CÔNG TY CỔ PHẦN SÔNG ĐÀ 5
Digitally signed by CÔNG TY CỔ PHẦN SÔNG ĐÀ 5
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SONG DA 5 JSC

No. 25 /2026/SĐ5-TCKT
(Re: Appellate Judgment on Commercial Contract Dispute)

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Hanoi, November 03, 2026

To: **Hanoi Stock Exchange**
State Securities Commission

- Organization name: **Song Da 5 Joint Stock Company**
- Ticker symbol: **SD5**
- Address: 5th Floor, Tower B, HH4 Building, Song Da My Dinh 1 Urban Area, Tu Liem District, Ha Noi, Viet Nam.
- Tel: 024 222 555 86 Fax: 024 222 555 58
- Authorized person for information disclosure: **Nguyen Trong Thuy**
- Position: **Chief Accountant**
- Content of information disclosure: Appellate Judgment No. 195/2026/KDTM-PT dated September 22, 2026, regarding the dispute over Construction Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 between Trading Construction Works Organization (WTO) and Song Da 5 Joint Stock Company, in connection with the execution of Packages: XD-01: Construction of Left Bank Works; XD-02: Construction of Right Bank Works; XD-03: Construction of Left Bank Dam combined with Traffic Road under the Bac Me Hydropower Project..
- This information is also disclosed on the company's website on November 03, 2026, at the following link: https://songda5.com.vn/vi/relations/dai-hoi-dong-co-dong-c7

We hereby commit that the information disclosed above is true and take full responsibility before the law for the disclosed information.

Best regards,

Recipient:
- As above;
- Filed: HR&Admin Dept, Financial & Accounting Dept.

AUTHORIZED PERSON FOR INFORMATION DISCLOSURE
TUQ. TỔNG GIÁM ĐỐC
KẾ TOÁN TRƯỞNG

M.S.D.N: 0100886857 - C.T.C.P
CÔNG TY CỔ PHẦN SÔNG ĐÀ 5
THÀNH PHỐ HÀ NỘI

Nguyen Trong Thuy

PEOPLE'S COURT OF HANOI CITY

SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Judgment No.: 195/2026/KDTM-PT
Date: September 22, 2026
Subject: "Dispute over Construction Contract"

CÔNG TY CỔ PHẦN SÔNG ĐÀ 5
CÔNG VĂN ĐẾN
Số: 480
Ngày 03/11/2026

IN THE NAME OF

THE SOCIALIST REPUBLIC OF VIETNAM

PEOPLE'S COURT OF HANOI CITY

- Composition of the Appellate Trial Panel consisting of:

Presiding Judge: Mr. Hoang Chi Nguyen.

Judges: Ms. Le Thuy Linh and Ms. Pham Thi Mai.

- Court Clerk recording the court session minutes: Ms. Le Thi Giang.

- Representative of the People's Procuracy of Hanoi City participating in the court session:

Ms. Phan Thi Tinh - Prosecutor.

On September 14 and September 22, 2026, at the Headquarters of the People's Court of Hanoi City; the court held a public appellate trial for the commercial business case registered under Case Acceptance No. 107/2026/KDTM-PT dated July 30, 2026, regarding: "Dispute over Construction Contract". This is due to the fact that the First-Instance Commercial Business Judgment No. 08/2026/KDTM-ST dated January 15, 2026, of the People's Court of District 4 - Hanoi, was appealed.

Pursuant to the Decision on Bringing the Case to Trial No. 656/2026/QĐ-PT dated August 12, 2026, and the Decision on Postponement of Court Session No. 710/2026/QĐ-PT dated August 28, 2026, issued by the People's Court of Hanoi City, between the litigants:

***- Plaintiff:* Trading Construction Works Organization (WTO).**

Enterprise Identification Number (EIN): 0100203476; Registered office address: No. 201 Minh Khai, Bach Mai Ward, Hanoi City.

Legal representative: Mr. Huynh Xuan Nhan - Chairman of the Board of Directors.

Authorized representatives (*Pursuant to Power of Attorney No. 1204/GUQ dated August 10, 2026*): (1) Mr. Nguyen Dang Dung; Citizen ID No.: 056201003173 issued by the Ministry of Public Security on April 13, 2026; (2) Mr. Le Anh Kien; Citizen ID No.: 019095007545 issued by the Department of Administrative Management for Social Order on December 17, 2021; (3) Mr. Nguyen Duy Khuyen; Citizen ID No.: 034081005200

issued by the Department of Administrative Management for Social Order on March 9, 2021. Contact address for all: No. 926 Bach Dang, Hong Ha Ward, Hanoi City.

At the court session: Mr. Nguyen Duy Khuyen was present; Mr. Nguyen Dang Dung and Mr. Le Anh Kien were absent.

Legal defenders of the plaintiff: Mr. Nguyen Trong Nghia - Lawyer, Bizconsult Law Co., Ltd., member of the Ho Chi Minh City Bar Association; and Ms. Nguyen Thi Thu Trang - Lawyer, Bizconsult Law Co., Ltd., member of the Hanoi Bar Association; Contact address for both: No. 20 Tran Hung Dao, Cua Nam Ward, Hanoi City. Both were present.

- Defendant: Song Da 5 Joint Stock Company (SONG DA N05 JSC).

Enterprise Identification Number (EIN): 0100886857; Registered office address: 5th Floor, Tower B, HH4 Building, Song Da My Dinh Urban Area, Tu Liem Ward, Hanoi City.

Legal representative: Mr. Nguyen Ngoc Dong - General Director.

Authorized representatives (*Pursuant to Powers of Attorney dated January 6, 2025 and August 11, 2026*):

1. Ms. Nguyen Thi Ha, born in 1964; Citizen ID No.: 036164001524 issued by the Ministry of Public Security on August 27, 2024; Contact address: No. 7, Alley 79A, Ly Nam De, Cua Dong Ward, Hoan Kiem District (now Hoan Kiem Ward), Hanoi City.

2. Mr. Nguyen Van Cuong, born in 1978; Citizen ID No.: 024078012246 issued by the Department of Administrative Management for Social Order on December 10, 2022. Position: Deputy General Director of Song Da 5 Joint Stock Company.

3. Mr. Nguyen Trong Thuy, born in 1980; Citizen ID No.: 037080000039 issued by the Ministry of Public Security on July 28, 2025. Position: Chief Accountant of Song Da 5 Joint Stock Company.

4. Ms. Nguyen Thi Hong Van, born in 1978; Citizen ID No.: 001178058057 issued by the Department of Administrative Management for Social Order on November 1, 2021. Position: Deputy Head of Economics - Planning Department, Song Da 5 Joint Stock Company.

5. Mr. Do Thanh Dong, born in 1981; Citizen ID No.: 034081007131 issued by the Department of Administrative Management for Social Order on April 25, 2021. Position: Staff of Technical Management Department, Song Da 5 Joint Stock Company.

All authorized representatives of the Defendant were present.

- Person with related rights and obligations: **Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV).**

Registered office address: BIDV Tower, No. 194 Tran Quang Khai, Hoan Kiem Ward, Hanoi City.

Contact address: No. 191 Ba Trieu, Hai Ba Trung Ward, Hanoi City.

Legal representative: Mr. Hoang Viet Hung - General Director.

Authorized representative (*pursuant to Authorization Decision No. 5225/QĐ-BIDV dated July 1, 2026):* Mr. Nguyen Ha An - Director of BIDV Transaction Office Branch 1.

Authorized representatives to participate in legal proceedings (*pursuant to Re-authorization Decision No. 5287/QĐ-BIDV.SGD1 dated August 11, 2026*):

1. Ms. Hoang Mai Suong (Citizen ID No.: 001184000944 issued by the Ministry of Public Security on October 7, 2024); Position: Deputy Director of BIDV - Transaction Office Branch 1.

2. Ms. Nguyen Linh Chi (Citizen ID No.: 038189018918 issued by the Department of Administrative Management for Social Order on November 17, 2021); Position: Head of Corporate Customer Department 5.

3. Mr. Nguyen The Tai (Citizen ID No.: 036086012762 issued by the Ministry of Public Security on January 15, 2026); Position: Specialist of Risk Management Department 1, BIDV.

4. Ms. Truong Hoang Thu Phuong (Citizen ID No.: 031190023670 issued by the Department of Administrative Management for Social Order on July 8, 2021); Position: Deputy Head of Corporate Customer Department 5 - BIDV.

5. Mr. Nguyen Quang Huy (Citizen ID No.: 040099017772 issued by the Ministry of Public Security on December 27, 2024); Position: Specialist of Corporate Customer Department 5 - BIDV.

All litigation-participating authorized representatives share the same contact address: Vincom Tower, No. 191 Ba Trieu, Hai Ba Trung Ward, Hanoi City.

Mr. Nguyen Quang Huy was present; all other representatives were absent.

FACTS OF THE CASE:

According to the First-Instance Judgment and documents in the case file, the case content is as follows:

I. The authorized representative of the plaintiff – Trading Construction Works Organization presented the plaintiff's petition claims as follows:

Trading Construction Works Organization (abbreviated as: WTO) is the Employer of the Bac Me Hydropower Plant Project in Bac Me district, Ha Giang province (the Project).

On November 11, 2014, WTO and Song Da 5 Joint Stock Company entered into the Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 regarding the execution of the Bac Me Hydropower Project (*Package XD-01: Construction of Left Bank Works; Package XD-02: Construction of Right Bank Works; Package XD-03: Construction of Left Bank Dam*

combined with Project Traffic ***(hereinafter referred to as Contract 808)***. Accordingly, Song Da 5 Joint Stock Company is the contractor executing the construction items under packages XD-01, XD-02, and XD-03 of the Project.

The performance period agreed upon by both parties in Article 7 of the Contract is as follows: "*Party B commits to executing the Contract according to the construction schedule for each item and the overall construction schedule as follows*:

7.1. Implementation period: 30 months from the contract commencement date. Details are specified in attached Appendix No. 3.

7.2. Contract commencement date: As stipulated in Article 1, Clause 7 of the Particular Conditions."

The provisional contract price (*according to Article 5 of the Contract*) is: VND 496,166,768,072.

During the performance of the Contract, Song Da 5 Joint Stock Company committed serious breaches of the Contractor's obligations regarding construction progress and quality, failed to fully provide documentation for payment and final settlement of the Project works in accordance with the agreement in the Contract and provisions of law, causing serious damage to the Employer, specifically as follows:

1. Song Da 5 Joint Stock Company failed to provide complete documentation for payment and final settlement of the Project works:

During the contract implementation process, Song Da 5 Joint Stock Company did not comply with the contents of the contract; failed to provide and present full documents and vouchers as required for the payment and final settlement dossiers of the Project works, specifically:

1.1. Regarding the interim payment dossier: Article 32 of the Particular Conditions of the Contract regulates the payment dossier as follows:

"32. Payment ....

The payment dossier includes:

- A payment request,

- A payment statement,

- An invoice in accordance with regulations of the Ministry of Finance,

- Quality acceptance records according to Party B's form approved by Party A prior to application,

- Cement goods-received notes confirmed by Party A and copies of Party B's cement purchase invoices."

Under the provisions quoted above, the payment dossier includes the quality acceptance records according to the approved form by the Employer. Among them, the

quality acceptance records include the Construction Log, and in practice, payment dossiers prior to Payment No. 22 were all accompanied by the Construction Log for the Employer to inspect and cross-check. This is an important basis for the Employer to consider and exercise rights as well as obligations in accordance with the contract. However, the payment dossiers provided by Song Da 5 Joint Stock Company from Payment No. 22 to Payment No. 25 are invalid, not accompanied by the corresponding construction logs of these payment installments, do not fully reflect the actual construction execution time of the works, and lack the construction log up to the ending date of work execution (*reflected in the corresponding work acceptance minutes of each payment installment*). In addition, according to the documents provided by Song Da 5 Joint Stock Company to the Court enclosed with the Statement of Counterclaim dated April 25, 2024, the payment dossiers from Installment 22 to Installment 25 are still missing documents required by the Contract provisions, specifically:

- Payment dossier of Installment No. 22: Missing Work Acceptance Minutes.

- Payment dossier of Installment No. 23: Acceptance minutes lacking the signature of the Supervision Consultant Representative.

- Payment dossier of Installment No. 25: Missing Work Acceptance Minutes.

WTO has repeatedly requested the Contractor to complete the dossier, and at the meeting on March 28, 2024, the Employer reiterated this request, but Song Da 5 Joint Stock Company still failed to execute it. Therefore, WTO had to initiate a lawsuit to petition the Court to compel Song Da 5 Joint Stock Company to properly perform its obligations under the Contract and construction laws.

1.2. Regarding the final settlement dossier: Article 45 of the Particular Conditions of the Contract regulates the Final Settlement Dossier as follows:

"1. Party B shall prepare the final settlement dossier for the quantities of work performed. Party A shall pay Party B for the quantities of work accepted.

2. The deadline for submitting the final settlement is within 30 days from the date the work is handed over and put into use. The contract final settlement dossier prepared by Party B shall conform to the principle of existing documents (acceptance minutes, periodic payment dossiers), only establishing statistical tables; missing documents shall be newly prepared. The main contents of the dossier include:

- As-built documents confirmed by both parties;

- Acceptance minutes of completed work volumes;

- Minutes of confirmation of arising work volumes (if any);

- Work handover minutes for operation;

- Statement of contract final settlement value confirmed by both parties;

- Other related documents."

In the Legal foundation section of the Contract, the Parties agreed to apply Government Decree No. 48/2010/NĐ-CP dated May 7, 2010, on contracts in construction activities (***Decree No. 48***) to govern the Contract. Decree No. 48 was later replaced by Government Decree No. 37/2015/NĐ-CP dated April 22, 2015, on construction contracts, amended and supplemented by Government Decree No. 35/2023/NĐ-CP dated June 20, 2023 (***Decree No. 37***). Article 22 of Decree No. 37 regulates the composition of the construction contract final settlement dossier as follows:

"Article 22. Final settlement of construction contracts...

2. The contract final settlement dossier prepared by the contractor must suit each type of contract and contract price. The contents of the construction contract final settlement dossier must comply with the agreements in the contract, including the following documents:

a) Acceptance minutes of completion of all works within the contract scope and works arising outside the contract scope.

b) Statement of construction contract final settlement value (A-B final settlement), explicitly stating the value of completed work under the contract, the value of work volume arising (if any) outside the contracted scope, the paid or temporarily paid value, and the remaining value that the employer is responsible for paying to the contractor.

c) As-built document, construction log for contracts involving construction work.

d) Other documents as agreed in the contract..."

In practice, the Contractor failed to comply with those provisions concerning final settlement documentation, specifically:

- Form: the final settlement documentation was not signed and sealed by Song Da 5's lawful representative.

- Content: mandatory documents required by law and the Contract were missing, including as-built documentation, work acceptance records, construction logs and other documents or information. Figures concerning the Contractor's financial obligations to the Employer, such as delay penalties, quality-related penalties and damages, were also missing.

