



## **Jindal Defeats Bolivian Effort to Annul Jindal Arbitration Victory and Responds to Statements by Bolivia**

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Jindal Steel Bolivia S.A., a subsidiary of Jindal Steel & Power Limited, has achieved another decisive ruling in its favor, capping a series of victories over Bolivian state entity Empresa Siderúrgica del Mutún (ESM).

Jindal has now obtained three unanimous International Chamber of Commerce (ICC) arbitration rulings in its favor:

- A final arbitration award of approximately US\$22.5 million rendered on August 6, 2014, in connection with the illegal encashment of guarantees posted by Jindal, reflecting the full principal amount sought by Jindal plus interest. The tribunal also found that the Bolivian excuses for encashment constituted an “abuse of right” and were “illegitimate.” (See Jindal press statement of August 23, 2014.)
- A decision dated August 29, 2014 rejecting a request by the Bolivian entity to modify the Award. (See Jindal press statement of September 12, 2014.)
- A decision dated October 7, 2014 rejecting as untimely a request by the Bolivian entity to annul that Award.

Jindal’s successes vindicate its efforts to develop the El Mutún project, and demonstrate the gross inaccuracy of the negative public attacks on Jindal undertaken by Bolivian officials during the current election campaign. The truth about the El Mutún mining and steel project has been distorted by repeated misstatements in the press over the past weeks since Jindal obtained the successful arbitration award against the Bolivian entity, following years of misinformation to the Bolivian people regarding a project that held great promise for Jindal and for a positive economic impact for Bolivia.

Jindal will continue to pursue payment of the award as well as a second arbitration against Bolivia and state entities seeking approximately US\$100 million in connection with numerous other violations. Jindal is compelled to clarify the continued inaccurate public statements about Jindal, the El Mutún project, and the international disputes.

### **1. Bolivia and its entities signed and undertook obligations under the Contract.**

Bolivian officials including the Attorney General have stated that there is no contract between Jindal Steel Bolivia and the Bolivian state. In fact, Bolivia signed the 2007 joint venture contract with Jindal and undertook specific obligations, as did Bolivian state entities ESM and Comibol. Following the intervention of the President, in 2010, Bolivia signed a further

agreement with Jindal for the provision of lands required under the Contract. Similarly, in 2011, Bolivia referred in writing to the contract “signed between Jindal Steel Bolivia and the Plurinational State of Bolivia”.

## **2. Bolivia and its entities breached their obligations and did not deliver the land for the project, impeding investment and job creation.**

The President in recent weeks has stated that Jindal “defrauded us.” The President also announced in a public ceremony in April 2009 that “time has been wasted on the land issue ... but we have now overcome the problems”. This was not accurate, and similar statements made by Bolivian officials over time are also inaccurate. In fact, critical land area for the project was never delivered, making it impossible for the project to be completed and jobs to be generated for the people of Bolivia. Contemporaneous correspondence confirmed that some 57% of the land for the steel plant was never made available. The international tribunal confirmed that “while ESM was encashing – and even after having collected on – the guarantees ... there still were lands not available to Jindal.” Among other things, an agreement signed by the Bolivian state in 2010 demonstrates that the lands were still pending.

## **3. Jindal invested and sought to develop the project despite government inaction.**

The Bolivian Mining Minister recently stated that the “the ICC issued an award giving Jindal only 30% of what it claimed, referred to the guarantees. The ICC does not value affirmatively the elements raised by Jindal because the Court considers that there have been no investments”. In fact, the ICC tribunal in the first arbitration awarded the full amount of US\$ 18 million requested by Jindal, plus interest, and found that Jindal “only raised claims related to the enforcement of the guarantees issued in 2007” and that Jindal’s investment was impeded “due to lack of delivery of the lands” for the project. Faced with lack of access to the land, and other breaches on the Bolivian side, Jindal’s investment was impeded, undermining the great potential of the project.

