THE 13TH LAWASIA INTERNATIONAL MOOT COMPETITION

KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

SIEM REAP, CAMBODIA
2018

BETWEEN

CHUIZI LEISHEN'S LLC

(CLAIMANT)

AND

ROBUSTESSE ESPACIAL SOLUTION CORP

(RESPONDENT)

MEMORIAL FOR THE CLAIMANT

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STATEMENT OF JURISDICTION

Chuizi Leishen's LLC ("Claimant") and Robustesse Espacial Solution Corp ("Respondent") have consented to submit the dispute to arbitration in accordance with the Kuala Lumpur Regional Centre for Arbitration Arbitration Rules (KLRCA Rules).

QUESTIONS PRESENTED

1. Whether the agreement to arbitrate is incapable of being performed due to impecuniosity of the Respondent.
2. Whether the request of the Claimant to join Vader as a party to the Arbitration should be granted by the Tribunal.
3. Whether the Contract was validly formed under UNIDROIT Principles.
    a. Whether the Claimant's nod was a valid acceptance.

STATEMENT OF FACTS

1. The Claimant, Chuizi Leishen's LLC (**"CL"**, **"Claimant"**, or **"Buyer"**) is the People's Republic of China commercial company specializing in construction. Since 2013, CL has begun to explore the markets in the Southeast Asian countries as China's Belt & Road Initiative ("B&R") offers many construction opportunities outside of China.

2. The Respondent, Robustesse Espacial Solucion Corp (**"RES"**, **"Respondent"**, or **"Seller"**) is a limited Company duly incorporated under the laws of Cambodia which is a wholly owned subsidiary of United Kingdom company Vader Ltd "Vader". RES's main activity is the production and selling of brick

3. By September 2013, Mr. Parades (Representative of RES) and Mr. Deewarvala (Representative of CL) (individually as a **"Representative"** and jointly as **"Representatives"**) signed a contract (**"the Contract")** which requires four deliveries of bricks in 2014 (on the last working day of March, June, September, and December)

4. The delivery started in 2014. The first three deliveries and payments were successful

5. On November 2014, the representatives met and the Buyer offered **"First incentive"** which is 15% price increase for the 4th delivery of 2014 and four more deliveries in 2015. The performance of the deliveries and payments of 4th delivery in 2014 and 4 deliveries in 2015 were successful.

6. The parties continued the agreement of four deliveries throughout 2016 with 15% price increase but no formal contract was executed.

7. On June 2016, Vader passed a motion such that no further financing, compliance monitoring or directives would be given to RES. Mr. Paredes had full control over RES.

8. The first three deliveries of 2016 were successful and the representatives talk to make moves throughout 2017 and 2018. On November 23th 2016, the representatives negotiated about “Second Incentive” which is 15% price increase for 2017 and 35% bonus at the end of the year and the Seller promised for 8 more deliveries for 2017-2018

10. Mr. Deewarvala accepted but did the sideway head shake which meant he agreed but the Seller thought that the Buyer refuses his proposal and thought that Contract was terminated. After that, the last delivery of 2016 was delivered.

12. In March 2017, the Buyer contacted the Seller to confirm the deliveries for 2017. The representatives knew that there was misunderstanding.

13. The Buyer filed a claim to AIAC requesting relief which is

a. To declare that the contract was existent and enforceable

b. To order the respondent to perform the deliveries

c. To set terms of contract in writing

14. AIAC requested USD 25,000 security deposit. The Claimant paid 50% of security deposit and the Respondent refused to pay the share.

15. The Respondent claimed that the Contract is already terminated and the agreement to arbitrate had become null because the Respondent is incapable to perform it but if the contract is still enforceable the respondent will file counterclaim.

16. The Respondent counterclaim is mainly about the payment of the second incentive and brick delivering, Interests for the payment ,the counsel's fees and the costs of arbitration. The problem is the respondent cannot file the counterclaim due to the cost of arbitration.

17. The Claimant denied the Respondent's counter-claims and requested that Vader join the Seller's party to support the costs of the arbitration.

18. The Parties now request for the Hearing which will take place on November 2-5, 2018 in the Kingdom of Cambodia. The applicable law shall be the UNIDROIT Principles and KLRCA Arbitration Rules.

