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ON

25th, 26th & 27th FEBRUARY, 2025

(ON CAMPUS)

CO-HOSTS



**SURANA & SURANA
INTERNATIONAL
ATTORNEYS**

**SCHOOL OF LAW (CADR)
SATHYABAMA INSTITUTE OF
SCIENCE AND TECHNOLOGY**

SUPPORTED BY



MED-ARB PROPOSITION



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FACTUAL BACKGROUND

SteelKo India Ltd (SteelKo) is into manufacturing steel and has its own iron ore and coal mines. It uses the minerals for captive purposes and sells them to others. It also has its own captive 250 MW thermal power plant, and the surplus energy is sold using the state and national grid to corporate industries.

As the steel plant was over 40 years old, SteelKo wanted to replace the plant with modern core technology to save energy and maximize production capacity. SteelKo identified **Potentia International LLC (Potentia)**, a Romanian company which owns the modern core technology and is a specialist in building power plants. The estimated project cost including transfer of technology was \$800 million. SteelKo invited Potentia to partner with it and offered 30% of its paid-up capital valued at \$500 million plus a cash payment of \$300 million as consideration. Potentia was interested in the deal, however, did not want to directly invest in SteelKo. Instead, they suggested the SPV route. After negotiation, the parties agreed and entered into a Letter of Intent (please refer to ANNEXURE 1) the key points agreed upon in the negotiation and recorded in the LoI are as follows:

1. Potentia and SteelKo to create an SPV called **HERMES LLC**.
2. Potentia and SteelKo to enter into a Shareholders Agreement with 50% control of HERMES LLC by each party.
3. Potentia to invest \$500 Million in HERMES LLC.
4. Potentia to transfer technology to HERMES LLC.
5. SteelKo to transfer power distribution licences valued at \$500 Million to HERMES LLC in consideration of 50% control of HERMES LLC and assign Partial Patent Rights to HERMES LLC.
6. HERMES LLC to fund SteelKo with \$300 Million convertible debentures and on conversion, it will have a 25% stake in the paid-up capital and to be documented by a loan agreement entered between HERMES LLC and SteelKo.



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7. SteelKo and Potentia are to sign a Construction Contract and the plant is to become operational within 20 months.
8. HERMES LLC to provide technical know-how to SteelKo.
9. All disputes shall be resolved by mutual discussion within 30 days from the date of raising the dispute, failing which the disputes are to be resolved through Mediation. If any dispute remains unresolved the same be referred for arbitration. The seat of Arbitration shall be Bengaluru and the applicable law shall be that of India.

HERMES LLC was created in Cyprus and SteelKo and Potentia entered into a tripartite Shareholders agreement with HERMES LLC. The salient features of this contract are in Annexure 2.

SteelKo and Potentia signed the construction contract the abstract of some of the clauses of this contract is seen in Annexure 3.

HERMES LLC and SteelKo signed a Convertible Debenture Bond Agreement, and the relevant clauses are in Annexure 4.

Potentia had invested \$400 million in Hermes as against \$500 million and Hermes had invested \$400 Million as convertible debentures. To generate income during the gestation period, SteelKo had entered into agreements for the supply of coal and iron ore to various other entities and had taken huge sums of money as advance. SteelKo had earlier got the Power distribution licence assigned to HERMES LLC along with power supply contracts for about 18 clients.

Potentia commenced the construction of the plant on February 1st, 2021, and completed it by the end of June 2022, but before the test run could commence the Supreme Court, in a public interest litigation, banned all private coal mining including that of SteelKo. The ban on coal mining had an impact on other steel manufacturers who could not lift the iron ore from SteelKo. The want for coal power generation had also come to a grinding halt.

SteelKo had a severe cash flow issue as it had invested the money received as advance in HERMES LLC as well as in the Plant construction. It had to sell small parcels of land to pay off the money received as an advance. For want of coal, Potentia was not able to complete the



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test run and \$100 Million was still due from SteelKo to Potentia. Potentia's team returned to Romania after handing over the technical papers to the technical team of SteelKo.

The legal battle in the Supreme Court lasted for several months, however, SteelKo got the interim stay vacated in June 2023 and resumed mining activities. The power generation and supply resumed in July 2023.

Please Note:

*In the matter of Mediation and Arbitration between **SteelKo India Ltd.** and **Potentia International LLC** and **HERMES LLC** - SteelKo is represented by its Director. Potentia and HERMES LLC have a common authorized representative appearing on behalf of **Potentia International LLC** and **HERMES LLC**.*



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PROBLEM FOR PRELIMINARY ROUNDS

The matter at hand revolves around an agreement between two prominent entities, **SteelKo** and **Potentia**, concerning the completion of a plant test. The crux of the dispute lies in Potentia's demand for payment from SteelKo, amounting to \$100 million, accompanied by an 8% interest rate, along with an additional \$1 million to refurbish a plant that had been inactive for nearly a year. Potentia contends that any delays in the project were not of their making, placing the responsibility on SteelKo, alleging that SteelKo failed to supply the required coal and power. Moreover, Potentia asserts that they have already provided the necessary operational guidelines to SteelKo's personnel.

