMB to claim a sum of Rs.394.96 (346.45) lacs on the basis of a Project Report which was already disclosed and proved in the arbitration proceeding. Accordingly, GMB has prayed for the amendment of Schedule E.

The last Schedule, that is, Schedule F relates to claim for payment of interest on account of alleged delay and breach of contract on the part of Neycer. In this regard, the case of GMB is that it had obtained term loan and financial accommodation from financial institutions agreeing to pay interest thereon, that on account of the delay in the commissioning of the plant and production thereat by Neycer, GMB was compelled to pay interest which it would not have otherwise incurred. In Schedule F, GMB initially claimed Rs.70.76 lacs and it is alleged inter alia that by reason of the failure of Neycer to perform its

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obligations under the contract and breach thereof, GMB was compelled and would be liable to pay penal interest, compound interest and damages which upto 1993-94 would amount to Rs.593.78 lacs. In view of the above, GMB has prayed for amendment of Schedule F by raising the initial claim for interest from Rs.70.76 lacs to Rs.593.78 lacs.

It may be stated that simultaneously with the prayer for amendments of Schedules D, E and F, amendments of the corresponding statements of the body of the claim petition have also been prayed for.

Now I may embark on the remaining two objections to the amendment, namely, one on the ground of limitation and the other on the ground of incorporating a new cause of action as already indicated before. It has been already noticed that by the amendments GMB seeks to revise and/or recast the amounts of damages claimed by it under different heads. By the amendments the original disputes are not altered, nor new allegations made, nor the heads under which the damages claimed have been changed. Therefore, by the amendments GMB has not made any attempt to change the cause of action. In the circumstances, in my opinion, merely because the amount of damages have been revised or recast it cannot be said that a new cause of action has been sought to be introduced by the amendments.

I may now refer to a few decisions relied on by Mr. Jhunjhunwala on behalf of GMB. In Leif Hoegh & Co. vs. Petrolsea Inc. (1992) Vol.1 Lloyds Law Reports 45, by a tanker voyage charter the owners (Leif Hoegh) let their

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Vessel 'World Era' to the Charterers (Petrolsea) for the carriage of a cargo of crude oil to ports in Italy and Sardinia. The charter contained an arbitration clause. After the vessel had sailed Petrolsea purported to order the vessel to discharge at Durban in South Africa, but the owners of the vessel refused to comply with the order. Petrolsea alleged that certain expenses had been incurred in supplying a substitute cargo to the South African purchasers. Thus disputes and differences having arisen between the parties, the same were referred to arbitration, and Petrolsea pleaded breaches of charter party and certain points of claim and claimed damages in the pleading. Subsequently, certain amendments were made in the pleadings and by one of such amendments, the claim for damages was revised and recast. By an originating summons, Leif Hoegh applied for an order declaring that the Arbitration Tribunal had no jurisdiction to hear and determine the issues raised by the amendments including the amendment of the claim for damages. Hobhouse, J. observed as follows :

"The claim referred by both parties was the claim of Petrolsea to recover by way of damages for breach of charter party a loss which Petrolsea alleged that it had suffered as a result of that breach. It was in respect of that that two original arbitrators were appointed. The fact that a claimant subsequent to the appointment of the arbitrators revises his damages claim so as to include items previously omitted or revises or recasts other items does not affect the actual cause of action. No new breach of charter party is alleged or relied upon."

(Emphasis supplied).

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The ratio decidendi of the above decision in Leif Hoegh's case is that if the cause of action is not changed or, in other words, if no new breach is alleged, there can be no objection to revise or recast the claim for damages or to include 'items' previously omitted. In view of this decision, there is no merit in the contention of the learned counsel for Neycer that the amendments of Schedules D and E of the claim petition seek to introduce new heads of claim, namely, "lowering of prices" and "loss of profit on the basis of delay in achieving optimum production" respectively, for in either case, no change has been effected to the breaches alleged to have been committed by Neycer and, accordingly, no new cause of action was introduced.

In the case of Juggilal Kamlapat Vs. Internationale Crediet-En-Handels, AIR 1955 Cal. 65, Bachawat J. (as he then was) observed as follows :

"The correspondence show that prior to the reference there was a dispute whether the petitioner wrongfully failed to ship the goods and whether their cancellation of the contract was wrongful and whether the petitioner was entitled to damages. The jurisdiction of the arbitrator is, therefore, attracted and the arbitrator is competent to assess the damages....

"The claim for a definite sum of money is not a condition precedent to the exercise of jurisdiction by the arbitrator. Indeed, on a general submission the arbitrator should determine and assess even prospective damages arising after the date of the submission - 'Smalley Vs. Blackburn Rail Co.' (1857) 27 LJEX 65 (J) - 'Speak Vs. Taylor', (1894) 10 TLR 224 (K)"



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Juggilal's case is, therefore, an authority for the proposition that it is the jurisdiction of the arbitrator, and he is competent not only to assess the damages but also prospective damages. Therefore, the quantum of damages can always be altered by an amendment and no objection against such amendment can be entertained.

The next decision that may be referred to is that of Anand Kumar Jain Vs. Union of India, AIR 1986 S.C. 1125. This decision does not relate to any arbitration proceedings, but still it is relevant for our present purpose. In this decision, Bhagwati, C.J. and Amarendra Nath Sen, J. were pleased to allow amendment of the claim to compensation by enhancing the original claim of Rs.40,000/- to Rs.3 Lacs in a Motor Vehicles Act Claim case on the ground of permanent disability to the extent of 50% which was discovered after the petitioner had filed his original claim, observing, inter ali, that there was no reason why the amendment should not be granted.

In view of the authority of the decisions cited above, it can be safely laid down that so long as the disputes or allegations of breaches of contract are not sought to be altered or changed or, in other words, the cause of action is not varied, revision or recasting of the quantum of damages, either by enhancing or reducing the same, by amendment of the claim petition is always permissible. ✓

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Now I may refer to two decisions relied upon by the learned counsel of Neycer. The first one is the decision of the Supreme Court in Muni Lal Vs. The Oriental Fire & General Insurance Co. Ltd. & Anr., AIR 1996 S.C. 642 and the second one is also the decision of the Supreme Court in Radhika Devi Vs. Bajrangji Singh, AIR 1996 S.C. 2358. ✓

In Muni Lal's case (Supra), it has been laid down that normally amendment is not allowed, if it changes the cause of action as held in the case of Vineet Kumar Vs. Mangal Sain Wadhera, AIR 1985 S.C. 817, ✓ but it is well recognised that where the amendment does not constitute the addition of a new cause of action, or raise a new case, but amounts to not more than adding to the facts already on record, the amendment would be allowed even after the statutory period of limitation. Chit

In Radhika Devi's case (Supra) in a suit for partition, the appellant who was the plaintiff, made an application for the amendment of the plaint by incorporating therein a prayer for a declaration that a deed of gift executed and registered by one Ramdeo Singh was obtained by the respondents illegally and fraudulently and, therefore, it was ineffective and did not bind the appellant. The application for amendment was made even after the period of limitation of a suit for such a declaration had expired. In dismissing the appeal, it has been observed by the Supreme Court that no doubt, the amendment of plaint is normally

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granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. In observing this, the Supreme Court referred to and relied on its previous decision in Laxmidas Dahyabhai Kabrawala Vs. Nanabhai Chunilal Kabarwala, AIR 1964 S.C. 11 (18) wherein it has been observed that it is no doubt, true that, save in exceptional cases, leave to amend under O.6 R.7 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time, but this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. But that is not the fact here. It has been already found by me that the amendment merely revises or recasts the amount of damages without introducing any new dispute or incorporating any new allegation and, as such, there can be no question of the amendments being barred by limitation.

Thus on a consideration of both factual and legal aspects and the contentions of the learned counsel of both parties, it is held that the application of GMB for the amendment of the claim petition is neither beyond the scope of the reference nor is it barred by limitation. The application for amendment is, accordingly, allowed.

The next point for consideration is as to the date of sanction of the loan as contemplated by paragraph 20 of

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the agreement, which provides that subject to the delivery of the equipment, the collaborators shall endeavour to commission the plant within eighteen calendar months from the date of sanction of the term loan by financial institutions. The point is important inasmuch as almost the entire case of GMB depends on the finding as to the date of sanction of the term loan of the financial institutions. According to GMB, the date of sanction of the term loan or the starting point of eighteen months was 19th May 1987 so that the commissioning of the plant should have been completed by 19th November 1988 which was extended to 31st January 1989. It is alleged that Neycer having failed and neglected to commission the plant by 31st January 1989, GMB had no other alternative but to take steps to commission the same and, in spite of best efforts, it was unable to do so until about 7th December 1989. Thus there was a delay of eleven months in commissioning the plant.

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GMB has placed strong reliance on a letter dated 19th May 1987 written by Industrial Finance Corporation of India (IFCI) to GMB regarding its application for financial assistance - Ext. G/81 (Vol. G-1). According to GMB, by this letter IFCI, the lead Institution, has sanctioned the loan and, therefore, the date of sanction is the date of the letter, that is, 19th May 1987. On the other hand, it is contended by Mr. Raghavan that sanction of loan connotes that there must be a binding commitment by the Financial Institution to advance the loan, the disbursement may be

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made subsequently. Further, it is submitted by the learned counsel that the letter is not only not a sanction by IFCI, but also it is not a sanction by IDBI and ICICI which is apparent from clause (2) of the letter. Accordingly, it is contended by the learned counsel that the letter, Ext.G/81 (Vol. G-1) does not satisfy paragraph 20 of the agreement requiring sanction of term loan from financial institutions. It is submitted by the learned counsel that the date of sanction is the date on which the loan agreement was executed by the financial institutions, that is, 7th December 1987. In other words, according to the learned counsel, the loan was sanctioned by the financial institutions by the loan agreement dated 7th December 1987.

The letter, Ext.G/81 dated 19th May 1987 relates to the application of GMB for financial assistance. On the right hand side of the letter two code numbers, namely 'Concern Code 2436' and immediately under that 'Sanctioned Code 8705' have been written. The allotment of a sanctioned code number is, in my opinion, very much indicative of the sanction of the loan applied for. In the first paragraph of the letter, it has been stated categorically "The proposal has been considered and Industrial Finance Corporation of India (IFCI) (hereinafter referred to as "the Lead Institution) is agreeable in principle to provide the following facilities."

Thereafter, the particulars of the loan to be given not only

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by IFCI but also by IDBI and ICICI on certain terms and conditions are set out. In my opinion, there can be no doubt whatsoever that by Ext. G/81 (Vol. G-1) the term loan has been sanctioned by the Financial Institutions. It is true that so far as IDBI and ICICI are concerned it has been stated in clause 2 of the letter that their participation in the 'Rupee Term Loans' and underwriting assistance is subject to the approval/sanction of their respective sanctioning authorities. This statement, in my view, cannot destroy or diminish the spirit and object of the letter sanctioning the term loan. If the loan was not sanctioned by the said letter there was no necessity to lay down the terms and conditions to be complied with by GMB to avail itself of the term loan. Moreover, in clause 2, the letter has been referred to as the 'Letter of Intent'. If the loan was not sanctioned there could be no reasonable justification for referring the letter as the 'letter of intent'. Needless to say, the lead institution, that is, IFCI is a responsible institution and it is not expected that it would allot a part of the term loan to IDBI and ICICI without their express consent. (The consent of these two institutions must have been there, but as a mere formality, under Clause 2 the sanction of the loan on their behalf was made subject to the approval/sanction of their respective sanctioning authorities. Indeed, in the loan agreement both IDBI and ICICI did participate. I am of the view that there is a binding commitment in the sanction of

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the loan by the letter Ext. G/81 (Vol. G-1). But the expression 'binding commitment' does not mean that the sanction must be unconditional. Generally, every letter of sanction or letter of intent contains terms and conditions to be fulfilled by the party in whose favour it is issued. In this connection, it is profitable to refer to paragraph 14(b) of the agreement which requires that one or the other financial institution should approve in principle to grant term loan. In view of the provision of paragraph 14(b) of the agreement, it is too late for Neycer to advance any contention contrary to the agreement. Under paragraph 14(b) it is sufficient if one or other financial institutions approve in principle. (Even leaving aside IDBI and ICICI, there can be no doubt that IFCI, the lead institution having approved in principle, the sanction of the term loan is quite in compliance with the provision of paragraph 14(b) of the agreement. I am unable to accept the contention of the learned counsel for Neycer that a commitment by all the three financial institutions would only satisfy the provision of paragraph 20 of the agreement. It is true that paragraph 20 has used the expression 'financial institutions'. But that does not mean that all the financial institutions shall simultaneously sanction the loan. The provision of paragraph 20 should be interpreted in the light of the other provisions of the agreement, and that in view of paragraph 14 (b), it will be compliance with the provision of clause 20 if one of the financial

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institutions accord sanction. Apart from that, I am of the view that not only IFCI has sanctioned the term loan, but also the other two financial institutions have expressly consented to or accorded sanction, otherwise, as has been already stated, IFCI would not have imposed on them liability to grant specific amounts as term loan to GMB.

In view of the discussion made above, I hold that by the letter dated 19th May 1987 the financial institutions sanctioned the term loan to GMB. Therefore, as required by paragraph 20 of the agreement, the commissioning of the plant should have been done within eighteen months from 19th May 1987, the date of sanction of the term loan, that is, within 19th November 1988 which was, however, extended to 31st January 1989.

Under paragraph 20 of the agreement, it is the responsibility of the collatorator, that is, Neycer to commission the plant within eighteen months of the sanction of the loan subject, however, to the delivery of the equipment by GMB.

At this stage, it may be stated that the feasibility report or the project report was prepared by Neycer at Madras, but for technical reason it was submitted through a consultant, namely Sigma Consultants Private Limited (see Q.1132 of Jalan's cross examination). Indeed, it appears that relevant copies of the project report, Ext.G/111



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(Vol. G-4) and of the application for financial assistance were sent to GMB from Madras by the Secretary, Neycer under cover of the letter dated 27th February 1987. At page 28, paragraph 2.15 of the project report, it has been stated, inter alia, that the commissioning of the plant is expected to be completed within eighteen months from the date of receiving the letter of intent from financial institutions sanctioning term loan. It appears that everything started well. Neycer in its letter dated 14th February 1987, Ext.G/3 (Vol. G-1), addressed to IFCI, inter alia stated that Neycer had been under considerable pressure from its dealers to substantially increase its production to meet and cater to the requirement of the dealers from all over India and that instead of substantially increasing the capacity of its own factory, it would be desirable to help the establishment of a new factory in Eastern India to meet some of the demands existing and increasing all the time. Further, it was stated inter alia that being fully confident of the marketing ability of the production envisaged under GMB's project, Neycer had no hesitation to even financially participate in the same. There was cordiality between the parties and the project was considered as a joint venture. Ext. G/7 (vol.G-1) is a letter dated 23rd July 1988 of Neycer to GMB showing how Neycer was eager to depute a senior with a view to starting the pilot plant production by September 1988.

At this point, the management of Neycer changed; it

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was taken up by Spartek Ceramics Limited in August 1988. Mr. Jalan did not waste time in writing to Mr. Krishna Prosad, the Managing Director of Spartek on 17th August 1988 expressing hope for the continued goodwill and understanding in the implementation of the agreement, Ext.G/8 (Vol.G-1), which was promptly replied to by Mr. Krishna Prosad on 20th August 1988 assuring Mr. Jalan that the agreement would be honoured fully, Ext.G/9 (Vol.G-1).

Ext.G/12 (Vol. G-1) is a letter dated 15th October 1988 of Mr. Jalan to Mr. Sarkar, the Vice-President of Neycer, informing him of the starting of operation of GMB's Moulding shop and expected completion of Sliphouse Pipeline work by 25th October and requesting him to come to Balasore with Mr. Swaminathan for reviewing the progress and discussion of all the aspects of future programme. The letter was, however, not replied to.

Mr. Jalan by his letter dated 29th October 1988, Ext.G/15 (Vol. G-1), reminded Mr. Krishna Prosad of his assurance of full support and solicited his continued cooperation which appeared to Mr. Jalan to be lacking during the recent past and informed him (Mr. Krishna Prosad) that GMB's work was going on fast on warfooting and any delay in communication and cooperation would upset GMB's plan. It was pointed out by Mr. Jalan to Mr. Krishna Prosad that in the past, various technicians of appropriate level including Mr. U. Sarkar and two others had been visiting (Balasore)

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for assisting GMB in the implementation of the project and solicited such visit by them. Again, it was requested by Mr. Jalan for the visit of Mr. Sarkar and Mr. Swaminathan, as very appropriate stage had come for their visit-letter dated 31st October 1988- Ext.G/9b (Vol. G-1).

The next letter dated 23rd November 1988 is from Mr. Krishna Prosad to Mr. Jalan, Ext.G/21 (Vol.G-1), whereby Mr. Jalan was advised to coordinate with Mr. P.R. Kale, Managing Director of Neycer, with regard to cooperation between GMB and Neycer. The said letter was replied to by Mr. Jalan on the same day informing Mr. Krishna Prosad that in spite of a number of telex messages and letters addressed to Mr. Kale, there was no response whatsoever from him- Ext.G/22 (Vol.G-1).

In this way, correspondence continued, Mr. Jalan pointing out to Mr. Krishna Prosad that joint meeting as was asked for by him was being avoided, that sporting spirit was missing and that at that stage every delay was upsetting his (GMB's) programme- Ext.G/26 (Vol.G-1).

Ultimately, discussions were held among Mr. Kale, M.D. Neycer, Mr. Mehra, Adviser, Neycer, and Mr. Jalan, M.D. GMB, on 3rd and 5th December 1988. In the said meeting, the following discussions were held :

- "(a) Pilot Plant is ready for commissioning and batch kiln will be ready and will be commissioned within two/three weeks' time, but not later than 31st December 1988.

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- (b) Tunnel Kiln is expected to be completed and lighted up at the latest by 31st January 1989 as discussed and finalised with Mr. D. A. Heimsoth.
- (c) Production from Pilot Plant is to start as early as possible.
- (d) Steps have to be taken for increasing production to a sufficient level by the end of January 1989 so that the tunnel kiln when commissioned can be properly fed."

Thereafter, the minutes of the meeting record certain tentative requirement of the personnel considered urgently required. One of such requirements as recorded against item No.5 is as follows :

"Over and above the aforesaid urgent requirments, it was agreed that a Sr. Technician capable of general supervision will be deputed immediately to take charge of the operation till optimum production and quality have been achieved."

- Ext.G/28 (vol.G-1).

Again correspondence followed, Mr. Jalan insisting on a competent person to supervise all the process and to stay at Balasore until GMB would start getting satisfactory results of quality and optimum production- Ext.G/51 (vol.G-1) dated 24th May 1989.

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In spite of several promises made by Spartek and also by Neycer to retain at site at least one expert technician of general supervisory level till optimum production was reached as provided in paragraph 10 of the agreement, no such expert technician was posted and, as a result, GMB by its letter dated 28th August 1989, Ext.G/57 (Vol.G-1), complained to Mr. Venkatesawara Rao, the Managing Director of Neycer that, GMB's project cost had gone overrun by two crores and asserted why GMB should not claim that amount from Neycer, the major part of which was because of interest payment to financial institutions. In regard to sales assistance, it was pointed out that GMB was not clear about the help from Neycer and, as such, it wanted to know what sales infrastructure Neycer got and how it intended to assist GMB. Again, by its letter dated 4th September 1989, Ext.G/63 (vol.G-1), GMB expressed surprise that even then a general supervisor was not sent and pointed out that Mr. Sarkar had been coming with a stop-gap arrangement. Further, it was pointed out that as Neycer had no sales infrastructure and had not made any proposal to GMB since the agreement, so GMB was going ahead organising sales. It was asserted that Neycer had not been able to perform its part under the agreement and was, therefore, not eligible for the 2% commission, but liable for damage caused to GMB.

In reply to GMB's letter dated 4th September 1989, Ext.G/63 (Vol.G-1), Neycer by its letter dated 7th September

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1989, Ext.G/65 (Vol.G-1) inter alia alleged that there was delay by GMB in approving the general supervisor proposed by Neycer and proposed to depute one Mr. Jagannath Rao. Neycer also asserted that GMB was not entitled to use the brand name in view of numerous breaches and obstructions caused by GMB of the contract.

The letter of Neycer, Ext.G/63 (Vol.G-1) was replied to by GMB by its letter dated 11th September 1989, Ext.G/66 (Vol.G-1). It was averred by GMB that in view of Neycer's failure to post an expert technician, it had suffered not only in production which had been delayed for 5/6 months but also caused overrun to the extent of Rs.2 crores and also damages by not providing sales assistance. GMB refused to accept Mr. Jagannath Rao for two reasons- first, that he never worked in Neycer and second, that he failed miserably while working with Parrys and subsequently with Rassi Ceramics. As to the allegation of breach of contract, GMB asked Neycer to point out any such breach and averred that GMB was entitled to use the brand name.

The remaining few correspondence between the parties leading to reference to arbitration have already been referred to before in connection with the amendment of the claim petition.

It appears from the correspondence between the parties that GMB was very much eager to complete the project.

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as early as possible and did all that it could do and repeatedly appealed and requested Neycer to post at site one expert technician of general supervisory level till optimum production was reached, but in vain. Neycer could depute Mr. Sarkar for the purpose, but that also was not done. The allegation of Neycer in its letter dated 7th September 1989, Ext.G/65 (Vol.G-1), that there was delay by GMB in approving general supervisor proposed by Neycer is not true, for it does not appear from the several correspondence between the parties that before Mr. Jagannath Rao Neycer had ever proposed the name of any expert technician of general supervisory level to be posted at the site at Balasore. Neycer has not also rendered any sales assistance to GMB. Not only that, it abruptly and without any reason expressed the view that GMB was not entitled to use the brand name of Neycer and subsequently forbade GMB to use the same. While in Ext.G/72 (Vol. G-1) GMB has specified several breaches of the agreement alleged to have been committed by Neycer, no breach could be specified by Neycer in any of its letters to GMB.