SUMMARY OF PLEADING

A. The agreement to arbitrate is capable of being performed.

The agreement to arbitrate is capable of being performed. KLRCA rules 2017 granted one party an opportunity to pay for the security deposit if another party fails to pay such deposit. If the Respondent is unable to pay for the security deposit, the Claimant can pay for the Respondent's share and the agreement to arbitrate is capable of being performed.

B. The request of the claimant to join Vader as a party to the arbitration should be granted by the tribunal

The Tribunal should grant the request of the Claimant to join Vader as a party to the arbitration due to the fact that under doctrine of kompetenz-kompetenz, the Tribunal has authority to determine its own jurisdiction and Vader is bound by the contract.

C. The Contract was validly formed under the UNIDROIT Principles.

The Claimant's nod possessed an intention to be bound by the offer given that it is interpret in accordance with Art 4.2 of UNIDROIT Principles. Also the Claimant's nod validly communicated so-called intention to the Respondent in accordance with Art 1.2 and 2.2.1 of the UNIDROIT Principles. Therefore, it met two criteria of acceptance thus effectively formed the Contract.

PLEADING

I. THE AGREEMENT TO ARBITRATE IS CAPABLE OF BEING PERFORMED.

1. The parties agreed to settle the dispute, controversy or claim arising out of the contract by arbitration procedures. The dispute concerning misunderstanding between the parties shall be settled by arbitration and the agreement to arbitrate is capable of being performed because the claimant is granted an opportunity to pay for the security deposit of the respondent [A].The agreement to arbitrate is not incapable of being performed due to the impecuniosity of the respondent [B]. The arbitration agreement and the main contract (the sale of bricks) is separated according to the doctrine of separability [C].

A. Claimant is granted the opportunity to pay for the security deposit of the respondent.

2. The parties agreed to use the KLRCA Rules 2017 to settle the dispute, controversy or claim arising out of the contract. As such, the procedural law governing the Contract shall be KLRCA rules 2017. Rule 14 of the KLRCA[1] Rules postulates that:

   According to KLRCA rules 2017. Rule 14

3. Rule 14(3) In the event that any of the parties fails to pay such deposit, the Director shall give the other party an opportunity to make the required payment within a specified period of time. The arbitral tribunal shall not proceed with the arbitral proceedings until such provisional advance deposit is paid in full.

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[1] KLRCA Arbitration Rules, 2017 14(3)

4. Rule 14(7) if the required deposits are not paid in full, the Director shall give the other party an opportunity to make the required payment within a specified period of time. If such payment is not made, the arbitral tribunal may, after consultation with the Director, order the suspension or termination of the arbitral proceedings or any part thereof.

5. Since the Respondent claims that it is impecunious and does not have enough fund to pay for the security deposit for the arbitration proceedings to continue which makes the agreement to arbitrate incapable of being performed. However, KLRCA rule 14(3) grants the claimant the opportunity to pay for the security deposit of the respondent share. After the security deposit is paid in full, the arbitral procedures can continue. The arbitration agreement is capable of being performed.

6. French Cour de Cassation (Supreme Court) ruled in Pirelli case[2]that the impecunious respondent, who was not in a position to bear the burden of his share of the advance on costs in arbitration proceedings, remained entitled to make counter-claims. The arbitrators accordingly retain jurisdiction to examine such claims where they are deemed "inseparable" from the principal claims. This means that the Court has confirmed the principles that the obvious inapplicability of an arbitration clause cannot be deduced from the alleged impecuniosity of a party, such that the arbitration tribunal retains jurisdiction to ensure proper access to justice.

[2] Pirelli v. LP,Court of Cassation, Civ. 1re, 28 Mar. 2013

B. The agreement to arbitrate is not incapable of being performed due to the impecuniosity of the respondent.

7. The procedural law is determined by *lex arbitri*[3] or law of the arbitration which provides general principle of arbitration governing law. The law of the seat of the arbitration becomes *lex arbitri* as an automatic consequence of choosing the seat of arbitration. The procedural laws of the country that is decided as the seat of the arbitration govern the procedure of the arbitration. In this case, the parties decided to bring the disputes to arbitration in Cambodia. As Cambodia is set as the seat of arbitration, laws of Cambodia shall be procedural law and control procedural aspect of the arbitration.

8. According to civil code of Cambodia section 392; the impossibility of performances.[4]

Section 392 impossibility of performances

(1) Where it is physically impossible to perform the obligation, the performance is deemed impossible. Performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint.

