

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

PETERIS PILDEGOVICS AND SIA NORTH STAR

(Applicants on Annulment)

and

KINGDOM OF NORWAY

(Respondent on Annulment)

**ICSID Case No. ARB/20/11
Annulment Proceeding**

DECISION ON STAY OF ENFORCEMENT OF THE AWARD

Members of the ad hoc Committee

Ms. Lucinda A. Low, President of the *ad hoc* Committee
Prof. Andrea K. Bjorklund, Member of the *ad hoc* Committee
Prof. Dr. Maxi Scherer, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Leah W. Njoroge

7 November 2024

TABLE OF CONTENTS

I.	INTRODUCTION AND PROCEDURAL HISTORY	1
II.	THE PARTIES' POSITIONS	7
A.	THE APPLICANTS' POSITION	7
(1)	Overview of the Law on Stay of Enforcement in ICSID.....	8
(2)	Continuation of the Stay Should Be Granted Without Conditions	11
B.	THE RESPONDENT'S POSITION	14
(1)	Burden of Proof and Application of the Relevant Legal Test	15
(2)	If a Stay Is Granted, It Should Be Based on a Condition	17
III.	ANALYSIS	19
(1)	The Legal Test	19
(2)	Evaluation of the Circumstances of this Case.....	21
(3)	Conditions	22
IV.	DECISION	25

I. INTRODUCTION AND PROCEDURAL HISTORY

1. This Decision addresses Peteris Pildegovics and SIA North Star’s request for the continuation of the stay of enforcement of the ICSID award (the “**Request**”) rendered on 22 December 2023 in *Peteris Pildegovics and SIA North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11 (the “**Award**”), and the relevant procedural background. This Decision will continue to use the terms “Claimants” or “Applicants” to refer to Peteris Pildegovics and SIA North Star (“**North Star**”), and the “Respondent” or “Norway” for the Kingdom of Norway, as in the original arbitration. The Applicants and the Respondent are collectively referred to as the “Parties.”
2. On 22 February 2024, ICSID received an application for annulment of the Award from Peteris Pildegovics and North Star (the “**Annulment Application**”). The Annulment Application also contained a request under Article 52(5) of the ICSID Convention and Rule 54(1) of the 2006 ICSID Rules of Procedure for Arbitration Proceedings (the “**ICSID Arbitration Rules**”)¹ for the stay of enforcement of the Award until the issuance of a decision on the Annulment Application (the “**Request for Stay**”).
3. On 27 February 2024, pursuant to Rule 50(2) of the ICSID Arbitration Rules, the Secretary-General of ICSID registered the Annulment Application. On the same date, in accordance with Arbitration Rule 54(2), the Secretary-General informed the Parties that the enforcement of the Award had been provisionally stayed.
4. On the same date, 27 February 2024, ICSID requested that the Applicants make an initial advance payment in the amount of USD 200,000.00. Pursuant to ICSID Administrative and Financial Regulation 16(2)(a) (2022), payment was due within thirty days after the date of that request, *i.e.*, by 28 March 2024.
5. By letter dated 8 April 2024, in accordance with Rules 6 and 53 of the ICSID Arbitration Rules, the Parties were notified that an *ad hoc* Committee composed of Ms. Lucinda Low, a national of the United States of America, appointed to the Panel by the Chair of the ICSID

¹ Unless otherwise noted, all references to the ICSID Arbitration Rules are to the 2006 version of the Rules.

Administrative Council, and designated as President of the Committee, Prof. Andrea Bjorklund, a national of the United States of America, appointed to the Panel by Canada, and Prof. Dr. Maxi Scherer, a national of the Federal Republic of Germany, appointed to the Panel by Bahrain, had been constituted (the “**Committee**”). On the same date, the Parties were notified that Ms. Leah W. Njoroge, Legal Counsel, ICSID, would serve as Secretary of the Committee.

6. On 10 April 2024, the Applicants submitted their Request for Continuation of Stay of Enforcement (the “**Applicants’ Request**”), including a Request for Production of Documents (Redfern Schedule), Exhibit A-0001 through A-0123 and Legal Authorities AL-0001 through AL-0014.
7. On 12 April 2024, the Committee informed the Parties that it had taken note of the Applicants’ procedural proposals and advised the Parties that it would schedule a first session within the 60-day period following constitution of the Committee, pursuant to ICSID Arbitration Rule 13(1). Further, the Committee advised the Parties that it would be available to hold the first session on 15, 28 or 29 May 2024, and invited the Parties to confirm their availability on one of these dates.
8. By its letter of 19 April 2024, the Respondent responded to ICSID’s letter of 12 April and submitted its Observations on the Applicants’ Request for Continuation of Stay of Enforcement (“**Norway’s Response**”), together with Exhibit R-0203.
9. On 23 April 2024, ICSID confirmed its receipt of the Applicants’ payment in the amount of USD 52,000.00, which corresponded to partial payment of the Applicants’ portion of the advanced requested in ICSID’s letter of 27 February 2024.
10. On 24 April 2024, following the Parties’ confirmation of their availability, the Committee informed the Parties that the first session would be held by video conference on 28 May 2024 and circulated a draft Procedural Order No.1.
11. On 26 April 2024, the Respondent wrote to ICSID to request clarifications regarding ICSID’s letter of 23 April 2024 concerning the interpretation of ICSID Administrative and Financial Regulation 16 in the present case.

