

**IN THE MATTER OF AN ARBITRATION**

**UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL  
CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES**

**ICSID CASE No. ARB/14/22**

**BETWEEN:**

**(1) BSG RESOURCES LIMITED**

**(2) BSG RESOURCES (GUINEA) LIMITED**

**(3) BSG RESOURCES (GUINEA) SÀRL**

**Claimants**

**- v -**

**THE REPUBLIC OF GUINEA**

**Respondent**

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**Second Witness Statement**

**ASHER AVIDAN**

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I, **ASHER AVIDAN**, of Pinkas Street, 54/9 Tel Aviv, Israel, 6226118, with date of birth 26 May 1962, will state as follows:

**A. INTRODUCTION**

1. I am an Israeli national and live in Israel. My native language is Hebrew, and I also speak English and French.
2. I make this second witness statement in relation to the claim by BSG Resources Limited ("**BSGR**"), BSG Resources (Guinea) Limited ("**BSGR Guernsey**") and BSG Resources (Guinea) Sàrl ("**BSGR Guinea**") against the Republic of Guinea. Save where I indicate otherwise, the facts and matters set out in this statement are based on my own knowledge and recollection.

3. While I do not accept any of the allegations Guinea has levelled against me, I also submit this second witness statement to put the record straight.
4. I have prepared this statement in English with the assistance of the Claimants' lawyers, Mishcon de Reya LLP. I reserve the right, however, to give evidence in Hebrew should it be necessary to do so.

**B. BSGR OBTAINED ITS RIGHTS LEGALLY**

5. Guinea alleges that BSGR bribed Mamadie Touré in order to obtain mining rights in Guinea, including Zogota and Simandou Blocks 1 & 2. In my first witness statement at paragraphs 18 – 33 I detail the efforts and work BSGR undertook in order to obtain the rights.
6. Further, Guinea have now produced documents evidencing the extent to which the Government had been disgruntled, discontented and disappointed with Rio Tinto and the effective freezing by Rio Tinto of Guinea's assets. Those documents reflect the discussions that I have had with Guinean officials since I arrived in Guinea in 2006.
7. It is against this background that BSGR applied for an exploration permit in Blocks 1 and 2 already in July 2007, and not as I wrongfully indicated in my first statement in 2008. Initially, the Government had the same concern about freezing the Simandou assets when we applied for them, in light of the other permits that we were already holding. However, we met those concerns by (i) proving that, contrary to Rio Tinto, we were exploring in our areas and were sharing our mining data with the Government and (ii) returning other permits.
8. When Rio Tinto's mining concession was suspended in July 2008, we re-applied for licences in Blocks 1 to 3 on 5 August 2005. At first, the Ministry did not really engage with our application. On the basis of the documents that Guinea has now produced, I assume that the Government was focusing on the negotiation of the retrocession of Rio Tinto's rights first.
9. When we were invited by Minister Nabé to provide information on what we had achieved in the country and confirm whether we would be prepared to give a number of important financial commitments to the Government in case they would grant some

of the Blocks to us, we responded immediately providing all the necessary information and commitments. As indicated in my first statement, there were other applicants but not that many and none of them had our track record in the country. From the documents that Guinea has produced, I deduct that Africanada was in fact the only applicant for an exploration permit in Blocks 1 to 4. Although I was not aware whether they were meeting the same conditions as we did, I was sure that we were much better than them. It was therefore not surprising that we were awarded Blocks 1 and 2. There was no corruption involved, neither would any corruption have been required.

10. BSGR proved itself worthy, submitting its feasibility study over Zogota in late 2009. Despite the fact that the mining authorities favourably welcomed our study, they gave us a hard time in the Technical Committee reviewing and advising on the feasibility study and the base convention. I remember that we discussed a lot of difficult technical and financial issues and issues in relation to the infrastructure and the transport. The BSGR negotiation team worked around the clock and we tried to accommodate the Committee's concerns as good as possible, obviously also taking our own interests into account. We managed to convince the Committee and the Committee recommended the Government to approve the Base Convention and grant us the mining concession.
11. Unfortunately that wasn't the end of the story for us as our proposal was met with some opposition within the Council of Ministers. The Government required us to clarify additional points and make further commitments. Because of the technicality and the level of detail of these points, I couldn't remember them anymore. However, having seen the documents that the Government was ordered to produce in this respect, I have seen some internal email communications involving Minister of Mines Thiam and I can confirm that these were the points that we were discussing and negotiating. Ultimately we managed to also convince the Council of Ministers and the Base Convention was approved. I believe that it was approved on its own merits but it was also the only project on the Government's table that had a real prospect of commercialisation within a reasonable short term. The Government was desperate to finally have its mineral deposits developed and commercialised.
12. I have said time and again that we did not obtain our expropriated mining rights by

corruption and the documentary record that has now been completed only confirms my statement.

