



July 15, 2016

To Whom It May Concern:

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Notice Regarding the Filing of a Lawsuit (Appeal) Against the Company

This is to notify that Sumitomo Heavy Industries, Ltd. (hereinafter referred to as the “Company” or “SHI”) has today received a copy of a written appeal that was submitted to the Osaka High Court by the City of Kyoto (hereinafter referred to as the “City”), which outlines their objections to the court decision that was previously disclosed in the “Notice Regarding a Court Decision on the Pending Lawsuit”, dated May 27, 2016.

1. Court where Appeal is pending and Date of Appeal

Osaka High Court, June 10, 2016

2. Plaintiff in the Lawsuit

- (1) Name: The City of Kyoto
(2) Address: 488 Kami-Honnoji-Mae-Cho, Oike-agaru, Teramachi-dori, Nakagyo-ku, Kyoto city, Kyoto, Japan
(3) Name of Representative: Mr. Daisaku Kadokawa, Mayor of the City of Kyoto

3. Historical Background

- (1) On March 18, 2005, the Company and the City entered into a construction contract (hereinafter referred to as the “Contract”) relating to the “Plant/Equipment Installation for the Kyoto City Incinerated Ash Melting Facility (Provisional Name) Construction Works”.
- (2) During the construction of the Incinerated Ash Melting Facility, several defects were discovered. At that point, the Company commenced a full-scale inspection of the facility, reviewed different corrective measures based on the results of the inspection, and received approval from the City to carry out such measures. Moreover, in July 2012, the Company and the City agreed to extend the project handover date to August 13, 2013 in order to provide enough time to implement these corrective measures.
- (3) The first trial run was completed in June 2013. At the same time, the works passed the first phase performance verification tests. Through this, the Company was able to confirm that the performance of the facility was satisfactory.
- (4) In the same month, the second trial run was carried out. At this time, it was discovered that un-melted residue (dust) was accumulating at the point where the slag from the melting furnace and un-melted waste is separated.
- (5) The Company submitted a report that analyzed the reasons for this problem as well as outlined corrective measures to the City and requested that it be allowed to implement such measures and re-commence commissioning activities. However, the “Performance Evaluation Committee” which was set up by the City, which comprises of technical staff and experts, concluded that it was not able to verify the effectiveness of such measures and denied the Company’s request.
- (6) While not approving the Company’s request to implement corrective measures and re-commence commissioning activities, in August 2013 the City announced that handover of the project would not be

made before the deadline and moved to terminate the Contract on the 5th of August (since a full month of operations is required to complete the second trial run, unless such activities commence on the 1st of the month, it would be impossible to handover the project prior to the deadline).

- (7) However, in the Contract there is no stipulation that requires that a "Performance Evaluation Committee" verify the effectiveness of any corrective measure. Of course, as the project principal, the City has the right to make its opinions known on an as needed basis during the performance of the Contract and also establish a "Performance Evaluation Committee" to review any corrective measures proposed by the Company. The Company also worked hard to incorporate the requests and wishes of the City as much as possible during the performance of the Contract. Nonetheless, SHI feels strongly that the project handover date should have been extended in line with the time required for the "Performance Evaluation Committee" to complete their review.
- (8) Moreover, the project handover could have been completed by the deadline, if the simple and easy-to-implement corrective measures proposed by the Company had been carried out.
- (9) In the Contract, there is a stipulation that states that if there are any disputes between the City and the Company regarding the performance of the Contract, a resolution will be sought out via mediation or conciliation through the Committee for the Adjustment of Construction Work Disputes as outlined in the Construction Industry Act. In accordance with this clause, on December 26, 2013, the Company submitted a conciliation request to the Central Committee for the Adjustment of Construction Work Disputes in regards to this dispute. However, the City stood firm on its stance to say that resolution via conciliation is not possible unless the Company abdicate the conciliation claim and responds favorably to its claim for compensation. Further, the City filed the lawsuit against the Company on March 20, 2014 without showing any posture to solve the dispute via conciliation.
- (10) Conciliation by the Central Committee for the Adjustment of Construction Work Disputes was terminated on July 31, 2014 because the City refused to participate in the conciliation.
- (11) The Company attempted to commence the second trial run for the plant that was almost complete, but the City refused to allow it, and the Company was thus prevented from carrying out one of the final steps of the Contract. As such, the Company still retains the right to claim payment for the outstanding balance of the Contract. The Company has filed the counterclaim against the City claiming payment for the outstanding balance of the Contract.
- (12) On May 27, 2016, the District Court of Kyoto (the court of first instance) rendered a decision dismissing all of the City's claims along with SHI's counterclaim. The City disagreed with the decision to dismiss the claims and filed an appeal with the Osaka High Court.

4. Summary of the Appeal

- (1) The City has requested that the Osaka High Court revoke that part of the decision dismissing the City's claims. In addition, the City has sought the following against SHI: (i) that the Incinerated Ash Melting Facility be dismantled (if (i) is not granted, payment of the costs to dismantle the Incinerated Ash Melting Facility); (ii) Payment of damages relating to the expenses incurred by the City to construct the Incinerated Ash Melting Facility; and (iii) Repayment of the construction fees paid by the City to the Company under the Contract, and payment of court costs.

- (2) Total Amount Claimed in the Appeal

JPY 18,454,324,573

5. Future Outlook

As the decision in the first instance affirms all of the assertions made by the Company against the City's claims, SHI continues to assert its validity of its assertions. Regarding that part of the decision dismissing the Company's counterclaim, the Company is considering its next steps, including filing an incidental appeal. The impact of this appeal on financial performance is not clear at the present moment. If an event that requires disclosure does occur in the future, SHI will provide a notification as soon as possible.

END

<References: Material made available to the public in the past>

<http://www.shi.co.jp/english/info/2013/6kgpsq0000001jv0-att/6kgpsq0000001jvi.pdf>

<http://www.shi.co.jp/english/info/2013/6kgpsq0000001jy0-att/6kgpsq0000001jyi.pdf>

<http://www.shi.co.jp/english/info/2013/6kgpsq0000001kg0-att/6kgpsq0000001kgi.pdf>

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