According to Mr. Jalan, no sooner had the management of Neycer had changed, than there was complete inaction and, therefore, for about complete four months the parties were just having correspondence with each other about various aspects- production programme, visit of the officers etc. whereas with the earlier management, both the parties were working as a team and Neyver was taking care and rather

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making planning for the future because it was its responsibility as well. With the change of management from August onwards, nothing was done from the side of Neycer. Before that GMB was proceeding on a war footing with its project, its workmen, trained officers and trained supervisors had come back in August. (see Q.212 of the examination-in-chief of Mr. Jalan). At the hearing it was submitted by Mr. Jalan that in view of a confidential report of its officers the new management of Neycer became very much apprehensive that in future GMB would excel Neycer in all respects and it would be difficult for Neycer to compete with GMB. The confidential report is Ext.G/L18 (Vol.N-1 / Page 229) and on the 2nd page thereof it has been inter alia stated as follows :

"Managing Director of GMB intends to replace the indigenous zircon with 100% imported zircon so that they can get better quality than Neycer to capture the market. Since GMB is situated almost in the centre of the nation, marketing costs (are) comparatively less."

"It is sure than they will achieve the targetted production within a short period and GMB will be one of the stiff competitors."

It is submitted by Mr. Jalan that after the change in its management, Neycer was just finding out ways and means as how not to help GMB and frustrate the entire project. It is difficult to say positively whether in view



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of the said confidential report Neycer had been after frustrating the entire project, but fact remains that the cordiality and team spirit which were there during the old management vanished and there were lackadaisical attitude and neglect on the part of Neycer in the discharge of its obligations under the agreement after the new management had taken over the charge of Neycer.

It is submitted by Mr. Raghavan that as the point regarding the change in the attitude of new management of Neycer has not been pleaded in the claim petition, GMB should not be permitted to raise the point at the hearing. In support of his contention, Mr. Raghavan has relied upon a decision of the Supreme Court in Abubakar Abdul Inamdar Vs. Harun Abdul Inamdar, AIR 1996 S.C.112. In that case, in a suit for partition, the appellant who was the defendant, although pleaded duration of his having remained in exclusive possession of the dwelling house, did not plead that from a particular point of time his possession became hostile and notorious to the complete exclusion of other heirs. Some evidence, basically of Municipal register entries were inducted to prove the point, but it has been observed by the Supreme Court that no amount of proof can substitute pleadings which are the foundation of the claim of a litigant party.

In Abubakar's case, adverse possession was the foundation of title of Abubakar to the house, but in the

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present case the change in the attitude of the new management is not the foundation of the case of GMB. GMB has adduced evidence to prove the breaches committed by Neycer in the performance of its obligations under the collaboration agreement. It has not depended on the inaction of the new management. Mr. Jalan has in his evidence-in-chief stated the same as the reason for the inaction of the new management. No objection was raised on behalf of Neycer at the time of his deposition. (In my opinion, not only that the omission to plead the same in the pleading is not fatal to GMB in the least, but also it is quite immaterial).

Under paragraph 20 of the agreement, the responsibility to commission the plant within eighteen calendar months of the date of sanction of the loan has been placed on the collaborator, that is Neycer, subject to the delivery of the equipment by GMB. It has been already found that the term loan was sanctioned on 19th May 1987 and, accordingly, the plant was to be commissioned within 19th November 1988 which was extended to 31st January, 1989. It is true that equipments were to be supplied by GMB. There is nothing to show that GMB failed and neglected to supply the equipments causing delay in commissioning the plant. On the other hand, there is positive evidence of the sincerity and promptness of GMB in making everything ready for the commissioning of the plant so that commercial production could be started as early as possible. In this connection,

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reference may be made to the minutes of the discussions held on 3rd and 5th December 1988 among the Managing Director of Neycer, the Adviser of Neycer and the Managing Director of GMB. The minutes, Ext. G/28 (Vol.G-1), portions of which have been quoted above, speak volumes of GMB's activity in supplying the equipments including making the pilot plant ready for commissioning. Apart from that, the confidential report, Ext.G/118 (vol. N-1/Page 229) prepared by Neycer's officers, a portion of which has also been quoted above, unmistakably show how greatly GMB was interested in the project. At least, the learned counsel for Neycer has not been able to place before me any evidence of GMB's failure to supply any equipment.

Mr. Jalan was cross-examined on behalf of Neycer regarding delivery of equipments as provided in paragraph 20 of the agreement. In answer to Q.642 as to when the various equipments were delivered at site, it was stated by Mr. Jalan that it was not necessary because in the correspondence it was clear that all the equipments were already delivered and those which were even lying idle for want of starter process, were delivered and erected, which had been confirmed in the correspondence and the minutes as well. Further, it was stated by him that if now it was required which equipments had been delivered and when, that could be always placed before the learned Arbitrators. But Mr. Jalan was not asked to produce the dates of delivery of different equipments.

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One of the most important equipments of the plant is Tunnel Kiln. It is the nerve-centre or the principal item as stated by Mr. Jalan in his cross-examination in answer to Q.592. The question is when was the Tunnel Kiln commissioned. It is the evidence of Mr. Jalan in Cross-examination that Heimsoth, a German company, supplied the drawings and few parts (Q.725). It appears from Ext.G/119 (Vol. G-7) that SPB Projects & Consultants Limited (SPB-PC), a company said to have common directors of Neycer arranged for a discussion between 18th and 23rd July 1988. Paragraph 8 of the minutes of such discussion, as recorded and signed by Mr. A. R. Thiagarajan of SPB-PC, Mr. Debold for Heimsoth and Mr. R. N. Mehra for Neycer, contains a list of revised drawings Heimsoth would be sending to SPB-PC as per the schedule mentioned under the said paragraph 8. The evidence of Mr. Jalan in cross-examination is that Neycer had arranged with Heimsoth for taking necessary help for erection and commissioning of the Tunnel Kiln with the help of German Engineers. In respect of any Indian machinery or imported machinery, it was done through Neycer and tenders were floated and after evaluation, the agreement or contract was made under the signature of GMB but recommended by Neycer. Further, it was stated by him that on account of his monetary involvement and personal guarantee, he was trying to go out of his way to persuade Neycer not to lose any time and complete the work in time. "One thing", said Mr. Jalan, "I would like to make it more clear that the

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total responsibility of erection, commissioning, marketing, giving brand name as well as assistance - was of our collaborator. As far as I was concerned, whatever was my responsibility, I think, I have not looked anywhere." (Qs. 725 to 746).

In answer to Questions 751 to 754 Mr. Jalan stated that the Tunnel Kiln was commissioned in April/May 1989, that it was fired on 30th May 1989, that GMB reached the stage of trial production in August 1989 and that commercial production was started on 8th December 1989.

It may now be pointed out that by his letter dated 9th August, 1989, Ext.G/54 (Vol. G-1) Mr. Jalan, while informing Mr. Venkateswara Rao, the Managing Director of Neycer of GMB's reaching the stage of trial production, inter alia requested Neycer's quick action in the matter as because the delay was a lot of overrun in the form of interest, depreciation and overheads and reminded him of the decision in the meeting held on 3rd and 5th December 1988 with Mr. Kale, the Managing Director of Neycer that a senior technician would be deputed immediately but was not deputed with the result that "such delay has already been caused to us to come out with the production which we are contemplating sometime around March 1989 end." Needless to say, no senior technician was deputed.

So far as the commissioning of the Tunnel Kiln is concerned, it is submitted by Mr. Raghavan that Neycer's

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obligation under paragraph 8 read with Appendix 2 of the agreement is to assist and supervise the various items of works as mentioned under that Appendix and also the work of commissioning. Counsel submits that it is with the assistance, advice and supervision of Neycer, GMB was to implement the project.

The grievance of GMB is that after the new management took over charge of Neycer, it failed and neglected to perform its obligations under the contract. The correspondence between the parties referred to above substantiate the grievance of GMB. While GMB cried hoarse for the posting of a senior technician Neycer turned a deaf ear to that and proposed to depute a person who, according to GMB, had a bad record having miserably failed in two similar establishments.

Paragraph 20 of the agreement specifically puts the responsibility of commissioning the plant on Neycer subject to delivery of equipments. It is true that paragraph 8 read with Appendix 2 of the agreement lays down some duties and obligations to be performed by Neycer. But Neycer cannot avoid its responsibility to commission the plant as laid down in paragraph 20 of the agreement by referring to some of its other duties and obligations under the agreement. Mr. Raghavan also points out certain duties of GMB as laid down in clauses (I), (II) and (III) of the Loan agreement between GMB and financial institutions. The provisions of

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the said clauses do not cast a duty on GMB to commission the plant. Moreover, the loan agreement is between GMB and the financial institutions. I fail to understand what bearing has the loan agreement on the question of Neycer's obligation to commission the plant as provided in paragraph 20 of the collaboration agreement between GMB and Neycer. All that paragraph 20 requires from GMB is delivery of equipments which, I have already found, GMB has delivered. The learned counsel for Neycer has not been able to point his finger to any duty which GMB has not performed or any equipment which it has not delivered.

It is, however, contended by the learned counsel that if another agency, namely Heimsoth, the German company, is also responsible for installation and commissioning of the Kiln, Neycer cannot be held liable for the delay. So Neycer wants to shift its responsibility to Heimsoth. I have, a little before, pointed out from Mr. Jalan's evidence in cross-examination (Qs. 725-746) that it was Neycer that had arranged with Heimsoth for taking necessary help for erection and commissioning of the Tunnel Kiln with the help of German Engineers, and that the total responsibility of erection, commissioning, marketing, giving of brand name as well as assistance was of Neycer. I do not find any reason not to believe Mr. Jalan and accept his evidence. The evidence of Mr. Jalan finds support from a report of SPB-PC relating to "GMB Ceramics Project"- Ext.120 (Vol.6-7). It may be recalled that SPB-PC and Neycer have common

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directors. The report starts under the heading "Services rendered by SPB-PC on behalf of M/s. NCRL." On the 2nd page of the report it is, inter-alia, stated as follows :

"As per original concept, the entire tunnel kiln is to be organised and coordinated by overseas kiln designer. Subsequently, in view of high cost of the same, this responsibility was undertaken by SPB-PC as a special case in view of good relations with GMB. The procurement and installation of complete kiln was done as per German Design drawings by properly coordinating between overseas designer, finalisation of material specifications and drawings, keeping in view of materials availability in Indian market, equipment suppliers, civil contractor, equipment erection contractors etc."

All the above works were done by SPB-PC on behalf of Neycer as the heading of the report unmistakably points. So it is futile to shift the responsibility of commissioning the plant or project to Heimsoth. Therefore, Neycer would be responsible for the delay in sending the equipments to and/or commissioning the plant by Heimsoth, even assuming that the delay was made by Heimsoth. Exts. G/92, G/94 and G/95 (all of Vol. G-4) are of no help to Neycer and do not support the contention of delay. These show the eagerness and anxiety of Mr. Jalan. There is no evidence of such eagerness and anxiety on the part of Neycer. It maintained a silence which was to be broken by GMB from time to time. In answer to Questions 741 and 742 Mr. Jalan said in his cross examination that all the major items were received by



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the end of November 1988 and he had records to show that. But he was not asked to produce the records. Therefore, it was Neycer- that was responsible, for everything was done by it including engagement of Heimsoth which is apparent from Ext. G/119 (Vol. G-7) and G/120 (Vol. G-7) and GMB had to depend on Neycer.

It has already been found that as provided in paragraph 20 of the agreement, the commissioning of the plant should have been by November 1988, which was extended to 31st January, 1989. It has been alleged inter alia in paragraph 18 of the claim petition that as Neycer had failed to commission the factory within 31st January 1989, GMB had no other alternative but to take steps to commission the factory and in spite of best efforts it was unable to do so until or about December 7, 1989, that is after a delay of eleven months. In his examination-in-chief Mr. Jalan stated that the plant was commissioned on 8th December 1989 and that there was a delay of about eleven months (Qs. 355 and 356). In his cross examination, he said that the major item of equipment of the plant, the Tunnel Kiln was commissioned in April/May 1989 (Qs. 750 and 751) and that commercial production was started on 8th December 1989 (Q.754).

It is contended by Mr. Raghavan, the learned counsel for Neycer, that as the Tunnel Kiln is admittedly the Major equipment of the Plant, the commissioning of the Tunnel Kiln is virtually the commissioning of the plant. This

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contention is not correct. The plant consists of several equipments or parts. It may be that Tunnel Kiln is the major equipment, but that does not necessarily mean that commissioning of the Tunnel Kiln is commissioning of the plant as a whole. Each equipment of the plant has to be commissioned and, thereafter, all the equipments have to be commissioned together. Thereafter, it will be followed by trial run or trial production. Till the successful trial run or trial production is achieved, it cannot be said that the plant has been commissioned. In answer to Q.753 it was stated by Mr. Jalan with reference to Ext.G/54 (Vol.G-1) that sometime in August 1989 they (GMB) had come to the stage of trial production. Mr. Jalan was, however, not asked as to the date when trial production started, there is nothing to show exactly when the trial production commenced. Be that as it may, it will be not unreasonable to proceed on the basis that trial run or trial production began in the month of August 1989. So there was a delay of at least seven months, and not three months, as contended by Mr. Raghavan, or eleven months as deposed by Mr. Jalan. In vain did Mr. Raghavan rely on Kenneth L. Shanks' letter to Mr. Jalan dated 15th April 1989, Ext.G/122 (Vol.G-6). By this letter Shanks offered his services as Technical Expert on certain terms and conditions. There is no whisper in the letter about the commissioning of the plant of GMB. Reliance was, however, placed by the learned counsel on the second paragraph of the letter which is as follows :

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"I was very impressed with the layout and the facilities available at your sanitaryware unit for the production of high quality sanitaryware."

I regret, I am unable to accept the contention of the learned counsel that the second paragraph quoted above indicates that the plant was commissioned. it is true that GMB's desire and aspiration was that high quality sanitaryware would be produced in the factory and with that object in view, it was proceeding accordingly. A mere look at the photograph of the plant would impress anybody, but it has nothing to do as to the commissioning of the plant which is a fact to be established by evidence. I, therefore, hold on the basis of the evidence available to me that the plant was commissioned in August 1989. ✓

About the posting of a senior technician, a few words more may be stated. Mr. U. Sarkar was a Senior Technician of Neycer. GMB was insisting on Neycer for the posting of Mr. Sarkar, an expert technician for general supervision until the optimum production was achieved. Indeed, Mr. Sarkar was sent to Balasore, but he felt that it would not be of such use in posting a man for a long time at a stretch, instead, he suggested to send some suitable person for some period as and when needed. This was stated by Mr. Jalan in his letter dated 14th December 1988, Ext.G/29 (Vol. G-1) addressed to Mr. Kale of Neycer. Mr. Raghavan has placed strong reliance on this letter and it is his submission that Neycer complied with the agreement and also

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the request of GMB by sending Mr. Sarkar, an expert technician. I shall deal with his contention presently, but before that it may be pointed out that in the fourth paragraph of the said letter, EXT.G/24 (Vol.G-1), it was requested by Mr. Jalan to consider sending Mr. Sarkar once in 15 days for at least three months so that the posting of a man of senior level for longer period at GMB's factory would be reduced and, at the same time, GMB would be getting full help to achieve the target. It may be recorded that this request of Mr. Jalan was not complied with.

Now I may refer to the evidence of Mr. Jalan for dealing with the contention of Mr. Raghavan as noted above. In his cross-examination, Mr. Jalan explained that senior level person was required as a captain to coordinate all the departments and bring the production upto the optimum level. Such a senior level person would have control over all the departments and who could put everything in order and then achieve optimum level of production. As per the agreement, the senior level person was required right from the pilot plant which GMB started in July/August because the production process was to start then. When confronted by Mr. Raghavan with the fifth paragraph (wrongly stated to be fourth paragraph in Q.763) of the said letter wherein Mr. Jalan requested Mr. Kale to consider sending Mr. Sarkar once in 15 days for at least three months, Mr. Jalan stated that it had to be read in the context of the whole letter, for it was written in the third paragraph that Mr. Sarkar felt that

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it would not be of much use in posting a man for a long time at a stretch, and that the said request was made basing on the said opinion as because he (Mr. Jalan) was a lay man. Further, Mr. Jalan stated that he learnt and which Mr. Sarkar confirmed that Neycer did not have any such person with them and so his suggestion was definitely with the idea since there was nobody to help GMB (Qs. 759 to 763).

It follows from the aforesaid evidence of Mr. Jalan that as Neycer had no senior level person to be deputed at Balasore for a long time at a stretch till optimum production was achieved as provided in the agreement, Mr. Sarkar had to give that opinion accordingly. It is the evidence of Mr. Jalan, inter alia, that he had been telling about the need right from August 1988 to depute a person of that level as because the working was going on warfooting, all people of GMB were loitering, there was no work, machineries had started arriving, process work had not started and GMB had been incurring huge amount by way of interest on such a huge loan (Q.764). No evidence was placed before me controverting the above statements of Mr. Jalan. Thus by not posting any senior level technician for a long period at a stretch till achievement of optimum production on the plea that it was not necessary, the whole project failed to the severe loss and prejudice of GMB. (It may be that Mr. Sarkar subsequently gave up his service under Neycer and joined GMB as a full time employee. But that will not wipe out any breach that may have been

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committed by it of its duties and obligations under the agreement. Moreover, Mr. Sarkar accepted employment under GMB at a very late stage on 1st January 1990 as per the Balance Sheet of GMB, Ext.N/94 (vol.N-2) when the project of GMB had almost failed. Indeed, it is not disputed that the entire project has gone to waste. So by the employment of Mr. Sarkar, GMB was not benefitted. It is submitted by Mr. Raghavan that as Mr. Sarkar continued to be associated with GMB from July/August 1989, GMB did not require any other supervisor and that is the reason why GMB rejected Mr. Jagannath Rao. I am unable to accept this contention. It may be that Mr. Sarkar was associated with GMB from July/August 1989, but he was not a full time employee; he was a mere consultant. GMB has assigned reasons for its refusal to accept Mr. Jagannath Rao. First, he did not belong to Neycer and second, he miserably failed in two similar establishments, as has already been stated before. Neycer could easily post Mr. Sarkar at Balasore continuously for a long time at a stretch till the achievement of optimum production, but it failed and neglected to do so. There is, therefore, no merit in the contention of the learned counsel for Neycer.

It has been already decided by me that the dispute relating to the use of the logo is very much within the scope of this arbitration proceeding. Paragraph 15 of the Collaboration Agreement inter alia provides that the collaborators also agree to license GMB to use the legend

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"GMB-Le NEYCER" to cover further periods with mutual consultations on the same terms and conditions as applicable now, and GMB agree to pay the collaborators royalty at the rate of 2% on the net sales value realised by GMB on the products manufactured by GMB during the period of the agreement. The expression 'net sales value' means the ex-factory value less normal trade discount given to the traders by GMB and exclusive of all Government duties and taxes. It follows from paragraph 16 that the agreement relating to the licence of the legend shall be for five years to be reckoned from the date of actual commercial production.

It is urged by Mr. Raghavan that under paragraph 15 of the agreement Neycer agreed to grant a licence to GMB, but no licence was granted and so GMB had no right to use the brand name. By the agreement as recorded in paragraph 15, Neycer agreed to 'licence GMB', the terms and conditions and the duration of such licence were specified and nothing more remained to be done. There is no provision for the execution of any document for the grant of such a licence. Apart from that it is provided "In consideration of the said licence to employ the said legend, GMB hereby agree to pay the collaborators royalty at the rate of 2% of the net sales value ....." The expression "In consideration of the said licence to employ the said legend," in my view, unmistakably points to the grant of the licence in presenti by the said agreement as contained in

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Paragraph 15. If the licence was yet to be granted, in that case, the expression would have been "In consideration of the agreement to grant the licence" and not "In consideration of the said licence". The latter expression supports the view that the grant of the licence was in presenti. The intention of the parties was quite clear that GMB would be entitled to use the legend from the date of the commercial production. Accordingly, disagreeing with the contention of Mr. Raghavan, I hold that GMB was entitled to use the legend.

During his cross examination, in answer to Q.925 it was asserted by Mr. Jalan that Neycer had granted a licence to use the legend GMB-NEYCER on the products of GMB. Thereafter, when he was asked whether according to him, no further act was required from Neycer's end entitling GMB to use the legend, Mr. Jalan answered that according to the agreement the consultants agreed for its legend 'GMB-Neycer' and they gave samples of the legend and the type of legend to be used (Q.926). In answer to Q.927 Mr. Jalan averred that further grant of licence was not necessary. Mr. Jalan's answer to Q.926 that Neycer gave samples and the type of the legend, does not appear to have been challenged, for it could not be challenged because it is borne out by the letter dated 23rd/24th March 1987 of Mr. Mehra, President of Neycer, Sanitariware Division, Ext.G/85 (Vol.G-IV), and also because Mr. Jalan produced the samples and the types of the legend before the learned Arbitrators. The said



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letter Ext.G/85 (Vol.G-IV) supporting the fact of giving samples and the types of the legend by Neycer to GMB establishes that the licence was granted by the agreement as contained in Paragraph 15, and that no further act was necessary for the same.

