

**PCA Case No. 2023-01**

**IN THE MATTER OF AN ARBITRATION**

**-before-**

**THE COURT OF ARBITRATION CONSTITUTED  
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

**-between-**

**THE ISLAMIC REPUBLIC OF PAKISTAN**

**-and-**

**THE REPUBLIC OF INDIA**

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**PROCEDURAL ORDER NO. 11**

**(PRODUCTION OF PAPERS AND OTHER EVIDENCE)**

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**COURT OF ARBITRATION:**

**Professor Sean D. Murphy (Chairman)  
Professor Wouter Buytaert  
Mr. Jeffrey P. Minear  
Judge Awn Shawkat Al-Khasawneh  
Dr. Donald Blackmore**

**SECRETARIAT:**

**The Permanent Court of Arbitration**

**27 May 2024**

**WHEREAS** in accordance with paragraphs 4 to 9 of Annexure G to the Indus Waters Treaty (the “**Treaty**”), a Court of Arbitration (the “**Court**”) has been constituted, consisting of Professor Sean D. Murphy (Chairman), Professor Wouter Buytaert, and Mr. Jeffrey P. Minear as the three Umpires, and Judge Awn Shawkat Al-Khasawneh and Dr. Donald Blackmore, as the Party-appointed Arbitrators;

**WHEREAS** paragraph 16 of Annexure G of the Treaty provides that “[s]ubject to the provisions of this Treaty and except as the Parties may otherwise agree, the Court shall decide all questions relating to its competence and shall determine its procedure...”;

**WHEREAS** paragraph 20 of Annexure G to the Treaty provides that “[t]he Court shall have the right to require from the Agents of the Parties the production of all papers and other evidence it considers necessary and to demand all necessary explanations. In case of refusal, the Court shall take formal note of it”;

**WHEREAS** on 31 March 2023, the Court issued its Supplemental Rules of Procedure, in which it determined, amongst other things, that “[t]he Court may take all appropriate measures in order to establish the facts” and that, “[p]ursuant to paragraph 20 of Annexure G to the Treaty, the Court may, at any time during the proceedings, require the Parties to produce documents, exhibits, or other evidence within such a period of time as the Court shall determine”;

**WHEREAS** in its Supplemental Rules of Procedure, the Court also determined that, “[t]he presumption is that the proceedings will continue in the absence of a Party or failure of a Party to defend its case”, but that “[b]efore making its Award, the Court shall satisfy itself that it has jurisdiction over the dispute, that the claims are admissible, and that the claims are well founded in fact and law”, and that “[t]he Court may take whatever other steps it considers appropriate to afford each Party a full opportunity to present its case and [for the Court] to fulfil [that obligation of satisfaction]”;

**WHEREAS** by way of its letter to the World Bank dated 21 December 2022 (the “**21 December Letter**”), India stated that it “expressly decline[d] to accept or recognize the existence of the so-called Court of Arbitration”, and enclosed an explanatory note “enunciating [India’s] stand based on the clear stipulations in the Treaty”;

**WHEREAS** on 2 February 2023, the Court issued its Procedural Order No. 1, in which the Court determined that “that India’s 21 December Letter (including its enclosed explanatory note) constitutes a plea concerning the competence of the Court for the purposes of paragraph 16 of Annexure G of the Treaty and will be treated as such for the purposes of this arbitration” and that the Court “would conduct a preliminary phase of the proceedings to consider the competence of the Court and the operation of Article IX of the Treaty”;

**WHEREAS** on 6 July 2023, the Court issued its Award on the Competence of the Court, finding that the Court is competent to consider and determine the disputes set forth in Pakistan’s Request for Arbitration dated 19 August 2016;

**WHEREAS** on 6 July 2023, the Court also issued its Procedural Order No. 6, in which it decided that it would “conduct these proceedings in a phased manner, bearing in mind the status of, and developments concerning, the proceedings taking place before the Neutral Expert” and identified the issues to be addressed in a First Phase on the Merits;

**WHEREAS** on 22 July 2023, the Court issued its Procedural Order No. 7, in which it fixed a deadline for Pakistan to submit its Memorial for the First Phase on the Merits and a deadline for India to indicate whether it intended to submit a Counter-Memorial for the First Phase on the Merits;

**WHEREAS** in its Procedural Order No. 7, the Court envisaged that an oral hearing in the First Phase on the Merits would be held in the Peace Palace, The Hague, the Netherlands from 8 to 12 July 2024, with 15 to 17 July 2024 held in reserve (“**First Phase Merits Hearing**”);

**WHEREAS** on 18 January 2024, India wrote to the Registrar of the Court, setting out its objections to a proposed site visit to the Neelum-Jhelum Hydro-Electric Plant and contending that the Court lacks competence in this matter (the “**18 January Letter**”);

**WHEREAS** on 2 February 2024, the Court issued its Procedural Order No. 9, in which it recalled the decisions made in its Award on Competence of 6 July 2023 and rejected India’s objections to the proposed site visit;

**WHEREAS** on 22 March 2024, Pakistan submitted its Memorial for the First Phase on the Merits, together with accompanying exhibits and authorities, including some materials relating to the Permanent Indus Commission, the *Baglihar* neutral expert proceedings, and the *Indus Waters Kishenganga Arbitration*;

**WHEREAS** to date, India has not appeared in these proceedings or made submissions beyond the 21 December Letter and the 18 January Letter, has not indicated any intention to submit a Counter-Memorial, and has not indicated any intention to appear at the First Phase Merits Hearing;