At the meeting on September 19, 2023, the Employer's representative requested: *"The Employer requests Song Da 5 to provide the Employer with the final settlement dossier (including documents explaining the progress milestones"* and the Parties agreed: *"It is agreed that by September 22, 2023, Song Da 5 shall provide the dossier to the Employer"*. Thus, Song Da 5 Joint Stock Company acknowledged that it had not provided the complete Final Settlement Dossier to WTO and committed to performing this obligation. However, Song Da 5 Joint Stock Company still failed to execute according to the above agreement. On March 28, 2024, the Parties held a further meeting regarding the contract payment and final settlement dossier. At the end of this meeting, representatives

of the Parties agreed to establish a specialized department including personnel from WTO and Song Da 5 Joint Stock Company to inspect and review the composition and contents of the payment dossier, final settlement dossier, project progress and quality, and no later than April 7, 2024, to have a plan and figures submitted to both parties' management for decision. On March 29, 2024, based on the meeting on March 28, 2024, WTO sent via email to Song Da 5 Joint Stock Company the List of documents and information required for payment and final settlement work. As at the date of this submission, however, the parties still had no proposals or figures to submit to management because Song Da 5 refused to provide any further documents or information requested by the Employer. The documents accompanying the Statement of Counterclaim dated 25 April 2024 likewise failed to include the missing final settlement documents identified by WTO. Song Da 5 therefore breached its obligations under the Contract and construction law to prepare valid final settlement documentation for the Employer's approval. Accordingly, under Article 32 of the Particular Conditions quoted above, there is no basis for finding that the Employer's obligation to pay the final value of the Project works has arisen.

2. Song Da 5 seriously breached the Project construction schedule and is liable for penalties and damages for delay

2.1. Song Da 5 seriously breached the construction schedule

a. Milestone M7: Article 6.3 of the Particular Conditions specifies the mandatory deadline for Song Da 5 to achieve Milestone M7 as follows:

"6.3. Important interface milestones involving other contractors that Party B must achieve are as follows:

... M7. No later than 30 April 2017: Party B shall hand over the works in a condition suitable for reservoir impoundment."

The deadline for Milestone M7 was subsequently extended to 15 May 2017 by WTO's Letter No. 403/TMXD-TĐ dated 25 April 2017 ***(Letter 403)***. However, Acceptance Record No. 08-LH/VT dated 16 June 2017 concerning borehole backfilling shows that Song Da 5 did not complete Milestone M7 until 16 June 2017. Song Da 5 was therefore 32 days late in achieving Milestone M7 under the Contract and the parties' agreement.

b. Milestone M8: Article 6.3 of the Particular Conditions specifies the mandatory deadline for Song Da 5 to achieve Milestone M8 as follows:

"6.3. Important interface milestones involving other contractors that Party B must achieve are as follows:

... M8. No later than 31 May 2017: Party B shall hand over all work within the scope specified in the Contract Agreement."

Song Da 5 failed to complete and hand over all contractual work to WTO by the agreed deadline of 31 May 2017. As at the date of this written statement, WTO had received no document showing the date on which Song Da 5 completed Milestone M8. For this

statement, WTO therefore provisionally uses 8 December 2017 (*the date on which Song Da 5 alleges that the works were handed over and put into use*) as stated in its Counterclaim dated 25 April 2024, to calculate the delay in Milestone M8.

On that provisional basis, Song Da 5 was 191 days late under the Contract. WTO reserves the right to revise the date used to calculate delay in Milestone M8 and to update the figures for delay penalties and damages payable by Song Da 5. In addition, for the avoidance of doubt, WTO's provisional use of 8 December 2017 in this statement does not constitute, and shall not be construed as, an admission that Song Da 5 completed Milestone M8 on that date.

2.2. Song Da 5 is liable for construction delay penalties and damages

a. Construction delay penalties: Article 33.2 of the Particular Conditions provides:

"2. *Penalty rates: By reference to Milestones M1 to M8 listed in Clause 6.3 of the Particular Conditions, each day of delay shall attract a penalty of VND 500,000,000 (five hundred million dong) per day. Party A shall recover the penalties payable by Party B according to the value of Party B's breach in the following order of priority: (i) first, by deduction from the value of work performed by Party B; (ii) second, if recovery against the value of work is insufficient, by further recovery under Party B's performance guarantee.*"

Applying that provision to the delays in Milestones M7 and M8 identified above, Song Da 5 is liable for:

- Milestone M7: 32 days × VND 500,000,000 = VND 16,000,000,000;

- Milestone M8: 191 days × VND 500,000,000 = VND 95,500,000,000.

Total construction delay penalties: VND 111,500,000,000 (*one hundred and eleven billion five hundred million dong*).

b. Damages for construction delay: As stated above, Song Da 5's delay seriously affected the Project's business operations and WTO's lawful interests, causing exceptionally serious financial loss to the Employer. Article 3.10 of the Contract provides for Song Da 5's liability in damages for failure to meet the construction schedule as follows:

"*Article 3. Party B's responsibilities ...*

3.10. To compensate for loss caused by breach of contract, including but not limited to (i) use of materials of an incorrect type; (ii) construction that fails to meet schedule or quality requirements, or causes environmental pollution; and (iii) other breaches causing loss through its fault."

Accordingly, Song Da 5 must compensate WTO for all loss suffered as a result of Song Da 5's delay, with the total arising damage of VND **94,138,401,255** (*ninety-four billion one hundred and thirty-eight million four hundred and one thousand two hundred and fifty-five dong*), comprising:

- Additional Project Management Unit personnel costs during the delay: VND **2,626,702,687** (*two billion six hundred and twenty-six million seven hundred and two thousand six hundred and eighty-seven dong*), according to WTO's salary summary and payroll statements for June through December 2017;

- Additional supervision consultancy costs payable to Power Engineering Consulting Joint Stock Company 3 during the delay: VND **1,039,758,200** (*one billion thirty-nine million seven hundred and fifty-eight thousand two hundred dong*);

- Additional foreign supervision advisory costs payable to Tokyo Electric Power Services Co., Ltd. (TEPSCO) during the delay: VND **6,344,652,875** (*six billion three hundred and forty-four million six hundred and fifty-two thousand eight hundred and seventy-five dong*). Under the contract between TEPSCO and WTO (dated July 2014), although the contract term was 40 months from commencement, WTO could terminate it early if the Project was completed on time (*by 31 May 2017)*. Song Da 5's delay required WTO to continue that contract and incur further payment obligations to TEPSCO under Invoice No. 6 for USD 271,429, equivalent to VND 6,344,652,875;

- Direct benefits that WTO would have received but for Song Da 5's delay, equivalent to 191 days of average electricity generation revenue from the Project: VND **84,127,287,493** (*eighty-four billion one hundred and twenty-seven million two hundred and eighty-seven thousand four hundred and ninety-three dong*). This amount is calculated by multiplying the Project's average daily generation revenue from September 2017 through December 2018 by the number of days of Song Da 5's delay, provisionally 191 days. Without the delay, WTO would have earned generation revenue during those 191 days.

3. Song Da 5 seriously breached construction quality requirements and is liable for penalties and damages

3.1. Song Da 5 seriously breached construction quality requirements

a. Disposal area landslide:

Article 3.2 of the Contract provides for Song Da 5's responsibilities as follows: "*To take over and manage the centre-lines, benchmarks and site handed over by Party A, and to be responsible for security, order, occupational safety, occupational accidents, fire and explosion prevention and environmental sanitation within the area of its construction operations.*"

Article 5.1 of the Contract specifies the costs included in the Contract Price paid by WTO and to be borne by Song Da 5, including:

"*- Costs of constructing and maintaining internal construction roads within the Contractor's working area, ensuring environmental sanitation, and repairing damage to roads inside and outside the site caused by construction activities; – Costs of restoring the site, landscape and environment affected by Party B's construction activities.*"

Article 40 of the Particular Conditions further provides for Song Da 5's

environmental protection obligations as follows:

"a) Party B shall implement measures to protect the environment for workers at the site and the surrounding environment, including dust and noise control, waste treatment and site clearance. Protective coverings shall be provided and waste shall be collected and taken to designated locations.

b) Construction materials and waste shall be covered during transport to ensure safety and environmental sanitation.

c) The parties shall inspect and supervise environmental protection during construction and shall be subject to inspection and supervision by the competent state environmental management authority. If Party B fails to comply with environmental protection requirements, Party A and the state environmental management authority may suspend construction and require Party B to implement the prescribed environmental protection measures.

d) Organisations and individuals responsible for environmental damage during construction shall bear liability under the law and compensate for loss caused through their fault."

During performance of the Contract, Song Da 5 breached those obligations. Specifically, it disposed of spoil improperly, causing material to slide from the disposal area into the Gam River. Thus, on 29 April 2016, WTO issued Letter No. 493/TĐ reminding Song Da 5 of its obligations and requiring it to remove the soil and rock that had slipped from Disposal Area No. 3 into the river before 15 June 2016. The letter also stated that all other costs resulting from Song Da 5's failure to comply would be deducted from its payment valuation statements. Song Da 5 received the request but neither responded in writing nor complied. This narrowed the flow and altered the river's natural hydraulics, causing a landslide at the left abutment downstream of the dam during the rainy and flood season. During construction, Song Da 5 also disposed of spoil on the downstream riverbank of the Bac Me Hydropower Plant to expand the concrete batching plant site. Upon completion, it failed to restore the site to its original condition, narrowing the river channel and causing erosion when the dam discharged floodwater.

b. Landslide downstream of the plant's left abutment

As stated above, Song Da 5's improper spoil disposal caused material to slide into the Gam River and a landslide at the left abutment downstream of the dam during the rainy and flood season. The parties' meeting record dated 17 April 2018 recorded the condition as follows: "*During the 2017 rainy and flood season, National Highway 34 downstream of the plant at Km63+750 suffered a landslide extending to the road edge and part of the concrete slope protection of the plant's tailrace channel. To ensure safety during the 2018 rainy and flood season, the Employer is engaging a contractor to remedy this item.*" To remedy the damage, WTO entered into Contract No. 926/HĐXD-BM dated 21 May 2018 (***Contract 926***, *already in the case file*) with Thang Long Construction and Investment

Development Joint Stock Company (***Thang Long Company***) to rectify Song Da 5's defective construction. Thang Long Company's scope was: "*Party A agrees to engage, and Party B agrees to undertake, construction, acceptance and handover for use of all works to remediate landslide locations on National Highway 34 under the Bac Me Hydropower Project, in accordance with the design documents and technical documents supplied by Party A to Party B, with the quantities and prices appended to the contract.*"

c. Cracking on the left-bank foundation slope (*above the administration building*)

The parties' meeting record dated 17 April 2018 also recorded the condition of the left-bank foundation slope (*above the administration building*): "*In August 2017, cracks appeared from the berm at 200.0 m to 142.00 m.*" As Song Da 5 failed to remedy the defects fully, WTO issued letters requiring rectification, including:

– WTO's Letter No. 462/TMXD-ĐTTĐ dated 26 March 2019 to Song Da 5: "*Left-bank slope (above the operations building): cracks have existed on the slope for a considerable time without being remedied by the Contractor. Surface water is now entering the cracks, causing erosion and widening, affecting the long-term stability of the slope. The Contractor is requested to remedy this promptly.*"

– WTO's Letter No. 791/TMXD-ĐTTĐ dated 23 April 2021 to Song Da 5: "*At the left-abutment slope behind the administration building, from elevation 185.07 m down to elevation 142 m, the shotcrete surface is cracked and broken. In 2019, Contractor SĐ5 filled the cracks with cement mortar, but did not fully remedy the problem. Surface water is now entering the cracks, causing erosion and widening, affecting the long-term stability of the slope; photographs are attached.*"

As at the date of this statement, however, the cracks on the left-bank foundation slope (*above the administration building)* remained and had not been fully rectified by Song Da 5, seriously affecting the quality of the works.

d. Collapse of Wall T1: According to the document dated 8 September 2017 sent to WTO by the Bac Me Hydropower Management and Operations Board and the Supervision Consultancy Board, Sections 03 and 04 of Tailrace Wall T1 (*14.83 m long*) on the regulation dam side, collapsed because Song Da 5's construction did not meet quality requirements. Flood discharge eroded the soil and rock foundation at the foot of Wall T1 on the regulating dam side, causing its collapse.

3.2. Song Da 5 is liable for penalties and damages for breach of construction quality requirements

a. Damages: As the defective construction arose from Song Da 5's breach of its contractual obligations, WTO had to enter into Contract No. 926/HĐXD-BM dated 21 May 2018 with Thang Long Construction and Investment Development Joint Stock Company to maintain operations and minimize loss to the Project. The cost of remedying the landslide downstream of the plant's left abutment was **VND 15,228,585,086** (*fifteen billion two hundred and twenty-eight million five hundred and eighty-five thousand and eighty-six*

dong), as shown in Table 01, Detailed value of the first payment under Contract No. 926/HĐXD-BM dated 21 May 2018.

Article 3.10 of the Contract provides for Song Da 5's liability in damages for defective construction:

"Article 3. Party B's responsibilities ...

3.10. To compensate for loss caused by breach of contract, including but not limited to (i) use of materials of an incorrect type; (ii) construction that fails to meet schedule or quality requirements, or causes environmental pollution; and (iii) other breaches causing loss through its fault."

Under that provision, Song Da 5 is liable to compensate WTO for all loss arising from defective construction, provisionally calculated as at the date of this statement at VND **15,228,585,086** (*fifteen billion two hundred and twenty-eight million five hundred and eighty-five thousand and eighty-six dong*).

b. Contractual penalties: As stated above, Song Da 5 breached quality requirements for the plant's left bank (*the left-bank dam combined with a traffic road*), and Wall T1. Under Table 1.3, Summary of Contract Prices, the construction value of the left-bank dam combined with a traffic road is VND 89,195,168,652. The construction cost of Wall T1 (*including concrete and reinforcing steel at the contractual unit rates*) is VND 1,717,000,800 according to WTO's calculation based on the quantities actually constructed by Song Da 5.

Article 33.4 of the Particular Conditions requires Song Da 5 to pay a penalty of 2% of the value of the breached portion of the Contract:

"33. Bonuses and contractual penalties ...

4. Other requirements concerning contractual penalties:

– If Party B breaches quality requirements, it shall bear full responsibility for rectification costs and the schedule, and shall pay a penalty of 2% of the value of the breached portion of the Contract."

Under that provision, Song Da 5 must pay a penalty of 2% of the value of the portions affected by the quality breaches, amounting to VND **1,838,243,389** (*one billion eight hundred and thirty-eight million two hundred and forty-three thousand three hundred and eighty-nine dong*), as detailed in WTO's submitted Summary of Quality-related Penalties.