In this connection, another fact came out in course of the cross examination of Mr. Jalan that Mr. Kale and Mr. Venkateswar Rao had no objection to the use of sterling for making the brand name still more popular (Qs. 938 and 939). This fact also supports the view that the licence to use the logo was granted by paragraph 15 of the agreement.

Another aspect of the agreement as embodied in paragraph 15 of the agreement regarding licence for the legend is that although it finds place in the collaboration agreement, it is completely outside it. The collaboration agreement comes to an end after the commercial production. The agreement for the licence for the brand name or legend as provided in paragraph 15 of the agreement or the agreement to help GMB in organising the marketing and sales department and further advice in sales promotion occurring in paragraph 16 are both for a period of five years to be reckoned from the date of the actual commercial production. Thus both the agreements under paragraphs 15 and 16 were to commence after the collaboration agreement. In my view, these two agreements are independent of the collaboration agreement or at least, they are severable. Therefore, Neycer cannot refuse to act in accordance with the

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agreements in paragraphs 15 and 16 on the plea of disputes and differences arising between the parties regarding the collaboration agreement upto the trial production, that is, the commissioning of the plant. Paragraphs 15 and 16 could be the subject matter of separate agreements and, in that case, the collaboration agreement would not have been affected in the least.

Next, it has been strenuously urged by Mr. Raghavan that the right to use the logo has been expressly given up by GMB and, accordingly, GMB is precluded from laying any claim on the basis of its alleged right to use the logo. The learned counsel places reliance on GMB's letter dated 6th October 1989, Ext.G/68 (Vol.G-1). It may be recalled that Mr. Venkateswara Rao, Managing Director of Neycer, in the last paragraph of his letter dated 7th September 1989, Ext.G/65 (Vol.G-1), to Mr. Jalan abruptly stated, inter alia, that GMB was not entitled to use the brand name in view of numerous breaches made by it and obstruction caused in the implementation of the contract. Mr. Jalan in his reply dated 11th September 1989, Ext.G/66 (Vol.G-1) requested Mr. Venkateswara Rao to let him know what breaches of contract had been done by GMB, whereas, it was averred that Neycer had done so may which in fact he avoided to mention in order to accommodate Neycer and to keep good relations as much as possible. Neycer did not point out any breach alleged to have been committed by GMB, but in its letter dated 19th September 1989, Ext.G/67 (Vol.G-1) called

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upon GMB to desist from using "NEYCER" as well as pictorial representation which constituted a part of Neycer's mark or any similar mark or device on GMB's product for marketing the same. In reply, GMB by its letter dated 6th October, 1989, Ext.G/68 (Vol.G-1) expressed surprise that despite its repeatedly asking Neycer as to what breach of agreement had been done by GMB, Neycer had not been able to mention even one. Thereafter, it was stated as follows :

"Your suggestion of not using your brand name again shows that how you want to deviate from your agreement and put us in more problems but, in view of keeping pleasant relation from our side as far as possible, we will henceforth not put your brand name on our ware. This will create a lot of hurdles for us but we want to minimise the area of confusion, complications. Regarding other pictorial representations on stationery we will use it until our new stationery are printed, and whatever wares have been manufactured so far (which are not very much in quantity), we will sell them with your brand name unless you want to stop sending the same to market, in which case the amount of the same will be borne by you."

By Ext.G/66 (Vol.G-1), a substantial portion of which has been quoted above, I do not think GMB had given up its claim to use the logo. It may be that in view of keeping pleasant relation, GMB did not want to use the brand name. So if for the purpose of avoiding unpleasantness, GMB stopped using the logo, it would be too much to say that it

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had given up the right and is not entitled to claim damages on that account. It was not a voluntary act on the part of GMB, but Neycer forbade it to use the brand name. Nor is GMB estopped from claiming damages, for Neycer had not changed its position to its detriment on any representation of GMB.

In the last paragraph of Mr. Jalan's letter, Ext.G/68 (Vol.G-1), it was stated "Now the matter boils down to our claim for overrun amount only .....". It is submitted by Mr. Raghavan that by this statement GMB has waived its claim for preventing GMB from using Neycer's name in the logo. I am unable to accept this contention of the learned counsel. The letter should be read as a whole. In the previous paragraph it was inter alia averred that by suggesting not to use the the brand name, Neycer wanted to deviate from the agreement. So GMB was complaining breach of agreement by Neycer. Apart from that, in the letter dated 24th October 1989, Ext.G/72 (Vol.G-1), GMB expressly reserved its right to claim all damages and compensations from Neycer for desisting GMB from using the brand name. It has been already held by me that this reservation was for the arbitration proceeding. It was pointed out in Ext.G/72 (Vol.G-1) that Neycer had not cancelled the licence. In the context of the facts stated above, I am unable to accept the contention of the learned counsel for Neycer that GMB had waived its claim relating to the brand name or logo.

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Now I may consider the claim made by GMB for damages, the particulars of which are contained in Schedules A, B, C, D, E and F.

SCHEDULE-'A'

Schedule A contains the particulars of damages for delay in commissioning the factory as mentioned in paragraph 20 of the Statement of Claim. GMB had to incur idle and infructuous expensses because of the delay in the commissioning of the plant due to the neglect and failure of Neycer in performing its obligations under the contract as discussed hereinabove. According to the evidence of Mr. Jalan in cross-examination, if the expenditures as specified in Schedule A had been incurred after the commissioning of the factory, then the same could go to the production account, that is, after the commercial production whatever expenditure was made, that would go to the normal account; whereas these expenditures had gone to the project overrunning account (Q.963). According to GMB, there was delay of eleven months in commissioning the plant and the expenditures as enumerated under Schedule A are for eleven months. But it has been found by me that the delay was for seven months, that is, from February 1989 to August 1989 and, consequently, GMB is entitled to realise the expenditures incurred by it upto and including August 1989 as damages from Neycer. The correctness of the amounts spent against different items have not been challenged before me. The total amount claimed under Schedule A for

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the delay of eleven months is Rs.61.52 Lacs and, therefore, for seven months it would be Rs.39,14,910/-. So GMB is entitled to realise from Neycer a sum of Rs.39,14,910/- (Rupees thirty nine lacs fourteen thousand nine hundred and ten) only as damages for the delay of seven months in commissioning the plant, that is, from February 1989 to August 1989 towards its claim under Schedule A.

#### SCHEDULE-'B'

In paragraph 21 of the Claim Petition, it has been inter alia alleged by GMB that Neycer was bound and obliged to provide GMB the advance and the development in the knowhow and technology for a term of five years, and that Neycer having failed to provide the knowhow, facilities and expertise, GMB was compelled to and would incur costs, charges and expenses and would consequently suffer loss and damages in a sum of Rs.15.66 lacs, the particulars of which have been given under Schedule B.

It is pointed out by Mr. Raghavan that GMB had not incurred any such cost amounting to Rs.15.66 lacs, as alleged, that the expenditures as shown under Schedule B are all anticipated expenditures, and that there is no evidence that any such expenditures have been incurred by GMB. There is considerable force in the contention of Mr. Raghavan. Mr. Jalan also did not seriously press the claim for damages under Schedule B. In the circumstances, the claim under Schedule B for the sum of Rs.15.66 lacs as damages for

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Research and Technology Development Expenditure is disallowed.

SCHEDULE 'C'

Under this Schedule GMB has claimed damages for preventing it from using the brand name "GMB-NEYCER". In my view, Neycer has illegally and without any just and reasonable cause prevented GMB from using the said brand name. It is the case of GMB that by desisting it from using the brand name, Neycer has deprived GMB from the benefit of goodwill, credibility and brand image of 'Neycer' which has been built over a period of 25 years and having regard to and in the face of highly competitive market, it would take at least five years to creat GMB's own brand image and achieve breakthrough in the market at an average minimum expenditure, inter alia by way of advertisement. There cannot be any doubt about GMB's case as pleaded under Schedule C. The minimum expenditure has been stated to be Rs.70 lacs per annum and for five years it would be Rs.350 lacs. In support of its claim for Rs.350 lacs at the rate of Rs.70 lacs per annum, GMB has placed strong reliance on the estimate dated 3rd April 1990 prepared by Sista's Private Limited, Ext.G/99 (Vol.G-3), page 313, wherein it has been stated, inter alia, that "We feel it would take a lot of advertising money spent over at least five years to get the kind of satisfactory brand image that you require." It is further stated that "products such as you are launching need an advertising backing of at least 60 to 70

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lacs of rupees in each of 5 years, in order to build a favourable brand image nationally." Indeed, on the basis of the said opinion GMB has claimed damages of Rs.350 Lacs for the deprivation of the use of the brand name, being the expenditure that would be incurred for advertisement through television, newspapers etc. If it could use the brand name of Neycer it would not have to spend the said amount.

It is the contention of GMB that in order to establish the brand image of GMB and earn the desired profit as per the project report, it has to spend the said amount of Rs.70 lacs every year. I have gone through the estimate as prepared by Sista's Private Limited, Ext.G/99 (Vol.G-3). I do not find any reason not to accept the same. However, the estimate is Rs.60 lacs or Rs.70 lacs per year. So as per the estimate Rs.60 lacs is the minimum amount required to be spent every year. In my view, however, Rs.50 lacs per annum would be quite sufficient, for the purpose of GMB's brand name. Thus GMB has to spend a total sum of Rs.250 lacs (Rs.50 lacs x 5) for five years. At this stage, it may be pointed out that under paragraph 15 of the collaboration agreement GMB has to pay to Neycer a royalty of 2% on the sales value to be realised by GMB on the products manufactured by GMB during the period of the agreement. The expression 'net sales value' as defined in the said paragraph 15, means the ex-factory value less normal trade discount given to the traders by GMB and exclusive of all Government duties and taxes. But GMB's factory is closed and, consequently, there is no production and no sale and,



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therefore, the question of calculation of 2% on the sales value to be realised by GMB does not arise till GMB starts production. But I feel that Neycer should not be deprived of its royalty as provided in paragraph 15. In my view, the difficulty may be obviated if, for the present purpose, the yearwise "Ex-Factory Sales Realisation" for five years as given in the project report, Ext.G/IIIA, is taken into consideration. On the basis of the yearwise ex-factory sales realisation as per the project report, the total amount of sales realisation for five years comes to Rs.2,587.36 lacs, and after deducting therefrom a discount of 10 per cent, the net sales value will be Rs.2,328.63 lacs. Neycer is entitled to the royalty of Rs.46.57 lacs being 2% of the said net sales value. Therefore, under Schedule C, GMB will be entitled to Rs.203.43 lacs (Rs.250 lacs minus Rs.46.57 lacs).

#### SCHEDULE-'D'

In paragraph 23 of the claim petition it has been, inter alia, alleged by GMB that in terms of the collaboration agreement Neycer was bound and obliged to organise marketing policy, sales promotion and policy and set-up marketing department and recruit sales personnel, build dealers network, effect advertisement and publicity for the said products to be manufactured at the said factory of the claimant and to build up the image and goodwill thereof for a period of five years from the date of actual commercial production thereof, which Neycer failed,

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neglected and refused to do. There can be no doubt that Neycer did not perform its obligations as laid down in paragraph 16 of the agreement regarding organising the marketing, sales department etc. as pleaded in paragraph 23 of the claim petition and, accordingly, GMB has claimed damages as specified under Schedule D which consists of three Items - (a), (b) and (c). Schedule D has been amended. So far as item (a) is concerned, it remains the same; Item (b) has been amended, the original claim of Rs.184.43 lacs on account of discount of sales has been reduced to Rs.16,33,101/- and Item (c) relating to a claim for Rs.92,28,270/- on account of loss due to lowering of prices of GMB's product vis-a-vis Neycer's has been incorporated by amendment.

My. Jalan in his examination-in-chief has given an explanation for the reduction of the claim under Item (b). It is stated by him that when the claim was submitted it was thought that GMB would be able to give a discount of 10% but subsequently it was giving a discount of 4% on ex-factory sales which also became considerably less than what was initially estimated (Q.394). In answer to Q.400 a detailed explanation has been given by Mr. Jalan.

It is, however, submitted by Mr. Raghavan that in order to avail of the provision of paragraph 16 of the agreement, there must be mutual trust and confidence between the parties, and as such confidence had been snapped, the question of Neycer's advice in marketing and sales promotion

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do not arise. It has already been held by me that both the agreements under paragraphs 15 and 16 of the collaboration agreement are independent of the Collaboration agreement or, at least, they are severable and, therefore, Neycer cannot refuse to act in accordance with the said agreements under paragraphs 15 and 16 on the plea of disputes and differences arising between the parties regarding the collaboration agreement upto the trial production, that is, the commissioning of the plant. After considering the facts and circumstances of the case and the evidence on record, I hold that it was Neycer which did not perform its obligations under the collaboration agreement without any reasonable justification for the same. It is the evidence of Mr. Jalan and also apparent from the correspondence between the parties that after the new management took over charge of Neycer, it failed and neglected to discharge its obligations under the contract. So, if confidence had been snapped between the parties as submitted by the learned counsel, it was Neycer and Neycer alone was responsible for the same.

It is next contended by Mr. Raghavan that Neycer offered marketing assistance by deputing one Pradeep Kakar by its letters, Ext.G/60 (vol.G-1) and Ext.G/92(vol.G-1), but such assistance was refused. Now I may consider the evidence of Mr. Jalan. In answer to Q.918 in cross examination Mr. Jalan said "I have given my notes that I was expecting to get the support, help and advice on marketing from Neycer's officers and staff. He (Pradeep Kakar) was

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only a person from advertising company which I made clear and probably informed and pointed out to show to them how seriously the matter was being taken up which was of utmost importance." Again, in answer to Q.921 and Q.922 it was inter alia stated by Mr. Jalan how seriously the collaboration agreement was being taken up after the change of management and that Neycer was purposely delaying in fulfilling the collaboration agreement. The learned Arbitrators asked him why did he reject rather refuse to take advice of Neycer's marketing adviser and the reply of Mr. Jalan was that he (Pradeep Kakar) was an outsider and a person from an advertising company (Q.923).

As against the evidence of Mr. Jalan, reliance has been placed by the learned counsel for Neycer on the evidence in examination-in-chief of Mr. Kale who was the Managing Director of Neycer from September 1988 to March 1989. It is the evidence of Mr. Kale that Mr. Kakar had prepared a scheme of Spartek taking over the marketing of Neycer. He came to know that Mr. Kakar is a Ph.D degree holder from an American University and a visiting professor in management schools including the Wharton School. He was a visiting professor of IIM and a chief executive of Duncan Tea Company and also a Director of Lintas (Qs. 154 and 155).

It may be that according to Mr. Kale, Mr. Kakar is a qualified person, but it is not his evidence that Mr. Kakar is a marketing expert. Mr. Kale has not said what was the

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subject of Mr. Kakar in his Ph.D. Course. It is apparent from his evidence that he was not the marketing adviser of Neycer. Thus Neycer deputed a person like Mr. Kakar who was not a marketing expert nor did he work in that capacity in Neycer or in any other similar concern. I believe Mr. Jalan when he said that Neycer was purposely delaying in fulfilling the collaboration agreement and that he had ample justification in refusing to accept Mr. Kakar as a marketing expert.

In the prospectus of GMB, Ex.N/6 (vol.N-2), Page 76 (79), it has been, inter alia, stated that Mr. Jalan has vast knowledge of the market for civil construction products in the Eastern Region. Relying on this statement, it is submitted by Mr. Raghavan that it shows that Mr. Jalan being a marketing person could speak to Mr. Kakar regarding marketing and sales promotion and was not justified in refusing to take his advice. I am afraid, I am unable to follow the contention of the learned counsel. If, according to Mr. Jalan, Mr. Kakar is not a marketing expert, it is not understandable why should he approach him (Mr. Kakar) for his advice on marketing and sales promotion. Indeed, there is nothing to show that Mr. Kakar has any qualification in marketing and sale promotion, nor has he any experience in that regard. There is therefore, no merit in the contention of the learned counsel.

Mr. Mehra, the President of Neycer, in his letter dated 14th February 1987, Ext.G/3 (Vol.G-1), addressed to

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IFCI inter alia stated "We have been under considerable pressure from our dealers to substantially increase our production to meet and cater to the requirement of the dealers from all over India. We had felt that instead of substantially increasing the capacity of our own factory, it will be desirable to help in the establishment of a new factory in Eastern India to meet some of the demands existing and increasing all the time for our product." In his evidence in examination-in-chief Mr. Jalan stated with reference to the said letter Ext. G/3 (Vol.G-1) that GMB would be the extension of Neycer and the factory would be set up in Eastern India and it (product of GMB) would be easily sold through the dealer network of Neycer (Q.145).

It is urged by Mr. Raghavan that the expression "to help GMB in organising the marketing and sales department and further render advice in sales promotion ....." as provided in paragraph 16 of the collaboration agreement, does not mean introduction of GMB to the dealers of Neycer, as stated by Mr. Jalan in his evidence-in-chief (Q.145), nor has it been pleaded in the claim petition. So far as the pleading is concerned, it is the evidence of Mr. Jalan in cross examination that it is implied (Q.906).

The expression in paragraph 16 of the collaboration agreement "to help GMB in organising marketing and sales department ....." is wide in its application. Neycer might have organised GMB's marketing by introducing GMB to the dealers of Neycer which, in my view, was the real

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intention and understanding between the parties as appearing from the said letter, Ext.G/3 (Vol. G-).

Ext.G/28 (Vol.G-1) page 86 is a record of the minutes of the meeting between the parties held on 3rd and 5th December 1988 recording the commitments of Neycer to perform its certain obligations under the agreement. On page 88, at the end of the minutes, it is recorded as follows :

"It was agreed that another round of discussions will take place on

- a) The use of Brand name,
- b) Advice on marketing arrangements, and
- c) Equity participation."

Relying on clause (b), it is submitted by Mr. Raghavan that Neycer was only to advise GMB on marketing. There can be no doubt that Neycer was also to advise on marketing and, at the same time, in organising marketing, it was to introduce GMB to its (Neycer's) dealers. In vain, did the learned counsel attempt to derive support from clause (b) to his contention that Neycer was only to advise GMB.

Apart from the letter Ex.G/3 (Vol. G-1) which has been discussed above, it may be pointed out that in an earlier letter dated 12th February 1987, Ext.G/82 (Vol.G-1) page 32 (34), Mr. Jalan informed the IFCI that GMB's collaborator Neycer would assist GMB "in marketing of the product and place at our disposal their entire distribution

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set up for marketing of the product on all India basis."

The argument of Mr. Raghavan is supplemented by his learned junior Mr. R. A. Murari. Mr. Murari submits that the said statement of Mr. Jalan in the said letter Ext.G/82 (Vol.G-1) does not find place in the collaboration agreement. A similar contention advanced by Mr. Raghavan has already been considered by me and I am of the view that there is no substance in it.

It is pointed out by Mr. Murari that in the unamended Schedule D, estimated loss on account of discount on sales has been stated to be Rs.184.43 lacs, but in the amended Schedule D the actual loss alleged to have been incurred on account of discount on sales is stated to be Rs.16.33 lacs. It is submitted by Mr. Murari that in the amended Schedule D, GMB has introduced new claims on the basis of average sales realisation for three years (1990 to 1992-93). Counsel submits that the loss has been computed on a comparison of sales realisation of Neycer with that of GMB, which is a completely new item. This contention of the learned counsel is misconceived. On a reference to paragraph 23 of the claim petition it appears that loss has not been computed on such comparison, but GMB was compelled to lower its prices than those of Neycer regarding the same quality of goods and thereby suffered loss.

Ext.G/4 (Vol.G-1) is a letter dated 10th April 1987 of Neycer to IFCI. It appears from this letter that the

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current average realisation of Neycer from the sanitaryware manufactured by it was around Rs.10,500/- per ton. Ext.G/111A (separate Vol.) shows that Rs.9,185/- was the sales realisation of GMB as against Neycer's Rs.10,500/- per ton. It is, however, admitted by Mr. Jalan in cross examination that GMB's expectation from Sales realisation was : 1st year- Rs.9,185/- per ton, 2nd year-Rs.9,521/- per ton, 3rd year-Rs.9,521/- per ton, 4th year-Rs.9,690/- per ton and 5th year Rs.9,857/- per ton. (Qs. 1175 and 1176). Accordingly, it is submitted by Mr. Murari that no loss was suffered by GMB on account of sales realisation. Prima facie it appears to be so. But Mr. Jalan in answer to Q.1192 in cross-examination has given an explanation. His explanation is that although GMB had the same sales realisation as in the project report, such expected sales realisation was on the basis of certain expenditure and as the expenditure had exceeded as estimated in the project report, the sales realisation should have been proportionately more and, accordingly, in view of the sales realisation, GMB had suffered loss. This explanation which has been elicited from Mr. Jalan in cross examination is quite reasonable and does not appear to have been challenged by any suggestion. The explanation is accepted. No other point of objection to Schedule D has been urged by the learned counsel for Neycer and, accordingly, GMB's claim for Rs.123.61 lacs under Schedule D is allowed.

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SCHEDULE 'E'

In paragraph 24 of the claim petition the case of GMB is that it would have otherwise earned a profit of Rs.396.96 lacs as mentioned in Schedule E, but for the failure, neglect and breach of contract by Neycer. In Schedule E it is stated inter alia that the loss of profit which GMB could have earned, 'had everything gone normal', is construed as projected profit which is calculated in the project/feasibility report. It is submitted by Mr. Murari, learned Counsel for Neycer that GMB's Balance Sheet, Ext.N/74 (Vol.N-1), Page 352A (356) shows that everything had not gone normal as contemplated in the project report and so, GMB is not entitled to the profit as per project report. Ext.N/74 (Vol.N-1) is the Annual Report for the year 1990-91. In the Directors' Report under the heading 'Operational Review & Financial Results' it is stated inter alia that the operating results would have been better but for stiff competition at the market place occurring due to higher production capacities for sanitariware in the organised sector vis-a-vis demand coupled with political and economic turmoil witnessed by the country during the last one and a-half year. It is, however, not the Directors' Report that due to the circumstances mentioned above, there was loss of profit. As pleaded in paragraph 24 of the claim petition, the loss of profit was due to failure, neglect and breach of contract by Neycer. I do not think that the said statement in the Directors' Report has any bearing on the question of loss of profit.