In response, SteelKo rebuffed any obligation to make additional payments, invoking the doctrine of **force majeure**. SteelKo also raised concerns about the non-transfer of technical expertise, placing the responsibility for training SteelKo's engineers squarely on Potentia's shoulders. However, Potentia maintained that the onus of technology transfer fell under the purview of **Hermes LLC** and, thus, they bore no such obligation.

As tensions escalated, SteelKo demanded that Potentia either remit the requested \$100 million or consider waiving their claim for both the outstanding balance and interest. In a counterclaim, SteelKo sought \$1,000 million in damages from Potentia for what they perceived as a breach of contract.

With the failure of mutual negotiations to resolve the matter amicably, the parties involved have decided to seek **mediation** as a means of resolving their dispute. The continued inability of payment despite this mediation will mean that the parties will have to seek recourse under the **Insolvency and Bankruptcy laws of India**, which both parties want to avoid.



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PROBLEM FOR THE QUARTER-FINAL ROUND

Potentia, represented by **Mr. Dominic Evan**, and **SteelKo**, represented by **Mr. Ko Afrose**, are shareholders in **HERMES LLC**, a company involved in power distribution and generation. Potentia alleges that the transfer of the power distribution business has resulted in severe financial distress and that it has yielded no income, hence contending that SteelKo is not entitled to any share in HERMES LLC. This cause of financial distress for HERMES LLC may potentially trigger insolvency. Potentia contends that SteelKo is not entitled to any share in the profits generated by the power generation segment. As a result, Potentia demands that SteelKo purchase its 50% share in HERMES LLC at a premium of 30%.

SteelKo rejects this demand, asserting that the Power Distribution not yielding expected results is a direct consequence of a **force majeure** event. SteelKo maintains that it is not in a position to pay the premium sought by Potentia, especially given the financial challenges HERMES LLC is facing. SteelKo argues that power generation has recently resumed, and invoices are now being raised by HERMES LLC. Both parties realize that in the event of failure of mediation, both may be drawn into the **Insolvency Resolution Process** under **Section 7 of the Insolvency and Bankruptcy Code (IBC)**.

The parties have agreed to seek resolution through **mediation**. In light of **force majeure** as a defense opted by SteelKo, and a probable initiation of Insolvency proceedings, the parties must deliberate on the following:

1. The parties must determine whether the financial distress arising from the power distribution segment qualifies as an insolvency trigger under the IBC, necessitating the commencement of insolvency proceedings for **HERMES LLC**.
2. The parties must assess the validity of SteelKo's **force majeure** claim in the context of the IBC and whether it provides a legitimate defense for the financial difficulties associated with the power distribution business.



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PROBLEM FOR SEMI-FINAL AND FINAL ROUNDS

At this stage, the board of directors of **HERMES LLC** was headed by a nominee of **Potentia**. **SteelKo**, a shareholder of **HERMES LLC**, formally called upon **HERMES LLC** to fulfill its obligation to invest the balance sum of \$100 Million, as required by the **Debenture Bond Agreement**. However, during a board meeting, the Chairman of the Board, exercising his casting vote, and with a majority decision, rejected **SteelKo's** demand. Additionally, the Board resolved to recall the debenture debt with interest while also threatening to invoke **Section 7 of the Insolvency and Bankruptcy Code (IBC)**.

In response, the Board of Directors of **SteelKo** passed a resolution to convert the \$300 Million debentures allocated to **SteelKo** into fully paid equity shares, constituting 15% of its paid-up capital. Simultaneously, **SteelKo** invoked the arbitration clause under **SECTION 21 of the Arbitration and Conciliation Act** against **Potentia** and **HERMES LLC**, thereby demanding arbitration. Furthermore, **SteelKo** initiated Pre-Arbitration Mediation proceedings under the **BIMACC Rules**.

HERMES LLC, however, strongly protested the conversion of its debentures into equity. **HERMES LLC** claimed that **SteelKo** had not obtained the prior consent of **HERMES LLC** for this conversion and insisted that it would not recognize the conversion. According to **HERMES LLC**, the converted amount should remain as an outstanding debt due from **Potentia** on its books.

Both parties have appeared to resolve the dispute mentioned hereforth and also to seek relief regarding the previous disputes that were not resolved due to the prior mediations between both parties failing.

The following are the main issues for consideration presently before the **Arbitration Tribunal** (under the presumption that the previous mediation sessions between the parties have failed). The participants are also at liberty to make submissions based on any additional issues (substantive issue or issue of jurisdiction) as necessary, under such presumption that all previous mediation sessions have failed, and also taking into account the dispute that arose post the Board Meeting of **HERMES LLC**.



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Issues:

1. Whether the parties can prove a breach of the relevant contracts?
2. Whether **HERMES LLC** has a right to invoke the provision **Section 7 of the IBC** (The Insolvency and Bankruptcy Code 2016)?
3. Whether each of the parties are entitled to claim damages from each other?
4. Whether the onus of sharing technology transfer falls under the purview of **Potentia International LLC** and/or **HERMES LLC**. Additionally, whether the tribunal has the jurisdiction to deal with the dispute concerning the transfer of Technical Know-How with **SteelKo**?