**WHEREAS** it remains open to India to participate in these proceedings and whereas the Court would welcome and benefit from such participation;

**WHEREAS** in the absence of India’s participation, the Court remains under a duty to satisfy itself that Pakistan’s claims are well founded in fact and law; and

**WHEREAS** the Court’s satisfaction of its duty would be furthered by having access to the greatest extent possible to documents and materials in which both Parties have set out their views on the matters at issue in the First Phase on the Merits;

## **THE COURT OF ARBITRATION HEREBY DECIDES:**

### **1. Production of Papers and Other Evidence**

1.1 In order to ensure that the Court has available to it a comprehensive record of the views and positions of the Parties on the matters at issue before the Court in the First Phase on the Merits, Pakistan is directed, pursuant to paragraph 20 of Annexure G to the Treaty and Article 22(3) of the Supplemental Rules of Procedure, to produce the following papers and other evidence (together, the “**Required Documents**”), to the extent that such papers and other evidence are not already entered into the record of the present proceedings and are not subject to a duty of confidentiality. If subject to a duty of confidentiality, an explanation as to that duty shall be provided.

1.2 With respect to the records of the neutral expert proceedings concerning the *Baglihar Hydroelectric Plant*, Pakistan is directed to produce:

1.2.1 a complete version of the *Baglihar* Neutral Expert Determination, including all annexures;

1.2.2 all written submissions of the Parties to the *Baglihar* Neutral Expert;

1.2.3 any expert reports provided to the *Baglihar* Neutral Expert;

- 1.2.4 all transcripts and minutes of the hearings and meetings with the *Baglihar* Neutral Expert;
  - 1.2.5 the record of the site visit to the Baglihar site and the hydraulic model;
  - 1.2.6 the draft versions of the *Baglihar* Neutral Expert Determination provided to the Parties for comment;
  - 1.2.7 any comments submitted by the Parties on draft versions of the *Baglihar* Neutral Expert Determination; and
  - 1.2.8 a list of all exhibits and authorities available to the *Baglihar* Neutral Expert.
- 1.3 With respect to the records of the *Indus Waters Kishenganga Arbitration*, Pakistan is directed to produce:
- 1.3.1 all written submissions, comments, and responses of the Parties to the *Kishenganga* Court of Arbitration;
  - 1.3.2 all transcripts in the *Kishenganga* proceedings;
  - 1.3.3 all expert reports provided to the *Kishenganga* Court of Arbitration; and
  - 1.3.4 a list of all exhibits and authorities available to the *Kishenganga* Court of Arbitration.
- 1.4 With respect to the records of the Permanent Indus Commission, Pakistan is directed to produce:
- 1.4.1 the records of all meetings of the Permanent Indus Commission; and
  - 1.4.2 the records of all tours of inspection by the Permanent Indus Commission that address matters at issue before the Court in the First Phase on the Merits.
- 1.5 With respect to correspondence between the Commissioners for Indus Waters, Pakistan is directed to produce any correspondence between the Commissioners for Indus Waters (or their subordinates) that addresses matters at issue before the Court in the First Phase on the Merits.
- 1.6 With respect to communications between the Governments of India and Pakistan, Pakistan is directed to produce:
- 1.6.1 any records of any inter-governmental meetings that addresses matters at issue before the Court in the First Phase on the Merits; and
  - 1.6.2 any inter-governmental correspondence that addresses matters at issue before the Court in the First Phase on the Merits.
- 1.7 In addition to the foregoing directions, Pakistan is directed to produce any other papers and other evidence in its possession in which India may have set out its views and positions on the matters at issue before the Court in the First Phase on the Merits.

## **2. Timing and Manner of Production**

- 2.1 To facilitate preparation for the First Phase Merits Hearing, Pakistan is directed to produce the Required Documents on or before **Monday, 1 July 2024**. Noting that certain of the Required Documents are readily available whereas others may require time to assemble, the Court would

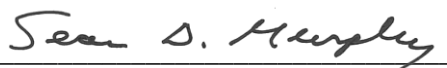
be open to receiving the Required Documents in tranches as and when they become available. To the extent that the volume of materials sought poses practical difficulties, Pakistan has leave to apply for a variation of the production schedule, bearing in mind the Court's preference to have as complete a record as possible in advance of the hearing.

- 2.2 To the extent that this Order seeks the production of several open-ended categories of correspondence and records of meetings, the Court's direction would be satisfied by the production of responsive materials actually known to the officials and counsel responsible for this matter and by a good faith search of repositories in which responsive materials would reasonably be expected to be found. In determining the scope of searches of repositories for any Required Documents, Pakistan may take into account the number of documents involved, the ease and cost of retrieving a document, and the significance of any document likely to be found.
- 2.3 To the extent Pakistan considers that the Required Documents ought to be the subject of further submissions, the Court envisages that such submissions can be made orally at the First Phase Merits Hearing or, if necessary, in any post-hearing briefs.

### **3. Leave to Apply**

- 3.1 Any Party has leave to apply to the Court for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 3.2 Any Party may, at any point in these proceedings, request that the Court convene a conference with the Parties to address any procedural aspect of these proceedings. The Court will arrange to confer with the Parties in person or by videoconference, according to the circumstances.

Dated: 27 May 2024



**Prof. Sean D. Murphy**  
**Chairman**

**On behalf of the Court of Arbitration**