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GMB became a sick industry. In order to prove that Neycer was not responsible for the sickness of GMB, Mr. Murari has relied upon a report of BIFR, Ext.N/32 (Yellow File) wherein the Board had found that the sickness of GMB was mainly due to lack of proper infrastructure leading to disruption of raw materials, low labour productivity and adverse climatic condition, but it was not the finding of the Board that the sickness of GMB was due to Neycer's fault. It is submitted by the learned counsel that everything had not gone normal and, accordingly, GMB is not entitled to the profits as per the project report. The expression 'had everything gone normal' means that if the collaboration agreement had been implemented by Neycer in letter and in spirit, then GMB would have earned the profits as mentioned in Schedule E. GMB is claiming damages for loss of profit on account of failure, neglect and breaches of contract as pleaded in paragraph 24 of the claim petition. The findings of the Board are not sacrosanct. Neycer has not examined anybody of the Board in support of the said findings so that GMB could have got an opportunity to cross examine him. Even assuming that the findings are correct, the same might be the result of Neycer's neglect and failure to perform its obligations under the collaboration agreement. The Board was not making any investigation against Neycer, nor had it any authority to do. So it is futile to argue that as the Board had not found that the sickness of GMB was due to the fault of Neycer, GMB is not entitled to the profits as per the

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project report. I do not find any merit in this contention.

It is pointed out by Mr. Murari that the project report was prepared on the basis of the installed capacity of the plant being 6000 tons per annum and the cost was assessed to be Rs.800 lacs. But in the prospectus N/6 (Vol.N-2) page 79, GMB proposed to manufacture 7000tons per annum and the cost had gone upto Rs.916 lacs (page 80). Again in the Balance Sheet for the year 1989-90, N/94 (Vol.N-2) page 116 (143), installed capacity had gone upto 8000 tons and the cost to Rs.10.54 crores (page 137). It is contended by the learned counsel that with the increase of the installed capacity, the cost also increased and, therefore, the profit must be less and GMB is not entitled to claim profit as per the project report. This point has not been pleaded nor was it put to Mr. Jalan in his cross examination. Moreover, there is no substance in the point. It may be that as the installed capacity was increased, the cost also increased. In spite of that, GMB suffered loss and could not even earn the profit as per the project report. So GMB has claimed damages for the loss of profit as per the project report on the basis of the installed capacity of 6000 tons per annum and the cost of Rs.800 lacs. I do not find anything wrong in it. The contention of the learned counsel is untenable and is, accordingly, rejected.

Lastly, it is submitted by the learned counsel of Neycer that if GMB is put on the normal condition after compensating it for the breaches of Neycer, it cannot again

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claim damages on account of loss of project which would duplicate the claim. This contention is misconceived. There are two aspects of the claim for damages, namely (1) cost and (2) profit. So when both cost and profit are paid to a party claiming damages, he is put to the normal condition, but not otherwise. Under Schedule E, GMB is claiming damages for loss of profit due to neglect and failure of Neycer to perform its obligations under the agreement. In order to put GMB to the normal condition, this claim has to be conceded to. The contention, therefore, fails.

The correctness of the accounts under Schedule E has not been challenged, for they cannot be, as they are on the basis of the project report. Accordingly, claim for damages under Schedule E being Rs.346.45 lacs is allowed in full.

#### SCHEDULE 'F'

In paragraph 25 of the claim petition, the case of GMB is, inter alia, that Neycer well knew at the time the collaboration agreement was entered into and at all material times that GMB obtained term loan and financial accommodation from the financial institutions and that it would have to pay interest therefor, and that if it performed the obligations under the said agreement, GMB would have been able to not only repay the interest to the financial institutions in due and proper time without incurring any liability to pay the penal interest, compound

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interest and damages but also would have been able to repay the substantial part of the principal sum within due and proper time thereby reducing the burden of interest. In Schedule F, the total amount of interest for five years from 8th December 1989 to 31st March 1994 (including normal interest and final compound interest) is Rs.593.78 lacs.

In respect of Schedule F, the case of GMB is that due to the failure of Neycer to perform its obligation under the agreement, GMB not only could not earn any profit, but suffered loss. As a result, the interest on the huge sum of money which GMB had borrowed from the financial institutions went on mounting and, accordingly, by amendment of the claim petition it incorporated therein interests including normal and compound interests upto 1993-94 as allowed by the learned Arbitrators for the time being subject to objection by Neycer at the hearing. It is wrong to say that no part of the claim can relate to delay beyond 8th December 1989 as submitted by Mr. Raghavan for Neycer. In my view, in order to compensate GMB for the loss suffered by it and to put it to the same condition, had everything gone normal, would be to pay the amount of interest by way of damages as claimed by it. I am unable to accept the contention of Mr. Raghavan that GMB would be placed in the same position only if damages on other heads are allowed and not interests as claimed under Schedule F. If everything had gone normal, then GMB would have earned profit and pay off the principal amount of loan together with interest thereon. GMB has been

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made to suffer damage by way of payment of interest and it cannot be prevented from recovering the amount of interest as damages.

It is urged by the learned counsel for Neycer that the claim for interest as damages as per Schedule F is not a part of the reference and is beyond the scope of the last letter of GMB to Neycer, Ext.G/72 (Vol.G-1). I have already dealt with the point elsewhere hereinbefore. At the risk of repetition, I may refer to the decisions of petrolsea's case (Supra) and Juggilal's case (supra). I have also expressed the view that in the absence of reference of specific disputes by the parties which is the case here, the disputes or claims must appear either from documents or from the claim petition before the arbitrator enters on the reference. Paragraph 25 of the claim petition read with Schedule F satisfied this test. I may also refer to the letter Ext. G/72 (Vol.G-1). In the last but two paragraphs of the said letter it has been stated that "Due to several breaches of the collaboration agreement committed by you, we have sustained huge monetary losses and are still sustaining losses and, as such, there has arisen dispute in terms of arbitration clause contained in the collaboration agreement and, therefore, we have already appointed Mr. O.P. Jhunjhunwala, Solicitor & Advocate, of 9 Old Post Office Street, Calcutta-700001, as our nominee arbitrator, to decide the disputes and differences." It is apparent from the statement that huge monetary losses sustained and still

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being sustained by GMB due to several breaches of the collaboration agreement committed by Neycer is the subject matter of dispute. Therefore, damages claimed by GMB as per Schedule F being the losses suffered by it as a result of the breaches of the collaboration agreement committed by Neycer come squarely within dispute or disputes referred to arbitration. This contention of the learned counsel fails.

It is next submitted by the learned counsel that the claim for damages under Schedule F is bad for remoteness. I am unable to accept this contention. In my view it is not only not remote but very much linked up with and is the direct result of the breaches committed by Neycer in the implementation of the collaboration agreement. I am also not impressed by the contention that the claim has been made on certain assumptions, e.g. if there had been proper performance, GMB would have earned profit etc. etc. I do not find any logic behind the contention. The claim for damages has been founded on stark realities, namely loss of profit due to the neglect and failure of Neycer in performing its obligations. Because of the loss of profit, GMB has suffered damage and, accordingly, it has claimed the amount of interests charged on the huge loan borrowed by it from the financial institutions. Therefore, there is no question of assumption. Both the contentions are untenable and are overruled.

Another contention of Mr. Raghavan in respect of the

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claim under Schedule F is that the claim for interest is inconsistent with the other claims for damages inasmuch as if the damages on other heads are allowed, GMB would be placed in the same position to which it would have been if everything had gone normal, and so the question of payment of interest cannot arise. Attractive though the contention is, I regret, I am unable to accept the same. The contention is based on an erroneous assumption. If everything had gone normal, GMB would have been in the position to regularly pay the interest as it fell due and there would have been no scope for the accumulation of such a huge amount of interest as specified in Schedule F. Apart from that, GMB could even pay off the principal amount of loan. So without payment of the amount of interest claimed as damages under Schedule F, GMB cannot be put to the same position to which it would have been had everything gone normal.

There cannot be any dispute that Neycer was greatly interested to see that GMB was granted the loan from the financial institutions. The letter dated 14th February 1987 of Mr. Mehra, the then President of Neycer before the change of management, Ext.G/3 (Vol.G-1) to IFCI speaks volumes about the bright prospect of the project. The only object of writing the said letter was to persuade IFCI to grant the loan as applied for by GMB. Therefore, it cannot be denied that Neycer was very much aware of the loan incurred by GMB for the purpose of the project and the interest it was to

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pay on the loan amount, and that if the project would fail, GMB would not be able to pay off the loan amount and would be saddled with the heavy liability to pay a huge amount of interest including penal interest.

The facts stated above clearly come within the purview of Section 73 of the Contract Act, which inter alia provides as follows :

"When a contract has been broken, the party who suffered by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of thing from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."

In the instant case, as has been stated before, both parties including Neycer well knew that if the project failed, Neycer would be liable for payment of huge amount of interest including penal interest. So all the ingredients of Section 73 are satisfied and, therefore, Neycer is liable to pay the amount of interest under Schedule F claimed as damages.

In this connection, it will be profitable to refer to illustration (1) under Section 73 which is as follows :

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"A, a builder, contracts to erect and finish a house by the 1st of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C."

In the instant case also, Neycer who has failed and neglected to perform its obligations under the contract, must not only pay the damages as specified under Schedules A, C, D and E but also under Schedule F as it was well within its knowledge before the execution of the collaboration agreement that GMB would be liable to pay to the financial institutions huge amount of interest including penal interest. After giving my best consideration to this contention of the learned counsel for Neycer, I do not think there is any merit in it. The contention is, accordingly, rejected.

The last contention in respect of Schedule F as advanced by the learned Counsel is that as the BIFR has relieved GMB from the payment of liquidated damages of Rs.136.79 lacs, Neycer is no longer liable for the same.

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The contention of the learned counsel is of substance. As GMB is not longer liable to pay the said sum of Rs.136.79 lacs as liquidated damages, it cannot claim the said sum from Neycer. Accordingly, the total amount of claim under Schedule F should be reduced by Rs.136.79 lacs and upon such reduction it comes to (Rs.593.78 - 136.79) Rs.456.99 lacs. Therefore, the claim made under Schedule F is allowed to the extent of Rs.456.99 lacs.

No other point has been argued by either party. No claim has been put forward or pressed on behalf of Neycer against GMB.

It may be stated that both parties have filed their respective written notes of argument before me. I have myself taken down elaborate and exhaustive notes of arguments which were read out to the learned counsel of the parties as and when they were taken down.

I express my sincere thanks and gratefulness to Mr. Raghavan and his learned Junior Mr. R.A. Murari, both learned counsel for Neycer, and Mr. Jhumjhunwala, learned counsel for GMB for the assistance rendered by them to me in the matter.

After considering the facts and circumstances of the case and the evidence on record, both oral and documentary, and after hearing the learned counsel of both parties I make

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the following

### A W A R D

GMB is entitled to realise from Neycer a total sum of Rs. 12,19,62,910/- (Rupees Twelve crore nineteen lacs, sixty two thousand nine hundred and ten) only in respect of its claim for damages as per Schedules A, B, C, D, E and F as follows :

SCHEDULE 'A'	-	Rs. 39,14,910/-	Delay of 11 months
SCHEDULE 'B'	-	Rs. NIL	Technological upgradation.
SCHEDULE 'C'	-	Rs. 2,03,43,000/-	Brand name.
SCHEDULE 'D'	-	Rs. 1,23,61,000/-	Not providing Meeting facilities.
SCHEDULE 'E'	-	Rs. 3,46,45,000/-	loss of Capital
SCHEDULE 'F'	-	Rs. 4,56,99,000/-	Sub. to financial institutions

Total Rs. 11,69,62,910/-  
(Rupees eleven crores sixty nine lacs sixty two thousand nine hundred ten only)

The said sum of Rs. 11,69,62,910/- shall be paid by Neycer to GMB within two months from the date of this Award, failing which, the said amount shall bear interest at the rate of 15% (fifteen per cent) per annum till realisation.

I sign this Award on this the 23<sup>rd</sup> day of the month of June 1999.

Sd/- ( MURARI MOHON DUTT )  
UMPIRE

ANNEXURE 1

BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTIONCase No. 88/92 in re : M/s. GMB Ceramics Limited (GMBCL)BENCH III

GMBCL.DS

DRAFT REHABILITATION SCHEME

GMB Ceramics Ltd. (GMBCL) made a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, to the Board in July, 1992. GMBCL's case came up for consideration before the Bench at the hearing held on the 5th January 1993, when GMBCL was declared a "Sick Industrial Company" within the meaning of Section 3(1)(o) of the Act. The Bench appointed IFCI as the Operating Agency (OA), under Section 17(3) of the Act, to examine the viability, and prepare a scheme for revival/rehabilitation of the company. IFCI formulated a draft rehabilitation scheme on the basis of the proposal submitted by GMBCL, in association with an NRI Co-promoter, Shri R. Chamarla. At the hearing held on the 3rd January, 1994, in view of the promoters declining to bring in the requisite interest free funds and seeking more reliefs, the Bench observed that GMBCL did not deserve reliefs/concessions beyond RBI parameters and decided to issue a show cause notice for winding up. GMBCL submitted a proposal in February, 1994 based on RBI parameters. At the joint meeting held on the 7th April, 1994, to discuss the viability study of the company's proposal, the consensus was that the package of reliefs and concessions as indicated in GMBCL's proposal, might be agreed subject to the terms and conditions stipulated in GMBCL's proposal as also the promoters agreeing to bring in the entire funds within a period of six months of sanction of scheme by BIFR and the NRI furnishing undertaking for non-disposal of his proposed share holding.

At the hearing held on 11th April, 1994, the Bench directed the company to furnish Auditors' Certificate in regard to utilisation of Rs.71 lacs already received from AGIO group of

companies, obtain a firm commitment from Shri Chamaria for induction of Rs.148 lacs, enter into agreement with NRI co-promoter for financial participation in the rehabilitation scheme and deposit Rs.30 lacs in a "No-Lien Interest-Bearing Account" with Indian Bank.

The company has furnished a copy of certificate from Auditors regarding utilisation of funds received from AGIO group of companies. Shri Chamaria had subsequently advised that he has nominated M/s. Asia Assets & Developments Inc., (AAD) Singapore, for holding equity of GMBCL and that AAD would be agreeable to induct Rs.148 lacs in the form of equity/unsecured loan. GMBCL has since obtained RBI's permission for accepting interest-free advance of Rs.30 lacs from AAD, subject to certain conditions. RBI has sought certain documents from GMBCL to consider granting approval under FERA, for issue of shares to AAD. GMBCL since entered into a legal agreement with AAD as per the draft vetted by the OA.

At the hearing held on 28/09/94, Indian Bank confirmed that AAD has deposited Rs.30 lacs in no-lien account. At the above hearing, the representative of State Govt of Orissa submitted that the State Govt would not be agreeable to waive ground rent payable to IDCOL, as was envisaged in the OA report. The Bench directed IFCI/OA to carry out modifications in the OA report in the light of the proceedings of the hearing. The OA has since submitted its modified report. Based on this, we have prepared the following draft scheme for the rehabilitation of GMBCL.

#### BACKGROUND

GMBCL, incorporated on 26th March, 1982, was promoted by Shri R.A. Jalan in the assisted sector with active support from Industrial Promotion and Investment Corporation of Orissa Limited.

(IPICOL) and technical-cum-financial collaboration of Neyveli Ceramics and Refractories Limited (NEYCER), for the manufacture of sanitaryware with an installed capacity of 8000 tpa, at village Somnathpur, District Balasore (Orissa), an 'A' category, centrally declared backward area.

The cost of the project was originally estimated at Rs.916 lacs, which was proposed to be financed from sources as under :

		(Rs.in lacs)
<u>Share capital :</u>		
Promoters:		
RA Jalan & Associates	111.00	
NEYCER	18.00	
IPICOL	36.00	
Public	137.00	
	-----	
Term Loans		302.00
IDBI		
IFCI	236.00	
ICICI	236.00	
	117.00	
	-----	
Central Investment Subsidy		589.00
		25.00
		-----
		916.00
		-----

The public issue of Rs.137 lacs was underwritten by the Institutions to the extent of Rs.100 lacs and equity of Rs.63.60 lacs was devolved.

The project was completed at a cost of Rs.1100 lacs. The overrun of Rs.184 lacs was financed by way of additional term loans from institutions (Rs.110 lacs), equity contribution from promoters (Rs.40.50 lacs) and IPICOL (Rs.7.50 lacs) and sub-ordinated interest free unsecured loan from promoters (Rs.26.00 lacs). GMBCL commenced commercial operation in December, 1989, as against February, 1989 as originally envisaged. At the time of sanction of additional assistance for overrun, the repayment of original rupee loans aggregating Rs.589 lacs was deferred by one year, and rescheduled to be payable from 15/10/91.



(10) 88/97

The working of GMBCL had not been satisfactory due to low capacity utilisation and it had been incurring cash losses since commencement of operations. In view of recurring cash losses, the company had been committing defaults in the payment of instalments of principal and payment of interest.

In July, 1990, GMBCL approached the Institutions for grant of reliefs by way of deferment of interest and reschedulement of loans. The financial forecasts supporting the company's proposal were found to be unrealistic and GMBCL was advised to submit a workable proposal for revival, which was not forthcoming. In view of the unsatisfactory state of affairs and indifferent/unresponsive attitude of the promoters, the Institutions recalled their loans in July, 1992.

The plant of GMBCL was closed on 25th October, 1991 due to labour problems and disconnection of electric power as the dues of Orissa State electricity Board (OSEB) had not been paid. Subsequently, the company negotiated with OSEB for reduction in the power load from 715 KVA to 490 KVA as a result of which, minimum consumption charges were reduced to Rs.20,000/- p.m. as against Rs.80,000/- p.m. besides saving in electricity duty. OSEB further agreed in March, 1993 for payment of a part of the overdues in easy instalments of Rs.50,000/- p.m. for six months which have been since paid by October, 1993. The balance overdues are proposed to be paid under the present rehabilitation scheme, over a period of three years without carrying interest, in monthly instalments commencing from April, 1994. As a result, OSEB had reconnected the power in March, 1993. GMBCL also entered into an agreement for five years w.e.f. March, 1993, with the labour, inter alia stipulating improved productivity terms and the plant was reopened on the 11th August, 1993.

The operations of GMBCL have been below break-even level right from the beginning mainly due to lack of proper infrastructure leading to disruption in availability of raw material and despatch of finished goods, low labour productivity coupled with strained industrial relations, adverse climatic conditions affecting mould and greenware drying, and high rate of rejections in the castings, as a result of which it incurred continuous cash losses and failed to meet its obligations to the institutions. The plant, which was closed since 26th October, 1991, has been restarted in August, 1993. As per the audited results as on the 31st March, 1993, its accumulated losses/miscellaneous expenses of Rs.808.31 lacs had eroded the entire paid up capital and free reserves aggregating Rs.446.67 lacs resulting in negative net worth of Rs.361.64 lacs.

#### THE SCHEME

The scheme envisages (i) capital expenditure for carrying out essential repairs/maintenance/overhauling of plant and machinery, publicity expenses apart from payment to pressing creditors and provision for additional margin money for working capital (ii) Long term agreement with workers for a five year period and (iii) induction of co-promoter capable of bringing additional equity funds.

#### (i) Capital Expenditure :-

A provision of Rs.23.60 lacs has been made towards carrying out essential repairs/maintenance/overhauling in order to bring the machines back to normal working condition. The details thereof are given below :—

-Cleaning, Wooden Racks, Wooden Benches, Ceiling Fans	(Rs. lacs)
Plastic Drums & Funnels Etc.	
-Generator Spares Circuit Breaker, Voltage	5.00
Stabiliser Other Electrical Spares Etc.	
-Kiln Parts	10.00
-Modification In The Slip House Pumping,	3.00
Glazing Booth Etc.	
-Modification In Gl. Slip	1.15
-Spares for Blunger Ball Mills	0.45
Vibrating Mills	
-Unloading System of Glaze	0.65
-Making of Chambers Near Spray Booths	0.25
of Glaze Section	
Administration & Others Sections	3.10
	-----
	23.60
	-----

(ii) Long Term Agreement with Workers :-

The management has entered into a Memorandum of Settlement (MOS) on 17th March, 1993, which is valid for a period of five years. The MOS had been registered with the Assistant Labour Commissioner, Balasore and covers areas of productivity-linked incentives, penalty for non-fulfilment of norms of production, apart from treatment of closure period (past and future) as 'no wage period' (except in case of fault with the management in providing raw materials).

(iii) Induction of NRI promoter :-

Shri R.A. Jalan, Managing Director of GMBCL has entered into a Memorandum of Understanding (MOU) with Shri R. Chamaria, a Singapore based NRI on 21/06/93. subsequently Shri Jalan entered into a legal agreement with M/s. Asia Assets & Developments Inc. the group company of Shri Chamaria, as per draft vetted by IFCI.