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ANNEXURE 1

LETTER OF INTENT

On this 1st January 2021, in Bengaluru, **SteelKo India Ltd**, a company registered in SteelKo Road, Bengaluru, (**SteelKo**), and **Potentia International LLC**, a company registered in Fier Drum, Romania, (**Potentia**) have discussed in collaboration and have decided to record the mutually agreed intent and the outline of terms:

1. **SteelKo** and **Potentia** shall create an SPV in Cyprus called **HERMES LLC** or such other named mutually agreed upon by the parties.
2. **Potentia** and **SteelKo** shall enter into a Shareholders Agreement with 50% control by each party **HERMES LLC**.
3. **Potentia** shall invest \$500 Million in **HERMES LLC**.
4. **Potentia** shall transfer technology to **HERMES LLC**.
5. **SteelKo** shall transfer power distribution licences valued at \$500 Million to **HERMES LLC** in consideration of 50% control of **HERMES LLC** and assign Partial Patent Rights to **HERMES LLC**.
6. **HERMES LLC** shall fund **SteelKo** with \$300 Million convertible debentures and on conversion it will have a 25% stake in the paid-up capital and shall be documented by a loan agreement entered between **HERMES LLC** and **SteelKo**.
7. **SteelKo** and **Potentia** shall sign the Construction Contract and the plant is to become operational within 20 months.
8. **HERMES LLC** shall provide technical know-how to **SteelKo**.
9. The Parties herein shall maintain confidentiality of these terms till the final documentation is completed.
10. All disputes shall be resolved by mutual discussion within a period of 30 days from the date of raising the dispute, failing which the disputes be resolved through Mediation. If



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any dispute remains unresolved the same be referred for arbitration. The seat of Arbitration shall be Bengaluru and the applicable law shall be that of India.

11. Unless superseded by any other agreements, this letter of intent shall have a legally binding effect on both parties.
12. Both the parties agree to co-operate with each other and complete the documentation within one month from this date.

Sd/-

SteelKo

Sd/-

Potentia



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ANNEXURE 2

SHAREHOLDERS AGREEMENT

This Shareholders Agreement made on this 1st February 2021, in Bengaluru, by and between **SteelKo India Ltd**, a company with registered office at SteelKoRoad, Bengaluru, hereinafter referred to as the “**SteelKo**”, the **1st Party and Potentia International LLC**, a company registered in Fier Drum, Romania, hereinafter referred to as **Potentia** , the **2nd Party** and **Hermes LLC** a company incorporated in CYPRUS hereinafter referred to as the SPV, the **3rd Party**, and are collectively referred to as **Parties**.

WHEREAS the 1st and 2nd parties had entered a Letter of Intent on 1st January 2021 and one of the terms was to incorporate the SPV as a joint venture, for the purpose of investment by the SPV by way of convertible debentures and to carry out distribution of Power. Accordingly, the SPV was incorporated on the 31st of January 2021, promoted by the 1st and 2nd parties who are the Shareholders of the SPV, and it has been agreed to incorporate the terms and conditions agreed between the 1st and 2nd Parties in the following manner:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS

1. SCOPE

1.1 The 1st and 2nd Party agree to work together in the SPV to do the business as specified in the Letter of Intent and to mainly to carry out investment in the 1st Party company by the SPV of a sum of \$500 Million by way of Convertible Debentures to facilitate the 1st Party to construct a steel plant with the help of the 2nd Party.

The 2nd Party shall undertake the construction of the said steel plant by using its unique Core Technology which will be transferred by the 2nd Party to the 1st Party through the SPV. Further, the 1st Party would transfer its entire energy distribution and supply business in favour of the SPV. The 1st Party and the 2nd Party hereby agree to modify the Letter of Intent in so far as the investment in Convertible Debenture by the SPV from \$300 Million to \$500 Million.



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2. SHARE CAPITAL AND SHAREHOLDING

2.1 The total paid-up equity capital of the SPV will be \$1000 Million comprising of 100 million Ordinary Shares of \$ 10 each.

2.2 1st and the 2nd Parties respectively will hold 50% of the share capital of the SPV.

2.3 The 2nd Party (Potentia) shall invest \$ 500 Million in the SPV for 50 million Ordinary Shares of \$10 each in the following manner:

a. \$ 400 Million on signing this contract.

b. \$ 100 Million on the completion of the execution of the Steel plant by the 2nd Party for the 1st party or before January 2023 whichever is earlier.

2.4 The SPV shall in consideration of the 1st Party having transferred its entire business of distribution and supply of energy from its 250MW Thermal Power Plant situated near the existing Steel Plant, at Survey No. 1, Kabbina District, Karnataka State, India, as listed in Exhibit A to this agreement, the SPV hereby agrees to allot 50 million Ordinary Shares of \$10 each to the 1st Party.

2.5 The Board of Directors of the SPV shall in its meeting resolve and complete the allotment process and issue the share certificates to the respective parties.