WTO requests the Court to grant the following relief:

1. Order Song Da 5 to supply WTO with all missing documents in the payment documentation for Instalments 22 to 25 in accordance with law and the Contract, including but not limited to construction logs, as-built drawings and work acceptance records;

2. Order Song Da 5 to provide WTO with valid final settlement documentation,

signed and sealed by the Contractor's lawful representative, with the final settlement value incorporating set-off of the Contractor's obligations to the Employer arising from breaches of the construction schedule and quality requirements for the Project;

3. Order Song Da 5 to pay WTO construction delay penalties of **VND 111,500,000,000**;

4. Order Song Da 5 to pay WTO construction quality penalties of **VND 1,838,243,389**;

5. Order Song Da 5 to pay WTO damages for construction delay of **VND 94,138,401,255, comprising**:

– Additional Project Management Unit personnel costs during the delay: **VND 2,626,702,687** (*as shown in WTO's salary summary and payroll statements for June through December 2017*);

– Additional supervision consultancy costs payable to Power Engineering Consulting Joint Stock Company 3 during the delay: **VND 1,039,758,200**;

– Additional foreign supervision advisory costs payable to Tokyo Electric Power Services Co., Ltd. (TEPSCO) during the delay: **VND 6,344,652,875** *(under the contract between TEPSCO and WTO dated July 2014 and Invoice No. 06 for USD 271,429, equivalent to VND 6,344,652,875)*;

– Direct benefits WTO would have received but for Song Da 5's delay, equivalent to 191 days of average electricity generation revenue: **VND 84,127,287,493** (*calculated using average daily generation revenue from September 2017 through December 2018. Without the delay, WTO would have earned that revenue during those 191 days)*;

6. Order Song Da 5 to pay WTO damages for defective construction of **VND 15,228,585,086** (*fifteen billion two hundred and twenty-eight million five hundred and eighty-five thousand and eighty-six dong*) (*WTO had to enter into Contract No. 926/HĐXD-BM dated 21 May 2018 with Thang Long Construction and Investment Development Joint Stock Company to remedy the landslide downstream of the plant's left abutment at that cost*);

The total amount WTO claims from Song Da 5 Joint Stock Company is VND **222,705,229,730** (*two hundred and twenty-two billion seven hundred and five million two hundred and twenty-nine thousand seven hundred and thirty dong*).

II. The representative of the Defendant, Song Da 5 Joint Stock Company, submitted as follows:

Song Da 5 JSC confirms that, on 11 November 2014, WTO and Song Da 5 JSC entered into Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 for Package XD-01: Construction of the Left-bank Works; XD-02: Construction of the Right-bank Works; and XD-03: Construction of the Left-bank Dam Combined with a Traffic Road. Song Da 5 JSC is the contractor responsible for implementing the works under those packages.

1. Regarding WTO's request that Song Da 5 provide all missing payment documents for the Payment Instalments No. 22 to No. 25

Throughout performance of the Contract, Song Da 5 complied with the contractual requirements concerning payment documentation, specifically:

1.1. Interim payment documentation: Article 32 of the Particular Conditions provides:

"c. Payment documentation shall comprise:

– A payment request;

– A payment valuation statement;

– An invoice compliant with the Ministry of Finance's requirements;

– Quality acceptance records in Party B's form, approved by Party A before use;

– Cement goods-received notes confirmed by Party A and copies of Party B's cement purchase invoices."

Under that provision, payment documentation includes quality acceptance records in the form approved by the Employer, including construction logs. In practice, the documentation for Instalments No. 1 to No. 25 included construction logs for the Employer's review and reconciliation, and the Employer and Supervision Consultant signed to confirm approval for payment. However, for painting and railing works in Instalments No. 24 and No. 25, Song Da 5 prepared construction logs and sent them to the Employer at the site, but the Employer did not return them. Song Da 5 therefore fulfilled its responsibilities under the Contract. WTO's written statement submitted to the Court on 29 July 2024 alleges that documents were missing from the payment documentation for Instalments No. 22 to No. 25.

Song Da 5 responds as follow: Song Da 5 prepared all documentation required by the Contract, specifically:

– Instalment No. 22: Song Da 5 prepared the work acceptance record, which was duly signed by the Employer and the Supervision Consultant;

– Instalment No. 23: the acceptance record was approved and signed by the Employer;

– Instalment No. 25: Song Da 5 submitted all work acceptance documentation to the Employer.

WTO and Song Da 5 met on 28 March 2024. After the meeting, Song Da 5 reaffirmed its position and supplied WTO again with the documents WTO alleged were missing (*supported by a document handover receipt dated 30 October 2023 confirmed by the Employer*).

2. Regarding final settlement documentation: Article 45 of the Particular

Conditions provides:

"1. Party B shall prepare final settlement documentation for the quantities of work performed. Party A shall pay Party B for the quantities of work accepted.

2. The final settlement shall be submitted within 30 days after the works are handed over for use. Party B shall prepare the contract final settlement documentation on the basis of existing documents, including acceptance records and stage payment documentation; only a schedule of those documents is required, and new documents shall be prepared only where they do not already exist. The documentation shall principally comprise:

– As-built documentation confirmed by the parties;

– Acceptance records for completed quantities of work;

– Records confirming additional quantities of work, if any;

– The record of handover of the works for use;

– The statement of the final contract value confirmed by the parties;

– Other relevant documents."

In practice, Song Da 5 consistently complied with the contractual requirements concerning final settlement documentation, specifically:

– Form: Clause 2 of Article 21 of Decree No. 48/2010/NĐ-CP on contracts in construction activities provides for construction contract final settlement documentation as follows: "*Final settlement of construction contracts ...*

2. The contractor shall prepare contract final settlement documentation appropriate to the type of contract and contract price. The construction contract final settlement documentation shall conform to the contractual agreements and include:

a) The acceptance record for completion of all work within the contractual scope and additional work outside that scope;

b) A calculation of the final construction contract value (referred to as the A–B final settlement), specifying the value of completed contractual work; the value of additional quantities, if any, outside the agreed scope; amounts paid or provisionally paid; and the balance payable by the employer to the contractor;

c) As-built documentation and construction logs for contracts involving construction work;

d) Other documents agreed in the contract ..."

Accordingly, Song Da 5 actively contacted and worked with WTO on the final settlement. In particular, Song Da 5 invited WTO to prepare a record concerning the final settlement documentation (*dated 4 July 2017*) in which presented procedures for compiling and reviewing that documentation, together with final settlement forms, but received no cooperation or response from WTO. Then, before and after signing the acceptance record

for putting the works into use, Song Da 5 sent numerous letters and final settlement documents to WTO, including Letter No. 299/SĐ5-QLKT dated 8 August 2017; Letter No. 390/CV-SĐ5-QLKT dated 3 October 2017; Letter No. 70/SĐ5-QLKT dated 26 February 2018; Letter No. 65/2018/SĐ5-QLKT dated 28 March 2017; and Letter No. 124/2018/SĐ5-QLKT dated 10 April 2018, requesting cooperation with final settlement. WTO neither responded nor signed the final settlement for Song Da 5.

WTO thus breached its obligations as Employer under the Contract and construction law concerning final settlement. After repeated unanswered requests from Song Da 5, the parties met on 19 September 2023 to agree on final settlement. As Song Da 5 had previously supplied the documentation, Song Da 5 agreed to provide WTO with another photocopied set for checking and reconciliation. WTO nevertheless failed to cooperate or implement that agreement. Despite repeated exchanges with WTO's specialist personnel to expedite final settlement in accordance with the meeting's conclusions, WTO did not cooperate. Song Da 5 therefore contacted WTO again to arrange a meeting on 28 March 2024. On 29 March 2024, WTO emailed a request for records and documents; on 4 April 2024, Song Da 5 replied by email concerning the list of documents and information requested for final settlement (*as evidenced by the retained email*) but received no response. Song Da 5 therefore consistently acted proactively and cooperatively in final settlement and performance of the Contract, in compliance with construction law. WTO, by contrast, breached its obligations as Employer concerning payment and final settlement under Articles 32 and 45 of the Particular Conditions quoted above.

3. Regarding delay in the contractual schedule

3.1. Milestone M7: Article 6.3 of the Particular Conditions provides: "*No later than 30 April 2017, Party B shall hand over the works in a condition suitable for reservoir impoundment.*" Before 20 April 2017, Song Da 5 had completed the Bac Me Hydropower Project to a condition suitable for reservoir impoundment.

On 20 April 2017, Song Da 5 issued Inspection request No. 177/2017-SĐ5-QLKT inviting the Employer to accept the works as ready for reservoir impoundment. On 25 April 2017, the Employer replied by Letter No. 403/TMXD-TĐ, confirming that the curtain grouting at the left abutment of the barrage was additional work outside the Contract due to changed geological conditions. The time required for that work would therefore not count towards the contractual milestones, and the Employer agreed to extend Milestone M7 to 15 May 2017. Previously, the meeting record dated 17 April 2017 recorded TEPSCO's recommendation for checkhole drilling and additional cement grouting in eight boreholes. Since this work fell outside the Contract due to changed geological conditions, the Employer could not apply the contractual progress milestone to it, and had agreed to that in writing.

Drilling and grouting works below elevation 117.5 m were particularly difficult *(because the structure to be drilled contained two steel reinforcement meshes and generation at the Bao Lam 1 Hydropower Plant caused inundation)*. On 12 May 2017,

Song Da 5 issued Letter No. 46/SĐ5-QLKT, stating that seven of the eight boreholes were complete but that conditions at the last borehole were very difficult, and requesting extension of the completion date for curtain grouting at the left abutment from 15 to 20 May 2017. At the meeting on 22 May 2017, the Employer and TEPSCO adviser requested the Contractor to use at least two drilling rigs simultaneously and to undertake additional checkholes from KT09 to KT16. Following TEPSCO's opinion, the Employer, Supervision Consultant and Contractor agreed at the meeting on 25 May 2017 to undertake additional curtain grouting from KT09 to KT16. This work was completed on 16 June 2017 and the parties signed the construction work acceptance record.

3.2. Milestone M8: Article 6.3 of the Particular Conditions provides: "*No later than 31 May 2017, Party B shall hand over all work within the scope specified in the Contract Agreement.*"

After 8 May 2017, progress at the Bac Me Hydropower construction site slowed because some work fronts were unavailable to the Contractor: the plant equipment installation works had not been handed over, affecting Milestone M8, including "*the working space for backfill concrete of Unit 2, the bulb turbine support, the downstream support, and the floor at elevation 122.5 m ...*". On 8 May 2017, the Contractor sent Letter No. 192/SĐ5-QLKT directly to the Employer's Hydropower Department requesting adjustment of Milestone M8 in which explained that the milestone could not be achieved because "*no available working space due to plant installation works, such as working space for backfill concrete of Unit 2, the bulb turbine support, the downstream support, and the floor at elevation 125 m ...; certain finishing materials for the railings also differ from the original design and have not been agreed as the basis for construction.*" and requested the Employer to "*provide a detailed schedule for handover of working spaces by the equipment installation contractor and for approval of finishing materials that differ from the Contract, so that we can plan the civil works; and consider adjusting Milestone M8 accordingly.*" The Employer did not respond.

On 25 May 2017, the Contractor sent Letter No. 209/SĐ5-QLKT concerning handover of Milestone M8, reiterating that the Employer needed to respond to the extension request because the equipment contractor had still not handed over the work spaces. Song Da 5 undertook to hand over Milestone M8 within 21 days after receiving the work spaces from the equipment installation contractor. The contractors subsequently handed over civil and equipment installation work spaces to one another as follows:

– On 11 July 2017, Installation Contractor 45.3 and ZHEFU handed over the work spaces for the "*governor oil tank and high-pressure oil tank on the floor at elevation 122.5 m*" to Song Da 5;

– On 15 July 2017, Installation Contractor 45.3 and ZHEFU handed over the work spaces for the two servomotors of Unit 2 to Song Da 5;

– On 31 August 2017, Installation Contractor 45.3 and ZHEFU handed over the work spaces for the two lateral supports at the bulb head of Unit 2 to Song Da 5;

– On 5 October 2017, ZHEFU handed over part of the floors at elevations 117.5 m and 122.5 m to Song Da 5 for floor backfill concreting, followed by further handover on 18 October 2017 for floor painting;

– On 16 November 2017, ZHEFU handed over the floor at elevation 122.5 m (*at the equipment lowering opening*) to Song Da 5.

After the above work among the contractors on site was completed, Song Da 5 sent Inspection Request No. 501/SĐ5-QLKT dated 29 November 2017 directly to the Employer's Hydropower Department for acceptance and handover, but received no response. Although the Milestone M8 completion record was not signed, the Contractor and Employer signed Acceptance Record No. 01/HT dated 8 December 2017 for completion of the civil works for use. Milestone M8 was thus completed on 8 December 2017, the date of the acceptance and handover record, later than originally agreed. The delay occurred because Song Da 5 had not received the work spaces from the Employer and therefore could not proceed according to schedule. On identifying the risk of delay, Song Da 5 sent numerous notices and requested an extension of the contractual completion milestone to reflect the actual situation, but received no response. Delay in Milestone M8 was therefore attributable to shared fault among the parties.

4. Regarding quality of the works

4.1. Song Da 5 seriously breached construction quality requirements

a. Disposal site landslide

In paragraph 3.1(a) of WTO's written statement dated 29 July 2024, WTO quoted the Contract as follows: "*Article 3.2 provides for SONG DA 5's responsibilities: To take over and manage the centre-lines, benchmarks and site handed over by Party A, and to be responsible for security, order, occupational safety, occupational accidents, fire and explosion prevention and environmental sanitation within the area of its construction operations.*"

In fact, the Contract contains no such provision. The quotation is therefore unfounded.

Regarding the environmental protection obligations in Article 40 of the Particular Conditions, Song Da 5 submits that Disposal Area No. 3 is 1.5 km downstream of the Bac Me Hydropower Plant. The Employer approved the Contractor's disposal of spoil there. Disposal activities were subject to supervision by the Supervision Consultant and the Employer, who would have stopped any improper disposal immediately. There was therefore no occasion requiring the Contractor to remove soil and rock that had slipped from Disposal Area No. 3 into the Gam River. Song Da 5 also did not receive the Employer's Letter No. 493/TĐ referred to in the Employer's submission.

Article 5.1 of the Contract Agreement provides: "*The above Contract Price includes, but is not limited to:*

– Costs of constructing and maintaining internal construction roads within the Contractor's working area, ensuring environmental sanitation, and repairing damage to roads inside and outside the site caused by construction activities;

– Costs of restoring the site, landscape and environment affected by Party B's construction activities ..."

Under those provisions, Song Da 5 performed the works in accordance with the Contract and WTO's approved site layout. The Supervision Consultant and Employer signed the acceptance records at the time of construction, and WTO paid for the works. Song Da 5 therefore fulfilled its contractual obligations and committed no breach of construction quality requirements.

b. Landslide downstream of the plant's left abutment

The meeting record dated 17 April 2018 and WTO's confirmation identify the landslide location as "*National Highway 34 downstream of the plant at Km63+750 and part of the concrete slope of the plant's tailrace channel*". Under Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 dated 11 November 2014 and the Employer-approved construction drawings *(namely Volume 18, Tailrace Channel Reinforcement and Retaining Walls, and the National Highway 34 Diversion Road drawings*), that location falls outside Song Da 5's contractual scope. There is therefore no basis for WTO to require Song Da 5 to pay damages or penalties for defective construction.

c. Cracking on the left-bank foundation slope (*above the administration building)*

Clause 1 of Article 26 of the General Conditions provides: "*The warranty period for the works shall run from the date on which the Employer signs the acceptance record for the completed construction component or works for use, and shall be as specified in the Particular Conditions.*" The Particular Conditions specify "*warranty period: 12 months*".