COST OF SCHEME AND MEANS OF FINANCE :

The requirement of funds towards GMBCL's Scheme has been estimated at Rs.74.59 lakhs, as per details given below :

	(Rs. in lacs)		
	1995	1996	Total
Capital Expenditure for Repairs and Overhauling of Plant and Machinery	23.60	-	23.60
Publicity expenses	15.00	-	15.00
Sundry Creditors	10.00	-	10.00
Additional Margin Money for Working Capital Requirement	0.00	18.49	18.49
Payment of Ground Rent	7.50	0.00	7.50
	56.10	18.49	74.59

#### Means of Finance

The above requirement of funds is to be met entirely by induction of interest free funds by AAD.

#### SCHEME OF IMPLEMENTATION

The Capital expenditure programme is proposed to be implemented during 1994-95. As against Rs.148 lacs proposed to be inducted by the NRI associate, Rs.25 lacs is reported to have been inducted in the form of advance, which would need to be converted into equity during the year 1994-95.

#### RELIEFS AND CONCESSIONS

##### A. INSTITUTIONS (IFCI/YDBI/ICICI)

- (i) To waive the penal interest and liquidated damages charged in the account upto 31st March, 1994.
- (ii) To fund the overdue interest accruing upto 31st March, 1994 carrying interest @ 13.5% p.a. w.e.f. 1/4/1994 and repayable in 18 quarterly instalments commencing from the third quarter of 1995-96.
- (iii) To reschedule repayment of existing term loans at document rates so as to be repaid in 34 quarterly instalments commencing from the third quarter of 1995-96.

##### B. INDIAN BANK

- (i) To waive penal interest charged in the account upto 31st March, 1994.

(ii) To segregate the irregularity in the bank borrowing as on 31/03/94 into core portion and interest portion. To convert core portion into WCTL carrying interest of 14% p.a. and repayable in 34 quarterly instalments commencing from the third quarter of 1995-96. Interest portion to be converted to FITL repayable in 18 quarterly instalments commencing from the third quarter of 1995-96, carrying interest @ 9% p.a.

(iii) To sanction need based working capital facilities carrying concessional rate of interest @ 13.5% p.a. (excluding interest tax) for a period of 7 years, to be restored to the normal rate of interest thereafter.

C. STATE GOVERNMENT OF ORISSA :

(i) To waive electricity duty charged in account upto 31st March, 1994.

(ii) To exempt the unit from payment of electricity duty for a period of five years commencing from April, 1994.

(iii) To waive minimum demand charges during the period of disconnection of power.

(iv) To accept overdues of electric power over a period of three years without interest in monthly instalments starting from April, 1994.

(v) To allow the company to avail of exemption from payment of Sales tax during next seven years from 1994-95.

(vi) To exempt the company from power cuts during the rehabilitation period.

D. CENTRAL GOVERNMENT

(i) To exempt GMBCL from the provisions of Section 41(1) and 43B of the Income Tax Act, 1961. (related)

E. PROMOTERS/ASSOCIATES

(i) To induct interest free funds of the order of Rs.154.59 lacs (Rs.74.59 lacs for cost of the scheme and Rs.80 lacs to meet cash deficit in 1994-95).

F. WORKERS

(i) To adhere to the Long Term Agreement signed with GMBCL.

SACRIFICES

The reliefs/concessions as envisaged above would entail the following sacrifices by Institutions/Banks/State Govt of Orissa: *for*

(Rs. lacs)

Item	Instns	Banks	St. Govt of Orissa	Total
Waiver of PI/LD	44.55	2.54	-	47.09
Fund. of Intt-Ins	65.38	-	-	65.38
Fund. of Intt-Bk	-	15.09	-	15.09
Redn of Intt cc	-	15.98	-	15.98
WCTL (Bank)	-	1.55	-	1.55
Sales tax ex.tion	-	-	142.97	142.97
Waiver of Elec.dut	-	-	25.00	25.00
	109.93	35.16	167.97	313.06

Cost of the scheme	74.59
Sacrifices	313.06
	387.65
Total Promoters' Contribution	154.59
% Promoters' Contribution	39.88%

#### VIABILITY

The projections of profitability, cash flow, Balance sheet are enclosed as Annexure II, III and IV respectively. The assumptions underlying the same are given in Annexure V.

As per the projections, with the total promoter contribution at Rs.154.59 lacs, the average DSCR would work out to 1.37 over a rehabilitation period of 10 years. The net worth is expected to turn positive in the sixth year 1999-2000 and accumulated losses would be wiped off in the eighth year 2001-02.

#### GENERAL TERMS AND CONDITIONS

The following conditions shall form a part of the scheme :-

1. GMBCL shall ensure that the promoters bring in interest free subordinated unsecured loans of the order of Rs.154.59 lac.
2. GMBCL shall constitute a Management Committee, including representatives of Institutions/Bank/BIFR which shall meet more frequently than the Board and review the operation more closely.
3. GMBCL shall appoint a Finance Controller/Secretary, besides satisfying the Institutions/Bank in regard to the overall executive set-up in technical, financial, commercial and other areas.

- GMBCL shall submit half yearly progress reports to the Institutions/Bank/BIFR duly vetted by the Concurrent Auditors, within two months of close of the half year.

(R.R.Gupta)  
CHAIRMAN

Public Officer  
for Serial &  
the Corporation

100-2900

**G M B CERAMICS LTD**  
**Standalone Balance Sheet for period 01/04/2011 to 31/03/2012**

**[400100] Disclosure of general information about company**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>	<b>01/04/2010 to 31/03/2011</b>
Name of company	G M B CERAMICS LTD	
Corporate identity number	L26933OR1982PLC001049	
Permanent account number of entity	AABCG1557C	
Address of registered office of company	R A J G A N G P U R , SUNDERGARH,,Sundergarh-770017,INDIA	
Type of industry	C o m m e r c i a l                      a n d Industrial	
Date of board meeting when final accounts were approved	27/06/2012	
Period covered by financial statements	12	(Text required here)
Date of start of reporting period	01/04/2011	01/04/2010
Date of end of reporting period	31/03/2012	31/03/2011
Nature of report standalone consolidated	Standalone	
Content of report	Balance Sheet	
Description of presentation currency	INR	
Level of rounding used in financial statements	Actual	
Type of cash flow statement	Indirect Method	
SRN of form 66	P92029123	
Date from which register of members remained closed	21/09/2012	
Date till which register of members remained closed	29/09/2012	

**[400400] Disclosures - Directors report**

**Details of directors signing board report [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

<b>Directors signing board report [Axis]</b>	<b>M-1</b>
	<b>01/04/2011 to 31/03/2012</b>
Details of signatories of board report [Abstract]	
Details of directors signing board report [LineItems]	
Name of director signing board report [Abstract]	
First name of director	RAMAVTAR
Last name of director	JALAN
Designation of director	Managing director
Director identification number of director	00358232
Date of signing board report	27/06/2012



Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>
Disclosure in board of directors report explanatory [TextBlock]	Textual information (1) [See below]
Details regarding energy conservation	NA
Details regarding foreign exchange earnings and outgo	NA
Particulars of employees as per provisions of section 217	During the year ended under review none of the employees of the company has received remuneration in excess of limit specified in Section 217(2A) of the Companies Act, 1956.
Disclosures in director's responsibility statement	Textual information (2) [See below]
Director's comments on qualification(s), reservation(s) or adverse remark(s) of auditors as per board's report	Textual information (3) [See below]

## Textual information (1)

### Disclosure in board of directors report explanatory [Text Block]

GMB CERAMICS LIMITED Directors' Report to the Members, Your Directors present the 29th Annual Report and Audited financial statements of the Company for the year ended 31st March, 2012. Review As reported briefly in the last Annual Report, the company arrived at an One Time Settlement (OTS) jointly with all its secured creditors and accordingly repaid the OTS dues in the year under review. Consequent upon the clearance of secured debts and filing of satisfaction of charge with Registrar of companies (ROC), the Receiver appointed by the Court was released and the winding up proceedings were closed. The possession of the assets at Balasore have been taken. The task of clearance and renovation of the assets is in progress. The steps have been taken to settle all other pressing liabilities. Management is actively pursuing for revival and/or diversification. Directors In accordance with the provisions of the Companies Act, 1956 and the Articles of Association of the Company, Sri A. De, who retires by rotation and being eligible, offers himself for reappointment. Sri Gaurang Jalan, Sri Manav Jalan and Sri Madhav Prasad Sureka were appointed as additional director of the Company with effect from 16.07.2012 by the Board of Directors of the Company, they are liable to hold office till the commencement of the ensuing Annual General Meeting, a notice has been received from a shareholder proposing their appointment with consent of the Shareholders at the Annual General Meeting. Auditor Messrs. G.K. Tulsyan & Company, the auditors of the Company will retire at the forthcoming Annual General Meeting as the Company's auditors at remuneration to be decided by the Board of Directors. Deposits The company has not accepted / renewed any deposits from the public during the year under review. Disclosures The information as required under 217(1)(e) of the Companies Act, 1956, read with (Disclosure of particulars in the Report of Board of Directors) Rules, 1988, is set out in the Annexure forming part of this report. GMB CERAMICS LIMITED Directors Responsibility Statement Pursuant to the requirement under Section 212(2AA) of the Companies Act, 1956 with respect to Directors Responsibility Statement, it is hereby confirmed. That in the preparation of the financial statements for the Financial Year ended 31st March, 2012 the applicable accounting standard had been followed except the valuation of inventory on cost instead of valuing the same at cost or market price whichever is lower. Valuation of finished goods has been made at net realisation value in line with the Accounting Standard - 2 issued by The Institute of Chartered Accountants of India. Your directors would like to mention that since inception your company continuously followed the uniform practice of valuation. In the absence of adequate revenue and fund generation your company being a sick company was not in a position to set aside fund for gratuity and other retirement benefits. As such no provision has been made towards gratuity etc. during the year. That the Directors selected such accounting policies, applied them consistently and made judgment and estimates that were responsible and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the Financial Year and of the Profit or Loss of the Company for the year under review. That the Directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Companies Act, 1956 for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities. That the Directors had prepared the accounts for the financial year ended 31st March, 2012 on a going concern basis. Employees During the year ended under review none of the employees of the company has received remuneration in excess of limit specified in Section 217(2A) of the Companies Act, 1956. By Order of the Board (R.A. Jalan) Managing Director

## Textual information (2)

### Disclosures in director's responsibility statement

Pursuant to the requirement under Section 212(2AA) of the Companies Act, 1956 with respect to Directors Responsibility Statement, it is hereby confirmed. That in the preparation of the financial statements for the Financial Year ended 31st March, 2012 the applicable accounting standard had been followed except the valuation of inventory on cost instead of valuing the same at cost or market price whichever is lower. Valuation of finished goods has been made at net realisation value in line with the Accounting Standard - 2 issued by The Institute of Chartered Accountants of India. Your directors would like to mention that since inception your company continuously followed the uniform practice of valuation. In the absence of adequate revenue and fund generation your company being a sick company was not in a position to set aside fund for gratuity and other retirement benefits. As such no provision has been made towards gratuity etc. during the year. That the Directors selected such accounting policies, applied them consistently and made judgment and estimates that were responsible and prudent so as to give a true and fair view of the state of affairs of the Company at the end of the Financial Year and of the Profit or Loss of the Company for the year under review. That the Directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Companies Act, 1956 for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities

## Textual information (3)

### Director's comments on qualification(s), reservation(s) or adverse remark(s) of auditors as per board's report

The information as required under 217(1)(e) of the Companies Act, 1956, read with (Disclosure of particulars in the Report of Board of Directors) Rules, 1988, is set out in the Annexure forming part of this report.

### [400200] Disclosures - Auditors report

#### Details regarding auditors [Table]

..(1)

Unless otherwise specified, all monetary values are in INR

Auditors [Axis]	M-1
	01/04/2011 to 31/03/2012
Details regarding auditors [Abstract]	
Details regarding auditors [LineItems]	
Category of auditor	Auditors firm
Name of audit firm	G.K. Tulsyan & Company
Name of auditor signing report	UDAYA KUMAR SENAPATI
Firms registration number of audit firm	323246E
Membership number of auditor	058084
Address of auditors	4, Gangadhar Babu Lane, Kolkata - 700 012
Permanent account number of auditor or auditor's firm	AACFG0981G
SRN of form 23B	Z99999999
Date of signing audit report by auditors	27/06/2012
Date of signing of balance sheet by auditors	27/06/2012

**Disclosure of auditor's qualification(s), reservation(s) or adverse remark(s) in auditors' report [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Auditor's qualification(s), reservation(s) or adverse remark(s) in auditors' report [Axis]	Auditor's favourable remark [Member]	Clause not applicable [Member]
	<b>01/04/2011 to 31/03/2012</b>	<b>01/04/2011 to 31/03/2012</b>
Disclosure of auditor's qualification(s), reservation(s) or adverse remark(s) in auditors' report [Abstract]		
Disclosure of auditor's qualification(s), reservation(s) or adverse remark(s) in auditors' report [LineItems]		
Disclosure in auditors report relating to fixed assets	Textual information (4) [See below]	
Disclosure in auditors report relating to inventories	Textual information (5) [See below]	
Disclosure in auditors report relating to loans	Textual information (6) [See below]	
Disclosure in auditors report relating to internal control system	The company does not have any transaction of purchase of inventory, fixed assets and also for the sale of goods and so no comment on internal control is required to be given.	
Disclosure in auditors report relating to contracts and arrangements under section 301 of companies act	As informed to us, there are no transaction covered u/s.301 of the Companies Act. 1956 hence paragraph (a) and (b) are not applicable	
Disclosure relating to presence of register for necessary transactions		NA
Disclosure relating to reasonability of transactions		NA
Disclosure in auditors report relating to deposits accepted from public	The company has not accepted any deposit from the public	
Disclosure in auditors report relating to companies internal audit system	01. Since the company's manufacturing actively remained suspended and no other activity and transaction took place, the internal audit could not be carried out during the period under review.	
Disclosure in auditors report relating to maintenance of cost records	01. The Central Government has not prescribed the maintenance of cost records by the company under Section 209(1)(d) of the Companies Act. 1956.	
Disclosure in auditors report relating to statutory dues	There are no dues outstanding in respect of the statutory liabilities on account of any dispute	
Disclosure in auditors report relating to accumulated losses	01. The company has accumulated losses and has incurred cash losses during the immediately preceding financial year and in the current year also.	

Disclosure in auditors report relating to default in repayment of financial dues	Textual information (7) [See below]	
Disclosure in auditors report relating to loans and advances granted by way of pledge of shares debentures and other securities	01. The company has not granted any loans and advances on the basis of security by way of pledge of shares, debentures and other securities.	
Disclosure in auditors report relating to provisions under special statute	Textual information (8) [See below]	
Disclosure in auditors report relating to adequacy of records maintained by share trading companies	As informed and explained to us, the company has not made any investment in shares and securities	
Disclosure in auditors report relating to guarantee given	01. According to the information and explanations given to us, the company has not given any guarantee for loans taken by others from bank of financial institutions.	
Disclosure in auditors report relating to term loans used for purpose other than for purpose they were raised	There are no outstanding dues to banks and financial institutions. The said clause of the order is not applicable to the company	
Disclosure in auditors report relating to nature and amount of fund raised for short-term has been used for long-term or vice versa	We have been informed by the management that no funds have been raised for short term purposes, and hence clause (xvii) of the order is not applicable	
Disclosure in auditors report relating to preferential allotment of shares	01. The company has not made any preferential allotment of shares to parties and companies covered in the register maintained under Section 301 of the Companies Act. 1956.	
Disclosure in auditors report relating to securities created against debentures issued	01. The company did not have any outstanding debenture during the year.	
Disclosure in auditors report relating to purpose and end use of money raised through public issues	01. The company has not raised any money through public issue during the year.	
Disclosure in auditors report relating to any material fraud reported during period	01. Based on information and explanations furnished by the management, which have been relied upon by us there were no frauds on or by the company noticed or reported during the year.	

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>
Disclosure in auditor's report explanatory [TextBlock]	Textual information (9) [See below]
Whether companies auditors report order is applicable on company	Yes
Whether auditors' report has been qualified or has any reservations or contains adverse remarks	No

## Textual information (4)

**Disclosure in auditors report relating to fixed assets**

a) The company has maintained proper records showing full particulars including quantitative details and situation of Fixed Assets on the basis of available information. b) As explained to us, the management has not made any physical verification of the fixed assets during the year. c) In our opinion, the company has not disposed of substantial part of fixed assets during the year. Considering the suspension of the activity of the company for a long period when the assets were under the possession of Receiver appointed by court, we are unable to comment on the going concern of the company.

## Textual information (5)

**Disclosure in auditors report relating to inventories**

01. As informed to us, the factory has been under lockout since 15th November, 1997 and under the possession of the Receiver, and for this reason no physical verification of inventories could be made during the year.

## Textual information (6)

**Disclosure in auditors report relating to loans**

01. In respect of loans, secured or unsecured, granted or taken by the company to / from companies, firm or other parties covered in the register maintained under Section 301 of the Companies Act. 1956. a) The company has not granted any loans to parties mentioned in the register maintained u/s. 301 of the Companies Act. 1956. The company has taken unsecured loans from parties mentioned in register u/s 301 & the year end outstanding in respect of such loan was Rs. 46,72,197/-. b) According to the information and explanations given to us, the loans are interest free. In our opinion the terms and conditions are not prima facie prejudicial to the interest of the company.

## Textual information (7)

**Disclosure in auditors report relating to default in repayment of financial dues**

01. The company's dues to financial institutions & banks at the year end is NIL. The company was in default of making payment of these outstanding. The company has entered with the lender for a one time settlement scheme to clear off the dues and the said negotiation have been settled in the current year.

## Textual information (8)

**Disclosure in auditors report relating to provisions under special statute**

In our opinion and according to the information and explanations given to us, the nature of activities of the company does not attract any special statute applicable to chit fund and nidhi / mutual benefit fund / societies

## Textual information (9)

### Disclosure in auditor's report explanatory [Text Block]

**AUDITORS' REPORT** To the Members of GMB Ceramics Limited. We have audited the attached Balance Sheet of Messrs. GMB Ceramics Limited, as at 31st March, 2012, Profit and Loss statement and Cash Flow Statement for the year ended on that date annexed thereto. These financial statements are the responsibility of the Company's Management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in India. Those Standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion. As required by the other Company (Auditors' Report) Order 2003 issued by the Central Government in terms of Section 227(4A) of the Companies Act, 1956, we enclose in annexure a statement on the matter specified in paragraph 4 & 6 of the said order. Further to our comments in the annexure referred to in paragraph 1 above. We have obtained all the information and explanations which to the best of our knowledge and belief are necessary for the purpose of our audit. Proper books of accounts as required by law have been kept by the Company so far as appears from our examination of such books. The Balance Sheet, Profit & Loss statement and Cash Flow Statement dealt with by this report are in agreement with the books of account of the Company. In our opinion the Profit & Loss statement and Balance Sheet comply with the accounting standards referred to in sub section 3(C) of section 211 of the Companies Act, 1956 except for Accounting Standard - 2 regarding valuation of inventories, Accounting Standard 15 regarding non-provision of gratuity and other retirement benefits. On the basis of written representations received from the directors and taken on record, by the Board of Directors, we report that none of the directors is disqualified as on 31st March, 2012 from being appointed as director in terms of clause (g) of Sub-section (1) of Section 274 of the Companies Act, 1956. Contd G.K. TULSYAN & COMPANY Chartered Accountants In our opinion and to the best of our information and according to explanations given to us the said statements subject to non-provision of depreciation, amount not ascertained and read together with other notes thereon give a true and fair view : in the case of the Balance Sheet of the state of affairs of the Company as at 31st March, 2012 and in the case of Profit & Loss statement of the Loss of the Company for the year ended on that date. In so far as it relates to the Cash Flow Statement of the cash flows of the company for the year ended on that date. For G.K. Tulsyan & Company Chartered Accountants, Registration No. 323246E U.K. Senapati Partner Membership No.58084 4, Gangadhar Babu Lane, Kolkata - 700 012 Dated the 27th day of June, 2012. G.K. TULSYAN & COMPANY Chartered Accountants Annexure referred to in our report of even date. 01. In respect of its Fixed Assets : a) The company has maintained proper records showing full particulars including quantitative details and situation of Fixed Assets on the basis of available information. b) As explained to us, the management has not made any physical verification of the fixed assets during the year. c) In our opinion, the company has not disposed of substantial part of fixed assets during the year. Considering the suspension of the activity of the company for a long period when the assets were under the possession of Receiver appointed by court, we are unable to comment on the going concern of the company. 02. As informed to us, the factory has been under lockout since 15th November, 1997 and under the possession of the Receiver, and for this reason no physical verification of inventories could be made during the year. 03. In respect of loans, secured or unsecured, granted or taken by the company to / from companies, firm or other parties covered in the register maintained under Section 301 of the Companies Act. 1956. a) The company has not granted any loans to parties mentioned in the register maintained u/s. 301 of the Companies Act. 1956. The company has taken unsecured loans from parties mentioned in register u/s 301 & the year end outstanding in respect of such loan was Rs. 46,72,197/-. b) According to the information and explanations given to us, the loans are interest free. In our opinion the terms and conditions are not prima facie prejudicial to the interest of the company. 04. The company does not have any transaction of purchase of inventory, fixed assets and also for the sale of goods and so no comment on internal control is required to be given. 05. As informed to us, there are no transaction covered u/s.301 of the Companies Act. 1956 hence paragraph (a) and (b) are not applicable. 06. The company has not accepted any deposit from the public. 07. Since the company's manufacturing actively remained suspended and no other activity and transaction took place, the internal audit could not be carried out during the period under review. 08. The Central Government has not prescribed the maintenance of cost records by the company under Section 209(1)(d) of the Companies Act. 1956. 09. There are no dues outstanding in respect of the statutory liabilities on account of any dispute. Contd.. G.K. TULSYAN & COMPANY Chartered Accountants 10. The company has accumulated losses and has incurred cash losses during the immediately preceding financial year and in the current year also. 11. The company's dues to financial institutions & banks at the year end is NIL. The company was in default of making payment of these outstanding. The company has entered with the lender for a one time settlement scheme to clear off the dues and the said negotiation have been settled in the current year. 12. The company has not granted any loans and advances on the basis of security by way of pledge of shares, debentures and other securities. 13. In our opinion and according to the information and explanations given to us, the nature of activities of the company does not attract any special statute applicable to chit fund and nidhi / mutual benefit fund / societies. 14. As informed and explained to us, the company has not made any investment in shares and securities. 15. According to the information and explanations given to us, the company has not given any guarantee for loans taken by others from bank of financial institutions. 16. There are no outstanding dues to banks and financial institutions. The said clause of the order is not applicable to the company. 17. We have been informed by the management that no funds have been raised for short term purposes, and hence clause (xvii) of the order is not applicable. 18. The company has not made any preferential allotment of shares to parties and companies covered in the register maintained under Section 301 of the Companies Act. 1956. 19. The company did not have any outstanding debenture during the year. 20. The company has not raised any money through public issue during the year. 21. Based on information and explanations furnished by the management, which have been relied upon by us there were no frauds on or by the company noticed or reported during the year. For G.K. Tulsyan & Company Chartered Accountants, Registration No. 323246E U.K. Senapati Partner Membership No.58084 4, Gangadhar Babu Lane, Kolkata - 700 012 Dated the 27th day of June, 2012.