3. BOARD OF DIRECTORS

3.1 There shall be a minimum of four and a maximum of 12 directors on the board of the SPV.

3.2 The 1st and the 2nd Party shall have an equal number of directors, nominated by them on the Board of the SPV.

3.3 The Chairman of the Board shall be nominated on a rotation basis by the 1st and 2nd party respectively and such a nominee shall hold the office for a period of two years.

3.4 The first Chairman of the SPV shall be appointed by the first party and will hold office till 31st of January 2023.



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3.5 Each director will have one vote. In the event of a tie, the Chairman will have a casting vote.

3.6 Board of Directors meeting shall be held once in three months and the quorum for the meeting is at least one director representing the 1st and the 2nd party.

3.7 The notice for the meeting shall be sent by email to the respective directors at least 14 days prior to the scheduled meeting.

3.8 The notice shall contain the details of the business that is to be transacted.

3.9 The business of the Board shall be with respect to the conduct of the business of the SPV and shall be strictly within the ambit of the Letter of Intent dated 1-1-2021 and the terms contained herein.

3.10 Unless decided otherwise by the nominating party, the Director nominated shall hold the office for a period of one year and either needs to be re-elected or new nominees shall be elected at the General Meeting of the SPV.

3.11 The minutes of the meeting shall be faithfully recorded and circulated within three working days from the conclusion of the meeting.

4. GENERAL MEETINGS

4.1 The General meetings – Annual as well as extraordinary meetings shall be in accordance with the law of Cyprus.

5. REPRESENTATION AND WARRANTIES

5.1 The Parties herein represent that each one of them is competent to contract and there are no legal impediments whatsoever to execute this agreement.

5.2. All the parties mutually agree and assure the performance of this agreement in good faith.



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6. BREACH

6.1 When a party fails to perform its part of this agreement, it shall amount to a breach. When a party perceives that it has suffered a loss or damage of value not less than \$ One Million, such a breach would be termed as a material breach.

6.2 The aggrieved party shall cause the issue of a notice calling upon the other party to rectify the breach to the satisfaction of the aggrieved party within 15 days from the receipt of the notice, failing which the aggrieved party will have a right to seek remedial reliefs.

7. REMEDIES FOR BREACH

7.1. In the event of a breach the aggrieved party may seek specific performance of the contract or seek unliquidated damages, provided the breach is material in nature in terms of the explanation in clause 6.1 above.

7.2. The aggrieved party shall apart from claiming damages, have the right to terminate the contract.

8. TERMINATION

8.1 This agreement can be terminated if all the parties to this agreement mutually agree to do so.

8.2. Subject to clause 6 above, the 1st or the 2nd Party may terminate this contract in the event of a breach committed by the other party by causing the issue of a notice of termination to the other party.

8.3 This contract shall stand terminated if one of the parties herein is declared as insolvent and bankrupt or by operation of law governing such a party.

9. INDEMNITY

9.1 All the parties shall indemnify each other from any third party claims, damages, losses, or litigation and cost and shall continue to indemnify each other.



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10. DISPUTE RESOLUTION

10.1 All disputes relating to any or all matters contained in this letter of intent shall be resolved by mutual discussion within a period of 30 days from the date of raising the dispute, failing which the disputes be resolved through Mediation under BIMACC Rules. If any dispute remains unresolved the same be referred for arbitration under BIMACC Rules. The seat of Arbitration shall be Bengaluru and the applicable law shall be that of India.

11. GOVERNING LAW

11.1 For the purpose of enforcement of this Contract, the governing law shall be that of India.

12. NOTICES

12.1 All communication and notices between the parties shall be by way of email and by registered post as per the address and details given in EXHIBIT B

13. All the parties agree to cooperate with each other in implementing this agreement.

IN WITNESS WHEREOF, the respective parties have set their hands and seal hereunto in the presence.

Witnesses

1.

2.

SteelKo India LTD

Potentia International LLC

Hermes LLC



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ANNEXURE -3

CONSTRUCTION CONTRACT

This Construction Contract (the "Contract") is made on this the 1st day of February 2021 by and between **SteelKo India Ltd, (SteelKo)** a company with its registered office at SteelKoRoad, Bengaluru, hereinafter referred to as the "**Owner**" on the first part and **Potentia International LLC, (Potentia)** a company registered in Fier Drum, Romania, hereinafter referred to as the "**Contractor**". The Owner and Contractor shall collectively be referred to as the "**Parties.**"

WHEREAS the Owner desires to construct a steel plant (the "Project") in Survey No. 1, Kabbina District, Karnataka State, India [Project site], using the technology of the Contractor, in terms of this agreement and the Contractor is willing to construct in accordance with the terms and conditions set forth herein;

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS

1. SCOPE OF WORK

1.1 The Contractor agrees to build, erect, and install a 15 MPTA steel plant, situated near the existing 10MPTA steel plant, using the core technology of the Contractor, in accordance with the specification detailed in Exhibit A to this agreement.

1.2. The Contractor shall source and provide all technical expertise, labour, materials, equipment, and services necessary for the construction of the steel plant in accordance with the plans and specifications as provided by the Owner.