The parties signed Acceptance Record No. 01/HT for completion of the civil works for use on 8 December 2017. The warranty period therefore ran from 8 December 2017 through 8 December 2018. WTO's Letter No. 462/TMXD-ĐTTĐ dated 26 March 2019, requiring Song Da 5 to remedy defects and damage during the Bac Me Hydropower Plant warranty period after that contractual period had expired, was inconsistent with Song Da 5's contractual responsibilities. On 2 July 2020, Song Da 5 issued Letter No. 276/SĐ5-P.QLKT informing the Employer that the plant's defects and damage had been remedied and the warranty period had expired, so Song Da 5 had no further obligation to remedy defects.

d. Collapse of Wall T1

Song Da 5 constructed the works in accordance with the Contract and WTO-approved construction drawings. The Supervision Consultant and WTO supervised the work; quality was ensured, and the parties signed acceptance records for use. Following the collapse of Sections 03 and 04 of Tailrace Wall T1, Song Da 5, at its own expense,

recast the reinforced concrete wall sections in accordance with construction drawings prepared by Power Investment and Development Consulting Joint Stock Company and approved by the Employer on 28 February 2019, and the Wall T1 construction method statement prepared by Song Da 5 and approved by WTO in February 2019. Rectification took place from 1 March to 30 May 2019 under inspection and supervision by the Employer's personnel. After rectification, Song Da 5 issued Letter No. 276/SĐ5-P.QLKT dated 2 July 2020, confirming that the defects and damage had been remedied and the warranty period had expired, so they no longer fell within Song Da 5's responsibilities or obligations. Song Da 5 thus complied with the Contract, its scope of work and the Employer-approved construction drawings. It committed no breach of construction quality requirements, and there is no basis to allow WTO's claim for damages and quality-related penalties.

Song Da 5 rejects WTO's original and supplemental claims in their entirety.

Based on the Contract and its actual performance, Song Da 5 makes the following counterclaims:

1. An order requiring WTO to pay all outstanding sums under Contract 808 as at 25 April 2024, totalling **VND 118,777,128,485** (*one hundred and eighteen billion seven hundred and seventy-seven million one hundred and twenty-eight thousand four hundred and eighty-five dong*);

2. An order requiring WTO to return the original acceptance record for putting the works into use and confirm release of Song Da 5's performance guarantee;

3. An order requiring WTO to pay all performance guarantee fees accrued through 31 December 2025, namely **VND 5,285,561** (*five million two hundred and eighty-five thousand five hundred and sixty-one dong*);

4. An order requiring WTO to pay late-payment penalties under Article 33 of the Contract, calculated at 150% × the State Bank's base interest rate of 9% per annum at the payment due date, i.e. 13.5% per annum, through the hearing date of 8 January 2026, totalling **VND 129,196,827,599** (*with a detailed calculation attached*).

At the hearing, the Defendant's representative requested the Panel not to consider the Plaintiff's supplemental claims for delay and quality-related penalties because they exceeded the scope of the Plaintiff's original claims.

During the proceedings and at the first-instance hearing, the Plaintiff's representative responded to the counterclaims as follows

1. There is no basis to allow Song Da 5's counterclaim seeking an order requiring WTO to pay VND 118,777,128,485:

According to Song Da 5's Statement of Counterclaim dated 25 April 2024, the alleged debt of VND 118,777,128,485 comprises VND 95,184,351,051 for unpaid construction work and VND 23,592,777,434 in warranty retention. Under Contract 808

and in light of actual performance, WTO maintains that there is no sufficient basis to allow the claim because, as at the date of this submission, its obligation to pay those sums has not arisen, specifically:

1.1. The amount of VND 95,184,351,051 for construction work

Article 32 of the Particular Conditions of Contract 808 provides:

"– Time for approval: Party A shall approve the documentation within 15 days after Party B submits complete acceptance and payment documentation.

– Time for payment: No later than 45 days after Party B submits all required supporting documents."

During performance of Contract 808, Song Da 5 failed to comply with the contractual requirements and failed to provide or submit all documents and supporting records required for payment and final settlement of the Project. Specifically, Article 32 of the Particular Conditions provides: *"32. Payment ...*

c. Payment documentation shall comprise:

– A payment request;

– A payment valuation statement;

– An invoice compliant with the Ministry of Finance's requirements;

– Quality acceptance records in Party B's form, approved by Party A before use;

– Cement goods-received notes confirmed by Party A and copies of Party B's cement purchase invoices."

Under those provisions, payment documentation includes quality acceptance records in the Employer-approved form, including construction logs. In practice, the documentation for all instalments preceding Instalment No. 22 included construction logs for the Employer to check and reconcile. This is an important basis for the Employer to exercise its rights and discharge its contractual obligations. The documentation provided by Song Da 5 for Instalments No. 22 to No. 25 was invalid, omitted the corresponding construction logs, did not fully reflect the actual construction period, and lacked log entries up to completion of the work recorded in the acceptance records. WTO repeatedly requested completion of the documentation and reiterated the request at the most recent meeting on 28 March 2024. Song Da 5 still failed to comply, compelling WTO to seek a court order requiring performance of the obligations under Contract 808 and construction law. Since Song Da 5 did not provide valid payment documentation under Article 32 of the Particular Conditions, there is no basis to find that the Employer's payment obligation under that Article has arisen.

Final settlement documentation: Article 45 of the Particular Conditions of Contract 808 provides:

"1. Party B shall prepare Final settlement documentation for the quantities of work

performed. Party A shall pay Party B for the quantities of work accepted.

2. The final account shall be submitted within 30 days after the works are handed over for use. Party B shall prepare the contract Final settlement documentation on the basis of existing documents, including acceptance records and stage payment documentation; only a schedule of those documents is required, and new documents shall be prepared only where they do not already exist. The documentation shall principally comprise:

– As-built documentation confirmed by the parties;

– Acceptance records for completed quantities of work;

– Records confirming additional quantities of work, if any;

– The record of handover of the works for use;

– The statement of the final contract value confirmed by the parties;

– Other relevant documents."

In the legal foundation of Contract 808, the parties agreed that Government Decree No. 48/2010/NĐ-CP dated 7 May 2010 on contracts in construction activities (Decree 48) would govern the Contract. Decree 48 was subsequently replaced by Government Decree No. 37/2015/NĐ-CP dated 22 April 2015 on construction contracts, as amended and supplemented by Government Decree No. 35/2023/NĐ-CP dated 20 June 2023 (Decree 37). Article 22 of Decree 37 prescribes the construction contract Final settlement documentation as follows:

"Article 22. Final settlement of construction contracts ...

2. The contractor shall prepare contract Final settlement documentation appropriate to the type of contract and contract price. The construction contract Final settlement documentation shall conform to the contractual agreements and include:

a) The acceptance record for completion of all work within the contractual scope and additional work outside that scope;

b) A calculation of the final construction contract value (referred to as the A–B final account), specifying the value of completed contractual work; the value of additional quantities, if any, outside the agreed scope; amounts paid or provisionally paid; and the balance payable by the employer to the contractor;

c) As-built documentation and construction logs for contracts involving construction work;

d) Other documents agreed in the contract ..."

In practice, the Contractor failed to comply with those requirements concerning Final settlement documentation:

– Form: the documentation was not signed and sealed by Song Da 5's lawful

representative;

– Content: mandatory documents required by law and Contract 808 were missing, including as-built documentation, work acceptance records, construction logs and other documents or information. Figures concerning the Contractor's financial obligations to the Employer, such as delay penalties, quality-related penalties and damages, were also missing. At the meeting on 19/0/2023, the Employer's representative requested: "*The Employer requests Song Da 5 to provide the Employer with Final settlement documentation, including documents explaining the scheduled milestones.*" The parties agreed: "*By 22/0/2023, Song Da 5 shall provide investment documentation.*" Song Da 5 thus acknowledged that it had not supplied complete Final settlement documentation and undertook to do so, but did not comply. On 28 March 2024, the parties again met concerning payment and Final settlement documentation under Contract 808. They agreed to establish a specialist team comprising WTO and Song Da 5 personnel to review the composition and contents of the payment and Final settlement documentation, the schedule and construction quality, and submit proposals and figures to both parties' management by 7 April 2024. On 29 March 2024, following that meeting, WTO emailed Song Da 5 a list of the documents and information required. As at the date of this submission, however, the parties still had no proposals or figures to submit because Song Da 5 refused to provide further documents or information requested by the Employer. Song Da 5 therefore breached its obligations under Contract 808 and construction law to prepare valid Final settlement documentation for the Employer's approval. Accordingly, under Article 32 of the Particular Conditions quoted above, there is no basis to find that the Employer's obligation to pay the final value of the Project works has arisen.

1.2. Warranty retention of VND 23,592,777,434: Article 26 of the Particular Conditions of Contract 808 provides: *"26. Warranty for the works*

1. Warranty period: 12 months.

2. Warranty requirements: Warranty security: 5% of the Contract Price. Party A shall retain 5% of each payment valuation, starting with the first instalment until the retained amount reaches 5% of the Contract Price before the warranty stage. Party A shall pay this 5% warranty retention within 30 (thirty) days after receiving from Party B a warranty guarantee compliant with these Particular Conditions ...

3.7.3. Warranty guarantee

Party B shall provide Party A with a warranty guarantee equal to 5% of the Contract Price upon acceptance and handover of the works. The guarantee must be issued by BIDV or Vietcombank and remain valid for 12 months from acceptance and handover for use."

As at the date of this submission, WTO had never received a warranty guarantee from Song Da 5 as required by those provisions. The Contractor also failed to cooperate in completing payment and Final settlement documentation and setting off the parties'

reciprocal obligations. There is therefore no basis to require WTO to refund this sum.

2. There is no basis to allow Song Da 5's counterclaim seeking an order requiring WTO to return the acceptance record for putting the works into use

Clause 1 of Article 91 of the 2015 Civil Procedure Code provides on the burden of proof: "*A party requesting the Court to protect its lawful rights and interests must collect, provide and submit documents and evidence to the Court to establish that its request is well-founded and lawful ...*". In this case, the Defendant seeks an order requiring WTO to return the original acceptance record for putting the works into use, but has produced no supporting evidence or legal basis. WTO therefore requests dismissal of this unfounded counterclaim.

3. There is no basis to allow Song Da 5's request that WTO release the performance guarantee and pay the performance guarantee fees

Article 3 of the Particular Conditions of Contract 808 provides: "*Validity of the performance guarantee: The performance guarantee shall remain effective from its issue date until acceptance and handover of the works and Party B's transition to its warranty obligations, or 30 June 2017, whichever is later. If Party B fails to complete on schedule, it shall extend the performance guarantee in line with the actual schedule.*" BIDV's Performance Guarantee No. 120.36.00.018627.8-0572 dated 13 November 2014 similarly provides: "*We irrevocably and unconditionally undertake to pay the Employer any amount up to VND 74,425,015,211 (seventy-four billion four hundred and twenty-five million fifteen thousand two hundred and eleven dong), as stated above, upon the Employer's written notice that the Contractor has breached the contractual schedule and quality requirements during the validity of the performance guarantee. This guarantee shall remain effective from its issue date until acceptance and handover of the works and transition to warranty obligations.*" Furthermore, Article 33 of the Particular Conditions further provides for recovery under the Contractor's performance guarantee: "*Party A shall recover Party B's penalties according to the value of Party B's breach in the following order of priority: (i) first, by deduction from the value of work performed by Party B; (ii) second, if recovery against the value of work is insufficient, by further recovery under Party B's performance guarantee.*" WTO maintains that release of the Contractor's performance guarantee is unwarranted for the following reasons:

First, as at the date of this submission, WTO had never received a warranty guarantee from Song Da 5. There is therefore no basis to terminate the performance guarantee, and the Contractor must extend it in accordance with Article 3 of the Particular Conditions of Contract 808 and BIDV's Performance Guarantee No. 120.36.00.018627.8-9572 dated 13 November 2014 quoted above; and

Second, Song Da 5 seriously breached construction schedule and quality requirements under Contract 808, entitling the Employer to impose contractual penalties. The Contractor also breached its obligation to prepare payment documentation by omitting documents, preventing the Employer from accurately determining the quantities performed

for the purpose of deducting contractual penalties. Under Article 33 of the Particular Conditions, the performance guarantee must therefore remain effective to secure the penalties payable to the Employer. Article 3 of Contract 808 also obliges the Contractor to provide performance security. There is accordingly no basis to allow Song Da 5's counterclaim requiring WTO to pay the cost of maintaining the performance guarantee.

4. There is no basis to allow Song Da 5's counterclaim requiring WTO to pay late-payment penalties

As explained above, WTO's obligation to pay construction costs and release retention to Song Da 5 has not arisen, so late-payment penalties are unwarranted. Furthermore, if the reciprocal obligations were set off in accordance with Contract 808, the Contractor would owe money to the Employer. The foregoing constitutes WTO's response to the counterclaims in Song Da 5's Statement of Counterclaim dated 25 April 2024.

After reviewing the documents accompanying the Statement of Counterclaim, the Plaintiff's authorised representative further submitted:

(1) Most documents accompanying the Defendant's Statement of Counterclaim do not satisfy the statutory requirements for evidence. Clause 1 of Article 95 of the 2015 Civil Procedure Code provides: "*Documents with readable contents shall constitute evidence if they are originals, lawfully notarised or certified copies, or supplied or confirmed by a competent agency or organisation.*"

On examining the Defendant's submissions, WTO found that most were photocopies that did not meet those evidentiary requirements. WTO therefore respectfully requests the Court to reject and exclude from the case file any documents supplied by the Defendant that do not satisfy the statutory requirements for evidence.

(2) WTO disputes the documents that Song Da 5 alleges it sent to WTO. The Statement of Counterclaim refers to numerous such documents, but Song Da 5 has supplied no evidence that it sent them or that WTO's lawful representative received them, specifically:

– Letter No. 46/SĐ5-QLKT dated 12 May 2017 concerning adjustment of the completion milestone for curtain grouting at the left abutment of Bac Me Hydropower Project;

– Letter No. 192/SĐ5-QLKT dated 8 May 2017 concerning adjustment of M8;

– Letter No. 209/SĐ5-QLKT dated 25 May 2017 concerning handover of Milestone 8;

– Invitation No. 501/SĐ5-QLKT dated 29 November 2017 concerning acceptance and handover of the works;

– Letter No. 04/SĐ5-QLKT dated 3 January 2018 concerning adjustment of M8 to 10 December 2017;

– Letter No. 89/SĐ5-KHCL dated 28 February 2017 requesting payment for work under Instalments 15 to 18 of the Bac Me Hydropower Works;

– Letters requesting payment for completed construction work at the Bac Me Hydropower Works: No. 425/SĐ5-TCKT dated 23 October 2017; No. 458/SĐ5-TCKT dated 2 November 2017; No. 521/SĐ5-TCKT dated 11 December 2017; No. 16/SĐ5-TCKT dated 11 January 2018; No. 86/SĐ5-TCKT dated 15 March 2018; No. 90/SĐ5-TCKT dated 4 April 2018; and No. 90/SĐ5-TCKT dated 4 April 2018;

– Letters requesting payment and completion of payment valuation statements for the Bac Me Works: No. 15/SĐ5-TCKT dated 11 January 2018 and No. 169C/SĐ5-TCKT dated 9 May 2018;

– Letters concerning release of the Bac Me Hydropower Project performance guarantee: No. 169F/SĐ5-TCKT dated 9 May 2018; No. 76/SĐ5-TCKT dated 14 March 2019; No. 304A/SĐ5-TCKT dated 1 August 2020; and No. 173/SĐ5-TCKT dated 31 August 2020;

– Letters requesting payment for work at the Bac Me Hydropower Works: No. 224/SĐ5-TCKT dated 28 May 2019; No. 302/SĐ5-TCKT dated 31 July 2020; No. 135A/SĐ5-TCKT dated 20 April 2021; No. 186/SĐ5-TCKT dated 31 May 2021; and No. 248A/SĐ5-TCKT dated 30 June 2021.