**[100100] Balance sheet**

Unless otherwise specified, all monetary values are in INR

	31/03/2012	31/03/2011
Balance sheet [Abstract]		
Equity and liabilities [Abstract]		
Shareholders' funds [Abstract]		
Share capital	3,49,27,500	3,49,27,500
Reserves and surplus	-2,53,01,044	-16,25,44,195
Total shareholders' funds	96,26,456	-12,76,16,695
Share application money pending allotment	0	0
Non-current liabilities [Abstract]		
Long-term borrowings	5,45,47,197	12,18,00,351
Other long-term liabilities	0	0
Long-term provisions	0	0
Total non-current liabilities	5,45,47,197	12,18,00,351
Current liabilities [Abstract]		
Short-term borrowings	0	97,26,472
Trade payables	0	27,64,126
Other current liabilities	88,993	6,45,25,801
Short-term provisions	1,520	1,836
Total current liabilities	90,513	7,70,18,235
Total equity and liabilities	6,42,64,166	7,12,01,891
Assets [Abstract]		
Non-current assets [Abstract]		
Fixed assets [Abstract]		
Tangible assets	5,98,35,967	6,45,63,228
Intangible assets	0	0
Total fixed assets	5,98,35,967	6,45,63,228
Non-current investments	0	2,000
Long-term loans and advances	0	0
Total non-current assets	5,98,35,967	6,45,65,228
Current assets [Abstract]		
Current investments	0	0
Inventories	43,09,470	45,74,648
Trade receivables	0	17,39,441
Cash and bank balances	79,866	58,666
Short-term loans and advances	38,863	2,63,908
Total current assets	44,28,199	66,36,663
Total assets	6,42,64,166	7,12,01,891

**[400300] Disclosures - Signatories of balance sheet****Details of directors signing balance sheet [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Directors signing balance sheet [Axis]	M-1	M-2
	01/04/2011 to 31/03/2012	01/04/2011 to 31/03/2012
Details of signatories of balance sheet [Abstract]		
Details of directors signing balance sheet [Abstract]		
Details of directors signing balance sheet [LineItems]		
Name of director signing balance sheet [Abstract]		
First name of director	RAMAVTAR	ARABINDA
Last name of director	JALAN	DE
Designation of director	Managing director	Director
Director identification number of director	00358232	00028093
Date of signing of balance sheet by director	27/06/2012	27/06/2012

**[200100] Notes - Share capital****Disclosure of classes of share capital [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classes of share capital [Axis]	Share capital [Member]		Equity shares [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of classes of share capital [Abstract]				
Disclosure of classes of share capital [LineItems]				
Number of shares authorised	[shares] 55,00,000	[shares] 55,00,000	[shares] 55,00,000	[shares] 55,00,000
Value of shares authorised	5,50,00,000	5,50,00,000	5,50,00,000	5,50,00,000
Number of shares issued	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000
Value of shares issued	3,50,00,000	3,50,00,000	3,50,00,000	3,50,00,000
Number of shares subscribed and fully paid	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000
Value of shares subscribed and fully paid	3,50,00,000	3,50,00,000	3,50,00,000	3,50,00,000
Number of shares subscribed but not fully paid	[shares] 0	[shares] 0	[shares] 0	[shares] 0
Value of shares subscribed but not fully paid	0	0	0	0
Total number of shares subscribed	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000
Total value of shares subscribed	3,50,00,000	3,50,00,000	3,50,00,000	3,50,00,000
Value of shares paid-up [Abstract]				
Number of shares paid-up	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000
Value of shares called	3,50,00,000	3,50,00,000	3,50,00,000	3,50,00,000
Calls unpaid [Abstract]				
Calls unpaid by others	72,500	72,500	72,500	72,500
Total calls unpaid	72,500	72,500	72,500	72,500
Value of shares paid-up	3,49,27,500	3,49,27,500	3,49,27,500	3,49,27,500
Reconciliation of number of shares outstanding [Abstract]				
Changes in number of shares outstanding [Abstract]				
Increase in number of shares outstanding [Abstract]				
Number of shares issued in public offering	[shares] 0	[shares] 0	[shares] 0	[shares] 0
Total aggregate number of shares issued during period	[shares] 0	[shares] 0	[shares] 0	[shares] 0
Total increase (decrease) in number of shares outstanding	[shares] 0	[shares] 0	[shares] 0	[shares] 0
Number of shares outstanding at end of period	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000	[shares] 35,00,000
Reconciliation of value of shares outstanding [Abstract]				
Changes in share capital [Abstract]				
Increase in share capital during period [Abstract]				
Amount of public issue during period	0	0	0	0
Total aggregate amount of increase in share capital during period	0	0	0	0
Total increase (decrease) in share capital	0	0	0	0
Share capital at end of period	3,49,27,500	3,49,27,500	3,49,27,500	3,49,27,500
Details of application money received for allotment of securities and due for refund and interest accrued thereon [Abstract]				
Application money received for allotment of securities and due for refund and interest accrued thereon [Abstract]				
Application money received for allotment of securities and due for refund, principal	0	0	0	0
Application money received for allotment of securities and due for refund, interest accrued	0	0	0	0
Total application money received for allotment of securities and due for refund and interest accrued thereon	0	0	0	0



## Disclosure of classes of share capital [Table]

..(2)

Unless otherwise specified, all monetary values are in INR

Classes of share capital [Axis]	Equity shares 1 [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of classes of share capital [Abstract]		
Disclosure of classes of share capital [LineItems]		
Type of share	EQUITY	EQUITY
Number of shares authorised	[shares] 55,00,000	[shares] 55,00,000
Value of shares authorised	5,50,00,000	5,50,00,000
Number of shares issued	[shares] 35,00,000	[shares] 35,00,000
Value of shares issued	3,50,00,000	3,50,00,000
Number of shares subscribed and fully paid	[shares] 35,00,000	[shares] 35,00,000
Value of shares subscribed and fully paid	3,50,00,000	3,50,00,000
Number of shares subscribed but not fully paid	[shares] 0	[shares] 0
Value of shares subscribed but not fully paid	0	0
Total number of shares subscribed	[shares] 35,00,000	[shares] 35,00,000
Total value of shares subscribed	3,50,00,000	3,50,00,000
Value of shares paid-up [Abstract]		
Number of shares paid-up	[shares] 35,00,000	[shares] 35,00,000
Value of shares called	3,50,00,000	3,50,00,000
Calls unpaid [Abstract]		
Calls unpaid by others	72,500	72,500
Total calls unpaid	72,500	72,500
Value of shares paid-up	3,49,27,500	3,49,27,500
Par value per share	[INR/shares] 10	[INR/shares] 10
Details of shares not fully called [Abstract]		
Amount per share called	[INR/shares] 10	[INR/shares] 10
Reconciliation of number of shares outstanding [Abstract]		
Changes in number of shares outstanding [Abstract]		
Increase in number of shares outstanding [Abstract]		
Number of shares issued in public offering	[shares] 0	[shares] 0
Total aggregate number of shares issued during period	[shares] 0	[shares] 0
Total increase (decrease) in number of shares outstanding	[shares] 0	[shares] 0
Number of shares outstanding at end of period	[shares] 35,00,000	[shares] 35,00,000
Reconciliation of value of shares outstanding [Abstract]		
Changes in share capital [Abstract]		
Increase in share capital during period [Abstract]		
Amount of public issue during period	0	0
Total aggregate amount of increase in share capital during period	0	0
Total increase (decrease) in share capital	0	0
Share capital at end of period	3,49,27,500	3,49,27,500
Details of application money received for allotment of securities and due for refund and interest accrued thereon [Abstract]		
Application money received for allotment of securities and due for refund and interest accrued thereon [Abstract]		
Application money received for allotment of securities and due for refund, principal	0	0
Application money received for allotment of securities and due for refund, interest accrued	0	0
Total application money received for allotment of securities and due for refund and interest accrued thereon	0	0

Unless otherwise specified, all monetary values are in INR

	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of notes on share capital explanatory [TextBlock]		
Whether there are any shareholders holding more than five per cent shares in company	No	No
Whether reduction in capital done during year	No	No
Whether money raised from public offering during year	No	No

**[200200] Notes - Reserves and surplus****Statement of changes in reserves [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Components of reserves [Axis]	Reserves [Member]		Capital reserves [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Statement of changes in reserves [Abstract]				
Statement of changes in reserves [LineItems]				
Changes in reserves [Abstract]				
Additions to reserves [Abstract]				
Profit (loss) for period	5,59,80,957	-1,52,769		
Other additions to reserves	0	0	0	0
Total additions to reserves	5,59,80,957	-1,52,769	0	0
Total changes in reserves	5,59,80,957	-1,52,769	0	0
Reserves at end of period	-2,53,01,044	-16,25,44,195	9,10,00,860	0

**Statement of changes in reserves [Table]**

..(2)

Unless otherwise specified, all monetary values are in INR

Components of reserves [Axis]	Other reserves [Member]		Other reserves, others [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Statement of changes in reserves [Abstract]				
Statement of changes in reserves [LineItems]				
Changes in reserves [Abstract]				
Additions to reserves [Abstract]				
Other additions to reserves	0	0	0	0
Total additions to reserves	0	0	0	0
Total changes in reserves	0	0	0	0
Reserves at end of period	92,81,885	1,90,20,551	92,81,885	1,90,20,551
Description of nature and purpose of other reserves/funds			- Central Investment Subsidy - Project Subsidy - Investment Allowance Reserve - BIFR Relief & Concession	- Central Investment Subsidy - Project Subsidy - Investment Allowance Reserve - BIFR Relief & Concession

**Statement of changes in reserves [Table]**

..(3)

Unless otherwise specified, all monetary values are in INR

Components of reserves [Axis]	Surplus [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Statement of changes in reserves [Abstract]		
Statement of changes in reserves [LineItems]		
Changes in reserves [Abstract]		
Additions to reserves [Abstract]		
Profit (loss) for period	5,59,80,957	-1,52,769
Total additions to reserves	5,59,80,957	-1,52,769
Total changes in reserves	5,59,80,957	-1,52,769
Reserves at end of period	-12,55,83,789	-18,15,64,746

**[200300] Notes - Borrowings****Classification of borrowings [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Long-term [Member]			
Classification of borrowings [Axis]	Borrowings [Member]		Other loans and advances [Member]	
Subclassification of borrowings [Axis]	Unsecured borrowings [Member]		Unsecured borrowings [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Borrowings notes [Abstract]				
Details of borrowings [Abstract]				
Details of borrowings [LineItems]				
Borrowings	5,45,47,197	12,18,00,351	5,45,47,197	12,18,00,351

**Classification of borrowings [Table]**

..(2)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Long-term [Member]		Short-term [Member]	
Classification of borrowings [Axis]	Other loans and advances, others [Member]		Borrowings [Member]	
Subclassification of borrowings [Axis]	Unsecured borrowings [Member]		Unsecured borrowings [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Borrowings notes [Abstract]				
Details of borrowings [Abstract]				
Details of borrowings [LineItems]				
Borrowings	5,45,47,197	12,18,00,351	0	97,26,472

**Classification of borrowings [Table]**

..(3)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Short-term [Member]			
Classification of borrowings [Axis]	Other loans and advances [Member]		Other loans and advances, others [Member]	
Subclassification of borrowings [Axis]	Unsecured borrowings [Member]		Unsecured borrowings [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Borrowings notes [Abstract]				
Details of borrowings [Abstract]				
Details of borrowings [LineItems]				
Borrowings	0	97,26,472	0	97,26,472

**[201000] Notes - Tangible assets****Disclosure of tangible assets [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Company total tangible assets [Member]					
Sub classes of tangible assets [Axis]	Owned and leased assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,98,35,967	6,45,63,228	10,05,84,208	10,53,11,469	4,07,48,241	4,07,48,241

**Disclosure of tangible assets [Table]**

..(2)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Company total tangible assets [Member]					
Sub classes of tangible assets [Axis]	Owned assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,98,35,967	6,45,63,228	10,05,84,208	10,53,11,469	4,07,48,241	4,07,48,241

## Disclosure of tangible assets [Table]

..(3)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Land [Member]					
Sub classes of tangible assets [Axis]	Owned and leased assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Total changes in tangible assets	0	0	0	0	0	0
Tangible assets at end of period	20,08,882	20,08,882	20,08,882	20,08,882	0	0

## Disclosure of tangible assets [Table]

..(4)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Land [Member]					
Sub classes of tangible assets [Axis]	Owned assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Total changes in tangible assets	0	0	0	0	0	0
Tangible assets at end of period	20,08,882	20,08,882	20,08,882	20,08,882	0	0

## Disclosure of tangible assets [Table]

..(5)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Plant and equipment [Member]					
Sub classes of tangible assets [Axis]	Owned and leased assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,78,27,085	6,25,54,346	9,85,75,326	10,33,02,587	4,07,48,241	4,07,48,241

## Disclosure of tangible assets [Table]

..(6)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Plant and equipment [Member]					
Sub classes of tangible assets [Axis]	Owned assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,78,27,085	6,25,54,346	9,85,75,326	10,33,02,587	4,07,48,241	4,07,48,241

## Disclosure of tangible assets [Table]

..(7)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Other plant and equipment [Member]					
Sub classes of tangible assets [Axis]	Owned and leased assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,78,27,085	6,25,54,346	9,85,75,326	10,33,02,587	4,07,48,241	4,07,48,241

## Disclosure of tangible assets [Table]

..(8)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Other plant and equipment [Member]					
Sub classes of tangible assets [Axis]	Owned assets [Member]					
Carrying amount accumulated depreciation and gross carrying amount [Axis]	Carrying amount [Member]		Gross carrying amount [Member]		Accumulated depreciation and impairment [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of tangible assets [Abstract]						
Disclosure of tangible assets [LineItems]						
Reconciliation of changes in tangible assets [Abstract]						
Changes in tangible assets [Abstract]						
Additions other than through business combinations tangible assets	0	0	0	0		
Depreciation tangible assets	0	0			0	0
Disposals tangible assets [Abstract]						
Disposals tangible assets through demergers	47,27,261	0	47,27,261	0		
Total disposals tangible assets	47,27,261	0	47,27,261	0		
Total changes in tangible assets	-47,27,261	0	-47,27,261	0	0	0
Tangible assets at end of period	5,78,27,085	6,25,54,346	9,85,75,326	10,33,02,587	4,07,48,241	4,07,48,241

**Disclosure of additional information tangible assets [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Company total tangible assets [Member]		Land [Member]		Plant and equipment [Member]	
Sub classes of tangible assets [Axis]	Owned assets [Member]		Owned assets [Member]		Owned assets [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of additional information tangible assets [Abstract]						
Disclosure of additional information tangible assets [LineItems]						
Depreciation method tangible assets	NA	NA	NA	NA	WDV	WDV
Useful lives or depreciation rates tangible assets	NA	NA	NA	NA	13.91%	13.91%

**Disclosure of additional information tangible assets [Table]**

..(2)

Unless otherwise specified, all monetary values are in INR

Classes of tangible assets [Axis]	Other plant and equipment [Member]	
Sub classes of tangible assets [Axis]	Owned assets [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of additional information tangible assets [Abstract]		
Disclosure of additional information tangible assets [LineItems]		
Depreciation method tangible assets	WDV	WDV
Useful lives or depreciation rates tangible assets	13.91%	13.91%

**[201100] Notes - Intangible assets****Disclosure of intangible assets [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classes of intangible assets [Axis]	Company total intangible assets [Member]	
Sub classes of intangible assets [Axis]	Internally generated and other than internally generated intangible assets [Member]	
Carrying amount accumulated amortization and impairment and gross carrying amount [Axis]	Carrying amount [Member]	
	31/03/2012	31/03/2011
Disclosure of intangible assets [Abstract]		
Disclosure of intangible assets [LineItems]		
Reconciliation of changes in intangible assets [Abstract]		
Intangible assets at end of period	0	0



**[200400] Notes - Non-current investments****Details of non-current investments [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classification of non-current investments [Axis]	M-1	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Non-current investments [Abstract]		
Disclosure of details of non-current investments [Abstract]		
Details of non-current investments [LineItems]		
Type of non-current investments	Other non-current investments	Other non-current investments
Class of non-current investments	Other investments	Other investments
Nature of non-current investments	NA	UNQUOTED
Non-current investments	0	2,000
Name of body corporate in whom investment has been made	NA	NA

Unless otherwise specified, all monetary values are in INR

	31/03/2012	31/03/2011
Disclosure of notes on non-current investments explanatory [TextBlock]		
Aggregate amount of quoted non-current investments	0	0
Market value of quoted non-current investments	0	0
Aggregate amount of unquoted non-current investments	0	2,000
Aggregate provision for diminution in value of non-current investments	0	0

**[200600] Notes - Subclassification and notes on liabilities and assets****Classification of inventories [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classification of inventories [Axis]	Company total inventories [Member]		Stores and spares [Member]	
	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Inventories notes [Abstract]				
Inventories [Abstract]				
Classification of inventories [Abstract]				
Details of inventories [LineItems]				
Inventories	43,09,470	45,74,648	43,09,470	45,74,648
Mode of valuation	market value	market value	market value	market value

## Loans and advances [Table]

..(1)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Short-term [Member]			
Classification of loans and advances [Axis]	Loans and advances [Member]		Security deposits [Member]	
Classification of assets based on security [Axis]	Unsecured considered good [Member]		Unsecured considered good [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Loans and advances notes [Abstract]				
Loans and advances [Abstract]				
Disclosure of loans and advances [LineItems]				
Loans and advances, gross	38,863	2,63,908	0	1,50,540
Allowance for bad and doubtful loans and advances	0	0	0	0
Loans and advances	38,863	2,63,908	0	1,50,540
Details of loans and advances due by directors, other officers or others [Abstract]				
Loans and advances due by directors	0	0	0	0
Loans and advances due by other officers	0	0	0	0
Total loans and advances due by directors, other officers or others	0	0	0	0
Details of loans and advances due by firms or companies in which any director is partner or director [Abstract]				
Loans and advances due by firms in which any director is partner	0	0	0	0
Total loans and advances due by firms or companies in which any director is partner or director	0	0	0	0

## Loans and advances [Table]

..(2)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Short-term [Member]			
Classification of loans and advances [Axis]	Other loans and advances [Member]		Advance tax [Member]	
Classification of assets based on security [Axis]	Unsecured considered good [Member]		Unsecured considered good [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Loans and advances notes [Abstract]				
Loans and advances [Abstract]				
Disclosure of loans and advances [LineItems]				
Loans and advances, gross	38,863	1,13,368	0	80,998
Allowance for bad and doubtful loans and advances	0	0	0	0
Loans and advances	38,863	1,13,368	0	80,998
Details of loans and advances due by directors, other officers or others [Abstract]				
Loans and advances due by directors	0	0	0	0
Loans and advances due by other officers	0	0	0	0
Total loans and advances due by directors, other officers or others	0	0	0	0
Details of loans and advances due by firms or companies in which any director is partner or director [Abstract]				
Loans and advances due by firms in which any director is partner	0	0	0	0
Total loans and advances due by firms or companies in which any director is partner or director	0	0	0	0

**Loans and advances [Table]**

..(3)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Short-term [Member]			
	Tax deducted at source [Member]		Other loans and advances, others [Member]	
Classification of loans and advances [Axis]	Unsecured considered good [Member]		Unsecured considered good [Member]	
Classification of assets based on security [Axis]	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Loans and advances notes [Abstract]				
Loans and advances [Abstract]				
Disclosure of loans and advances [LineItems]				
Loans and advances, gross	0	80,998	38,863	32,370
Allowance for bad and doubtful loans and advances	0	0	0	0
Loans and advances	0	80,998	38,863	32,370
Details of loans and advances due by directors, other officers or others [Abstract]				
Loans and advances due by directors	0	0	0	0
Loans and advances due by other officers	0	0	0	0
Total loans and advances due by directors, other officers or others	0	0	0	0
Details of loans and advances due by firms or companies in which any director is partner or director [Abstract]				
Loans and advances due by firms in which any director is partner	0	0	0	0
Total loans and advances due by firms or companies in which any director is partner or director	0	0	0	0

**Subclassification of trade receivables [Table]**

..(1)