(2) Where it is established prior to the time for performance that the performance of an obligation will be impossible at the time for performance, the performance shall be deemed impossible when such impossibility is established.

9. Since Cambodian law is also the procedural law, the impossible to perform obligation are only physically impossible and the obligation Where it is established prior to the

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3 GREENBERG, supra note 1, at 58.

4 Civil code of Cambodia 2008, s 392 (1)(2)

time for performance that the performance of an obligation will be impossible at the time for performance. The impecuniosity of the respondent is not the impossible performance according to the Cambodian law.

C. The arbitration agreement and the main contract is separated according to the Separability Doctrine[5]

10. The arbitration agreement and the main contract is separated according to the Separability Doctrine which means the arbitration clause survive regardless of the validity of the main contract.

11. The "Separability doctrine" was articulated comprehensively by the United States Supreme Court in Prima paint Corp v. Flood & Conklin Manufacturing Co.[6] which the Court ruled that arbitration clauses can be 'separable' from the contracts in which they are included. The separability doctrine is generally understood as implying the continued validity of an arbitration clause (notwithstanding defects in the parties' underlying contract), and as permitting the application of different substantive laws to the parties' arbitration agreement and underlying contract.

12. Regardless of the validity of the main contract between the claimant and the respondent, the arbitration agreement between the parties is still capable of being performed.

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5 All Answers ltd, 'Arbitration agreement and doctrine of separability' (Lawteacher.net, September 2018) <https://www.lawteacher.net/free-law-essays/contract-law/arbitration-agreement-and-doctrine-of-separability-contract-law-essay.php?vref=1> accessed 17 September 2018

6 Prima Paint Corp. V. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967)

II. THE REQUEST OF THE CLAIMANT TO JOIN VADER AS A PARTY TO THE ARBITRATION SHOULD BE GRANTED BY THE TRIBUNAL.

13. The tribunal should granted the request of the claimant to join Vader as a party to the arbitration due to the fact that (A) Under doctrine of kompetenz-kompetenz, The tribunal has authority to determine its own jurisdiction and (B)Vader is bound by the contract

A. Under doctrine of kompetenz-kompetenz ,The tribunal has authority to determine its own jurisdiction

14. Literally speaking,"doctrine of kompetenz-kompetenz" means that arbitrators may rule on their own authority without having to stop the proceedings when a jurisdictional question arises[7]. This doctrine should be adopted is this case due to (i) Under KLRCA procedural rule, doctrine of kompetenz-kompetenz is recognized (ii)Doctrine of kompetenz-kompetenz is internationally recognized (iii)The tribunal has power to appointed to determine whether objecting party ,vader ,was bound as signatory under this doctrine

(i) Under KLRCA procedural rule, doctrine of kompetenz-kompetenz is recognized

15. Due to agreement[8], the Tribunal is governed by KLRCA 2017 Arbitration Rules which recognizea the doctrine of kompetenz-kompetenez. The evidence showed in

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[7] WILLIAM W. PARK, ARBITRAL JURISDICTION IN THE UNITED STATES: WHO DECIDES WHAT? [2008] Int. A.L.R,37

[8] Moot problem, Para15

rule number 9 "The Request for Joinder will be determined by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Director"[9]

(ii) Doctrine of kompetenz-kompetenz is internationally recognized

16. not only recognized in KLRCA 2017 Arbitration Rules, Doctrine of kompetenz-kompetenz also widely recognized. A notable example is UNICITRAL model law article 16 which state that *The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause*.[10]

(iii) The tribunal has power to appointed to determine whether objecting party, Vader, was bound as signatory under this doctrine

17. A function of this doctrine is the arbitrator appointed to determine whether objecting party was bound as signatory. The clear example is *Masterfile Corp v Graphic Images, Inc* case[11].