2. CONTRACT PRICE AND PAYMENT SCHEDULE

2.1 The total contract price for the Project is \$ 500 Million payable in terms of Indian Rupees as per the rate prevailing at the time of effecting payment as per the following payment Schedule:

- \$100 Million on signing this contract.



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- \$ 100 Million on getting the approvals from the local authorities and other government agencies.
- \$ 100 Million on completion of 50% of the project
- \$ 100 Million on completion of 100% of the project
- \$ 100 Million on the commercial operation of the project

2.2. The parties agree that under no circumstance can the Contractor claim additional compensation on account cost or time overrun, provided the delay is caused on account of the Owner.

2.3 The parties agree that the Owner shall promptly pay all the amounts due to the Contractor upon the Contractor achieving the milestones, subject to verification of completion details, jointly by the representative of the Contractor and the Project Manager of the Owner, and on approval of the invoices by the joint inspection team. The payment should be made within seven working days failing which the owner is liable to pay to the Contractor interest at the rate of 8% p.a., for any delayed payment.

3. EFFECTIVE DATE AND COMPLETION DATE

3.1 The Project shall be deemed to have commenced on signing this contract and shall be the effective date and shall be completed on or before October 2023. Completion date shall mean the completion of the entire plant, including the period for conducting the test run and training of the Owner's personnel. However, parties may mutually agree in writing for extensions of time.

3.2. Time is the essence of this Contract. The parties may mutually agree to extend the period of execution of this Contract if there is any delay on account of an act of God, war, government or legal intervention.

4. AMENDMENTS AND ALTERATIONS

4.1 Any changes to the scope of work or contract price must be documented in writing and signed by both Parties.



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5. REPRESENTATION AND WARRANTIES

5.1 The Owner represents that it has the capacity to contract and its title with respect to the project site is clear and free of encumbrances and it further warrants that it will affect the payment promptly in terms of Clause 2 supra and assures the Contractor that there shall not be any interruption whatsoever in the project work that is to be executed by the Contractor.

5.2. The Owner further assures the contractor that it will ensure adequate ingress and egress to the project site, and allocate space to accommodate the living quarters for the construction workers, electricity, and water supply.

5.3 The Contractor assures that it has the wherewithal to execute the project and has the proprietary rights of the patented technology and warrants that all work will be performed in a professional manner and in accordance with industry standards.

6. INSURANCE

6.1 The Contractor shall maintain appropriate insurance coverage as specified in Exhibit B and shall not engage children and not violate any labour law or environmental law of India and the State of Karnataka.

7. BREACH OF TERMS OF THE CONTRACT

7.1 Breach as per this contract would mean, when any of the parties violate the terms of this contract including the conditions specified in the Exhibits herein and not rectified within a period of seven working days, from the date of the same being brought to the notice of the other party.

7.2 Material breach would mean the monetary value of the loss or damage suffered by the aggrieved party on account of the breach committed by the other party and the value of such loss or damage not being less than \$100,000.

8. REMEDIES FOR BREACH

8.1. In the event of a breach the aggrieved party complaining of breach shall give two months' notice in writing to the other party to rectify or undo the breach or seek specific performance of the contract.



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8.2 In the event of a material breach the aggrieved party has the right to claim unliquidated damages, or the damage is irreversible and when the relationship between the parties is deeply strained and no longer feasible to continue the contract, the aggrieved party will have the option to terminate the contracts in terms of Clause 9 below.

9. TERMINATION

9.1 This Contract may be terminated mutually by both the party.

9.2 A party who is aggrieved on account of a material breach by the other party, may terminate this Contract by giving a two-month notice to the other party, provided the material breach remains unaddressed or unresolved to the satisfaction of the aggrieved party within a reasonable period of time and in a situation explained in clause 8.2 above,

9.3 This Contract shall stand terminated if either party is declared insolvent and bankrupt or by operation of law.

10. INDEMNITY

10.1 Both parties shall indemnify each other from any third-party claims, damages, losses, litigation, and cost and continue to indemnify each other.

11. DISPUTE RESOLUTION

11.1 All disputes relating to any or all matters contained in this letter of intent shall be resolved by mutual discussion within a period of 30 days from the date of raising the dispute, failing which the disputes be resolved through Mediation under BIMACC Rules. If any dispute remains unresolved the same be referred for arbitration under BIMACC Rules. The seat of Arbitration shall be Bengaluru and the applicable law shall be that of India.

12. GOVERNING LAW

12.1 This Contract shall be governed by the laws of India.

13. NOTICES

13.1 All communication and notices between the parties shall be by way of email and by registered post as per the address and details given in **EXHIBIT B**.



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**IN WITNESS WHEREOF, the respective parties have set their hands and seal hereunto
in the presence.**

Witnesses

1.

2.

Steel Ko LTD

Potentia International LLC



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ANNEXURE 4

DEBENTURE BOND AGREEMENT

THIS DEBENTURE BOND AGREEMENT (the "Contract") is made on this 1st February 2021 by and between **SteelKo India Ltd**, a company registered in Bengaluru, having its registered office at SteelKo Road, Bengaluru, hereinafter referred to as the **COMPANY**, and **HERMES LLC**, a company incorporated in Cyprus, Fantasy Towers, Cyprus, hereinafter referred to as the **DEBENTURE HOLDER**.