12. Also on 26 April 2024, ICSID acknowledged receipt of the Respondent's letter of the same date and informed the Parties that it had understood that the Applicants' payment of the balance of the advance requested was forthcoming, and that unless proof of the Applicants' payment of such balance were received by 30 April 2024, the Secretary-General intended to notify both Parties of the financial default pursuant to ICSID Financial and Administrative Regulation 16(2)(a).
13. On the same date, 26 April 2024, the Applicants submitted their Reply for Continuation of Stay of Enforcement ("**Applicants' Reply**"), together with the First Witness Statement of Peteris Pildegovics, Exhibit WS-PP01, Exhibits A-0124 through A-0135, and Legal Authorities AL-0015 and AL-0016.
14. On 30 April 2024, the Applicants informed ICSID that a further payment in the amount of USD 50,000.00 had been made and that they "were working on sending the remainder of the USD 200,000 call for funds as soon as possible."
15. On the same date, 30 April 2024, in accordance with Administrative and Financial Regulation 16(2)(a), ICSID informed the Parties of the default and gave either Party the opportunity to make the required the outstanding payment of USD 98,000.00 within 15 days, *i.e.*, by 15 May 2024.
16. On 1 May 2024, the Respondent submitted its response to the Applicants' Reply for Continuation of Stay of Enforcement ("**Norway's Rejoinder**").
17. On 15 May 2024, the Applicants informed ICSID that they were not able to pay the remainder of the balance requested and were not opposed to a decision to suspend the proceedings on this basis. The Applicants undertook to provide an update on the status of their payment as soon as feasible.
18. By its letter of 16 May 2024, the Respondent submitted its request to the Committee that any decision on suspension is taken as a matter of priority and that, if the proceedings are suspended, it must follow that the stay of enforcement is also lifted, including for the reasons it had set out in its submissions on the stay of 19 April 2024 and 1 May 2024.

19. On the same date, 16 May 2024, ICSID informed the Parties that it had not received the outstanding payment from either Party. Pursuant to ICSID Administrative and Financial Regulation 16(2)(b), ICSID notified the Parties that the Secretary-General intended to suspend the proceeding for non-payment on 17 May 2024. Further, ICSID reminded the Parties that in accordance with ICSID Administrative and Financial Regulation 14(5), unless the Parties had made sufficient payments to defray the costs of the proceeding, the Centre would not be required to provide any service in connection with the proceeding or to pay the fees, allowances or reimbursements of the members of the Committee.
20. In further correspondence of 16 May 2024, as instructed by the Committee, ICSID wrote to the Parties regarding the status of the stay of enforcement and the first session of the Committee. ICSID explained that the Committee had taken note that the Secretary-General intended to suspend the proceedings on 17 May 2024 pursuant to ICSID Administrative and Financial Regulation 16(2)(b). The Committee further noted that Article 52(5) of the ICSID Convention provides that “[i]f the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.” The Committee informed the Parties that the provisional stay of enforcement of the Award would remain in place until the Committee reached a decision on the Applicants request for extension of the stay, and that in light of the suspension of the proceedings, the Committee would not be able to reach a decision on that request until the proceedings resumed. The Committee also informed the Parties that the first session scheduled for 28 May 2024, and the 21 May 2024, deadline for the Parties’ procedural proposals, were vacated and would be rescheduled should the proceedings resume.
21. ICSID did not receive the outstanding payment from either Party. Accordingly, pursuant to ICSID Administrative and Financial Regulation 16(2)(b), after having given notice to the Parties and the Committee on 16 May 2024, the Secretary-General suspended the proceeding for non-payment on 17 May 2024.
22. By letter of 18 July 2024, ICSID reminded the Parties that, pursuant to ICSID Administrative and Financial Regulation 16(2)(c), if the proceeding were suspended for non-payment for more than consecutive 90 days (i.e. 15 August 2024), the Secretary-

General could, after giving notice to the Parties and the Committee, discontinue the proceeding.

23. By their letter of 7 August 2024, the Applicants wrote to the ICSID Secretary-General to clarify that the Applicants' earlier payment of USD 50,000.00 had failed to reach ICSID after being returned by the sending bank. In the same letter, the Applicants requested a one-month extension, until 15 September 2024, to pay the remaining amount of USD 148,000.00.
24. On 9 August 2024, the ICSID Secretary-General informed the Parties that unless ICSID received the Applicants' payment of the outstanding advance by 15 September 2024, she would proceed to discontinue the case as provided by ICSID Administrative and Financial Regulation 16(2)(c).
25. On 12 September 2024, the Applicants informed ICSID and the Committee that a payment of the remainder of the advance had been made.
26. On 16 September 2024, ICSID wrote to the Parties to confirm its receipt on 14 September 2024, of a wire transfer in the amount of USD 148,000.00 from the Applicants and informed the Parties that, in light of the Applicants' payment, the proceedings were resumed as of that date.
27. By its letter of 19 September 2024, on behalf of the Committee, ICSID requested the Parties to confirm whether (i) they consented to the extension of the 60-day timeline for the first session by 30 days to 6 November 2024; and whether (ii) they would be available to attend the first session on 22 October 2024 beginning at 10am Washington, D.C. time. Further, by the same letter, the Committee invited the Parties to simultaneously file a brief update on the status of the Applicants' Request, or to confirm there was no update required of their submissions, in either case by 10 October 2024.
28. On 25 September 2024, the Applicants wrote in response to ICSID's letter of 19 September 2024, advising that the Applicants consented to the extension of the 60-day timeline for the first session by 30 days and noting their availability on 22 October 2024 for the first session. Further, in the same email correspondence, the Applicants proposed that the

Committee consider rendering the decision on annulment within 24 months of registration of the annulment proceedings to avoid incurring a third year of ICSID's administrative fee deducted annually on the anniversary of the date of registration of the annulment proceedings.

29. On the same date, 25 September 2024, the Respondent wrote, with reference to ICSID's letter of 19 September 2024, confirming its consent to the extension of the 60-day timeline for the first session and its availability to participate the first session at the time proposed by the Committee.
30. By its letter of 27 September 2024, ICSID advised the Parties, on behalf of the Committee, that the first session would be held by video conference on 22 October 2024, commencing at 10am Washington, D.C. time, and circulated a draft Procedural Order No. 1. It invited the Parties to submit joint proposals on procedural items by 15 October 2024.
31. As invited by the Committee, on 10 October 2024 (i) the Applicants submitted a letter containing an update on the request for continuation of the stay of enforcement and *inter alia* advising the Committee that North Star would be applying to the Latvian Court for legal protection by 18 October 2024 ("**Applicants' Supplemental Letter**"), together with Exhibit A-0136; (ii) the Respondent submitted a letter containing its observations on the request for continued stay of enforcement and a request for security for costs ("**Norway's Supplemental Letter**"), together with the indices of factual exhibits and legal authorities, Exhibits Y-0001 through Y-0001 and Legal Authorities Y-LA-0001 through Y-LA-0006; (iii) the Applicants submitted a second letter responding to the Respondent's request for security for costs ("**Applicants' Second Supplemental Letter**").
32. On 20 October 2024, the Applicants advised the Committee that North Star had not yet made the application for legal protection but intended to do so over the subsequent days.
33. On 22 October 2024, the Committee held its first session with the Parties by videoconference.
34. On 23 October 2024, the Applicants submitted a further update on North Star's application for legal protection, together with Exhibits A-0137 and A-0138.