WTO requests the Court to require Song Da 5 to supply further evidence that it sent, and WTO's lawful representative received, those documents. Song Da 5 also omitted documents and evidence listed as accompanying the Statement of Counterclaim. The list set out in Notice No. 25 *includes (i) construction logs and (ii) the bailiff's record dated 4 July 2023*. However, when WTO accessed and copied the counterclaim documents at the Court, it found neither item in the case file. WTO respectfully requests the Court to require Song Da 5 to supply those missing documents and evidence.

At the hearing, the Plaintiff's representative requested the Panel to consider that the Defendant's claim for late-payment interest was time-barred.

III. During the proceedings and at the hearing, the representative of BIDV submitted as follows:

The Joint Stock Commercial Bank for Investment and Development of Vietnam *(BIDV)* was summoned as a party with related rights and obligations at the Defendant's request. In relation to Contract No.808 *(according to the Contract copy provided by Song Da 5 with its guarantee application)*, BIDV confirms that it issued two guarantees:

1. Advance Payment Guarantee No. 120.36.00.018628.7-9571 dated 13 November 2014, which has been fully discharged;

2. Performance Guarantee No. 120.36.00.018627.8-9572 dated 13 November 2014. The detailed terms are contained in the documents BIDV supplied to the Court.

The above-mentioned case concerns a dispute between the Plaintiff and Defendant over performance of their Contract. BIDV makes no further submissions or requests.

First-instance Commercial Judgment No. 08/2026/KDTM-ST dated 15 January 2026 of the Regional People's Court No. 4 – Hanoi ordered as follows:

The Plaintiff - Trading Construction Works Organization (WTO)'s claims against the Defendant - Song Da 5 concerning Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 for the Bac Me Hydropower Works *(covering Package XD-01: Construction of the Left-bank Works; XD-02: Construction of the Right-bank Works; and XD-03: Construction of the Left-bank Dam Combined with a Road)*, signed on 11 November 2014 between WTO as the Employer and Song Da 5 as the Contractor, are allowed in part. The Defendant's counterclaims against the Plaintiff are also allowed in part, as follows:

I. For the Plaintiff's claims:

1. WTO's claims against Song Da 5 concerning the above Contract are allowed in part:

1.1. Song Da 5 shall pay WTO construction delay penalties of **VND 111,500,000,000** *(One hundred and eleven billion five hundred million dong)*;

1.2. Song Da 5 shall pay WTO damages totalling **VND 24,973,408,955** *(Twenty-four billion nine hundred and seventy-three million four hundred and eight thousand nine hundred and fifty-five dong)* arising from construction delay, comprising:

1.2a. Additional cost of the Project Management Unit personnel during Song Da 5's delay: **VND 2,626,702,687** *(Two billion six hundred and twenty-six million seven hundred and two thousand six hundred and eighty-seven dong);*

1.2b. Additional supervision consultancy costs payable to Power Engineering Consulting Joint Stock Company 3 during Song Da 5's delay: **VND 1,039,758,200** *(One billion thirty-nine million seven hundred and fifty-eight thousand two hundred dong);*

1.2c. Additional foreign supervision advisory costs payable to Tokyo Electric Power Services Co., Ltd. (TEPSCO) during Song Da 5's delay: **VND 6,078,363,000** *(Six billion seventy-eight million three hundred and sixty-three thousand dong);*

1.2d. Costs of remedying the landslide of the downstream dam during the warranty period, which Song Da 5 failed to remedy, requiring WTO to engage a third party *(Thang Long Construction and Investment Development Joint Stock Company)*: **VND 15,228,585,068 (fifteen billion two hundred and twenty-eight million five hundred and eighty-five thousand and sixty-eight dong).**

The total amount payable by Song Da 5 to WTO under the Contract is **VND 136,473,408,955** ***(One hundred and thirty-six billion four hundred and seventy-three million four hundred and eight thousand nine hundred and fifty-five dong).***

2. The Plaintiff's claims against the Defendant are dismissed in part, in the total amount of **VND 84,393,577,368**, comprising:

(1) VND 84,127,287,493 *(estimated as revenue WTO would allegedly have earned from 191 days of electricity generation but for Song Da 5's delay, for lack of substantiation);*

(2) VND 266,289,875 *(representing part of WTO's loss relating to payments to TEPSCO for a period not accepted)*;

(3) VND 1,838,243,389 *(estimated as penalties of construction quality, for lack of substantiation).*

II. For the Defendant's counterclaims, as follows:

1. Song Da 5's counterclaims against WTO concerning the above Contract are allowed in part:

1.1. WTO shall pay Song Da 5 the entire outstanding contractual debt of **VND 118,777,128,485** *(One hundred and eighteen billion seven hundred and seventy-seven million one hundred and twenty-eight thousand four hundred and eighty-five dong);*

1.2. WTO shall pay Song Da 5 interests on unpaid amounts *(under Interim Payment Certificate (IPC) No.19 to 21 of the above Contract)*, calculated from 30 June 2018 to the hearing date of 15 January 2026, totalling **VND 27,068,020,082** *(Twenty-seven billion sixty-eight million twenty thousand and eighty-two dong)*, as detailed below:

IPC	Amount payable (VND)	Due date	Interest to	Days overdue	Base rate (% p.a.)	Interest payable (VND)
IPC 19	807,700,212	30/6/2018	15/01/2026	2,757	13.5	823,621,864
IPC 20	13,672,413,212	30/6/2018	15/01/2026	2,757	13.5	13,941,928,316
IPC 21	12,064,647,602	30/6/2018	15/01/2026	2,757	13.5	12,302,469,902
TOTAL	26,544,761,026					**27,068,020,082**

The total amount payable by WTO to Song Da 5 under the Contract is **VND 145.845.148.567** *(One hundred and forty-five billion eight hundred and forty-five million one hundred and forty-eight thousand five hundred and sixty-seven dong).*

2. Song Da 5's counterclaims against WTO are dismissed in part, in the total amount of **VND 102,134,093,078** *(One hundred and two billion one hundred and thirty-four million ninety-three thousand and seventy-eight dong)*, comprising VND 5,285,561 in performance guarantee fees and VND 102,128,807,517 in penalties for late-payment from

IPC 01 to 19 and from IPC 21 to 25.

III. Set-off of payment obligations: Following set-off of the parties' reciprocal payment obligations *(under Sections I and II above)*, WTO shall pay Song Da 5 the balance of **VND 9,371,739,594** *(Nine billion three hundred and seventy-one million seven hundred and thirty-nine thousand five hundred and ninety-four dong)*. After both parties discharge those payment obligations, WTO shall release Song Da 5's performance guarantee. The parties shall cooperate in completing the payment procedures under the Contract.

From the day following the first-instance hearing until enforcement is completed, the judgment debtor shall also pay interest on the outstanding judgment debt at the rate prescribed in Clause 2 of Article 468 of the Civil Code.

In addition, the first-instance judgment also ruled on court fees, enforcement rights and the parties' rights of appeal.

Both parties disagreed with First-instance Commercial Judgment No. 08/2026/KDTM-ST dated 15 January 2026 of the Regional People's Court No. 4 – Hanoi and lodged appeals as follows:

- On 26 January 2026, the Plaintiff appealed against part of the judgment *(the Court received the appeal on 27 January 2026)*; accordingly, the Plaintiff requested the People's Court of Hanoi to vary the judgment to allow its claims and dismiss the Defendant's counterclaims.

Grounds of appeal: The challenged findings and orders were inconsistent with the objective circumstances, the documentary evidence in the case file and the law, failed to reflect the true nature of the case, and seriously prejudiced WTO's lawful rights and interests.

- On 15 January 2026, the Defendant appealed against part of the judgment *(the Court received the appeal on 21 January 2026)*. Grounds of appeal: The Defendant argued that the judgment lacked objectivity and fairness and requested the appellate court to vary it by dismissing certain claims of the Plaintiff and allowing the Defendant's counterclaims, specifically:

1. Dismiss the Plaintiff's claims requiring Song Da 5 to pay WTO VND 136,473,408,973, comprising:

(1) Penalties of construction delay of VND 111,500,000,000.

(2) Damages for construction delay, comprising:

- Additional costs of Project Management Unit personnel during the delay: VND 2,626,702,687 *(according to WTO's salary summary and payroll statements for June/2017 through December 2017)*;

- Additional supervision consultancy costs payable to Power Engineering Consulting Joint Stock Company 3: VND 1,039,758,200 (according to the acceptance and payment documentation for IPC6 of 2017 under Consultancy Contract No.

84/2015/HĐTV-VIETTRACIMEX & PECC3 dated 28 January 2015 between WTO and Power Engineering Consulting Joint Stock Company 3 -the Owner's Engineer).

- Additional foreign supervision advisory costs payable to Tokyo Electric Power Services Co., Ltd. (TEPSCO) during the delay from July 2017 to 8 December 2017: VND 6,078,363,000, according to the July 2014 contract between TEPSCO and WTO and TEPSCO's work report for the period from 24 July 2017 to January 2018;

- Costs of remedying the landslide downstream of the plant's dam during the warranty period, which Song Da 5 failed to remedy, requiring **WTC** to engage the third party (Thăng Long Construction and Investment Development Joint Stock Company) to remedy: **VND 15,225,585,068**.

2. Allow the Defendant's claims requiring WTO to return the documentation and pay Song Da 5 VND 134,746,074,563, comprising:

- All performance guarantee fees provisionally calculated through the first-instance hearing date of 8 January 2026: VND 5,241,728,084;

- Contractual late-payment penalties provisionally calculated through the first-instance hearing date of 15 January 2026: VND 129,504,346,479;

- Return of the original Taking-over Certificate of Works for putting the works into use and confirmation of release of Song Da 5's performance guarantee.

At the appellate hearing:

- The authorized representative of the Plaintiff, together with the person protecting the Plaintiff's lawful rights and interests, unanimously presented the following position: They maintained the appeal and the request to partially appeal the First-Instance Judgment, requesting that the Appellate Court amend the First-Instance Judgment in the direction of accepting all of the Plaintiff's claims and dismissing all of the counterclaims of Song Da 5 Joint Stock Company, specifically: (1) To order Song Da 5 Joint Stock Company to pay compensation for damages in the amount of VND 84,393,577,368; (2) To order Song Da 5 Joint Stock Company to pay a contractual penalty of 2% for construction quality violations in the amount of VND 1,838,243,389; (3) To review the part of the First-Instance Judgment accepting the Defendant's counterclaim, whereby WTO was ordered to pay Song Da 5 Joint Stock Company the outstanding contractual amount of VND 118,777,128,485 and interest on Payment Instalments 19 to 21 in the amount of VND 27,068,020,082. The grounds for the appeal were that Song Da 5 Joint Stock Company had breached Contract No. 808 by delaying construction progress and failing to comply with construction quality requirements, contrary to the agreements under Article 3 of Contract No. 808 and Articles 6.3 and 32.2 of the Particular Conditions. The outstanding payment amount had not been clearly determined; therefore, the calculation of interest was not accepted.

- The authorized representative of the Defendant, who had lodged an appeal, presented the following position: They maintained the appeal against part of the First-Instance Judgment and requested that the Appellate Court review and amend the First-

Instance Judgment in the direction of dismissing certain claims of the Plaintiff and accepting certain claims of the Defendant, specifically as follows:

- The duly authorised representative of the Defendant who lodged the appeal presented the Defendant's position as follows: The Defendant maintained its appeal against part of the First-instance Judgment and requested the Appellate Court to review and amend the First-instance Judgment in the direction of dismissing certain claims brought by the Plaintiff and upholding certain claims brought by the Defendant, specifically:

./ To set aside the First-instance Court's decision upholding the Plaintiff's claims and ordering Song Da 5 Joint Stock Company to pay WTO a total amount of **VND 136,473,408,973**, comprising VND 111,500,000,000 in contractual penalties and VND 24,973,408,955 in compensation for losses and damages arising from construction delay.

./ To uphold the Defendant's claims seeking an order requiring WTO to return the relevant documents and pay Song Da 5 the amount of VND 134,746,074,563, comprising:

(i) Performance Guarantee fees provisionally calculated up to the date of the first-instance hearing (8 January 2026), in the amount of VND 5,241,728,084;

(ii) Contractual penalties for late payment (interest on overdue payments under Contract No. 808), provisionally calculated up to the date of the First-instance Judgment (15 January 2026), in the amount of VND 129,504,346,479;

(iii) To order WTO to return to Song Da 5 the original Works Acceptance Record for putting the Works into use and to confirm the release of the Performance Guarantee in favour of Song Da 5.

- The representative of BIDV attending the hearing presented the following position: The Court was requested to consider and resolve the release of BIDV's guarantee in accordance with the law.

- The representative of the Hanoi People's Procuracy presented the following opinions:

Regarding procedural matters: The parties lodging appeals had duly filed their notices of appeal and paid the advance appellate court fees within the prescribed time limit. Accordingly, their appeals were valid.

The Judge and the Trial Panel had complied with the applicable legal provisions throughout the proceedings. The parties' procedural rights and obligations had been ensured both prior to and at the hearing in accordance with the civil procedure laws.

The People's Court of Nam Tu Liem District ***(now the People's Court of Region 4 – Hanoi)*** had accepted and adjudicated the case at first instance in accordance with its jurisdiction and within the applicable limitation period for initiating legal proceedings.

Regarding the merits: After analysing the circumstances of the case and the outcome of the first-instance trial, the representative of the Hanoi People's Procuracy presented the following opinion:

The representative of the Hanoi People's Procuracy requested the Trial Panel, pursuant

to Clause 2 of Article 308 of the Civil Procedure Code and Resolution No. 326/2016/UBTVQH14 dated 30 December 2016 of the Standing Committee of the National Assembly on court fees and charges, to render a judgment amending First-instance Judgment No. 08/2026/KDTM-ST dated 15 January 2026 of the People's Court of Region 4 – Hanoi, as follows: (i) Dismiss the Plaintiff's (WTO's) claims against Song Da 5 Joint Stock Company seeking contractual penalties for construction delay and breaches of construction quality requirements; and dismiss WTO's claims seeking an order requiring Song Da 5 Joint Stock Company to compensate for losses and damages arising from construction delay and breaches of construction quality requirements. (ii) Uphold the part of the Defendant's (Song Da 5 Joint Stock Company's) counterclaim seeking an order requiring WTO to pay Song Da 5 Joint Stock Company the following amounts: the outstanding payment for construction works under the Contract, in the amount of VND 118,777,128,485; and the corresponding interest accrued for the period of late payment. Uphold Song Da 5 Joint Stock Company's request for the release of BIDV's Performance Guarantee on the grounds that the guarantee period had expired (as from the date the Works were transferred to the Warranty Period). iii) Amend the decision on liability for court fees accordingly, in proportion to the obligations to be borne by each litigant in accordance with the law.