WHEREAS the Company and one **Potentia International LLC** of Romania had entered into a Letter of Intent on 1st January 2021, and one of the terms of the parties therein was to incorporate the Debenture Holder as a joint venture. The main objects of the Debenture Holder are to function as an investment company by issuing fully convertible debentures to the Company, and to other entities around the world and also to carry out the distribution of Power, from the power generated by the Company. Accordingly, the Company was incorporated on the 31st of January 2021, and in terms of the above-said Letter of Intent, the parties herein execute this agreement on the following terms and conditions.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. SCOPE

1.1 The Company hereby agrees to issue 50 million Fully Convertible Debentures of the face value of \$10 each to the Debenture Holder, in consideration of the Debenture Holder subscribing to the said debentures and paying the full value of the debenture.

2. PAYMENT SCHEDULE

2.1 On signing this Agreement, 30 million Fully Convertible Debentures shall be allotted to the Debenture Holder on payment of \$10 per debenture.

2.2 On or before 31st January 2022, 10 million Convertible shall be allotted to the Debenture Holder on payment of \$10 per debenture.

2.3 On or before 31st January 2023, 10 million Convertible Debentures shall be allotted to the Debenture Holder on payment of \$10 per debenture or any prior date subject to



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completion of the Construction Contract entered between the Company and the said **Potentia International LLC**.

2.4 Debenture Bonds shall be executed and delivered by the Company to the Debenture Holder not later than two weeks from the dates of allotment.

3. INTEREST

3.1 The Company shall pay interest of 3% per annum (non-compoundable) to the Debenture Holder.

3.2 The Parties agree that the accrued interest for the first three years on the debenture bond will be payable by the Company to the Debenture Holder only after completion of three years from the date of this agreement and not earlier.

4. CONVERSION

4.1 The Company either on the request of the Debenture Holder or on its own, at any time, shall convert all or part of the Debentures issued to the Debenture Holder into fully paid equity shares.

4.2 At the time of conversion of part or full of the existing debentures and if there are further investments due and pending from the Debenture Holder, the same will not be waived and the obligation to invest would remain unless waived by the Company in writing.

5. REPRESENTATION AND WARRANTIES

5.1 Each party represents that it has the capacity to contract, that there are no legal impediments in signing this agreement and that each one of them has necessary and appropriate approvals from their respective regulative authorities.

6. TERMINATION

6.1 This Contract may be terminated mutually by both parties.

6.2 This Contract shall be terminated upon either party being declared as insolvent and bankrupt or by operation of law.

7. REMEDIES FOR BREACH



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7.1 In the event of a breach, the aggrieved party may seek specific performance of the contract or seek unliquidated damages, provided the breach is material in nature.

8. DISPUTE RESOLUTION

8.1 All disputes relating to any or all matters contained in this letter of intent shall be resolved by mutual discussion within a period of 30 days from the date of raising the dispute, failing which the disputes be resolved through Mediation under BIMACC Rules. If any dispute remains unresolved the same be referred for arbitration under BIMACC Rules. The seat of Arbitration shall be Bengaluru and the applicable law shall be that of India.

9. GOVERNING LAW

9.1 This Contract shall be governed by the law of India.

10. NOTICES

10.1 All communication and notices between the parties shall be by way of email and by registered post as per the address and details given in EXHIBIT B.

IN WITNESS WHEREOF, the respective parties have set their hands and seal hereunto in the presence.

WITNESS

- 1.
- 2.

STEELKO INDIA LTD

HERMES INTERNATIONAL



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AND COL. DR. JEPPIAAR
ADR FEST



ANNEXURE 5

HERMES LLC

1st February 2021

Fantasy Towers

CYPRUS

SteelKo India Ltd.

SteelKo Road

Bengaluru.

Sir,

Sub: Sharing of Technical Know-How

Ref: Letter of Intent dated 1-1-2021 entered between SteelKo India Ltd and Potentia International LLC

With reference to the captioned subject, we are advised by our Principal **Potentia International LLC**, Romania to share the Technical Know-How documents to you, only after our principal completes the construction of the Power Plant that our principal has agreed to do for you.

Please note that the Technical Know-How is the intellectual property of our principal, and sharing the same with you does not create or vest any exclusive right over the same in your favour. Neither you nor your employees or anybody associated with you including partners, directors, subsidiaries have any rights over the same.

Being a non-exclusive document, the consideration for sharing this document will not amount to transfer of Technical Know-How, and the documentation charges of \$100 (USD Hundred only) shall be paid by you on your countersigning this letter as a token of your acceptance of the above said condition.

For

HERMES LLC



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AND COL. DR. JEPPIAAR
ADR FEST**



Sd.

DIRECTOR

Above terms are accepted and payment made.

For

SteelKo India Ltd

Sd.

Director.