II. THE PARTIES' POSITIONS

A. THE APPLICANTS' POSITION

35. The Applicants recall that, in accordance with Article 52(5) of the ICSID Convention and ICSID Arbitration Rule 54(2), they requested in the Annulment Application (i) a provisional stay of enforcement of the Award; and (ii) the continuation of the stay of enforcement until the decision in this annulment proceeding is rendered by the Committee.²

36. The Applicants consider that the conditions are met in the present case for the stay of enforcement of the Award to continue, without conditions, until the conclusion of these annulment proceedings.³

37. First, the Applicants provide an overview of the law on stay of enforcement in ICSID annulments. Second, the Applicants explain the reasons why the stay should be continued without condition.

38. The Applicants present the following requests for relief:

- (a) That the *ad hoc* Committee confirm the stay of enforcement of all of the Award, without condition;
- (b) That the *ad hoc* Committee reserve the question of costs for its annulment Decision; or alternatively,
- (c) That the *ad hoc* Committee confirm the stay of enforcement of the entire Award, taking note of the Applicants' undertaking to ensure the payment of any portion of the costs award found in Award confirmed (or not annulled) by the *ad hoc* Committee.

² Applicants' Request, paras. 2 and 4.

³ Applicants' Request, para. 2.

(1) Overview of the Law on Stay of Enforcement in ICSID

39. The Applicants recall that the framework on stays of enforcement of ICSID awards pending annulment proceedings is set forth under Article 52(5) and 53(1) of the ICSID Convention and Rule 54(5) of the ICSID Arbitration Rules.⁴ According to the Applicants, an annulment committee “may” stay the enforcement of the award pending the annulment decision “if it considers that the circumstances so require”, pursuant to Article 52(5) of the ICSID Convention.⁵ In support, the Applicants make five arguments concerning the applicable legal standard for decisions on continuation of stay of enforcement.
40. First, the Applicants contend that among ICSID *ad hoc* committees, there is no “jurisprudence constante” on the issue of stay of enforcement.⁶ Whether a continued stay of enforcement is granted depends on the facts of each case as reflected in Article 52(5) of the ICSID Convention.⁷ The Applicants rely for this point on the decision of the *ad hoc* committee in *NextEra*.⁸ The Applicants further state that while some *ad hoc* committees have found the continuation of stay of enforcement to be “automatic”⁹, others have held that any such continuation should be “exceptional.”¹⁰ Furthermore, the Applicants indicate that ICSID’s Updated Background Paper on Annulment published in March 2024 shows

⁴ Applicants’ Request, para. 7

⁵ Applicants’ Request, para. 8.

⁶ Applicants’ Request, para. 10.

⁷ Applicants’ Request, para. 10.

⁸ Applicants’ Request, para. 11 citing *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Annulment Proceeding, Decision on Stay of Enforcement of the Award, 6 April 2020 (AL-0001), para. 76 (“*NextEra*”).

⁹ Applicants’ Request, para. 11. *Victor Pey Casado and Fondation “Presidente Allende” v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on the Republic of Chile’s Application for a Stay of Enforcement of the Award, 5 May 2010 (AL-0003), para. 25, p. 11 (“*Pey Casado*”); *Mitchell v. Democratic Republic of the Congo*, ICSID Case No. ARB/99/7, Annulment Proceedings, Decision on the Stay of Enforcement of the Award, 30 November 2004, 20 ICSID Rev.—FILJ 587 (2005) (AL-0004), para. 28; *Enron v. Argentine Republic*, ICSID Case No. ARB/01/3, Annulment Proceedings, Decision on the Argentine Republic’s Request for a Continued Stay of Enforcement of the Award, 7 October 2008 (AL-0005), para. 42.

¹⁰ Applicants’ Request, para. 11. *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Annulment Proceeding, Decision on the Request for Continued Stay of Enforcement of Award, 27 June 2018 (AL-0006), para. 34 (“*Churchill Mining*”).

the absence of a trend in one direction or the other and notes that most decisions on stay of enforcement are not public.¹¹

41. Second, notwithstanding the absence of “jurisprudence constante”, the Applicants invite the Committee to take special notice of publicly available decisions on the continuation of stays requested by investor-claimants in respect of costs awards.¹² To this, the Applicants say that the vast majority of continuation requests are by States facing large awards as compared to a small subset of requests made by investor-claimants.¹³ Therefore, the Applicants argue that while some general principles may apply to all continuation of stay requests, different considerations may be warranted depending on whether the stay should be granted to an investor or a State.¹⁴ In particular, the Applicants identify (i) three decisions in which the full reasoning of the decision is publicly available and which deal with the question whether a stay of enforcement of a costs award against an investor should be continued;¹⁵ and (ii) a fourth case involving a similar scenario for which extracts of the reasoning are publicly available.¹⁶

42. Third, the Applicants state that usually *ad hoc* committees will assume that annulment applications are made in good faith in the context of a request for continuation of a stay of enforcement.¹⁷ According to the Applicants, the *ad hoc* committees in *Libananco* and *Churchill Mining* “gave extensive benefit of the doubt to annulment applicants in this respect”¹⁸ and the *Pey Casado* second *ad hoc* Committee was of the view that “good faith

¹¹ Applicants’ Request, para. 12, referring to ICSID, “Updated Background Paper on Annulment”, March 2024 (AL-0007), pp. 19-28.

¹² Applicants’ Request, para. 13.

¹³ Applicants’ Request, para. 14.

¹⁴ Applicants’ Request, para. 14.

¹⁵ Applicants’ Request, para. 14, referring to *Libananco Holding Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Annulment Proceeding, Decision on Applicant’s Request for Continued Stay of Enforcement of the Award, 7 May 2012 (AL-0002) (“*Libananco*”); *Pey Casado* (AL-0008); *Churchill Mining* (AL-0006).

¹⁶ Applicants’ Request, para. 15 referring to, *Mr. Raymond Charles Eyre and Montrose Developments (Private) Limited v. The Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Annulment Proceedings, Decision on Stay of Enforcement of Award, 16 July 2020 (cited at paras. 14-15 of the Decision on Annulment, 2 December 2020 (AL-0009) (“*Eyre*”)

¹⁷ Applicants’ Request, para. 17.