B. Vader is binding to the arbitration

18. From this case, Vader is a non-signatory party. However, Vader is binding to the arbitration and the tribunal should granted the request of joinder form claimant due to (i) Respondent is a Vader's agent (ii) From Doctrine Of direct benefit estoppel, Vader

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9 KLRCA Arbitration rule ,2017, rule 9

10 UNCITRAL Model Law on International Commercial Arbitration, art. 16(1)

11 Masterfile Corp v Graphic Images, Inc [2002] OJ No 2590

is binding to this contract (iii) Alternatively, Vader is binding to the contract by Group of company doctrine (iv) Alternatively, respondent is an alter ego of Vader

(i) Respondent is a Vader's agent

19. Agency relationship is one clause that can bound non-signatory to the arbitration[12]. Agent is "one individual or legal entity to enter into binding legal acts on behalf of another"[13]. In this case, the Respondent can prove that it is a Vader's agent by proving that (a.) respondent is granting authority from Vader (b.)Vader is boding to this contract due ostensible authority for respondent to act as its agent

20. (a.) Respondent is granting authority from Vader

The authorization of the agent by the principal may be express or implied[14] and need not be given in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses[15].In this case, Authorization from Vader may came from compliance monitoring or directives from Vader[16]. Thus, where First Respondent held an express authority from Second Respondent it would include the authority to conclude arbitration agreements.

21. (b.) Vader is binding to this contract due ostensible authority for respondent to act as its agent

22. Ostensible authority or apparent authority "refers to a situation where a reasonable third party would understand that an agent had authority to act. This means a principal

12 Denney v BDO Seidman LLP 412 F 3d 58, 71

13 Gary Born. International Commercial Arbitration: Commentary and Materials.Kluwer Law International, The Hague, 2nd Ed. 2001 p125

14 CONVENTION ON AGENCY IN THE INTERNATIONAL SALE OF GOODS, Art. 9

15 CONVENTION ON AGENCY IN THE INTERNATIONAL SALE OF GOODS. Art.10

16 Moot problem,Para 27

is bound by the agent's actions, even if the agent had no actual authority, whether express or implied. It raises an estoppel because the third party is given an assurance, which he relies on and would be inequitable for the principal to deny the authority given. Apparent authority can legally be found, even if actual authority has not been given[17]" In this case, respondent is created by Vader and wholly owned subsidiary of Vader at first[18]. Second, both companies' main business activity is the production and selling of bricks[19]. The claimant had reasonable reason to think that respondent is a Vader's agent. Moreover, the claimant's CEO met Vader CEO in the meeting before have an agreement with respondent[20] which may lead Claimant to think that Vader and respondent have relationship to each other.

(ii) From Doctrine Of direct benefit estoppel, Vader is binding to this contract

23. Under doctrine of direct benefit estoppel or another term "equitable estoppel"[21], "non-signatory plaintiff seeking the benefits of a contract is estopped from simultaneously attempting to avoid the contract's burdens, such as the obligation to arbitrate disputes".[22]

24. Doctrine of direct benefit estoppel is one of the reasons that can bind Non-signatory to the contract.[23] The doctrine of direct benefit estoppel should be applied to the tribunal because (a.) It is widely recognized (b.) Vader gets direct benefit from the contract

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17 Garner, Bryan A., ed. in chief. Black's Law Dictionary (7th ed.). St. Paul, MN: West Group. p. 128.

18 Moot problem,Para 8

19 Ibid

20 Moot problem,Para 9

21 HARTFORD LIFE INS. v. FORMAN, 13-08-00547-CV (Tex.App.-Corpus Christi 6-3-2009)

22 In Re Kellogg Brown & Root, Inc., 166 S.W.3d 732 (Tex. 2005)

23 *See* cases cited Supra note 11.

(a.) The doctrine of direct benefit estoppel is widely recognized

25. The doctrine of direct benefit estoppel is recognized in common law country and even if Civil Law does not contain an estoppel doctrine, it contains several basic principles that serve to the same goal which can be summarized as to achieve justice through equity. The doctrine of direct benefit estoppel is also recognized in CISG (The United Nations Convention on Contracts for the International Sale of Goods)[24].

(b.) Vader get direct benefit from the contract

26. The purpose of Vader from established respondent is "to prepare for the off chance of a brexit and to go in into the Asian market"[25]. Surely, the contract between respondent and Chuzi Leishen's LLC serve this purpose and Vader get benefit from it. This will made Vader bounded to the contract.