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AND COL. DR. JEPPIAAR
ADR FEST



EXHIBIT - A

LEGAL NOTICE SENT BY STEELKO TO POTENTIA

1st October 2023

Sir/Madam,

We are instructed by our client **SteelKo India Ltd** to issue this notice to you. Our client states that you had entered a construction contract with our client on 1-2-2021 to build, erect, and install a 15 MPTA steel plant, situated near the existing 10 MPTA steel plant, using the core technology for which a sum of \$400 million has been paid to you as against the total consideration of \$500 million, and that you have acknowledged the receipt of the same. The balance of \$100 million is payable to you by our client only on successful completion of the test run and transfer of the technology to our client.

Our client states that the project ought to have been completed within 20 months, i.e., before the commencement of the test run of the plant. Our client states that due to its cooperation, you completed the construction by the end of June 2022, but you were not able to conduct the test run due to an interim order of June 2022 passed by the Hon'ble Supreme Court staying the coal mining of various private mining collieries, including the one belonging to our client. Despite our client's best efforts, it was not able to procure coal from any other source to enable the test run. While our client was making all legal means to get the interim order vacated, it states that you were impatient and recalled your team back to Romania.

Our client states that the Hon'ble Supreme Court vacated its interim order in June 2023, enabling our client to resume coal mining in its collieries. Our client states that they immediately informed you to carry out the test run and assured you that it would stock adequate coal for this purpose, and within a short period of 20 days, our client had stocked 500 MT of coal for you to conduct the test run and complete the sharing of the technology with our client's engineers.

Our client states that instead of fixing a schedule to commence the test run, you made an unreasonable demand of \$100 million from our client to be paid upfront, which according to the contract should be payable only after the successful completion of the test run and sharing



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the technical know-how. Further, you have not only demanded interest on the said \$100 million but also demanded \$1 million towards purported overhauling costs, which was never negotiated with our client. You have also flatly refused to share the technical know-how, stating it is not your responsibility to do so.

Our client states that sharing the technical know-how is an inherent condition of the contract, as the very purpose our client selected you as the contractor is for the technology that you claim to be patented by you. You are fully aware that the non-availability of coal for the test run was due to a court order, beyond our client's control, and is to be termed as **force majeure**.

Our client states that the non-cooperation on your part in sharing the technology and refusing to perform the test run amounts to a breach of contract and has put our client into a huge financial loss of more than \$1000 million, which your client is liable to pay.

Our client hereby calls upon you to carry out the test run of the plant built by you within seven days from the receipt of this notice and pass on the technology know-how to our client and train our client's personnel, failing which **Clause 11** of the Construction Contract will stand invoked automatically without notice, and the dispute shall be referred to BIMACC for mediation and arbitration, as the situation might arise at your peril and costs.

The cost of this notice is \$1000, and you are liable to pay the same to our client.

Sd

XYZ

Advocate.



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ADR FEST



EXHIBIT – B

LEGAL NOTICE SENT BY STEELKO TO HERMES

Dated: 8th October 2023

Sir,

We are instructed by our client **SteelKo India Ltd** to issue this notice to you.

1. Our client states that you had entered into a **Debenture Bond Agreement** with our client on 1-2-2021 to fund \$500 million as Fully Convertible Debentures carrying interest at the rate of 3% per annum. Our client states that as per the said agreement you were supposed to invest money in the following manner in our client's debenture issue:

1.1 On signing this Agreement 30 million Fully Convertible Debentures shall be allotted to the Debenture holder on payment of \$10 per debenture

1.2 On or before 31st January 2022, 10 million Convertible shall be allotted to the Debenture holder on payment of \$10 per debenture

1.3 On or before 31st January 2023, 10 million Convertible Debentures shall be allotted to the Debenture holder on payment of \$10 per debenture or 1.1 On or before 31st January 2023, 10 million Convertible Debentures shall be allotted to the Debenture holder on payment of \$10 per debenture or any prior date subject to completion of the Construction Contract entered between the Company and the said Potentia International LLC.

2. Our client states that after having invested \$400 million in terms of items 1 and 2 supra, you ought to have invested the balance sum of \$100 million on completion of the Construction Contract entered between our client and Potentia International LLC, which fact you are aware of. Even though it is on record that Potentia had completed the construction of the project in June 2022 you filed to honour your commitment by not investing the said sum in June 2022 or latest by 31st January 2023. The default committed by you is contrary to the contract and has put our client at a huge loss.

3. Further, in terms of the letter dated 1st February 2021 issued by you acting as the agent of the said Potentia, you ought to have shared the Technology know-how records with our client



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and our client states that despite repeated demands you have refused to honour the said commitment.

4. Our client states that it is a fact that Potentia 's representatives are controlling the Board of your company with its representative being the current Chairman of your Board. Our client states that your Board of Directors are conducting themselves in an unfair and oppressive manner. Our client states at your Board meeting held on 3rd October 2023 your chairman and his companion director not only refused to invest the said \$100 million in our client's debenture bonds but also passed an illegal resolution to recall the \$400 million invested in our client's Debenture Bonds, which is contrary to the contract.