¹⁸ Applicants’ Request, para. 17, referring to *Libananco* (AL-0002), para. 49 and *Churchill Mining* (AL-0006), para. 36.

annulment applicants deserve not only the benefit of the doubt regarding the continuation of the stay, but also to have it without condition.”¹⁹

43. Fourth, the Applicants clarify that in deciding whether a stay should be continued, *ad hoc* committees, for example in *Eyre*, will take into account factors such as risk of non-payment, risk of non-recoupment, and balance of hardship including an applicant’s right of access to justice.²⁰ With regard to the risk of non-payment of the award, the Applicants argue that the *Libananco*, *Pey Casado*, *Churchill Mining* and *Eyre ad hoc* committees held that if the continuation of a stay did not increase the risk of non-payment, or did not increase it in any significant way, this weighed in favour of maintaining the stay of enforcement.²¹ With regard to risk of non-recoupment of a paid award should it be annulled, the Applicants assert that this arises more when a State raises a possibility that the investor will not pay a large award.²² As regards the balance of hardship and access to justice, the Applicants explain that this is a question that was consistently addressed in favour of the investor by the *Libananco*, *Pey Casado*, *Churchill Mining* and *Eyre ad hoc* committees.²³
44. Finally, the Applicants posit that the balance of hardship, or proportionality, also applies to whether a stay is continued with or without conditions. To support their assertion, the Applicants again rely on *Libananco*, *Pey Casado*, *Churchill Mining* and *Eyre*, in which the consideration of the balance of hardship or proportionality was held to apply regardless of whether the stay of enforcement was continued with or without conditions.²⁴ Further, the Applicants point out that in all the reported cases where the investor sought a continuation of stay of enforcement of an adverse costs award, it was only in *Churchill Mining* where

¹⁹ Applicants’ Request, para. 17, referring to *Pey Casado* (AL-0008), para. 72.

²⁰ Applicants’ Request, para. 18, referring to *Eyre* (AL-0009), paras. 14-15.

²¹ Applicants’ Request, para. 19, referring to *Libananco* (AL-0002), para. 60; *Pey Casado* (AL-0008), para. 75; *Churchill Mining* (AL-0006), paras. 37-38; *Eyre* (AL-0009), para. 14.

²² Applicants’ Request, para. 20.

²³ Applicants’ Request, para. 21, referring to *Libananco* (AL-0002), para. 61; *Pey Casado* (AL-0008), para. 72; *Churchill Mining* (AL-0006), para. 38; *Eyre* (AL-0009), para. 14.

²⁴ Applicants’ Request, para. 22.

the continuation was granted on condition of posting security, a condition proposed by the investor itself, likely based on the finding of fraud in the underlying arbitration.²⁵

(2) Continuation of the Stay Should Be Granted Without Conditions

45. The Applicants request the Committee to continue the stay without condition.²⁶ According to the Applicants, the absence of a “jurisprudence constante” on the issue of continuation of stay should not prevent the Committee from applying the reasoning found in decisions holding that continuation is automatic.²⁷ Further, the Applicants invite the Committee to take special notice of publicly available decisions in which decisions on continuation of stays of enforcement were requested by investor-claimants without condition and, similarly, in this case, suggest that the Committee should also grant the stay without condition.²⁸ Expounding further on the facts in *Libananco*, the Applicants say that if the applicants in that case could secure a continuation of stay without conditions despite a USD 15 million costs award and questionable business conduct then so should they.²⁹ Drawing a contrast with some of the facts of *Libananco*, the Applicants argue that they ran a legitimate business enterprise.³⁰

46. As mentioned above, the Applicants indicate that most *ad hoc* committees assume that annulment applications are made in good faith and are not frivolous.³¹ In the same vein, the Applicants identify a list of four issues which, together with the grounds for annulment in the Annulment Application, demonstrate the seriousness of their application, “if only on a *prima facie* basis.”³²

47. The Applicants ask the Committee to consider factors established by other annulment committees, namely the: (i) risk of non-payment (ii) risk of non-recoupment, and

²⁵ Applicants’ Request, para. 23.

²⁶ Applicants’ Request, para. 24.

²⁷ Applicants’ Request, paras. 25-26.

²⁸ Applicants’ Request, para. 27.

²⁹ Applicants’ Reply, para. 6, referring to *Libananco* (AL-0002), para. 21.

³⁰ Applicants’ Reply, para. 7.

³¹ Applicants’ Request, para. 28.

³² Applicants’ Request, para. 30.

(iii) balance of hardship including the Applicants' right of access to justice, to determine whether the stay should be continued without conditions.³³

48. First, as to the risk of non-payment, the Applicants argue that *ad hoc* committees have found that if the continuation does not increase the risk of non-payment, then the continuation should be granted.³⁴ The Applicants contend that in the present case, there is no evidence that continuation of the stay would decrease Norway's chances of obtaining payment of the Award.³⁵

49. Second, as to the risk of non-recoupment, the Applicants are of the view that this is of less significance in cases where an investor-claimant seeks continuation of the stay.³⁶

50. Third, as regards the balance of hardship, the Applicants argue that this factor weighs in their favour especially because the Applicants are a physical person and a small enterprise, and that EU law recognises access to justice for small and medium-sized enterprises, including in relation to investment treaty arbitration.³⁷ Further, the Applicants allege that because Norway has threatened to enforce the Award, terminating the stay will impact the Applicants' right of access to justice and that the Applicants have no other international avenue to pursue the claim.³⁸ As regards the parallel proceedings mentioned by the Respondent, the Applicants assert that the parallel ICSID proceedings are not relevant in the present case, but they go to demonstrate that the balance of hardship weighs in their favour.³⁹

51. In response to the Respondent's request that if the stay is granted it should be conditioned on the provision of security such as the establishment of an escrow account or the provision of a bond for the full cost award, the Applicants state that it would be extremely difficult

³³ Applicants' Request, para. 31.

³⁴ Applicants' Request, para. 32.

³⁵ Applicants' Request, para. 33.

³⁶ Applicants' Request, para. 34.

³⁷ Applicants' Request, para. 35.