(iii)Alternatively, Vader is binding to the contract by Group of companies doctrine

27. Group of company doctrine is also one of reason that can bound non-signatory to the arbitration clause[26] and might not require written arbitration agreement to use this doctrine[27].The group of company theory relies on two elements, an objective and a subjective one. The first one refers to the actual existence of a group of companies under common ownership, operating and being managed closely by the parent

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24 Uçaryılmaz, 'Equitable Estoppel And Cisg' Hacettepe Hukuk Fak. Derg.,(2013) 3(2), 161,161

25 Moot problem,Para 6

26 Defining the Party: Who is a Proper Party in an Institutional Arbitration before the AAA and Other International Institutions. 34 Geo. Wash. Int"l L. Rev. 711 (2003)

27 Kryvoi, Yaraslau. "Piercing the Corporate Veil in International Arbitration." Global Business Law Review 1 (2011): p. 177.

company, and the second one is represented by the implied acquiescence of the parent company to the contracts entered by the subsidiary and the participation of the parent company in the formation, performance and/or termination of the contract[28] .

28. In this case, Vader is binding to the contract by Group of company doctrine from both objective and subjective element

29. On objective element, respondent is being managed closely by the parent company; because, it is wholly funded as subsidiary of Vader[29]; furthermore, Vader also give directions and monitoring to respondent[30].

30. On subjective element, Even though the contract is signed between claimant and respondent, Vader is participation in the formation of the contract between respondent and claimant; because, before contract was signed, Vader 's CEO and claimant's CEO met each other in the meeting and discussed about term of agreement and found some mutual agreement[31].

(iv) Alternatively, respondent is an alter ego of Vader

31. The alter ego or another term "piercing the Corporate Veil"[32] doctrine is "Legal doctrine whereby the court finds a corporation lacks a separate identity from an

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28 Boza, Rafael. "Caveat Arbiter: The U.S.-Peru Trade Promotion Agreement, Peruvian Arbitration Law, and the Extension of the Arbitration Agreement to Non-Signatories. Has Peru Gone Too Far?" Currents International Trade Law Journal 17 (2009): p. 68

29 Moot problem,Para 8

30 Moot problem,Para 27

31 Moot peoblem,para 10

32 Piercing the Corporate Law Veil: The Alter Ego Doctrine under Federal Common Law. (1982). Harvard Law Review, 95(4), 853-871. doi:10.2307/1340779

individual or corporate shareholder, resulting in injustice to the corporation's debtors. Finding alter ego gives the court cause to pierce the corporate veil and hold individual shareholders personally liable for debts of the corporation."[33] The alter ego doctrine is also one reason that can bound non-signatory to the arbitration[34].

32. Generally, general test for piercing the Corporate Veil is (1) completely dominated and controlled; and (2) being used as a shield for fraudulent or improper conduct.[35] In this case, respondent is an alter ego of Vader because

(a) Respondent is completely dominated and controlled by Vader .It is stated clearly that Respondent is wholly owned[36], compliance monitoring, or directive[37] from Vader which can create a scenario that Vader is controlling respondent

(b) Even though respondent is not being used as a shield for fraudulent or improper conduct, respondent is still be an alter ego of Vader . From *Kingsman Enterprises, Inc. v. Bakerfield Electric Company*, piercing the Corporate Veil doctrine can be used to bound non-signatory which is fully controlled by parent company Even though fraud is absent[38].

III.THE CONTRACT WAS VALIDLY FORMED UNDER THE UNIDROIT PRINCIPLES.

33. The Contract was validly formed as the Claimant's nod was a valid acceptance given that it is interpreted under UNIDROIT Principles**.**

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33 Cornell Law School, 'Alter Ego' <https://www.law.cornell.edu/wex/alter_ego> accessed 18 September 2018

34 *See* cases cited Supra note 11.

35 Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co. (1996), 28 O.R. (3d) 423 (Ont. Ct. Gen. Div.)

36 Moot problem,Para 8

37 Moot problem,Para 27

38 Kingsman Enterprises, Inc. v. Bakerfield Electric Company 339 So. 2d 1280 (La. App. 1st Cir. 1976).

A. The Claimant's nod was a valid acceptance given that it is interpreted the intended intention under the UNIDROIT Principles.

34. Under UNIDROIT Principles, a contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.[39] In order to determine whether the conduct of the Parties is an offer or acceptance, three criterias must be met[40]

    a. The manifestor must intend to be bound.

    b. The manifestation must be communicated to the other party.

35. The Claimant's nod was regarded as a valid acceptance because it intended to be bound by the offer**(i)**, and communicated the Claimant's intention to the Respondent. **(ii)**

(i) The Claimant's nod intended to be bound by the offer.