FINDINGS OF THE COURT:

Having examined the documents and evidence contained in the case file, which were publicly examined at the court hearing; and having considered the results of the arguments presented at the court hearing, after hearing the opinions of the litigants and the Procurator, the Trial Panel makes the following findings:

[I]. Procedure matters.

The appeals lodged by the Plaintiff (WTO) and the Defendant (Song Da 5 Joint Stock Company) were both submitted to the Court within the statutory time limit, and both parties paid the advance court fees for the appellate proceedings within the prescribed time limit. Accordingly, both appeals are deemed valid.

Regarding the legal relationship in dispute and the Court's jurisdiction: This is a commercial business dispute arising from a construction works contract *(as prescribed in Article 140 of the Construction Law)*, falling within the category of disputes stipulated in Clause 1, Article 30 of the Civil Procedure Code. The Defendant has its registered head office at: 5th Floor, Tower B, HH4 Building, Song Da My Dinh Urban Area, My Dinh 1 Ward, Nam Tu Liem District ***(now Tu Liem Ward)***, Hanoi City. Therefore, the People's Court of Nam Tu Liem District ***(now the People's Court of Region 4 – Hanoi)*** accepted and adjudicated the case at first instance in compliance with the jurisdictional provisions set out at Point b, Clause 1, Article 35 and Point a, Clause 1, Article 39 of the 2015 Civil Procedure Code.

[II]. Consideration of the parties' grounds of appeal

Both parties lodging appeals have expressly stated that their appeals concern only

certain parts of the First-Instance Judgment. Accordingly, the Appellate Court shall review only those parts of the Judgment that have been appealed.

[1]. Regarding the limitation period for initiating legal proceedings: The Defendant, Song Da 5 Joint Stock Company (hereinafter referred to as "Song Da 5 Company" or "Song Da 5"), requested the Court to apply the statutory limitation period to the Plaintiff WTO's additional claims filed on 01 July 2024.

The Court finds as follows: During the performance of Construction Contract No. 808/2014/HĐ-BM/TMXD-SĐ5 dated 11 November 2014, the parties developed a dispute concerning the provision of documents required for acceptance and inspection, as well as the final settlement of the Contract value. The parties held their most recent negotiation meetings in an attempt to resolve the dispute on 19/0/2023; 28 March 2024 and 05 April 2024. However, they were unable to reach an agreement on the outstanding issues. On 09 April 2024, the Plaintiff, WTO Company, filed a statement of claim with the Court. On 01 July 2024, the Plaintiff, WTO Company, submitted an additional statement of claim, requesting the Court to order the Defendant, Song Da 5 Company, to pay contractual penalties for delays in construction progress and breaches of construction quality requirements, and to compensate for losses and damages arising from such delays and quality breaches, in accordance with the agreements entered into by the parties under Contract No. 808 and the Particular Conditions attached thereto. On 25 April 2024, the Defendant, Song Da 5 Joint Stock Company, filed a counterclaim, requesting the Court to order the Plaintiff, WTO, to pay the outstanding amount owed to the Defendant, together with interest on the overdue payment.

The Court considers that the dispute between the parties concerning payment under Construction Contract No. 808/2014/HĐ-BM/TMXD-SĐ5 dated 11 November 2014 is duly established, and that 05 April 2024 was the date on which the parties held their final meeting to discuss the resolution of the dispute. After the Court had accepted the Plaintiff's original claims and the Defendant's counterclaim, the Plaintiff submitted its additional claims on 01 July 2024, directly relating to the disputed Construction Contract in this case. Such additional claims were still within the limitation period for initiating legal proceedings prescribed in Article 429 of the 2015 Civil Code.

Therefore, the First-Instance Court's determination that the Plaintiff's additional claims remained within the applicable limitation period was consistent with the provisions of law.

[2]. Regarding the determination of whether Song Da 5 Company breached the construction completion deadline for Milestone M7 and WTO's claim for liquidated damages for delay.

The Court finds as follows: Pursuant to Construction Contract No. 808/2014/HĐ-BM/TMXD-SĐ5, signed by the parties on 11 November 2014, and Article 6.3 of the Particular Conditions attached to the Contract, Song Da 5 Company was required to complete Milestone M7 by 30 April 2017.

The scope of work under Milestone M7 required Song Da 5 Company to carry out 21 grout holes for seepage control in the project's reservoir area. According to Acceptance Certificate No. 06-LH/VT dated 16 April 2017, duly confirmed by representatives of WTO and the Supervision Consultant, Song Da 5 Company had completed all 21 grouting holes in accordance with the approved design.

On 20 April 2017, Song Da 5 Company issued Letter No. 177/2017-SDD5-QLKT, notifying WTO that the relevant construction works had been completed and inviting the Employer to conduct acceptance and inspection of the works to confirm that the reservoir was ready for impoundment, and that the works were ready for handover.

On 25 April 2017, based on the recommendation of the Supervision Consultant, WTO issued Letter No. 403/TMXD, requesting Song Da 5 Company to carry out an additional 08 concrete-filled drill holes and agreeing to extend the handover deadline for Milestone M7 to 15 May 2017, specifically as follows:

"1. In order to ensure the conditions for reservoir impoundment, Party B shall complete the seepage-control grouting works at the left abutment of the main dam. However, as these works constitute additional works outside the Contract scope due to changes in geological conditions, Party A shall not apply the contractual milestone schedule as the basis for determining the construction period for these works; and

2. In order to ensure the acceptance of Milestone M7 (handover of the works in a condition ready for reservoir impoundment), Party A requests Party B to urgently carry out additional seepage-control grouting at the left dam abutment (drilling and grouting an additional 08 holes as recorded in the site minutes dated 17 April 2017), to be completed before 15 May 2017. Party A agrees to extend the completion deadline for Milestone M7 to 15 May 2017."

By 12 May 2017, Song Da 5 Company had completed 07 out of the 08 drilling holes. As the location of the eighth drilling hole was particularly complex, making it impossible to complete the work within the stipulated time limit, Song Da 5 Company submitted a written request for an extension until 20 May 2017.

On 22 and 25 May 2017, Song Da 5 Company attended meetings with the Employer, the Supervision Consultant and the Design Consultant. At these meetings, the Employer instructed Song Da 5 Company to carry out an additional 08 drilling holes, numbered KT-09 through KT-16.

On 16 June 2017, Song Da 5 Company completed all seepage-control grouting works, and the relevant works were duly accepted and certified by the parties through the signing of acceptance records.

The Court considers as follows: The works under Milestone M7 had been completed by Song Da 5 Company and accepted pursuant to Acceptance Certificate No. 06-LH/VT dated 16 April 2017. The additional grouting works involving 16 drilling holes constituted additional works outside the scope of the design under the Contract. WTO's allegation that the Contractor (Song Da 5) had breached the construction completion deadline by 32 days

(from 15 May 2017 to 16 June 2017) is founded improper for the following reasons:

(i) It was not until 25 May 2017 that WTO instructed Song Da 5 Company to carry out the additional grouting works involving 08 drilling holes numbered KT-09 through KT-16. However, WTO failed to take into account the time required by Song Da 5 Company to perform these additional works when determining the alleged delay.

(ii) In Letter No. 403/TMXD dated 25 April 2017, WTO's representative had expressly acknowledged that these works were additional works outside the Contract scope and that the time required for their execution would not be counted towards the contractual milestone completion period. WTO's representative agreed to extend the handover deadline for Milestone M7 to 15 May 2017 in order to allow Song Da 5 Company sufficient time to diligently carry out the additional works, given that Song Da 5 Company had in fact completed the works under Milestone M7 as early as 20 April 2017.

Furthermore, the Report of the Supervision Consultant submitted to the Employer and prepared on 28 May 2017 also confirmed that, as of the date of the report, Song Da 5 Company had completed Milestone M7.

Accordingly, WTO's allegation that Song Da 5 Company had breached the construction completion deadline for Milestone M7 by 32 days is unfounded. The First-Instance Court's decision to uphold this claim brought by WTO and, pursuant to Article 33.2 of the Particular Conditions attached to Contract No. 808, order Song Da 5 Company to pay a contractual penalty of VND 16 (sixteen) billion was therefore incorrect. Song Da 5 Company's appeal against this part of the First-Instance Judgment is well-founded and should therefore be accepted.

[3]. Regarding the determination of whether Song Da 5 Company breached the construction completion deadline for Milestone M8 and WTO's claim for contractual penalties for delay.

The Court finds as follows: Pursuant to Article 6.3 of the Particular Conditions attached to Contract No. 808, Song Da 5 Company was required to hand over Milestone M8 by 31 May 2017. In fact, the parties confirmed that Milestone M8 was not handed over by Song Da 5 Company to WTO until 08 December 2017, as evidenced by the Works Acceptance Certificate. Accordingly, WTO alleged that Song Da 5 Company had breached the construction completion deadline by 191 days and claimed contractual penalties pursuant to Article 33.2 of the Particular Conditions in the amount of VND 95,500,000,000 *(Ninety-five billion five hundred million Vietnamese dong).*

The Court considers as follows: It is correct that Song Da 5 Company completed and handed over Milestone M8 191 days later than the contractual deadline. However, the delay in handing over Milestone M8 resulted from both objective and subjective causes and was not entirely attributable to the Contractor (Song Da 5 Company), for the following reasons:

(i) The additional works arising under Milestone M7 (which were not completed until 16 June 2017) also resulted in an extension of the construction period for Milestone

M8;

(ii) During the execution of the Works, a force majeure event occurred, namely a flood exceeding the design flood frequency on 12 November 2015, which resulted in the suspension of construction activities for several days (12 days);

(iii) During the execution of the Works, objective impediments also arose due to the delayed handover of the construction site by the Employer and other interfacing contractors, specifically as follows:

- On 19 March 2017, Song Da 5 Company completed the structural works for the floor at elevation 122.5 m. However, as of 08 May 2017, the Contractor had still not been handed over the site to carry out the subsequent construction works. Accordingly, Song Da 5 Company issued Letter No. 192/SĐ5-QLKT dated 08 May 2017 to WTO, requesting an adjustment to the construction schedule for Milestone M8.

- On 25 May 2017, Song Da 5 Company issued Letter No. 209//SĐ5-QLKT to WTO, requesting the handover of the construction site and an extension of the completion deadline for Milestone M8.

In fact, the handover of the construction site by the equipment supplier/contractor (Zhefu) and the contractor of electromechanical installation (LILAMA 45.3), being the interfacing contractors, to Song Da 5 Company for completion of the relevant works was delayed and carried out in several separate phases, specifically as follows:

- On 11 July 2017, LILAMA 45.3 and ZHEFU handed over the work areas for the "Governor Oil Tank and High-Pressure Oil Tank on the floor at elevation 122.5 m" to Song Da 5 Company for construction.

- On 15 July 2017, LILAMA 45.3 and ZHEFU handed over the work areas for the "02 servomotors of Unit No. 2" to Song Da 5 Company for construction.

- On 31 August 2017, LILAMA 45.3 and ZHEFU handed over the work areas for the "02 lateral support bearings of the bulb head of Unit No. 2" to Song Da 5 Company for construction.

- On 05 October 2017, LILAMA 45.3 and ZHEFU handed over the work areas comprising the "floors at elevations 117.5 m and 122.5 m" to Song Da 5 Company for concrete topping works. The work areas were subsequently handed over on 18 October 2017 to Song Da 5 Company for floor painting works.

- On 16 November 2017, ZHEFU handed over the work area comprising the "floor at elevation 122.5 m *(equipment lowering opening location)"* to Song Da 5 Company for construction.

Therefore, it was not until 16 November 2017 that Song Da 5 Company received full access to the site required to complete the remaining works (as evidenced by duly executed Site Handover Minutes). After receiving full access to the site, Song Da 5 Company required at least 21 days to complete the outstanding works. Accordingly, the fact that Song Da 5 Company did not complete the construction works and hand over the

Works to WTO until 08 December 2017 was determined to have been largely attributable to objective impediments and WTO's failure to provide adequate cooperation and coordination. Song Da 5 Company's fault lay in its failure to proactively and diligently negotiate with the Employer to execute a Contract Addendum extending the construction completion deadlines and handover dates for the relevant work items in accordance with the agreed commitments, despite the occurrence of additional works and the delayed handover of the construction site by the Employer and other contractors.

The First-Instance Court's failure to examine and assess the objective circumstances relating to the additional works outside the Contract scope, the force majeure event and the objective impediments encountered by Song Da 5 Company during the execution of Milestone M8 (being the final milestone under Construction Contract No. 808 dated 11 November 2014), before upholding WTO's entire claim for contractual penalties for the 191-day delay, was therefore inappropriate.

The Court further considers as follows: It is correct that Song Da 5 Company's handover of Milestone M8 to WTO was delayed by 191 days. However, during the construction period, the Contractor was unable to carry out construction works for 12 days due to a flood exceeding the design flood frequency, which constituted a force majeure event (from 31 October 2015 to 12 November 2015). Song Da 5 Company had duly notified WTO of this event by Letter No. 704/SĐ5-QLKT dated 16 November 2015. The remaining delay amounted to 179 days and resulted from objective impediments caused by the Employer and the interfacing contractors' delayed handover of the construction site. Accordingly, Song Da 5 Company shall bear one-third (1/3) of the responsibility for the breach of the Milestone M8 handover deadline, equivalent to 60 days of delay, with the contractual penalty calculated pursuant to Article 33.2 of the Particular Conditions attached to Contract No. 808 as follows: 60 days × VND 500,000,000/day = **VND 30,000,000,000** *(Thirty billion Vietnamese dong)*. **(*)**

The Bac Me Hydropower Project in Ha Giang Province does not fall within the category of projects financed by public investment capital or state capital other than public investment capital, as provided for in Clause 2, Article 146 of the Law on Construction, since the project is self-funded, self-managed and the Works are independently operated and utilized. Therefore, the breaching party shall be liable for the contractual penalty in accordance with the agreement between the parties under the Contract. However, the First-Instance Court's decision to uphold the Plaintiff's entire claim and impose contractual penalties on Song Da 5 Company for the full 191-day delay, without considering the force majeure event and objective impediments encountered by Song Da 5 Company during the construction process, was inappropriate. Accordingly, the First-Instance Judgment must be amended to uphold only part of WTO's claim for contractual penalties, in accordance with the foregoing analysis.