³⁸ Applicants' Request, paras. 36, 41.

³⁹ Applicants' Reply, para. 38. The parallel proceedings referred to by the Parties are *SIA Baltjura-Serviss v. Kingdom of Norway* (ICSID Case No. ARB/23/7) and *UAB Arctic Fishing v. Kingdom of Norway* (ICSID Case No. ARB/22/31).

for them to comply with this condition.⁴⁰ Further, the Applicants state that should the stay be lifted, they would likely face enforcement attempts from the Respondent thereby jeopardizing these annulment proceedings.⁴¹ The Applicants admit that even though North Star has assets, it is unable to place an amount of EUR 1.4 million in escrow or obtain a bond at this time due to difficulties with liquidity.⁴² Through his witness statement, the first Applicant, Mr. Pildegovics, confirmed that both he and North Star would be unable to pay the costs award at this time.⁴³ The Applicants state that to show their good faith, “Mr. Pildegovics is ready to undertake that he personally and North Star will ensure that any costs award confirmed by the present *ad hoc* Committee will be paid”⁴⁴ and that an undertaking has been held to be sufficient in some cases.⁴⁵

52. In addressing the balance of hardship point, the Applicants further argue that the stay should be continued without condition in light of (i) the absence of any impact of a delayed payment of the costs award of the amount of EUR 1.4 million on the operating budget of Norway; and (ii) the balance of financial hardships regarding the merits of the case.⁴⁶

53. In their update to the Committee of 10 October 2024, the Applicants advised that it was expected that North Star would apply for legal protection under Division B (Legal Protection Proceedings, sections 32-55) of Latvia’s Insolvency Law by 18 October 2024.⁴⁷ On 23 October 2024, the Applicants confirmed that North Star’s application for legal protection had been filed. According to the Applicants, should North Star attain legal protection status, the ruling will suspend the claims from North Star’s creditors for a period of two months, while the Applicants formulate a legal protection plan to be submitted to the creditors for approval.⁴⁸ The Applicants submit that they would have to take into

⁴⁰ Applicants’ Reply, para. 7.

⁴¹ Applicants’ Reply, paras. 9-11.

⁴² Applicants’ Reply, paras. 15-17.

⁴³ Applicants’ Reply, para. 19, referring to the First Witness Statement of Peteris Pildegovics in Annulment Proceedings, 26 April 2024, **WS-1**, and the Annual Report of SIA North Star for FY 2022 (**A-0125**).

⁴⁴ Applicants’ Reply, para. 20, referring to an undertaking in the First Witness Statement of Peteris Pildegovics in Annulment Proceedings, 26 April 2024, **WS-1**.

⁴⁵ Applicants’ Reply, para. 20.

⁴⁶ Applicants’ Reply, para. 24.

⁴⁷ Applicants’ Supplemental Letter, p. 2.

⁴⁸ Applicants’ Supplemental Letter, p. 2.

account the amounts due under the Award in the legal protection plan for North Star. If the plan is approved by the court, it is legally binding on the creditors and North Star will start implementing it for in principle a maximum period of two years, but with the possibility of renewal.⁴⁹ In the Applicants' view, "the need for North Star to submit this application to Latvian court is further support for continuing the stay of enforcement of the Award."⁵⁰

54. The Applicants agree to provide regular updates to the Committee on the status of the legal protection proceedings, including providing the Committee with copies of the submissions made in the legal protection proceedings, and seek the Committee's permission to do so.

55. In response to the Respondent's request for security for costs incurred in these annulment proceedings, the Applicants object to the form of the security for costs application because in their view, it does not request a particular amount or form of security and they would not be able to respond to the security for costs application in its current form.⁵¹ Further, the Applicants "reserve the right to ask the Committee to re-apportion the advances for the present proceedings under Regulation 15 of ICSID's Administrative and Financial Regulations."⁵² According to the Applicants, should the Respondent continue with the security for costs application, it will require the Committee to incur further costs and thus they reserve the right to ask the Committee to modify the call for funds under ICSID's Administrative and Financial Regulation 15 such that the Respondent bears the costs of the security for costs application instead of the Applicants.⁵³

B. THE RESPONDENT'S POSITION

56. The Respondent states that the Applicants' request for continued stay of enforcement comes at a time when the Applicants owe the Respondent a considerable amount under the Award and that delay in enforcement would only benefit the Applicants.⁵⁴ The Respondent

⁴⁹ Applicants' Supplemental Letter, p. 2.

⁵⁰ Applicants' Supplemental Letter, p. 2.

⁵¹ Applicants' Second Supplemental Letter, p. 2.

⁵² Applicants' Second Supplemental Letter, p. 2.

⁵³ Applicants' Second Supplemental Letter, p. 2.

⁵⁴ Norway's Response, p. 2.

addresses two parallel ICSID proceedings concerning similar facts as being part of the broader issues in this case.

57. The Respondent states that it owes a duty to protect public monies and to take the necessary steps to ensure that debts owed are paid promptly or are secured and therefore request the Committee to:

- (i) Dismiss the Applicants' application for a continuation of the provisional stay;
- (ii) Declare that the provisional stay on enforcement of the Award has therefore been terminated;
- (iii) Alternatively, order that the continuation of the stay of enforcement is conditional upon the Applicants providing, within 21 days, sufficient security and/or a bank guarantee in the amount of EUR 809,724.07 plus a USD sum for arbitration costs less any amount of double recovery.⁵⁵

(1) Burden of Proof and Application of the Relevant Legal Test

58. The Respondent recalls that the Committee is empowered by Article 52(5) of the ICSID Convention to stay enforcement of the Award "if it considers that the circumstances so require" and that Rule 54 of the 2006 ICSID Arbitration Rules states that the Party which requests a stay of enforcement of an award "shall specify the circumstances that require the stay."⁵⁶ According to the Respondent, the *ad hoc* committee in *ESPF* held that the party seeking to continue the stay of enforcement bears the burden of establishing the

⁵⁵ Norway's Rejoinder, p.3.