36. In order to determine whether the Claimant's nod possessed intention to be bound by the Respondent's offer, the conduct must be interpreted in accordance with criterias set forth in Art 4.1 and 4.2 of UNIDROIT Principles.[41]

37. Under Art 4.2 the statement and other conduct of a party shall be interpreted according to

    (1) that party's intention if the the other party knew or could not have been unaware of that intention. or

[39] UNIDROIT Principles Art 2.1.1
[40] UNIDROIT Principles Art 2.1.2
See also Henry Cheeseman. Business Law. p.205

[41] Ibid

(2) If the preceding paragraph is not applicable, such statements and conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstance.

38. The nod indicated the Complainant's intention to be bound by the Contract because the Respondent knew or could not be unaware of the Claimant's intention. (**a)** Even if the Respondent did not know about such intention, a reasonable person of the same kind as the Respondent would not interpret an Indian head nod as a rejection.**(b)**

(a.) The Respondent knew or could not be unaware of the Claimant's intention.

39. According to substance fact of the case, Mr.Deewavala did an Indian head nod to express his acceptance.[42] The nod expressed acceptance by the Claimant, head moving from left to right vertically, could not lead to the Respondent's belief that it was a rejection because it was expressed differently from commonly perceived rejection gesture, head moving from left to right horizontally.[43] Therefore the Respondent could not be unaware of the Claimant's intention to accept the offer.

(b.) Even if the Respondent did not know about such intention, a reasonable person of the same kind as the Respondent would not interpret an Indian head nod as a rejection.

[42] Moot Problem Para 35
[43] Darwin, Charles. *The Expression of the Emotions in Man and Animals*. New York: D. Appleton and Company, 1913; Page 272

40. In Art 4.2(2), objective theory is adopted to interpret the parties' intention. In objective theory of contracts, the intent to contract is judged by the reasonable person standard and not by the subjective intent of the parties.[44]

41. According to the fact, the Respondent was born and raised in Mexico and later completed an MBA in France.[45] In Mexico and France, their cultures interpret a horizontally head shake as a rejection. However they do not interpret vertically head nod as a rejection but rather a sign that the person is considering something.

42. In commercial agreements, the parties' intentions must be presumed to be bound legally by the Contract unless it is proven otherwise[46]. The party asserting an absence of legal relations must prove it; and any terms seeking to rebut the presumption must be clear and unambiguous.[47]

43. According to rebuttable presumption theory in preceding paragraph, the Claimant's head nod must be presumed intention to be bound by the offer unless there was a clear, unambiguous fact that the Claimant did not have an intention to be bound by the offer.

(ii) The Claimant's nod communicated its intention to the Respondent.

[44] Henry Cheeseman. Business Law. p.205
see also in Smith v Hughes (1871) LR6 QB 597
[45] Clarification, Question 5
[46] Esso Petroleum Co Ltd v Customs & Excise Edwards v Skyways [1964] 1 WLR 349
[47] Furmston, Cheshire, Simpson, Fifoot, p. 150

44. When the offeree has an intention to accept the offer, it must indicate or communicate so-called intention to the offeror to form an effective acceptance.[48]

45. To determine whether the offeree communicates its intention to the offeror, Acceptance-upon-Dispatch Rule shall be applied.[49] Under this rule, the acceptance is effective when it is dispatched by an authorized means of communication.[50]

46. Authorized means of communication under UNIDROIT Principles may be in verbal, written form or other conduct.[51] The Claimant dispatched its intention through body language to the Respondent and there was nothing more it believed it could have done therefore the communication was done at the time of negotiation.

47. Since Mr. Deewavala's nod indicated the Claimant's intention to be bound by the offer, it was a valid acceptance thus the Contract was validly formed between the Parties.

[48] UNIDROIT Principles Art 2.1.6 See also Taylor v Laird (1856) 25 LJ Ex 329
[49] Henry Cheeseman. Business Law. p.215
[50] Ibid
[51] UNIDROIT Principles Art 1.2 and 2.1.1

PRAYERS FOR RELIEF

For the foregoing reasons, the Claimant respectfully requests the Tribunal to declare that

1. The agreement to arbitrate is capable of being performed

2. The request of the claimant to join Vader as a party to the arbitration should be granted by the tribunal

3. The Claimant's sideway nod was a valid acceptance and the Contract was formed and enforceable.