[4]. Regarding the date of acceptance of the entire construction works for commissioning and operation

Based on the documents contained in the case file and the statements made by the

parties before the Court, it is established that: On 08 December 2017, WTO and Song Da 5 Company signed Acceptance Certificate No. 01/HT entitled "Acceptance of Completion of the Construction Works for Putting into Use". This Acceptance Certificate bears the signatures of the parties to the Contract and Power Engineering Consulting Joint Stock Company 3 (the Ownr's Engineer); in fact, the Bac Me Hydropower Plant was already in operation at that time.

Pursuant to the agreement recorded in Section 26 of Construction Contract No. 808/2014/HĐ-BM/TMXD-SĐ5 dated 11 November 2014, there are sufficient grounds to determine that the Construction Works were accepted by the two parties on 08 December 2017 and subsequently entered the Defects Liability/Warranty Period. Accordingly, the warranty period for the Works was one (01) year, commencing on 08 December 2017 and expiring at the end of 08 December 2018.

[5]. Consideration of Song Da 5 Company's claim for interest on overdue payments by WTO

[5.1]. Based on the documents and evidence contained in the case file, together with the parties' confirmations, there are sufficient grounds to establish that the total amount outstanding and payable by WTO to Song Da 5 Company under Construction Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 dated 11 November 2014, as of 25 April 2024, was **VND 118,777,128,485** (1), comprising: Outstanding payment for construction works: VND 95,184,351,051; Amount retained by WTO as retention money for the warranty period: VND 23,592,777,434. The First-Instance Court's decision ordering WTO to pay this amount to Song Da 5 Company was well-founded and in accordance with the law.

Furthermore, the First-Instance Court upheld Song Da 5 Company's counterclaim and ordered WTO to pay Song Da 5 Company interest for late payment in respect of Interim Payment Certificates Nos. 19 through 21, calculated from 30 June 2018 to the date of the Court's first-instance hearing on 15 January 2026, in the amount of **VND 27,068,020,082** (2). This decision was well-founded. Accordingly, the appeal lodged by the Defendant, WTO, against these parts of the First-Instance Judgment is unfounded and should not be accepted.

As analysed in Section [4] above, the warranty period for the Works was one (01) year and expired on 08 December 2018. Upon expiry of the warranty period, the Employer, WTO, was required to refund to Song Da 5 Company the 5% retention money in the amount of VND 23,592,777,434 *(Twenty-three billion five hundred and ninety-two million seven hundred and seventy-seven thousand four hundred and thirty-four Vietnamese dong).*

During the proceedings, the Defendant requested the Court to order WTO to pay interest on this overdue amount. However, the First-Instance Court's refusal to award interest on the retention money of VND 23,592,777,434, which should have been refunded to Song Da 5 Company upon expiry of the warranty period on 08 December 2018, calculated up to the date of the first-instance hearing on 15 January 2026 (a total of 2,592 days), was inappropriate. Accordingly, WTO must be ordered to pay Song Da 5 Company interest on this overdue amount, calculated as follows:

VND 23,592,777,434 × 2,592 / 365 × 13.5% per annum = **VND 22,618,040,218** [3].

[5.2]. Regarding overdue payments in respect of Interim Payment Certificates Nos. 22 through 25:

WTO's argument that it had not made payment because Song Da 5 Company had failed to submit complete payment documentation (specifically, the construction site diaries) is unfounded, for the following reason: The absence of construction site diaries does not constitute a valid ground for withholding payment, since the parties had already signed the acceptance records confirming the completed quantities of work and had handed over the Works for use. Accordingly, WTO was obliged to make payment and was liable for interest arising from late payment. Song Da 5 Company's claim for late-payment interest from WTO in respect of the following interim payment instalments: Payment Instalment No. 22: VND 11,916,819,933; Interim Payment Instalment No. 23: VND 14,626,619,508; Interim Payment Instalment No. 24: VND 16,782,040,019; and Interim Payment Instalment No. 25: VND 5,009,525,376; totalling VND 48,335,004,836 in interest for late payment in respect of Interim Payment Instalments Nos. 22 through 25, is therefore well-founded and should be accepted.

The First-Instance Court's decision to reject this part of the Defendant's counterclaim was inappropriate. Accordingly, this part of the Judgment should be amended to uphold the Defendant's claim.

[5.3]. Regarding Song Da 5 Company's request for the release of BIDV's guarantee and for WTO to reimburse the guarantee fees incurred from 08 December 2017 (the date on which the Works entered the warranty period) through 31 December 2025.

Article 3 of Contract No. 808, the Parties agree as follows:

"1. The Contractor shall be obliged to provide Performance Security in accordance with the requirements set out in the Particular Conditions in order to secure its obligations and responsibilities in the performance of the Contract.

2. The Performance Security shall be payable to the Employer as compensation for any losses or damages arising from the Contractor's failure to fulfil its obligations and responsibilities under the Contract.

3. The Employer shall return the Performance Security to the Contractor within the period specified in the Particular Conditions."

As stipulated in Article 3 of the Particular Conditions attached to Contract No. 808, the parties agree regarding Performance Security as follows:

"3.1.1....

Validity of the Performance Security: The Performance Security shall remain valid from the date of its issuance until the Works have been accepted and handed over and Party B has entered into its warranty obligations in accordance with the applicable provisions, or until 30 June 2017, whichever occurs later. In the event that Party B fails to complete the Works within the prescribed schedule, Party B shall extend the validity of the

Performance Security in accordance with the actual construction schedule..."

During the proceedings before the Court, the representative of the Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV) stated that BIDV confirmed having issued the following two guarantee letters:

(i) Advance Payment Refund Guarantee Letter No. 120.36.00.018628.7-9571 dated 13 November 2014. This guarantee had already been settled and discharged.

(ii) Performance Security Guarantee Letter No. 120.36.00.018627.8-9572 dated 13 November 2014. The specific terms and conditions of these guarantee letters are set out in the documents provided by BIDV to the Court. In particular, the Performance Security Guarantee Letter expressly stipulates that the guarantee shall terminate when the construction works covered by the guarantee enter the warranty period. However, since Song Da 5 Company had failed to submit to BIDV the original Acceptance Certificate for the construction works dated 08 December 2017, which was required to establish that the Works had entered the warranty period, BIDV was unable to release the guarantee. BIDV therefore requested the Court to consider and resolve the matter in accordance with the law and stated that it would release the guarantee upon issuance of the Court's decision.

As analysed in Section [4] above, there are sufficient grounds to establish that the construction works were accepted by the parties to the Contract on 08 December 2018. Accordingly, the construction works entered the warranty period pursuant to Article 3 of Contract No. 808 and the provisions of the Law on Construction. On this basis, the Court determines that the construction works performed by the Contractor, Song Da 5 Joint Stock Company, under the project entered the warranty period on 08 December 2017. Consequently, BIDV's guarantee obligations in respect of the construction works under Performance Security Guarantee Letter No. 120.36.00.018627.8-9572 dated 13 November 2014 shall terminate with effect from 09 December 2017. Therefore, there are sufficient grounds to uphold this part of the Defendant's appeal.

According to the Summary of Additional Guarantee Fees Incurred from the First Quarter of 2018 through the Fourth Quarter of 2025, prepared by Song Da 5 Company and certified by BIDV's representative, the additional guarantee fees paid by Song Da 5 Company to BIDV amounted to VND 5,241,728,084 *(Five billion two hundred and forty-one million seven hundred and twenty-eight thousand and eighty-four Vietnamese dong)*. Song Da 5 Company requested WTO to reimburse this amount.

Based on the agreement between WTO and Song Da 5 Joint Stock Company under Article 3 of Contract No. 808, the Trial Panel finds that, pursuant to the terms of Performance Security Guarantee Letter No. 120.36.00.018627.8-9572 dated 13 November 2014, BIDV's guarantee obligations were to terminate once the construction works covered by the guarantee entered the warranty period. Accordingly, the guarantee should have been terminated immediately after 08 December 2017, had the parties to Contract No. 808 acted in good faith and cooperated with each other.

The Court further finds that the amount of VND 5,241,728,084 in guarantee fees

payable to BIDV from the First Quarter of 2018 through the Fourth Quarter of 2025 represents additional costs incurred and paid by Song Da 5 Company to BIDV. The Trial Panel determines that the additional guarantee fees were incurred due to the fault of both Song Da 5 Company and WTO. Accordingly, each party shall bear 50% of the additional guarantee fees, calculated as follows: **VND 5,241,728,084 ÷ 2 = VND 2,620,864,042.** Therefore, the Trial Panel decides to uphold part of Song Da 5 Company's counterclaim and orders WTO to reimburse Song Da 5 Joint Stock Company for one-half (1/2) of the fees for maintaining the Performance Security, in the amount of **VND 2,620,864,042** (5).

[6]. Regarding the compensation awarded under the First-Instance Judgment

The First-Instance Court decided to order Song Da 5 Company to pay WTO compensation for losses and damages arising from Song Da 5 Company's delay in construction progress, in the total amount of **VND 24,973,408,955**, comprising:

(i) Additional personnel costs incurred by the Project Management Board during the period of construction delay, amounting to **VND 2,626,702,687** *(based on the Summary of Salary Expenses and the Salary Payment Statements of WTO Company for the period from June 2017 through December 2017)*;

(ii) Additional costs of engaging the Owner's Engineer (Power Engineering Consulting Joint Stock Company 3) incurred during the period of construction delay, amounting to **VND 1,039,758,200** *(based on the payment and acceptance documentation for Interim Payment Instalment No. 6 of 2017 under Consultancy Contract No. 84/2015/HĐTV-VIETTRACIMEX & PECC3 dated 28 January 2015, entered into between WTO Company and the Owner's Engineer, Power Engineering Consulting Joint Stock Company 3);*

(iii) Additional costs of engaging a foreign supervision consultant *(Tokyo Electric Power Services Co., Ltd. (TEPSCO), incurred during the period of construction delay (from July 2017 to 08 December 2017)*, amounting to **VND 6,078,363,000** *(based on the contract entered into between TEPSCO and WTO in July 2014 and TEPSCO's work reports covering the period from 24 July 2017 through January 2018)*;

(iv) Costs of remedial works and rectification of the erosion and landslide at the downstream area of the power plant dam during the warranty period (because Song Da 5 Company failed to carry out the necessary remedial and rectification works, WTO was required to enter into a contract with a third party, namely *Thang Long Investment Development and Construction Joint Stock Company)* to carry out such works, at a cost of **VND 15,228,585,068.**

The Court considers as follows: It is correct that Song Da 5 Company breached the agreed construction completion schedule by failing to hand over Milestone M8 on time. However, as analysed in Sections [2] and [3] above, Song Da 5 Company's delay arose from force majeure events and/or objective impediments, with the delay being primarily attributable to objective causes. Furthermore, given the extended construction period of the Project, the additional costs incurred by the Employer for the Project Management Board's personnel, the engagement of the Supervision Consultant and the engagement of the

foreign supervision consultant related to all contractors participating in the Project, rather than being costs incurred exclusively to address or remedy Song Da 5 Company's contractual breaches. Accordingly, liability for these additional costs should be borne by all contractors who breached their respective construction completion deadlines.

Therefore, the Trial Panel determines that Song Da 5 Company shall bear 50% of the costs specified in Items (i), (ii) and (iii) above, with the resulting compensation payable amounting to **VND 4,872,411,944.**

- Regarding the amount awarded by the First-Instance Court under Item (iv), namely **VND 15,228,585,068**, which Song Da 5 Company was ordered to pay to WTO as compensation for the costs of remedial works and rectification of erosion and landslides at the downstream area of the power plant dam during the warranty period *(which WTO arranged to be carried out by Thang Long Investment Development and Construction Joint Stock Company under a separate contract due to Song Da 5 Company's failure to undertake such remedial works):*

The Court considers as follows: The First-Instance Court's determination that the Works were still within the warranty period and that the actual losses incurred for remedial works were sufficient grounds to order Song Da 5 Company to pay compensation was inappropriate, for the following reasons: The entire area affected by erosion and landslides at the downstream section of the power plant dam does not fall within the scope of works undertaken by Song Da 5 Company under the Project and, therefore, does not fall within Song Da 5 Company's warranty obligations. Furthermore, in its adjudication, the First-Instance Court determined that Song Da 5 Company had not breached the construction quality requirements and accordingly rejected the Plaintiff's claim for contractual penalties for breaches of construction quality by Song Da 5 Company. Song Da 5 Company had carried out spoil disposal at Spoil Disposal Area No. 3 as designated by the Employer and under the supervision of the Supervision Consultant. No competent authority has determined that the landslide occurring on the opposite side of Spoil Disposal Area No. 3 was caused by the disposal of spoil at Spoil Disposal Area No. 3. Accordingly, in its capacity as the Employer, WTO bears responsibility for carrying out the necessary remedial works to rectify the landslides. Therefore, there are no grounds to order Song Da 5 Company to compensate WTO for the remedial costs in the amount of **VND 15,228,585,068.**

[7]. Regarding WTO's claims for contractual penalties and compensation for damages arising from alleged breaches of construction quality by Song Da 5 Company

Throughout the proceedings, WTO failed to produce any documents, evidence or conclusions issued by a competent state authority establishing that Song Da 5 Company had committed any breaches of construction quality requirements. The handover minutes for the construction work items from Milestone 1 through Milestone 8 all bear the signatures of the representatives of the Employer (WTO Company), the Contractor (Song Da 5 Company) and the Supervision Consultant. Accordingly, the First-Instance Court's decision rejecting this part of the Plaintiff's claims was well-founded and consistent with

the provisions of law.

[8]. Based on the foregoing analysis, the Trial Panel finds that there are sufficient grounds to amend the First-Instance Judgment in the following manner: To uphold part of the Plaintiff's claims (WTO Company), and accordingly order Song Da 5 Joint Stock Company to pay WTO Contractual penalties for delay in construction progress in the amount of **VND 30,000,000,000** (*Thirty billion Vietnamese dong*); and Compensation for actual costs incurred as a result of construction delays in the amount of **VND 4,872,411,944** *(Four billion eight hundred and seventy-two million four hundred and eleven thousand nine hundred and forty-four Vietnamese dong).*

Accordingly, the total amount payable by Song Da 5 Joint Stock Company to WTO is VND **30,000,000,000 + VND 4,872,411,944 = VND 34,872,411,944** *(Thirty-four billion eight hundred and seventy-two million four hundred and eleven thousand nine hundred and forty-four Vietnamese dong).*

[9]. Based on the foregoing analysis, the Trial Panel finds that there are sufficient grounds to uphold the Defendant's appeal and to uphold part of the Defendant's counterclaim (Song Da 5 Joint Stock Company). Accordingly, the First-Instance Judgment shall be amended to order WTO Company to pay the Defendant the following amounts: 1. Outstanding unpaid amounts for the construction works: **VND 118,777,128,485**; 2. Interest for late payment in respect of Interim Payment Instalments Nos. 19 through 21, calculated from 30 June 2018 to 15 January 2026 (as determined in the First-Instance Judgment): **VND 27,068,020,082**; 3. Interest on the overdue retention money: **VND 22,618,040,218**; 4. Interest for late payment in respect of Interim Payment Instalments Nos. 22 through 25: **VND 48,335,004,836**; and 5. Fees for maintaining the Performance Security payable by Song Da 5 Joint Stock Company to BIDV: **VND 2,620,864,042**.