⁵⁶ Norway's Response, p. 3.

circumstances that require its continuation⁵⁷ and that other committees have taken the same view.⁵⁸

59. The Respondent states that when an *ad hoc* committee is faced with a request for continued stay of enforcement, the “ultimate test involves a balancing of the Parties respective interests and risks of harm.”⁵⁹ According to the Respondent, *ad hoc* committees usually consider a range of factors such as “the ability and willingness of an award debtor to pay,”⁶⁰ “the financial situation of the debtor to pay,”⁶¹ “the presence or absence of a dilatory purpose,”⁶² and the “seriousness of the request for a stay,”⁶³ and that each case is fact-specific.⁶⁴

60. In the present case, the Respondent’s position is that the Applicants have not satisfied the test set forth by *ad hoc* committees. In particular, the Respondent alleges that the Applicants have not claimed the inability to make payments due under the Award now or that they faced any special harm if they were to comply with the Award.⁶⁵

61. Furthermore, the Respondent argues that there are concerns regarding the ability of the Applicants to pay the sums owed under the Award given that the second Claimant, North Star, had applied for legal protection proceedings in respect of a potential bankruptcy in

⁵⁷ Norway’s Response, p. 3, referring to *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 9 July 2021, para. 45 (“**ESPF**”).

⁵⁸ Norway’s Response, p. 3, referring to *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Decision on the Argentine Republic’s Request for a Continued Stay of Enforcement of the Award (Rule 54 of the ICSID Arbitration Rules), 5 March 2009, para. 27; *Joannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Decision of the *ad hoc* Committee on the Stay of Enforcement of the Award, 12 November 2010 para. 26; *SGS Societe Generale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Paraguay’s Request for the Continued Stay of Enforcement of the Award, 22 March 2013, para. 86 (“**SGS**”); *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Decision on the Stay of Enforcement of the Award, 22 February 2018, para. 99.

⁵⁹ Norway’s Response, p. 3, referring to *ESPF*, para. 49.

⁶⁰ Norway’s Response, p. 4, referring to *ESPF*, paras. 54-56; *Pey Casado (AL-0008)*, paras. 74-75.

⁶¹ Norway’s Response, p. 4, referring to *Libananco (AL-0002)*, para. 61.

⁶² Norway’s Response, p. 4, referring to *SGS*, para. 94; *ESPF*, para. 53.

⁶³ Norway’s Response, p. 4, referring to *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Stay of Enforcement of the Award, 4 December 2014, para. 84.

⁶⁴ Norway’s Response, p. 4.

⁶⁵ Norway’s Response, p. 4.

October 2021.⁶⁶ In the circumstances, the Respondent does not consent to the continuation of the stay of enforcement.⁶⁷

62. In relation to the Applicants' ability to pay the costs of the Award, the Respondent notes that the Applicants do not deny that they are in a difficult position financially, presenting it as a reason for not paying sums due under the Award.⁶⁸ In relation to the risk of non-recoupment, the Respondent is of the opinion that "it is clearly an issue in the case of individuals and one-person companies where the risk of bankruptcy has been shown to be a real concern."⁶⁹ As such, the Respondent's position is that Mr. Pildegovics' undertaking does not have the value it might have had if it had been made by, for example, the controlling shareholder of a company which was in a good financial position.⁷⁰ The Respondent considers that there is a risk of non-payment by the Applicants.⁷¹ The Respondent believes that it should not have to bear that risk given that it was successful in the underlying arbitration.⁷² However, the Respondent shares the Applicants' position that there is no real risk of non-recoupment faced by the Applicants in the event the Award is annulled.⁷³ To further support its arguments on the Applicants' inability to pay, the Respondent refers in particular to the Applicants' lack of payment of the advance on costs requested by ICSID in these annulment proceedings and other parallel proceedings at ICSID in which the related party claimants also faced difficulties in paying the advances requested by ICSID.

(2) If a Stay Is Granted, It Should Be Based on a Condition

63. As regards whether the continuation of the stay of enforcement should be permitted with or without conditions, the Respondent disagrees with the Applicants on this issue. The Respondent explains that where extension of stays have been ordered, it has often been on

⁶⁶ Norway's Response, p. 4, referring to Exhibit **R-0203**. The filing for judicial protection by North Star was made in October 2024. See paragraph 53 *supra*.

⁶⁷ Norway's Response, p. 4.

⁶⁸ Norway's Rejoinder, p. 2.

⁶⁹ Norway's Rejoinder, p. 2.

⁷⁰ Norway's Rejoinder, p. 2.

⁷¹ Norway's Rejoinder, p. 2.

⁷² Norway's Rejoinder, p. 2.

⁷³ Norway's Rejoinder, p. 2.

condition of the provision of some type of security for the eventual payment of the award.⁷⁴ Relying on *Churchill Mining*, the Respondent argues that the conditioning of a stay of enforcement is justified when there are legitimate fears of non-enforcement, including fears engendered by the financial situation of the applicant.⁷⁵ In the present case, the Respondent requests that the stay of enforcement not be extended but if the Committee were to decide that the conditions to extend the stay of enforcement have been met under Article 52(5) of the ICSID Convention, it would not be opposed to an extension that would be subject to conditions such as the establishment of an escrow account or the provision of a bond.⁷⁶

64. The Respondent notes that the Applicants, Mr. Pildegovics and North Star, have not attempted to secure a bond or bank guarantee for the costs award. In the Respondent's view, if the Committee decides that the stay should continue, then it should be based on the condition that the Applicants put up sufficient security in the amount of EUR 809,724.07 for representation costs and an appropriate USD amount for arbitration costs, less any amount of double recovery, to cover payments due under the Award.⁷⁷

65. In response to the Applicants' statement that both Mr. Pildegovics and North Star are unable to pay the costs of the Award, as explained in Mr. Pildegovics' witness statement, the Respondent notes that by their own admission, the Applicants are impecunious.⁷⁸ In this respect, the Respondent does not see how the undertaking by Mr. Pildegovics shows that the Applicants can pay the costs in the Award.⁷⁹ According to the Respondent, recent developments further support the argument that the Applicants are unable to pay: (i) the Respondent notes that North Star's 2022 financial statements indicate that North Star's main assets, its two vessels, have been sold off; (ii) the Applicants' sequence of payments of the advance on costs requested by ICSID; and (iii) the Applicants' counsel request of 25

⁷⁴ Norway's Response, p. 4, referring to Schreuer's Commentary on the ICSID Convention (3rd ed., 2022), paras. 52-761 - 52-790.