## **4. Jindal was awarded the entire principal amount of its claim, plus interest.**

Bolivian officials have stated that Jindal only won a small portion of its claims in the arbitration. In fact, the tribunal awarded Jindal all of the principal amount it sought, plus interest. Among other things, the ICC Award confirmed:

- Rights and access to the lands required for the project were never delivered.
- The Bolivian entity illegally encashed two guarantees posted by Jindal in the amount of US\$18 million.
- The Bolivian excuses for encashment constituted an “abuse of right” and were “illegitimate.”

## **5. The arbitration was carried out in conformity with due process and applicable rules and law.**

In an effort to avoid responsibility, Bolivian officials have complained about the validity of the arbitration award and the Bolivian Mining Minister has stated that “the ICC applied a norm that is no longer in force to issue its award, and that is the Code of Civil Procedure.” In fact, the Tribunal applied the relevant Code of Civil Procedure and also carefully compared it against the later version of the Code. The tribunal also carefully considered the Bolivian entity’s procedural complaints and duly rejected them. The parties had ample opportunities to make their case.

**6. Bolivia invented criminal proceedings for alleged breach of contract, including to aid its own defense.**

The Prosecutor General of Bolivia has stated, in reference to an ongoing criminal proceeding against Jindal representatives for "breach of contract," that "one thing is what was determined about the payment and the situation revealed in the last few days, and another is the criminal proceeding which is being pursued" against Jindal representatives. In fact, the basis for the criminal actions has been undermined by the findings and rulings under Bolivian law of the independent tribunal, which determined that it was the Bolivian state entity, not Jindal, which breached the contract. The tribunal also found that it was Jindal who was the victim of "abuse of right", and that the Bolivian entity engaged in conduct "lacking any legal or logical justification." The harassment of Jindal has led to one international asylum petition and an international complaint against Bolivia before the Inter-American Commission of Human Rights.

**7. The US\$18 million and millions of additional dollars taken from Jindal are unaccounted for.**

The President of ESM has stated that he "does not know where the US\$18 million collected by his predecessor have gone, and which were supposedly administered by the Mining Ministry." The millions of dollars illegally taken from Jindal are missing.

**8. Bolivia claims to have no external lawyers, while at least US \$2.4 million was incurred in legal fees on the losing case.**

Bolivia recently stated in the second arbitration proceeding that it had no external counsel, seven months after the arbitration was filed and notified to the state, and even as ESM and Comibol replied through external lawyers. In fact, the Bolivian side incurred US\$ 2.4 million in legal costs in the first arbitration, as reported to the international tribunal. Meanwhile, in the second arbitration, the defense team has included on communications many lawyers in the office of the Attorney General and in at least one instance lawyers from the Paris office of the Dechert law firm, which has represented Bolivia in other international disputes. Bolivia now has requested additional time to find lawyers, with the effect of delaying the next step in the case until after elections.

**9. The two Jindal arbitrations focus on distinct breaches that harmed Jindal.**

The Bolivian Attorney General claims that Jindal's second arbitration filed against Bolivia and two state entities is "a complaint for the same issues that have been addressed in the commercial arbitration between [ESM] and Jindal." In fact, the ICC tribunal found that the first case related only to the encashment of two guarantees for US\$18 million. The second arbitration relates to the encashment of additional guarantees and further breaches of the contract and law causing Jindal to incur significant losses. Indeed, the Bolivian Ministry of Mining has contradicted the Attorney General, recognizing that the additional arbitration "has to do with the encashment of a third guarantee." Jindal will continue to pursue payment of the Award of US\$ 22.5 million, and the second arbitration related to the termination of its contract necessitated by the conduct of Bolivia and its entities.

**10. Bolivia's disputes with investors continue, while Jindal invites resolution.**

Bolivian officials have suggested recently, during the election campaign, that Bolivia has resolved most disputes with foreign investors. In fact, in addition to other serious issues involving investors, Bolivia has failed to pay any of the amounts legally owed to Jindal under a

binding and final international decision. While always open to dialogue as in the past, Jindal will continue pursuing its rights and seeking to recover its losses.