### C. MAMADIE TOURE

13. In its counter-memorial, Guinea relies heavily on a statement of Mamadie Touré to make a number of allegations. I have dealt with these issues in my first witness statement ("CWS-3")<sup>1</sup> and I confirm this statement. I have always said that she was unreliable and we have now discovered that she was paid by the Guinean authorities to implicate Beny Steinmetz and was offered substantial benefits from the US authorities. She simply had her own financial and personal interest to make the declaration that she made at the time, irrespective of the truth.

### D. GHASSAN BOUTROS

14. In its counter-memorial Guinea purports that BSGR used Ghassan Boutros as a middle man through whom payments to Ms Toure would pass.<sup>2</sup> This is simply not true. In mid-2009 I was told by my technical team that we needed to purchase specific types of tractors. I approached Mr Boutros, from whom BSGR had previously purchased other pieces of technical equipment, about whether he could source a Caterpillar D9R and a Caterpillar 336DL, which are both models of Caterpillar brand tractors. I placed an order with Mr Boutros.
15. BSGR received an invoice from LMS dated 18 August 2009 in the amount of US\$1.3 million in respect of these two tractors and a generator<sup>3</sup>. This invoice was paid by BSGR that same day by bank transfer to an account designated by Mr Boutros<sup>4</sup>. I understand that the payment details were different from the ones which Mr Boutros usually provided to us. I do not now recall this level of detail, although from the accounting information I have now been shown it appears that the beneficiary bank account was called "L.M.S SARL" which is the name of Mr Boutros' company. Subsequently, the tractors were delivered to BSGR, although I do not recall precisely when.

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<sup>1</sup> CWS-3 (Avidan) at [108]-[158]

<sup>2</sup> Counter-memorial at [387]

<sup>3</sup> R-277, Facture de LMS à BSGR Guinée

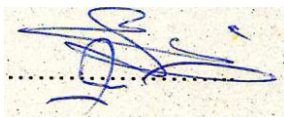
<sup>4</sup> R-278, Instruction de paiement de BSGR TS à LMS

16. I have been shown a copy of a Guinean Import Declaration dated 17 August 2009 for a Caterpillar D9R and a Caterpillar 336DL, with a collective value of US\$998,000. The importer is stated to be “LMS SARL”, and the seller is stated to be “Mitilda & Co Ltd”. However, at the time, I did not enquire and I was not aware of the identity of Mr Boutros' supplier.
17. I have been shown additional documents evidencing the supply and use of the tractors. In October 2009, BSGR entered into an agreement with Somaco for the transportation to Zogota of two tractors<sup>5</sup>. A copy of Vale's March 2010 presentation on Project Hills, which refers to a “CATD9R” as among VBG's equipment<sup>6</sup>.
18. Guinea also purports that Mr Boutros made a US\$2 million cash deposit on 18 May 2010 into Mamadie Touré's bank account at the Banque Populaire Maroco-Guinéene in Conakry under the instruction of BSGR<sup>7</sup>. This is not true. I did not give this instruction and I am not aware that anyone else at BSGR did.
19. Mr Boutros and his company LMS continued to provide bona fide equipment and services to BSGR after the supply of the tractors, and after entering into the joint venture, VBG also continued to engage Mr Boutros and his company LMS, with invoices of more than US\$4 million incurred by VBG.

#### E. ISRAELI PROCEEDINGS

20. I have recently been questioned by the Israeli authorities in relation to this matter and was released under certain conditions. While I appreciate that the criminal authorities must do their job, I am confident that the case will be closed without charges.

I confirm that this statement is true to the best of my knowledge and belief.



Asher Avidan

10 January 2017

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<sup>5</sup> C-0281

<sup>6</sup> C-0282

<sup>7</sup> Counter-memorial at [414]