⁷⁵ Norway's Response, p. 4, referring to *Churchill Mining* (AL-0006), para. 37.

⁷⁶ Norway's Response, p. 4.

⁷⁷ Norway's Rejoinder, p.3.

⁷⁸ Norway's Supplemental Letter, para. 3.

⁷⁹ Norway's Supplemental Letter, para. 4.

September 2024, asking the Committee to render a decision within 24 months of registration of the Annulment Application.⁸⁰

66. According to the Respondent, these circumstances depicting the Applicants' financial situation demonstrate that it has no assurance that its costs in the annulment proceedings will be paid should it prevail, nor does it have assurance that the costs it is already owed under the Award will be paid.⁸¹

67. In connection with the Respondent's costs in these annulment proceedings, the Respondent requests the Committee to order security for costs in an amount to be quantified in the form of a bank guarantee or deposit into escrow.⁸² According to the Respondent, security for costs is warranted given that (i) the Applicants will be unable to pay an adverse costs order in respect of the annulment proceedings; (ii) the Respondent should not be expected to bear the risk of non-payment as the Award creditor; (iii) the Applicants have a history of non-payment or late payment; (iv) the need for security for costs is proportionate as the proceedings will be complex; and (v) the Respondent faces the prospect of incurring public funds to defend itself in these annulment proceedings with little chance of recovery of the costs.⁸³

III. ANALYSIS

(1) The Legal Test

68. At the outset, the Committee highlights the language of Article 52(5) of the ICSID Convention and Arbitration Rule 54(2), which govern this decision. Article 52(5) states that the Committee "may" stay enforcement "if it considers that the circumstances so require", while Rule 54(2) states that the Party which requests a stay of enforcement of an award "shall specify the circumstances that require the stay."

⁸⁰ Norway's Supplemental Letter, paras. 6-8.

⁸¹ Norway's Supplemental Letter, para. 10.

⁸² Norway's Supplemental Letter, para. 12.

⁸³ Norway's Supplemental Letter, para. 14 (a)-(e).

69. These provisions make it clear that the decision whether to grant a continued stay of enforcement, and on what basis, are matters for the discretion of the Committee in view of the circumstances of the particular case. In the Committee's view, the exercise of such discretion is neither automatic or exceptional, but requires a review and consideration of all of the relevant circumstances and a balancing of the parties' respective interests.

70. The Parties largely coincide with respect to the fact-specific nature of the inquiry and the factors that the Committee should take into account in reaching its decision. These can be summarized as:

(i) the risk of ultimate non-payment of any amounts awarded to the extent the annulment application is unsuccessful if the stay is continued;

(ii) the risk of non-recoupment should the stay not be continued, should it be determined in the course of this proceeding that the Applicants are entitled to recover amounts collected on the Award in the meantime; and

(ii) the balance of hardships, including the implications of not continuing the stay on the Applicants' access to justice and the impact on the Respondent of non-payment.

71. The Applicants consider that in applying these factors, particular attention should be given to the (relatively small) number of cases in which, like this case, the monetary elements of an award involve only costs assessed against a claimant. The Respondent has discussed some of those same authorities, particularly *Churchill Mining*.

72. Although some annulment committees have mentioned good faith as an additional criterion, the Committee considers that at this early stage, the good faith of the Applicants must be assumed absent clear evidence of bad faith. To do otherwise would risk prejudgment of the merits of the Application.

(2) Evaluation of the Circumstances of this Case

73. Turning to the case at hand, an application for a continued stay of enforcement would normally be ruled upon under Arbitration Rule 54(2) within 30 days of the constitution of the Committee. In this case, however, suspension of these proceedings has resulted in an extension of time for the Committee's decision, with the provisional stay that was granted upon the registration of the application for annulment having continued.
74. With regard to the potential element of good faith discussed above, the Committee does not consider that the existence of parallel proceedings demonstrates bad faith. The Committee understands that the parallel ICSID proceedings have been discontinued.⁸⁴
75. The Committee also considers that the second factor identified above, the risk of non-recoupment from the Respondent, is not present here, and the Respondent acknowledges as much.⁸⁵ Rather, the key considerations in this case relate to the first factor—the risk of non-payment of the Award by Applicants if their Application is unsuccessful; and the third factor—balance of hardship.
76. Whether the risk of non-payment of the Award by the Applicants increases if the stay is continued is difficult to determine. The monetary element of the Award in favour of Respondent is a costs award of EUR 809,724.07 for legal representation costs and half of USD 597,307.04 in respect of the Respondent's arbitration costs, with interest accruing at the Secured Overnight Financing Rate plus 2%, compounded twice yearly.⁸⁶
77. It is clear from the history of this case as set out above (paragraph 17 *et seq*) that the Applicants' resources are strained. It also appears that one of the Applicants, North Star, has recently sought judicial protection from its creditors.⁸⁷ The Committee lacks

⁸⁴ See ICSID website: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/7> and <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/22/31>.

⁸⁵ See para. 63 *supra*.

⁸⁶ Award, para. 626. The Respondent has referred, in relation to its request for a bond or escrow, to EUR 809,724.07 for its representation costs plus a USD sum for arbitration costs less any amount of double recovery.

⁸⁷ As noted above (para. 54), in its update to the Committee of 10 October 2024, the Applicants advised that it was expected that North Star, would apply for legal protection under Division B (Legal Protection Proceedings, sections 32-55) of Latvia's Insolvency Law by 18 October 2024. The Applicants' further update of 15 October 2024 indicated

information to enable it to assess the implications of that action, and whether even prior to it being taken, the law of the jurisdiction where that protection has been sought (Latvia) imposes any restrictions on pre-protection payments, as do some jurisdictions. As the Committee understands it, this circumstance applies to only one of the Applicants, the corporate entity (North Star), and not to the individual Applicant (Mr. Pildegovics). Having attempted to assess this factor, the Committee concludes that it is not clear that a delay would materially increase the risk of non-payment by the Applicants. Of course, interest will continue to accrue at the rate set forth in the Award during the pendency of these proceedings, which will compensate the Respondent for the delay in payment.

78. In relation to the balance of hardship, that factor favours the Applicants. The Committee considers that there is a real risk that if the stay were not to be continued, the Applicants' access to justice would be impeded. Indeed, these proceedings were suspended for several months while the Applicants sought to secure the necessary funds to support the costs of this proceeding. The amount of the Award is much larger, as noted in paragraph 76 above. It seems evident that ordering payment of this sum at this juncture could well threaten the continued ability of Applicants to pursue these proceedings.