Unless otherwise specified, all monetary values are in INR

Classification of assets based on security [Axis]	Classification of assets based on security [Member]		Unsecured considered good [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Trade receivables notes [Abstract]				
Trade receivables [Abstract]				
Subclassification of trade receivables [Abstract]				
Subclassification of trade receivables [LineItems]				
Breakup of trade receivables [Abstract]				
Trade receivables, gross	0	17,39,441	0	17,39,441
Allowance for bad and doubtful debts	0	0	0	0
Total trade receivables	0	17,39,441	0	17,39,441
Details of trade receivables due by directors, other officers or others [Abstract]				
Trade receivables due by directors			0	0
Trade receivables due by other officers			0	0
Total trade receivables due by directors, other officers or others			0	0
Details of trade receivables due by firms or companies in which any director is partner or director [Abstract]				
Trade receivables due by firms in which any director is partner			0	0
Total trade receivables due by firms or companies in which any director is partner or director			0	0

## Disclosure of breakup of provisions [Table]

..(1)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Long-term [Member]		Short-term [Member]	
	31/03/2012	31/03/2011	31/03/2012	31/03/2011
Subclassification and notes on liabilities and assets [Abstract]				
Provisions notes [Abstract]				
Disclosure of breakup of provisions [Abstract]				
Disclosure of breakup of provisions [LineItems]				
Provisions [Abstract]				
Other provisions	0	0	1,520	1,836
Total provisions	0	0	1,520	1,836

Unless otherwise specified, all monetary values are in INR

	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of subclassification and notes on liabilities and assets explanatory [TextBlock]		
Trade payables, long-term	0	0
Total others, long-term	0	0
Total other long-term liabilities	0	0
Nature of other provisions	Employees Providend fund	Employees Providend fund
Interest accrued but not due on borrowings	0	4,64,22,605
Interest accrued and due on borrowings	0	0
Debentures claimed but not paid	0	0
Unpaid dividends	0	0
Unpaid matured deposits and interest accrued thereon	0	0
Unpaid matured debentures and interest accrued thereon	0	0
Security deposits refundable, current	5,000	82,116
Total deposits refundable current	5,000	82,116
Public deposit payable, current	0	0
Total other payables, current	5,000	82,116
Advance received from customers	0	1,44,90,215
Current liabilities portion of share application money pending allotment	0	0
Other current liabilities, others	83,993	35,30,865
Total other current liabilities	88,993	6,45,25,801
Aggregate amount of trade receivables outstanding for period exceeding six months	0	0
Fixed deposits with banks	0	0
Other deposits with banks	25,246	55,708
Total balance with banks	25,246	55,708
Cash on hand	54,620	2,958
Total cash and cash equivalents	79,866	58,666
Total cash and bank balances	79,866	58,666
Total balances held with banks to extent held as margin money or security against borrowings, guarantees or other commitments	0	0
Bank deposits with more than twelve months maturity	0	0

**[200700] Notes - Additional disclosures on balance sheet**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>	<b>01/04/2010 to 31/03/2011</b>
Disclosure of additional balance sheet notes explanatory [TextBlock]		
Claims against company not acknowledged as debt	0	0
Total contingent liabilities	0	0
Total contingent liabilities and commitments	0	0
Amount of dividends proposed to be distributed to equity shareholders	0	0
Amount of per share dividend proposed to be distributed to equity shareholders	[INR/shares] 0	[INR/shares] 0
Percentage of equity shares held up by other body corporates	100.00%	100.00%
Deposits accepted or renewed during period	0	0
Deposits matured and claimed but not paid during period	0	0
Deposits matured and claimed but not paid	0	0
Deposits matured but not claimed	0	0
Interest on deposits accrued and due but not paid	0	0
Share application money received during year	0	0
Share application money paid during year	0	0
Amount of share application money received back during year	0	0
Amount of share application money repaid returned back during year	0	0
Number of person share application money paid during year	0	0
Number of person share application money received during year	0	0
Number of person share application money paid as at end of year	0	0
Number of person share application money received as at end of year	0	0
Whether maintenance of cost records by company has been mandated under any cost accounting records rules notified under section 209(1)(d) of companies act, 1956	No	No
Whether audit of cost records of company has been mandated by central government under section 233B of Companies Act, 1956	No	No
Unclaimed share application refund money	0	0
Unclaimed matured debentures	0	0
Unclaimed matured deposits	0	0
Interest unclaimed amount	0	0

**[200800] Notes - Disclosure of accounting policies, changes in accounting policies and estimates**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>	<b>01/04/2010 to 31/03/2011</b>
Disclosure of accounting policies, change in accounting policies and changes in estimates explanatory [TextBlock]	Textual information (10) [See below]	(Text required here)

## Textual information (10)

### Disclosure of accounting policies, change in accounting policies and changes in estimates explanatory [Text Block]

Messrs. GMB Ceramics Limited Note No. - 1 Significant Accounting Policies: General : The books of accounts have been maintained on mercantile basis and according to the double entry system of accounting. Pending ascertainment of physical status and value of the fixed assets and inventories after takeover of the possession from the Receiver in December, 2011, the book values of the assets as per the last record have been carried forwards. Fixed Assets & Depreciation : i) Fixed Assets are stated as cost less depreciation. ii) No Depreciation has been provided since March, 2001 as the company's plant continues to remain inoperative since 15th November, 1997. iii) Proportionate cost of lease hold land has not been written off. Retirement Benefit : Retirement benefit if any, are provided on actual payment basis. Additional Information : 1. Earning in foreign exchange FOB value of exports Nil 2. Value of imports CIF basis raw materials Nil 3. Particulars as regards finished Products Contd Messrs. GMB Ceramics Limited i) Production: Nil for the current year and previous year. ii) Closing Stock: Particulars Current Year Previous Year Quantity (Pcs.) Value (Rs.) Quantity (Pcs.) Value (Rs.) Indian Water Closet 4,874 9,05,341 4,874 9,05,341 European Water Closet 7,197 9,00,055 7,197 9,00,055 Wash Basins 16,807 3,26,387 16,807 3,26,387 Others 52,810 8,72,004 52,810 8,72,004 4. Imported materials consumed Raw Materials : Nil 5. Indigenous materials consumed Raw Materials : Nil 6. Raw Materials Consumed : Nil for the current year and previous year. 7. The Company arrived at One Time Settlement (OTS) jointly with all the four lenders namely, Industrial Development Bank of India (IDBI), IFCI Limited (IFCI), Standard Chartered Bank (SCB), the assignee of the debt of ICICI Limited, and Indian Bank (IB) and according to the terms of One Time Settlement(OTS) the lenders dues are settled at Rs. 470 lakhs. Consequently to the OTS made and after making payment in terms of the OTS, the book value of outstanding principal amount of loan are transferred to capital Reserves. The unpaid interest amounting to Rs. 5,19,64,077/- are written back and credited to Profit and Loss. 8. In view of the suspension of production / operations by the company effective from November 15th, 1997, the Company has not provided interest and depreciation in its books for the accounting year ending on March 31st, 2012 too. 9. Previous year figures have been regrouped/rearranged wherever necessary. 10. Production continues to remain suspended since the Factory is under Lockout from 15th November 1997. 11. No provision for income tax has been made in accounts since the company is a sick industrial company and provisions of I.T. Act for applicability of MAT is not applicable to the company. 12. In the opinion of the management there are no dues payable to SSI Units.

### [201200] Notes - Employee benefits

Unless otherwise specified, all monetary values are in INR

	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of employee benefits explanatory [TextBlock]	NA	NA

### [201600] Notes - Related party

Unless otherwise specified, all monetary values are in INR

	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of notes on related party explanatory [TextBlock]		
Whether there are any related party transactions during year	No	No
Whether company is subsidiary company	No	No

### [300300] Notes - Earnings per share

Unless otherwise specified, all monetary values are in INR

	01/04/2011 to 31/03/2012	01/04/2010 to 31/03/2011
Disclosure of earnings per share explanatory [TextBlock]		
Adjustments of numerator to calculate basic earnings per share [Abstract]		
Profit (loss) for period	5,59,80,957	-1,52,769
Adjustments of numerator to calculate diluted earnings per share [Abstract]		
Profit (loss) for period	5,59,80,957	-1,52,769

**[202800] Notes - Subsidiary information**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>
Disclosure of subsidiary information explanatory [TextBlock]	
Whether company has subsidiary companies	No

**[202400] Notes - Investments in associates**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>
Disclosure of notes on investment in associates explanatory [TextBlock]	
Whether company has invested in associates	No

**[202500] Notes - Financial reporting of interests in joint ventures**

Unless otherwise specified, all monetary values are in INR

	<b>01/04/2011 to 31/03/2012</b>
Disclosure of notes on interests in joint ventures explanatory [TextBlock]	
Whether company has invested in joint ventures	No

**[202700] Notes - Cash flow statements**

Unless otherwise specified, all monetary values are in INR

	<b>31/03/2012</b>	<b>31/03/2011</b>
Disclosure of cash flow statement explanatory [TextBlock]		
Cash and cash equivalents if different from balance sheet [Abstract]		
Total cash and cash equivalents	79,866	58,666

IN-PRINCIPLE SANCTION LETTER OF IFCI TO RESPONDENT

312/Telexgrams: "फिनको"/"FINCO" THIS LETTER IS NOT  
 टेलीफोन/Telephone: 312052 (14 लाइनें/Lines)  
 टेलीग्राम/Telex: 31-66123 FINAL SANCTION LETTER

भारतीय औद्योगिक वित्त निगम

## INDUSTRIAL FINANCE CORPORATION OF INDIA

[औद्योगिक वित्त निगम अधिनियम, 1948 (1948 च XV) के अधीन निगमित]

[Incorporated under the Industrial Finance Corporation Act, 1948 (XV of 1948)]

बैंक शा. बड़ोदा भवन,  
 16, संसद मार्ग,  
 पोस्ट बाक्स संख्या 363,  
 नई दिल्ली-110001

BANK OF BARODA BUILDING,  
 16, SANSAD MARG,  
 POST BOX NO. 363,  
 NEW DELHI-110001

ANNEXURE 5

संख्या/No. C. App. 839/87-61710

दिनांक/Dated 19<sup>th</sup> May, 1987  
(शक/Saka)

M/s GMB Ceramics Ltd.,  
 25, Ganesh Chandra Avenue,  
 CALCUTTA-700013.

Concern Code 2436  
 Sanctioned Code 8705014

Dear Sirs,

Re: Application for financial assistance.

Please refer to your letter dated 9th February 1987 and the subsequent correspondence and discussions your representatives had with us regarding your application for financial assistance for setting up a plant for the manufacture of sanitaryware (sw) with an installed capacity of 7000 tpa at Village Sonmathpur, Block-Remuna, Distt. Balasore, an 'A' Category backward area in Orissa.

The proposal has been considered and Industrial Finance Corporation of India (IFCI) (hereinafter referred to as "the Lead Institution") is agreeable, in principle, to provide the following facilities:

- (1) Grant to the company Rupee Term Loans not exceeding Rs. 14.00 lakhs (Rupees Six Hundred and Fourteen lakhs only) under the aggregate under the Project Finance Participation Scheme including bridging loan against Central Investment subsidy of Rs. 25.00 lakhs in participation with other

IN-PRINCIPLE SANCTION LETTER OF IFCI TO RESPONDENT OF  
 MAY 1987. THIS IS NOT FINAL SANCTION LETTER. LENDERS COMMIT  
 TO PROVIDE LOAN ONLY ON CONDITION...



-2-

financial institutions (hereinafter collectively referred to as 'the Participants') in the manner and to the extent set out below subject to such modifications as might be agreed amongst the Participants:

<u>Name of the Institution</u>	<u>Extent of Participation</u> (Rs. in lakhs)
IDBI	236.00
IFCI (Lead Institution)	261.00*
ICICI	117.00
Total	<u>614.00</u>

\*Including bridging loan against Central Investment Subsidy of Rs. 25.00 lakhs

11) Underwriting of equity shares of the aggregate face value of Rs. 100 lakhs (Rupees one hundred lakhs only) in participation with IDBI and ICICI out of the public issue of equity share capital of Rs. 125 lakhs proposed to be made by the company in the manner and to the extent set out below subject to such modifications as might be agreed amongst the participants:

<u>Name of the Institution</u>	<u>Extent of participation</u> (Rs. in lakhs)
IDBI	40.00
IFCI	40.00
ICICI	20.00
Total	<u>100.00</u>

2. The participation of IDBI and ICICI, in the Rupee and underwriting assistance term loans as mentioned above is subject to the approval/sanction of their respective sanctioning authorities.

The aforesaid facilities are subject to the General Conditions No. GC-1-96, copy whereof is enclosed, which is deemed to contd..

-3-

be part of this Letter of Intent in addition to the normal terms and conditions applicable to the grant of such assistance and the special terms and conditions set out in Appendix-I hereto.

The above facilities are also subject to such additional conditions as may be stipulated by IFCI on the suggestion of the Participants.

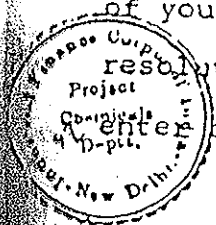
4. The Company shall enter into a Loan Agreement with IFCI in respect of the Rupee Term Loan. The Company shall also convey acceptance of the terms and conditions of the Letter of Underwriting to be issued by IFCI in due course.

5. Specimen copies of the Standard Loan Agreement/Letter of Underwriting (which are subject to such modifications before execution/issue as may be considered necessary) containing the normal terms and conditions for grant of such financial assistance are enclosed (Appendix II & III). Drafts of the Loan Agreement/Letter of Underwriting, covering the above facilities, would be forwarded to the Company by IFCI after the Company has accepted the terms and conditions of this Letter of Intent.

6. In case the above tentative terms and conditions are acceptable to you,

(i) You may furnish to us within 30 days two certified copies of the resolution duly passed by the Board of Directors of your Company as per the proforma in Appendix IV. This resolution must provide that the Company is agreeable to enter into the Agreement(s) in the forms mentioned above

contd..



-4-

within the time stipulated by IFCI and that till such Agreement(s) are executed, there is no obligation or commitment on the part of the Lead Institution and Participants to advance any money.

(ii) You may, within the same time as in (i) above, furnish to us a statement of anticipated drawals of loans indicating probable dates and amounts of drawals.

7. ✓ Please note that this communication should not be construed as giving rise to any binding obligation on the part of IFCI, unless the Company communicates to IFCI within 30 days from the date of receipt of this letter that the terms and conditions set out therein are acceptable to it and unless the Loan Agreement and other documents relating to the above facilities are executed by the Company in such form as may be required by IFCI within 4 months from the date of this letter of intent or such further time as may be allowed by IFCI in its absolute discretion.

8. The prospectus and the names of brokers and bankers to the proposed issue of shares should be finalised by the Company in consultation with IFCI and sufficient number of copies of the prospectus, as will be indicated later, should be delivered to IFCI at least fifteen days before the date of opening of the list of public subscription.

9. Copies of your communications may also be sent to Calcutta Regional Office.

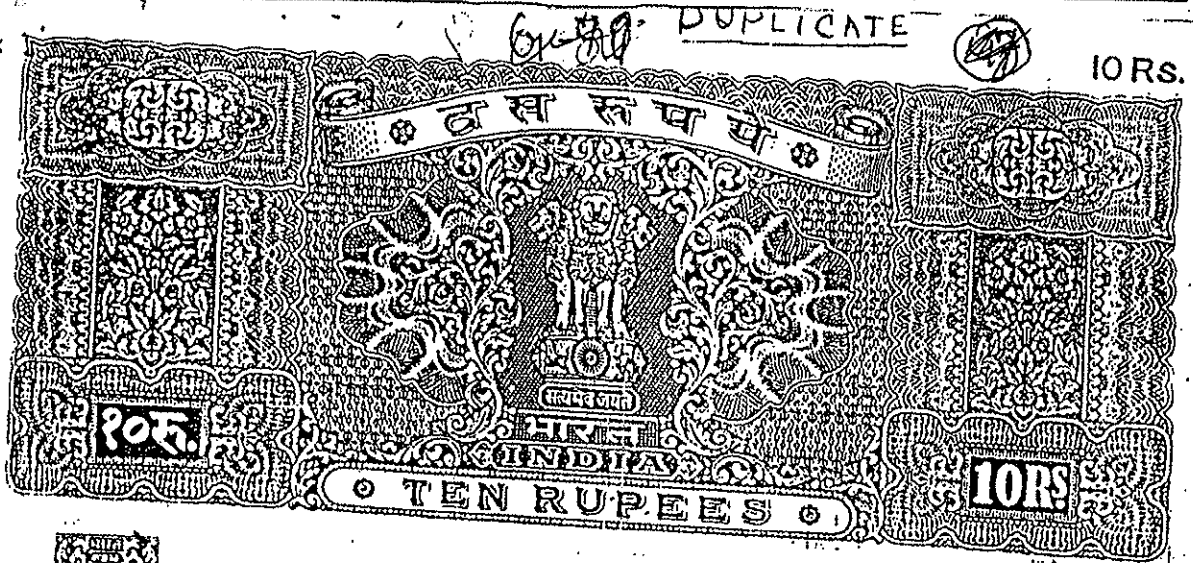
10. Meanwhile, kindly acknowledge receipt of this letter.

Yours faithfully,

(M. A. Krishnamurthy)  
MANAGER (PROJECTS)

ANNEXURES I, II, III & IV.

- LOAN DISBURSEMENT MADE TO RESPONDENT ONLY AFTER THIS DATE



LOAN AGREEMENT

ANNEXURE 6

THIS AGREEMENT made this 7<sup>th</sup> day of December One Thousand Nine Hundred and Eighty Seven between CMB CERAMICS LIMITED, a Company within the meaning of the Companies Act, 1956 (1 of 1956) and having its Registered Office at Rajgangpur - 770 017, District Sundergarh, Orissa (hereinafter referred to as "the Borrower", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) ;

AND

Industrial Finance Corporation of India (hereinafter referred to as "the Lead Institution", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) ;

AND

The Financial Institutions whose names and addresses are set out in Schedule I hereto (hereinafter collectively referred to as "Lenders", which expression shall include any one or more of them or their successors and assigns as the subject or context may require).

*[Signature]*

*[Signature]*

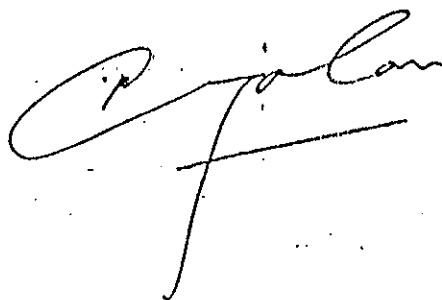
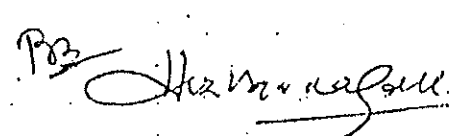
ARTICLE IDEFINITIONSDEFINITIONS

The following terms shall have the following meanings :-

- a) 'General Conditions' means the GENERAL CONDITIONS NO. CC-I-86 APPLICABLE TO ASSISTANCE PROVIDED BY FINANCIAL INSTITUTIONS;
- b) 'Project' means the project to be financed as described in Schedule II hereto;
- c) 'Financing Plan' means the financing plan as described in Schedule III hereto.

GENERAL CONDITIONS

The Loans hereby agreed to be granted by the Lenders shall be subject to the Borrower complying with the terms and conditions set out herein and also in the General Conditions a copy of which has been furnished to the Borrower. The General Conditions shall be deemed to form part of this Agreement and shall be read as if they are specifically incorporated herein.

ARTICLE IIAGREEMENT AND TERMS OF LOANS1 AMOUNT AND TERMS OF LOANS:

The Borrower agrees to borrow from each of the Lenders and each of the Lenders agrees to lend to the Borrower, on the terms and conditions contained herein as also in the General Conditions, the sums to the maximum extent set out against their respective names in Schedule I aggregating Rs. 589 lakhs. The said sums are hereinafter collectively referred to as the 'Loan' or 'the Loans' as the context admits.

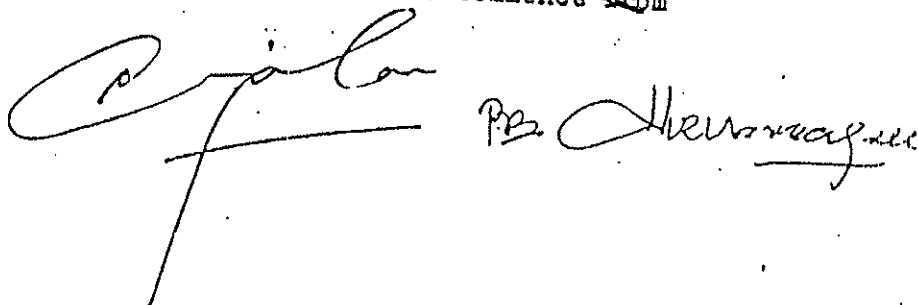
The rights and obligations of the Lenders hereunder are several. Failure of any one of the Lenders to perform its obligations hereunder shall not relieve the other Lenders or the Borrower of any of their or its respective obligations.

2 INTEREST:

(1) The Borrower shall pay to the Lenders interest on the principal amounts of the Loans outstanding from time to time, quarterly in each year, on January 15, April 15, July 15, and October 15 at the rates set out in Schedule IV hereto.

(11) ADDITIONAL INTEREST:

The Borrower shall pay to the Lenders in the aforesaid manner, additional interest at the rate of 1% per annum on the principal amount of the loans outstanding from time to time. Such additional interest shall commence from



The block contains two handwritten signatures. The signature on the left is a large, stylized cursive signature, likely of the Borrower. The signature on the right is a smaller, more legible cursive signature, likely of a representative of the Lenders. Both signatures are written in dark ink.