5. Our client states that it has come to its knowledge that at the very same Board Meeting, your Board of Directors represented by the nominees of Potentia passed a resolution falsely alleging that our client has committed a breach of the shareholder's agreement stating that there is no business generated from the transfer of the power supply business by our client to you. In this regard, our client's nominees on your board have protested and recorded their dissent. Your Chairman has also threatened our client's representatives on your board that you will be initiating an insolvency resolution process against our client under Section 7 of the Insolvency and Bankruptcy Code 2017 before the National Company Law Tribunal with respect to the purported \$400 million worth of convertible debentures invested by you in our client's company.

6. Our client states that your refusal to invest \$100 million into our client's debenture bonds amounts to a breach of the contract. Our client further states that the allegation pertaining to their business of power supply distribution is denied as false and you are put to strict proof of the same. Our client states that the loss of business was temporary which you are aware of was due to an interim order banning the mining of coal. You are aware that due to the non-availability of coal, power could not be generated from the thermal plant which affected your distribution business, and it was a business risk that you as a business entity had to have been prepared for. Further, since July 2023 the power generation at the power plant has resumed; power is being distributed to your consumers and we understand that you have raised invoices demanding payment from the respective consumers.



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7. Further, our client instructs us to inform you that your Board cannot threaten our client with any proceedings for Insolvency and Bankruptcy as there is no subsisting debt due to you from our client. Please be informed that at its Board Meeting dated 4th October 2023, our client has converted 40 million Convertible Debenture Bonds of \$ 10 each standing in your name to 40 million ordinary shares of \$10 each in terms of the Debenture Bond Agreement. You are hereby advised to surrender the Debenture Certificates to our client and get the new issued share certificates.

8. Notwithstanding the above, our client hereby calls upon you to invest the \$100 million in our client's convertible debenture bonds forthwith along with interest at the rate of 8% per annum from June 2022 or alternatively your Chairman who represents Potentia, should persuade Potentia to waive the demand for \$100 million along with its demand for interest. You are also called upon to share the technical know-how documents forthwith with our clients failing which our client will be constrained to enforce specific performance of the contract and initiate arbitration proceedings and request BIMACC to register our dispute and initiate the arbitration process within one week from the receipt of this notice in terms of the Debenture Bond Agreement.

9. The cost of this notice is \$1000, and you are liable to pay the same to our client.

Regards

XYZ Lawyers

Advocate



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AND COL. DR. JEPPIAAR
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EXHIBIT – C

REPLY FROM POTENTIA TO STEELKO

5th October 2023

Mr. XYZ

Advocate

Bengaluru

Sir,

Your notice dated 1st October 2023 addressed to our client **Potentia International LLC** has been placed in our hands to reply and demand as follows:

At the outset, our client states that your client has not revealed the true and correct information to you, and our client denies the allegations and content of your notice. Our client acted efficiently and, in all earnestness, completed the construction of the project well within the agreed time. Our client has no knowledge of any court order imposing any ban on mining, and even if such a ban had existed, nothing prevented your client from importing coal for the purpose of testing. All that was required was 300 MT of coal, which could have been imported. Instead, your client made our client's team of 40 Engineers wait at the project site for three months, merely promising the supply of coal, which never arrived, resulting in a huge loss to our client as it had to maintain its staff in India and seek extensions of VISAs for them.

Had your client arranged the import of coal, our client would have finished the test run successfully and fulfilled its obligations within one or two months, earning the balance amount of \$100 million on or before August 2022. Thus, our client is justified in making the demand for an upfront payment of the said sum with interest at the rate of 3% per annum.

The demand for an additional sum of one million dollars is justified, as our client has incurred huge costs towards redeploying its engineers from Romania to the project site, providing for their travel, accommodation, and maintenance. The demand is further justified because our



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client not only needs to train your client's personnel, it also needs more time to overhaul the machinery and equipment which have remained idle for several months.

Our client denies any direct obligation on its part to share the technical know-how, as the same is not provided in the contract. It is erroneous on your client's part to assume that our client is influencing **Hermes of Cyprus**, and please note that your client owns 50% of the shares in the said company. It is on record that there are issues of breach of promise by your client with respect to the power supply business, and it is for your client to resolve the issues with **Hermes** independently regarding the sharing of technical know-how.

Our client is still willing to perform its part of the contract, provided your client clears the arrears of money due to it along with interest and pays a further sum of one million dollars. Please note that our client will not pay any amount as damages as demanded in your notice, as your client has not suffered any loss.

On the contrary, our client reserves its right to claim damages and is ready and willing to participate in the arbitral proceedings, as well as mediation, at your client's costs and risk. Our client is not liable to pay the cost of legal notice as demanded in your notice. On the contrary, your client is liable to pay \$10,000 towards the cost of this reply notice.

Yours Truly,

Romanian Law Firm



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EXHIBIT - D

REPLY FROM HERMES TO STEELKO

16th October 2023

To
XYZ
Lawyers
Without Prejudice

Sir,

With reference to the notice issued by you on behalf of your client **SteelKo**, please note that as your client has initiated the Arbitration process, we reserve our right to respond to the claim that may be preferred by your client before the Arbitration Tribunal and further reserve our right to file a counterclaim if any.

Please note that this reply shall not amount to acceptance or admission of any of the allegations and averments made in your notice.

Yours Truly,

For **HERMES**

Sd/

Authorised representative.