79. The Committee eschews any prejudgment of the merits of the Application. But access to justice is in any event about having the opportunity to make one's case, not the result.

80. The Committee thus considers that the balance of hardship tips in favour of the Applicants.

(3) Conditions

81. But that is not the end of the analysis. The Committee must also consider the issue of conditions, particularly whether the undertaking proffered by Mr. Pildegovics is necessary or sufficient, or whether, as the Respondent suggests, a stronger condition—the posting of a bond or the establishment of an escrow account—is warranted as part of the balancing of hardship.

that the filing would occur on or around 22 October 2024 (see para. 34 above). On October 23, 2024, the Applicants submitted a document, Exhibit A-0137, in English and Latvian, entitled “application for Legal Redress” submitted by Applicant North Star the previous day to the Latvian courts. In 2021, North Star signaled its intention to file for judicial protection through an application for the same.

82. Conditions can be a relevant tool in reaching an appropriate balance of hardship and mitigating risks. In particular, they can decrease the risk of later non-payment. They have been used in some of the cases cited by the Parties but by no means all of them, particularly when opposed by the applicant.
83. While the Committee appreciates that the assurance proffered by Mr. Pildegovics has more of a moral rather than monetary character, it also considers that the conditions sought by the Respondent in the circumstances of this case would have the same financial impact as a termination of the stay. That is because they would require that the full amount of the Award be on call in immediately available funds (in the case of a bond) or made fully available (in the case of an escrow). The Committee appreciates that this may not be feasible, and there is no dispute that the Applicants face, at a minimum, a liquidity challenge. Accordingly, the impact on the balance of hardship, and particularly the access to justice element discussed above, would be essentially the same.
84. The Committee therefore declines to order that the conditions proposed by the Respondent be applied. Although the Applicants have asked for continuation of a stay without conditions, the Committee considers that there is value to the undertaking proffered by Applicant Mr. Pildegovics, and determines that such an undertaking should be given within seven calendar days of this Decision. This undertaking should be given by Mr. Pildegovics not only on his individual behalf, but on behalf of Applicant North Star, in his capacity as a controlling shareholder of North Star. He should commit, using whatever authorities and role he has in North Star, to causing Applicant North Star to pay the Award if it is not annulled, along with his own personal commitment to do so. The commitment should be joint and several on behalf of the Applicants and irrevocable for the duration of the proceedings.
85. In so deciding, the Committee does not prejudge the merits of the Application, nor should its decision be construed as reflecting on the legitimacy of the Applicants' business operations. Rather, the decision is a reflection of the appropriateness of providing some assurance to the Respondent in the face of the evident financial difficulties of the Applicants, and North Star's recent application for judicial protection.

86. *Churchill Mining*, which both Parties have cited in their submissions, presents a useful comparison to this case and supports the approach outlined above.
87. *Churchill Mining* also involved an award against the claimants for costs. The applicants in the subsequent annulment proceeding sought a continued stay of the award’s enforcement, proffering some security in the form of a pledge of land, the value of which the respondent disputed. The respondent for its part sought full security for costs such as a bank guarantee.
88. The annulment committee treated the continuation of the stay as an exceptional measure. However, it was persuaded in light of the precarious financial position of the award debtor that it would be disproportionate to order the security requested by the respondent. In its view, such an order would have “manifestly excessive” consequences.⁸⁸
89. In contrast, in *Libananco*, a case cited by Applicants for the proposition that no condition should be applied, there did not seem to be any significant concerns about the financial position of the applicant.
90. Ultimately, using a balancing analysis, the *ad hoc* committee in *Libananco* found that the applicants’ interest in a continued stay outweighed the respondent’s interest in immediate payment. With respect to the conditions, it found that it would be disproportionate to apply the condition sought by the respondent in the form of security.
91. Notably, the *ad hoc* committees in both cases ultimately focused on the issue of proportionality with respect to the conditions sought by the State. This Committee finds their approach persuasive and relevant to the circumstances of this case. It has therefore decided on a more limited condition as set forth in paragraph 84 above.
92. The Committee accepts the Applicants’ offer to provide it with periodic updates regarding the status of North Star’s judicial protection proceedings. These should be provided every three months from the date of this Decision, or upon the occurrence of important milestones

⁸⁸ *Churchill Mining (AL-0006)*, para. 35.

in the proceedings (*e.g.*, filing, plan submission, plan approval, other important rulings, termination), whichever occurs first.

93. The current Decision is without prejudice to any future application by the Respondent for the termination of the stay based on changed circumstances that may materially alter the prospects for payment of the Award or the balance of hardship.

94. The Committee has separately established a schedule for further submissions on the issue of security for costs, which will also consider the Applicants' related reapportionment request. Any decision on those issues is reserved pending those further submissions and deliberations of the Committee.

IV. DECISION

95. For the reasons set forth above, the Committee decides as follows:

- a. The Applicants' request for a continuation of the stay of enforcement of the Award is granted, subject to the conditions forth in paragraph b. below.
- b. Within seven (7) days of the issuance of this Decision, the Applicant Mr. Pildegovics shall provide a joint and several undertaking, irrevocable for the duration of these proceedings, on behalf of himself individually and on behalf of Applicant North Star, in which he commits to (i) pay any and all sums finally ordered in these proceedings, including interest accrued from the date of the Award; and (ii) use his authorities as a shareholder or otherwise with North Star to cause Applicant North Star to take whatever steps are necessary to fulfill the purpose of this undertaking.
- c. Applicants shall provide the Committee with periodic updates regarding the status of Applicant North Star's judicial protection proceedings. These should be provided every three months from the date of this Decision, or upon the occurrence of important milestones in the proceedings (*e.g.*, filing, plan submission, plan approval, other important rulings, termination), whichever occurs first.

96. The Respondent's request for termination of the stay is denied, without prejudice.

97. No decision is made on the Respondent's request for security for costs, which will be addressed separately once submissions on the issue are completed.

On behalf of the *ad hoc* Committee,

[signed]

Ms. Lucinda A. Low
President of the *ad hoc* Committee
Date: 7 November 2024