2.3 COMMITMENT CHARGE: NOT APPLICABLE

2.4 LAST DATE OF WITHDRAWAL:

Unless the Lead Institution otherwise agrees, the right to make drawals from the Loans shall cease on 31.3.1989.

2.5. REPAYMENT:

The Borrower undertakes to repay the principal amounts of the Loans in accordance with the Amortization Schedule set forth in Schedule V hereto.

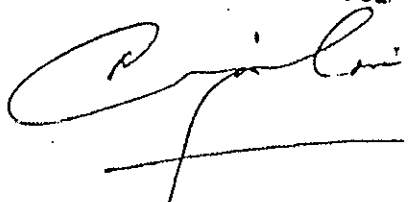
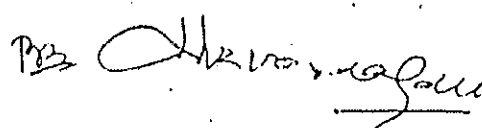
2.6 CONVERSION RIGHT: NOT APPLICABLE

2.6 CONVERSION RIGHT IN CASE OF DEFAULT OR MISMANAGEMENT:

IF -

- (1) (a) The Borrower commits a default in payment or repayment of three consecutive instalments of principal amounts of the Loans or interest thereon or any combination thereof, or
- (b) the affairs of the Borrower pertaining to the Project are, in the opinion of the Lead Institution, being mismanaged in a manner which is likely to affect prejudicially the interest of the Lenders,

then, each of the Lenders shall have the right to convert (which right is hereinafter referred to as "the conversion right") at its option the whole of the outstanding amount of the Loans or a part not exceeding 20% of the Loan whichever is lower into fully paid-up equity shares of the Borrower, at par, in the manner specified in a notice in writing to be given by the Lead Institution to the Borrower (which notice is hereinafter referred to as the "notice of conversion") prior to the date on which the conversion is to take effect, which date shall be specified in the said notice (hereinafter referred to as the "date of conversion").

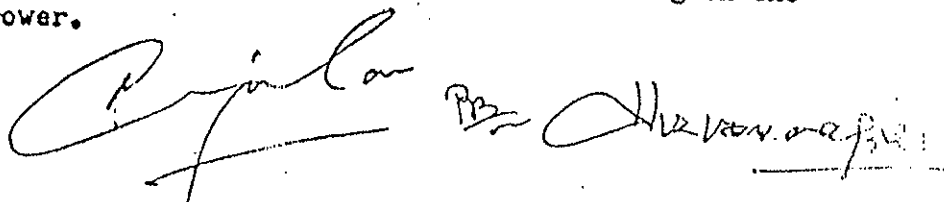
(i) On receipt of notice of conversion, the Borrower shall allot and issue the requisite number of fully paid-up equity shares to the Lenders as from the date of conversion and the Lenders shall accept the same in satisfaction of the principal amount of the Loans to the extent so converted. The part of the Loans so converted shall cease to carry interest as from the date of conversion and the Loans shall stand correspondingly reduced. Upon such conversion, the instalments of the Loans payable after the date of conversion as per Schedule V herein shall stand reduced proportionately by the amounts of the Loans so converted. The equity shares so allotted and issued to the Lenders shall carry, from the date of conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Borrower. Save as aforesaid, the said shares shall rank pari passu with the existing equity shares of the Borrower in all respects. The Borrower shall, at all times, maintain sufficient unissued equity shares for the above purpose.

(ii) The conversion right reserved as aforesaid may be exercised by the Lenders on one or more occasions during the currency of the Loan(s) on the happening of any of the events specified in sub-clause (1)(a) and (1)(b) above.

(iii) The Borrower assures and undertakes that in the event of the Lenders exercising the right of conversion as aforesaid, the Borrower shall get the equity shares which will be issued to the Lenders as a result of the conversion, listed with the Stock Exchange(s) at Calcutta.

(iv) (a) For purposes of sub-clause (1)(a) above, it shall not be construed as a default, if the Borrower approaches the Lead Institution well in advance for postponement of principal or interest, as the case may be, and the Lead Institution agrees to the same.



(b) The opinion of the Lenders referred to in sub-clause (1)(b) above shall be final and binding on the borrower.



The block contains two handwritten signatures. The signature on the left is a large, stylized cursive signature, likely of the Borrower. The signature on the right is a smaller, more legible signature, likely of a representative of the Lenders. There is a small 'PB' mark between the two signatures.



SECURITY

3.2 CREATION OF ADDITIONAL SECURITY :

If, at any time during the subsistence of this Agreement, the Lead Institution is of the opinion that the security provided by the Borrower has become inadequate to cover the balance of the Loans then outstanding, then, on the Lead Institution advising the Borrower to that effect, the Borrower shall provide and furnish to the Lenders, to the satisfaction of the Lead Institution, such additional security as may be acceptable to the Lead Institution to cover such deficiency.

3.3 ACQUISITION OF ADDITIONAL IMMOVABLE PROPERTIES:

So long as any monies remain due and outstanding to the Lenders, the Borrower undertakes to notify the Lead Institution in writing of all its acquisitions of immovable properties and as soon as practicable thereafter to make out a marketable title to the satisfaction of the Lead Institution and charge the same in favour of the Lenders by way of first charge in such form and manner as may be decided by the Lead Institution.

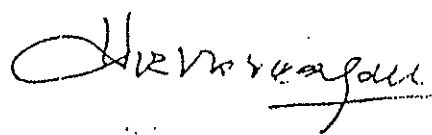
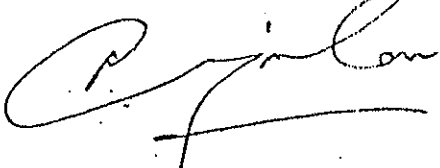
3.4 GUARANTEE:

The Borrower shall procure irrevocable and unconditional personal guarantee from Shri R.A. Jalan in favour of the Lenders for the due repayment of the Loans and the payment of all interest and other monies payable by the Borrower in the form prescribed by the Lead Institution and to be delivered to the Lead Institution before any part of the Loans is advanced. The Borrower shall not pay any guarantee commission to the said Guarantors.

ARTICLE IV

APPOINTMENT OF NOMINEE DIRECTOR(S)

The Borrower agrees that each of the Lenders shall be entitled to appoint and withdraw from time to time Nominee Director(s) on the Board of Directors of the Borrower at any time during the currency of this Agreement.

BB  


(42) (364)

ARTICLE V

SPECIAL CONDITIONS

The Loans hereby granted shall also be subject to the Borrower complying with the special conditions set out in Schedule VI hereto.

ARTICLE VI

INTERIM DISBURSEMENT

Disbursement made pending creation of final security as stipulated in Article III shall, after the expiry of 365 days from the date of first disbursement, carry further interest at the rate of 1% till creation of such security.

ARTICLE VII

EFFECTIVE DATE OF AGREEMENT

This Agreement shall become binding on the Borrower and the Lenders on and from the date first above written. It shall be in force till all the monies due and payable under this Agreement are fully paid off.

B3

*[Handwritten signatures]*

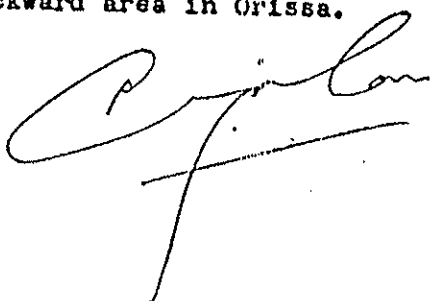
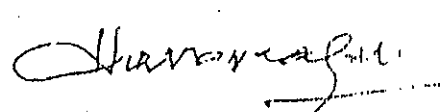
SCHEDULE IPARTICULARS OF LOANS

(Rs. in lakhs)

<u>Name of the Lender</u>	<u>Normal Loan</u>	<u>Concessional Loan</u>	<u>Total</u>
Industrial Development Bank of India (IDBI) 227, Vinay K. Shah Marg, Nariman Point, Bombay 400 021	36.00	200.00	236.00
Industrial Finance Corporation of India (IFCI) Bank of Baroda Building, 16, Sansad Marg, P.B. No.363, New Delhi 110 001	36.00	200.00	236.00
The Industrial Credit & Investment Corporation of India Limited (ICICI), 163, Backbay Reclamation, Bombay 400 020.	17.00	100.00	117.00
	89.00	500.00	589.00

SCHEDULE IITHE PROJECT

The Project envisages the setting up of a Plant for the manufacture of Sanitarywares with an installed capacity of 7000 TPA at Village Somnathpur, District Balasore, an "A" category backward area in Orissa.

SCHEDULE IIIFINANCING PLAN

(Rs. in lakhs)

Share Capital (Equity) :

Promoters	111.00	
IPICOL	36.00	
NCRL	<u>18.00</u>	165.00

Public Issue to be underwritten by :

IDBI	40.00	
IFCI	40.00	
ICICI	20.00	
Brokers	<u>37.00</u>	137.00

302.00

Rupee Loans from :

IFCI	236.00	
IDBI	236.00	
ICICI	<u>117.00</u>	

589.00

Central Subsidy25.00Total : 916.00

(Rs. in lakhs)

COST OF THE PROJECT

Land & Site Development	23.42
Buildings	240.15

Plant & Machinery

- Imported (CIF)	19.88	
- Duty @85% and transportation, clearing & forwarding charges	19.26	
- Import of drawings & designs	16.50	
- Indigenous	<u>225.51</u>	281.15

Foundation & Erection	26.01
Technical Know-How Fee	20.00

Expenses on Training and Foreign Technicians (for kiln)	16.63
Misc. Fixed Assets	93.20

Preliminary & Preoperative Expenses	110.94
Provision for Contingencies	79.50

Margin Money for Working Capital	<u>25.00</u>
----------------------------------	--------------

916.00

P22

SCHEDULE IV  
PARTICULARS OF INTEREST

<u>Name of the Lender</u>	<u>Rate of Interest on</u>	
	<u>Normal Loan</u>	<u>Concessional Loan</u>
IDBI	14%	12.5% *
IFCI	p.a.	p.a.
ICICI		

\* In case the Borrower becomes ineligible for concessional finance, the entire Rupee Loan shall carry normal rate of interest, i.e., 14% p.a.

SCHEDULE V  
AMORTISATION SCHEDULE  
(Each of IFCI & IDBI)

<u>NAME OF LENDERS:</u>	IFCI IDBI	<u>(Rs. in lakhs)</u>	
		<u>Payment of Principal</u>	
<u>Date of Payment</u>		<u>Normal Loan</u>	<u>Concessional Loan</u>
15.10.1990		1.20	7.15
15.01.1991		1.20	7.15
15.04.1991		1.20	7.15
15.07.1991		1.20	7.15
15.10.1991		1.20	7.15
15.01.1992		1.20	7.15
15.04.1992		1.20	7.15
15.07.1992		1.20	7.15
15.10.1992		1.20	7.15
15.01.1993		1.20	7.15
15.04.1993		1.20	7.15
15.07.1993		1.20	7.15
15.10.1993		1.20	7.15
15.01.1994		1.20	7.15
15.04.1994		1.20	7.15
15.07.1994		1.20	7.15
15.10.1994		1.20	7.15

*[Handwritten signatures]*

## AMORTISATION SCHEDULE ... cont'd

NAME OF LENDERS : IFCI  
IDBI

(Rs. in lakhs)

Date of PaymentPAYMENT OF PRINCIPAL

Normal Loan	Concessional Loan
-------------	-------------------

15.1.1995	1.20	7.15
15.04.1995	1.20	7.15
15.07.1995	1.20	7.15
15.10.1995	1.20	7.15
15.01.1996	1.20	7.15
15.04.1996	1.20	7.15
15.07.1996	1.20	7.15
15.10.1996	1.20	7.15
15.01.1997	1.20	7.15
15.04.1997	1.20	7.15
15.07.1997	3.60	6.95
	<u>36.00</u>	<u>200.00</u>

NAME OF LENDERS : ICICI

(Rs. in lakhs)

Date of PaymentPAYMENT OF PRINCIPAL

Normal Loan	Concessional Loan
-------------	-------------------

15.10.1990	0.60	3.58
15.01.1991	0.60	3.58
15.04.1991	0.60	3.58
15.07.1991	0.60	3.58
15.10.1991	0.60	3.58
15.01.1992	0.60	3.58
15.04.1992	0.60	3.58
15.07.1992	0.60	3.58
15.10.1992	0.60	3.58
15.01.1993	0.60	3.58
15.04.1993	0.60	3.58
15.07.1993	0.60	3.58
15.10.1993	0.60	3.58

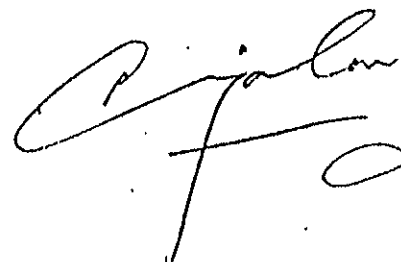
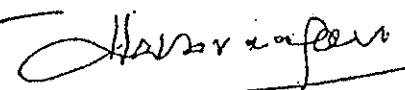
*Signature*

## AMORTISATION SCHEDULE .. cont'd.

NAME OF LENDERS: ICICI

(Rs. in Lakhs)

Date of Payment	PAYMENT OF PRINCIPAL	
	Normal Loan	Concessional Loan
15.01.1994	0.60	3.58
15.04.1994	0.60	3.58
15.07.1994	0.60	3.58
15.10.1994	0.60	3.58
15.01.1995	0.60	3.58
15.04.1995	0.60	3.58
15.07.1995	0.60	3.58
15.10.1995	0.60	3.58
15.01.1996	0.60	3.58
15.04.1996	0.60	3.58
15.07.1996	0.60	3.58
15.10.1996	0.60	3.58
15.01.1997	0.60	3.58
15.04.1997	0.60	3.58
15.07.1997	0.80	3.34
	<u>17.00</u>	<u>100.00</u>



### 3. SPECIAL TERMS & CONDITIONS

1. Before availing itself of any assistance, the Borrower shall agree to comply with the following conditions :-
  - (i) Satisfy the lenders that it has appointed technical, financial and executive personnel of proper qualifications and experience for the key posts and that its organisational set-up is adequate enough to ensure smooth implementation and operation of the project.
  - (ii) Satisfy the lenders that its Chief Executive is stationed at the project site and looks after the day-to-day working relating to the implementation of the project.
  - (iii) Constitute a Project Management Committee of its Directors to the satisfaction of the lenders for the purpose of supervising and monitoring the progress in the implementation of the project. The committee shall be responsible for the day-to-day management of the project during construction period including civil tendering, placement of orders for supply of plant and machinery and other assets and monitoring of the implementation of the Project.
  - (iv) Satisfy the lenders that the physical progress as well as expenditure incurred on the project are as per the original schedule. To this end, the borrower agrees and undertakes to furnish to the lenders such information and data as may be required by the lenders.
  - (v) The lenders shall have the right to review the cost of the project before the final disbursement of the loan. Pending completion of the review, the borrower shall obtain prior approval of the lenders for utilising the amount of the loan equivalent to the contingency provision in the cost of the project.
  - (vi) The lenders may at their discretion, withhold disbursement of the amount of the loan equivalent to the provision against margin money for working capital in the cost of the project till such time as the project is completed and build-up of working capital commences.

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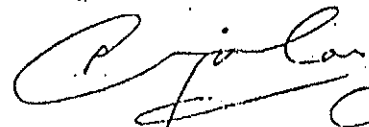
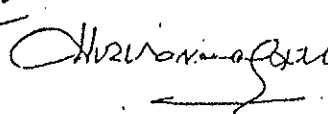
- (vii) Obtain necessary sanction from OSED for its requirement of power for the project.
- (viii) Amend its Memorandum and Articles of Association suitably for increasing the authorised share capital in line with the envisaged financing plan :

<u>EQUITY SHARE CAPITAL</u>		<u>(Rs. in lakhs)</u>	
Private Promoters	111		
IPICOL	36		
NCRL	<u>18</u>	165	
Public Issue to be underwritten by :			
IDBI	40		
IFCI	40		
ICICI	20		
Banks/Brokers	<u>37</u>	137	302
Rupee Term Loan			
IDBI	236		
IFCI	236		
ICICI	<u>117</u>		589
Central Subsidy			<u>25</u>
			916

- (ix) Shall get the agreement with NCRL suitably amended for incorporating suitable guarantees/warranties for the performance of the plant for an installed capacity of 7000 tpa and saleable finished production of 6000 tpa respectively; to the satisfaction of the lenders.
- (x) Make suitable arrangements for obtaining its requirement of LPG to the satisfaction of the lenders.
- (xi) Obtain necessary approval from the Government of India for the import of drawings/designs for the tunnel kiln from Helmsoth, West Germany, to the satisfaction of the lenders.

*[Signature]*

- (xi) Take possession of the land proposed for the factory at Ramuna Blook, Industrial Area, Balasore District, Orissa.
- (xiii) Obtain Import Licence/Govt.'s approval for the import of burner, to the satisfaction of the lenders.
2. The Borrower shall restructure its Board and broad-base the same to the satisfaction of the lenders.
3. The Borrower shall obtain approval from the Orissa Pollution Control Board for disposal of factory effluents.
4. The Promoters shall give an undertaking that :-
- (a) In the event of Central Investment Subsidy being not made available to the Borrower, the promoters shall make arrangements of their own to the satisfaction of the lenders for making good the shortfall in the resources and
- (b) for meeting the shortfall in resources required towards the promoters contribution in the event of any shortfall in the contribution from IPICOL, the funds to be brought in towards the promoters' contribution shall be in a manner and on terms acceptable to the lenders.
5. The Borrower shall make suitable arrangements with its bankers for adequate facilities in respect of working capital, to the satisfaction of the lenders.
6. The Borrower shall suitably strengthen its marketing set-up to the satisfaction of the lenders.

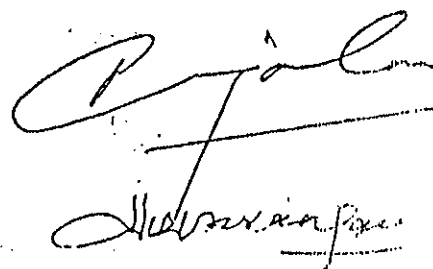
*P.P.*  

(375)

IN WITNESS WHEREOF the Borrower has caused its Common Seal to be affixed hereto and to a duplicate hereof on the day, month and year first hereinabove written and the Lenders have caused the same and said duplicate to be executed by the hand of Shri P. Brahmachari, General Manager of the Lead Institution acting for itself and as Attorney for the other Lenders as hereinafter appearing,

THE COMMON SEAL OF THE  
GMB CERAMICS LIMITED  
has pursuant to the  
Resolution of its Board  
of Directors passed in  
that behalf on the  
23 day of November, 1987  
hereunto been affixed in  
the presence of  
Shri R.A. Jalan, Managing  
Director, who has signed  
these presents in token  
thereof and  
Shri A.V.R. Varadan,  
Business Manager cum  
Secretary, who has also  
signed the same in token  
thereof.

SIGNED AND DELIVERED BY THE  
withinnamed Lenders by the  
hand of Shri P. Brahmachari,  
General Manager, an authorised  
official of IFCI, IFCI  
acting as the Lead Institution  
and one of the Lenders and as  
Attorney for IDBI and ICICI.



STATEMENT OF MR. JALAN, MD OF RESPONDENT TO ARBITRATOR,  
ACCEPTING PLANT WAS COMMISSIONED IN MAY 1989 81

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ANNEXURE 7

total responsibility of erection, commissioning, marketing, giving brand name as well as assistance .. was of our collaborator. As far as I was concerned, whatever was my responsibility, I think, I have not lacked anywhere." (Qs. 725 to 746).

In answer to Questions 751 to 754 Mr. Jalan stated that the Tunnel Kiln was commissioned in April/May 1989, that it was fired on 30th May 1989, that GMB reached the stage of trial production in August 1989 and that commercial production was started on 8th December 1989.

It may now be pointed out that by his letter dated 9th August, 1989, Ext.G/54 (Vol. G-1) Mr. Jalan, while informing Mr. Venkateswara Rao, the Managing Director of Neycer of GMB's reaching the stage of trial production, inter alia requested Neycer's quick action in the matter as because the delay was a lot of overrun in the form of interest, depreciation and overheads and reminded him of the decision in the meeting held on 3rd and 5th December 1988 with Mr. Kale, the Managing Director of Neycer that a senior technician would be deputed immediately but was not deputed with the result that "such delay has already been caused to us to come out with the production which we are contemplating sometime around March 1989 end." Needless to say, no senior technician was deputed.

So far as the commissioning of the Tunnel Kiln is concerned, it is submitted by Mr. Raghavan that Neycer's

ANNEXURE 8

Ltd, Sonmathpur Indl Area, Bazarore, Orissa State.

- (1) All materials supplied by party - all design/statutory works, fabrication/erection/testing/licencing/commissioning by NPS for 1 No X 50 MT LPG storage and distribution piping.
- (2) Fabrication/erection of overhead conveyors, humidifier stands, kiln gas distribution pipeworks, sliding doors etc - EXTRA WORKS

02. Order Placed - 25 Nov 1988

Site mobilised - 01.12.1988

Works completed - 28.02.1989

Safety certification issued - 17.03.1989

Licence applied - 23.03.1989

Licence issued - 05.04.1989

Plant commissioned - 01.05.1989 - (60 - (11. tanks not set))

Site closed - 10.05.1989

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STATEMENT FILED BY RESPONDENT IN ARBITRATION  
CONFIRMING PLANT COMMISSIONED IN MAY 1989.