The total amount payable by WTO Company to Song Da 5 Company is calculated as follows: **VND 118,777,128,485 + VND 27,068,020,082 + VND 22,618,040,218 + VND 48,335,004,836 + VND 2,620,864,042 = VND 219,419,057,663** *(Two hundred and nineteen billion four hundred and nineteen million fifty-seven thousand six hundred and sixty-three Vietnamese dong).*

[10]. After setting off the respective amounts payable by the parties against each other, WTO Company shall remain liable to pay Song Da 5 Company the balance of: **VND 219,419,057,663 – VND 34,872,411,944 = VND 184,546,645,719** *(One hundred and eighty-four billion five hundred and forty-six million six hundred and forty-five thousand seven hundred and nineteen Vietnamese dong).*

[11]. Song Da 5 Joint Stock Company shall be responsible for paying BIDV the entire amount of guarantee fees under BIDV's Performance Security Guarantee Letter No. 120.36.00.018627.8-9572 dated 13 November 2014.

[12]. Regarding Song Da 5 Company's request to order WTO Company to reimburse the fees for maintaining the Performance Security payable to BIDV under Performance Security Guarantee Letter No. 120.36.00.018627.8-9572 dated 13 November 2014, in the

amount of **VND 5,241,728,084** *(Five billion two hundred and forty-one million seven hundred and twenty-eight thousand and eighty-four Vietnamese dong)*, calculated up to the date of the first-instance hearing on 15 January 2026.

In the First-Instance Judgment, the Trial Panel, when considering and ruling on this claim, only took into account the amount of **VND 5,285,561** *(Five million two hundred and eighty-five thousand five hundred and eighty-one Vietnamese dong)* claimed by Song Da 5 Company as guarantee maintenance fees. This was an error and should be noted for future reference. The Appellate Court amends this part of the Judgment concerning the above claim in accordance with the law.

[13]. The remaining parts of the First-Instance Judgment that were not appealed or protested against shall take legal effect upon expiry of the statutory time limit for lodging appeals or protests.

[14]. Liability for court fees

- Regarding first-instance court fees: As the First-Instance Judgment is amended, the decision on - first-instance court fees must also be amended accordingly, taking into account the portions of the parties' claims and counterclaims that were rejected by the Court and the obligations that each party is required to perform. Accordingly, the Plaintiff shall bear court fees in respect of the portion of its claims that was rejected by the Court (VND 187,832,817,786) and the portion of the Defendant's counterclaim upheld by the Court (VND 219,419,057,663). The Defendant shall bear court fees in respect of the portion of its counterclaim that was rejected by the Court (VND 33,796,626,505) and the portion of the Plaintiff's claims upheld by the Court (VND 34,872,411,944).

- Regarding appellate court fees: The party whose appeal is upheld (Song Da 5 Company) shall not be liable for appellate court fees. The party whose appeal is rejected (WTO Company) shall be liable for appellate court fees.

For the foregoing reasons,

Pursuant to Articles 147 and 148; Clause 2, Article 308; and Article 309 of the 2015 Civil Procedure Code;

Pursuant to Articles 26 and 29 of Resolution No. 326/2016/UBTVQH14 dated 30 December 2016 of the Standing Committee of the National Assembly on court fees and charges.

DECISION:

[I]. To partially accept the appeal lodged by Song Da 5 Joint Stock Company; and to dismiss the appeal lodged by Construction and Trading Joint Stock Corporation. To amend part of First-Instance Judgment No. 08/2026/KDTM-ST dated 15 January 2026 of the People's Court of Region 4 – Hanoi, specifically as follows:

Pursuant to Articles 357, 429 and 468 of the 2015 Civil Code;

Pursuant to Articles 113, 138, 139, 140, 141, 144, 146 and 147 of the 2014 Law on

Construction;

Pursuant to Articles 14, 15, 21 and 26 of Government Decree No. 48/2010/ND-CP dated 7 May 2010; and Articles 19, 20, 21, 22 and 42 of Government Decree No. 37/2015/ND-CP dated 22 April 2015, providing detailed regulations on construction contracts;

Pursuant to Resolution No. 01/2019/NQ-HDTP dated 11 January 2019 of the Council of Judges of the Supreme People's Court, guiding the application of certain provisions of law on interest, interest rates and contractual penalties.

Decides:

To partially accept the claims of the Plaintiff, Construction and Trading Joint Stock Corporation (WTO Company), against the Defendant, Song Da 5 Joint Stock Company, **in relation to the dispute over Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 – Bac Me Hydropower Project – Construction Package XD-01: Construction of the Left Bank Works; XD-02: Construction of the Right Bank Works; and XD-03: Construction of the Left Bank Dam in Combination with the Road Works, signed on 11 November 2014, between Construction and Trading Joint Stock Corporation and Song Da 5 Joint Stock Company;** and to partially accept the Defendant's counterclaim against the Plaintiff, specifically as follows:

[1]. Regarding the Plaintiff's claims:

To partially accept the claims of the Plaintiff, WTO Company, against the Defendant, Song Da 5 Joint Stock Company, in relation to the dispute over the above-mentioned Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5, specifically as follows:

[1.1]. To order Song Da 5 Joint Stock Company to pay WTO Company a contractual penalty for delay in construction progress in the amount of **VND 30,000,000,000** *(Thirty billion Vietnamese dong).*

[1.2]. To order Song Da 5 Joint Stock Company to compensate WTO Company for actual costs incurred as a result of Song Da 5 Joint Stock Company's delay in construction progress, in the amount of **VND 4,872,411,944** *(Four billion, eight hundred and seventy-two million, four hundred and eleven thousand, nine hundred and forty-four Vietnamese dong).*

The total amount payable by Song Da 5 Joint Stock Company to WTO Company under the above-mentioned Contract No. 808 is **VND 34,872,411,944** *(Thirty-four billion, eight hundred and seventy-two million, four hundred and eleven thousand, nine hundred and forty-four Vietnamese dong).*

[1.3]. To dismiss the Plaintiff's claim for damages against the Defendant in the total amount of VND **89,265,989,312** *(Eighty-nine billion, two hundred and sixty-five million, nine hundred and eighty-nine thousand, three hundred and twelve Vietnamese dong),* comprising: (i) VND 84,127,287,493 *(being the revenue that WTO Company would have earned from electricity generation over the 191-day period had Song Da 5 Joint Stock*

Company not delayed construction, which claim is unsupported by sufficient grounds); (ii) VND 266,289,875 *(being part of the damages paid by WTO Company to TEPSCO corresponding to the period not accepted by the Court)*; and (iii) VND 4,872,411,944 *(being 50% of the actual costs incurred and paid by WTO Company to the Project Management Board, the Supervision Consultant and the foreign supervision consultant as a result of the delay in construction progress).*

[1.4]. To dismiss the Plaintiff's claim against the Defendant for a contractual penalty for construction quality violations, calculated at 2% of the value of the non-compliant works, in the amount of VND 1,838,243,389 *(One billion, eight hundred and thirty-eight million, two hundred and forty-three thousand, three hundred and eighty-nine Vietnamese dong).*

[2]. Regarding the Defendant's counterclaim:

To partially accept the counterclaim of Song Da 5 Joint Stock Company against WTO Company in relation to the dispute over the above-mentioned Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5, specifically as follows:

[2.1]. To order WTO Company to pay Song Da 5 Joint Stock Company the entire outstanding amount owed under the above-mentioned Contract, being **VND 118,777,128,485** *(One hundred and eighteen billion, seven hundred and seventy-seven million, one hundred and twenty-eight thousand, four hundred and eighty-five Vietnamese dong).*

[2.2]. To order WTO Company to pay Song Da 5 Joint Stock Company interest on the outstanding amounts (for Payment Instalments 19 to 21 under the above-mentioned Contract), calculated from 30 June 2018 to the date of the Court's hearing, 15 January 2026, in the amount of **VND 27,068,020,082** *(Twenty-seven billion, sixty-eight million, twenty thousand and eighty-two Vietnamese dong).*

[2.3]. To order WTO Company to pay Song Da 5 Joint Stock Company interest on the outstanding amounts (for Payment Instalments 22 to 25 under the above-mentioned Contract), calculated from 30 June 2018 to the date of the Court's hearing, 15 January 2026, in the amount of **VND 48,335,004,836** *(Forty-eight billion, three hundred and thirty-five million, four thousand, eight hundred and thirty-six Vietnamese dong).*

[2.4]. To order WTO Company to pay Song Da 5 Joint Stock Company interest on the amount equivalent to 5% of the Contract value retained by WTO Company as retention money for the warranty of the Works, calculated from 8 December 2018 to the date of the Court's hearing, 15 January 2026, in the amount of **VND 22,618,040,218** *(Twenty-two billion, six hundred and eighteen million, forty thousand, two hundred and eighteen Vietnamese dong).*

[2.5]. To order WTO Company to reimburse Song Da 5 Joint Stock Company for the fees for maintaining the Performance Security Guarantee incurred and paid to BIDV under Performance Security Guarantee No. 120.36.00.018627.8-9572 dated 13 November 2014, in the amount of **VND 2,620,864,042** *(Two billion, six hundred and twenty million,*

eight hundred and sixty-four thousand and forty-two Vietnamese dong).

The total amount payable by WTO Company to Song Da 5 Joint Stock Company under Contract No. 808/2014/HĐXD-BM/TMXD-SĐ5 is **VND 219,419,057,663** *(Two hundred and nineteen billion, four hundred and nineteen million, fifty-seven thousand, six hundred and sixty-three Vietnamese dong).*

[2.6]. To dismiss part of the counterclaim of Song Da 5 Joint Stock Company against WTO Company in respect of the claimed amount of **VND 33,796,626,505** *(Thirty-three billion, seven hundred and ninety-six million, six hundred and twenty-six thousand, five hundred and five Vietnamese dong)*, comprising the claim for WTO Company to pay the Performance Security Guarantee fees and the claim for WTO Company to pay interest arising from late payment for Interim Payment Instalments 01 to 19.

[3]. Regarding the request for release of the guarantee:

Song Da 5 Joint Stock Company shall be responsible for paying the entire amount of the guarantee maintenance fees under Performance Security Guarantee No. 120.36.00.018627.8-9572 dated 13 November 2014 issued by BIDV. Upon full payment of the guarantee fees by Song Da 5 Joint Stock Company, BIDV shall be responsible for releasing Performance Security Guarantee No. 120.36.00.018627.8-9572 dated 13 November 2014 in accordance with applicable laws and the Bank's regulations.

[4]. Set-off of payment obligations:

Following the set-off of the payment obligations between the Plaintiff and the Defendant, *as determined in Sections [1] and [2] above*, WTO Company shall remain liable to pay Song Da 5 Joint Stock Company the amount of **VND 184,546,645,719** *(One hundred and eighty-four billion, five hundred and forty-six million, six hundred and forty-five thousand, seven hundred and nineteen Vietnamese dong).*

From the day immediately following the date of the first-instance hearing until the judgment is fully enforced, the judgment debtor shall also be liable to pay interest on the outstanding amount payable under the judgment at the interest rate prescribed in Clause 2, Article 468 of the Civil Code.

[5]. First-instance court fees:

[5.1]. WTO Company, as the Plaintiff, shall bear total first-instance court fees of **VND 515,251,875** *(Five hundred and fifteen million, two hundred and fifty-one thousand, eight hundred and seventy-five Vietnamese dong).* This amount shall be set off against the total advance payment of first-instance court fees of VND 168,353,000 *(One hundred and sixty-eight million, three hundred and fifty-three thousand Vietnamese dong)* already paid to the Nam Tu Liem District Civil Judgment Enforcement Sub-Department ***(now the Civil Judgment Enforcement Office of Region 4 – Hanoi),*** pursuant to Receipts for Advance Payment of Court Fees and Charges No. 0009554 dated 11 April 2024 and No. 0009845 dated 5 July 2024. The remaining first-instance court fees payable by WTO Company amount to **VND 346,898,875** *(Three hundred and forty-six million, eight hundred and*

ninety-eight thousand, eight hundred and seventy-five Vietnamese dong).

[5.2]. Song Da 5 Joint Stock Company, as the Defendant, shall bear total first-instance civil court fees of **VND 176,669,038** *(One hundred and seventy-six million, six hundred and sixty-nine thousand and thirty-eight Vietnamese dong)*. This amount shall be set off against the advance payment of first-instance civil court fees of VND 166,533,000 *(One hundred and sixty-six million, five hundred and thirty-three thousand Vietnamese dong)* already paid to the Nam Tu Liem District Civil Judgment Enforcement Sub-Department ***(now the Civil Judgment Enforcement Office of Region 4 - Hanoi)***, pursuant to Receipt for Advance Payment of Court Fees and Charges No. 0009677 dated 10 May 2024. The remaining first-instance court fees payable by Song Da 5 Joint Stock Company amount to **VND 10,136,038** *(Ten million, one hundred and thirty-six thousand and thirty-eight Vietnamese dong).*

[II]. Appellate court fees:

[1]. The Defendant and appellant, Song Da 5 Joint Stock Company, shall not be liable for appellate court fees. The amount of VND 2,000,000 *(Two million Vietnamese dong)* paid by Song Da 5 Joint Stock Company as an advance payment of appellate court fees shall be refunded pursuant to Receipts for Advance Payment of Court Fees and Charges No. 0002237 dated 26 January 2026 and No. 0002325 dated 26 January 2026 issued by the Hanoi City Civil Judgment Enforcement Department.

[2]. The Plaintiff and appellant, Construction and Trading Joint Stock Corporation, shall bear appellate court fees of VND 2,000,000 *(Two million Vietnamese dong)*. This amount shall be set off against the advance payment of appellate court fees of VND 2,000,000 *(Two million Vietnamese dong)* already paid by Construction and Trading Joint Stock Corporation pursuant to Receipt for Advance Payment of Court Fees and Charges No. 0003151 dated 3 February 2026 issued by the Hanoi City Civil Judgment Enforcement Department. It is hereby acknowledged that Construction and Trading Joint Stock Corporation has paid the appellate court fees in full.

Where a legally effective judgment is subject to enforcement in accordance with Article 2 of the Law on Civil Judgment Enforcement, the person entitled to enforce the civil judgment and the person liable to enforce the civil judgment shall have the right to agree on enforcement, request enforcement, voluntarily comply with the judgment, or be subject to compulsory enforcement in accordance with Articles 6, 7 and 9 of the Law on Civil Judgment Enforcement. The limitation period for requesting enforcement shall be governed by Article 30 of the Law on Civil Judgment Enforcement.

[III]. This appellate judgment takes legal effect from the date of pronouncement./.

Recipients:
- *People's Procuracy of Hanoi;*
- *Regional People's Court No. 4 - Hanoi;*
- *Regional Civil Judgment Enforcement Office No. 4 - Hanoi;*
- *The parties;*
- *Case file.*

FOR AND ON BEHALF OF THE APPELLATE PANEL
JUDGE AND PRESIDING JUDGE
[Signed and sealed]
Hoang Chi Nguyen