At Asian International Arbitration Center

MEMORIAL

FOR

CLAIMANT

Claimant	Respondent
Chuizi Leishen's LLC	**Robustesse Espacial Solusion Corp**

I. Table of Contents

II. Abbreviations

Term	**Official name / Formal name**
AIAC/KLRCA	Asian International Arbitration Centre known as the Kuala Lumpur Regional Centre for Arbitration before 28 February 2018
Cambodia	Kingdom of Cambodia
China	People's Republic of China
UK	United Kingdom
EU	European Union
Claimant	Chuizi Leishen's LLC
Respondent	Robustesse Espacial Solucion Corp
The Parties	Claimant and Respondent
CEO/CEOs	Ms. Lee Qiang Bi and Mr. Auld Chap

Mr. Deewarvala	Mr. Kalai Deewarvala
Mr. Paredes	Mr. Armando Paredes
Representatives	Mr. Deewarvala & Mr. Paredes
Vader	Vader ltd
The Contract	The agreement executed by CL and RES in September 2013
B&R	Belt & Road Initiative
First Incentive	A 15% price increase in exchange for 4 future deliveries
Second Incentive	A 35% bonus for successful completion of 4 deliveries
P.	Page
para(s).	Paragraph(s)

C.	Clarifications to the moot problem
AC.	Additional Clarifications to the moot problem
Sec.	Section
Art.	Article
ed.	Edition
USD	United State Dollar

III. Index of Authorities

Articles and Works of Publicists

Abbreviation	**Books/Articles**	**Page No.**
Patricia Zivkovic	Patricia Zivkovic Impecunious Parties in Arbitration: An Overview of European National Courts' Practice (December 12, 2016). Croatian Arbitration Yearbook Volume 23 (2016) https://ssrn.com/abstract=2884416	22, 27
Hans van Houtte	Hans van Houtte Changed Circumstances and Pacta Sunt Servanda, in: Gaillard (ed.), Transnational Rules in International Commercial Arbitration (ICC Publ. Nr. 480,4), Paris 1993, at 105 et seq. https://www.trans-lex.org/117300	24
Gary Born	Gary B. Born	25, 26, 33

	International Commercial Arbitration, volume I, International arbitration agreements (2nd ed., Wolters Kluwer Law & Business 2014)	
Redfern & Hunter	Alan Redfern and Martin Hunter REDFRN AND HUNTER ON INTERNATIONAL ARBITRATION (6th ed., Oxford University Press 2015)	31
Cornell	Cornel Law School Legal Information Institution https://www.law.cornell.edu/wex/prima_facie	33
Thomson Reuters	Thomson Reuters Practical Law https://content.next.westlaw.com/	33
Pietro Ferrario	Pietro Ferrario The Group of Companies Doctrine in International Commercial Arbitration: Is There	34, 38

	any Reason for this Doctrine to Exist?' (2009) 26 Journal of International Arbitration, Issue 5 *(Volume 26, Kluwer Law International 2009)*	
Hor Peng	Hor Peng, Kong Phallack and Jörg Menzel Introduction to CAMBODIA LAW (Konrad-Adenauer-Stiftung, Cambodia 2012) http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080906	36
Vogenauer/ Kleinheisterkamp	Stefan Vogenauer and Jan Kleinheisterkamp Commentary on the UNIDROIT Principles of International Commercial Contracts, (1st ed. Oxford University Press 2017)	47, 48
UNIDROIT Official comments	Commentary on the UNIDROIT Principles of International Commercial Contracts 2016	46, 56, 57

	https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016	
Chartered Institute of Arbitrators	Chartered Institute of Arbitrators Drafting Arbitral Awards Part III, Costs of International Arbitration Guidelines 2016 http://www.ciarb.org/docs/default-source/ciarbdocuments/guidance-and-ethics/drafting-arbitral-awards-part-iii-costs-8-june-2016.pdf?sfvrsn=4	62

Cases

Abbreviation	**Cases**	**Page No.**
	France	
Graphics decision	Judgement of 19 November 1991, Societe TRH Graphics v. Societe Offset Aubin,	28

	1992 Rev. abr. 462 (French Cour de cassation civ. le)	
Paris Court of Appeals (1984)	Paris Court of Appeals, Rev. Arb. 1984, 98 (at 100)	35
	UK	
Paczy case	Haendler & Natermann GmbH v Janos Paczy, 1 Lloyd's Law Reports 302 (Court of Appeal 1980)	26
Nasharty decision	Amr Amin Hamza El Nasharty v. J Sainsbury Plc, [2007] EWHC 2618 (Comm) 2007 WL 3389508.	27
Jackson case	Jackson Distribution Ltd v Tum Yeto Inc (12/05/2009	57
	Swiss	
DFT decision	Judgment of 12 March 2003, DFT 4p.2/2003, ¶ 3 (Swiss Federal Tribunal)	28
	The U.S	

Gar case	Gar Energt&Assocs. v. Ivanhoe Energt Inc., 2011 WL 6780927, at *7-8 (E.D. Cal.)	26
	ICC	
Dow Chemical case	Interim Award in ICC Case No. 4131, IX Y.B. Comm. Arb. 131 [1984]	34, 35
Dallah case	Government of Pakistan, Ministry of Religious Affairs v Dallah Real Estate and Tourism Holding Company [2010]	36
ICC 4A_450/2013	ICC arbitration Case No. 4A_450/2013	41
ICC No. 11160	the final award in ICC case No. 11160 [2005]	38
	Arbitration	
Sapphire case	Sapphire v. National lranian Oil Company, Arbitral award March 15, 1963, I.L.R., 1967, 136 at 181.	23

Statutes

Abbreviation	**Citation**	**Page No.**
The UNIDROIT principles	The UNIDROIT principles of international Commercial Contract (2016)	20, 41, 44, 45, 47, 48, 49, 52, 54, 55, 56, 60, 61
The KLRCA Rules	The KLRCA Arbitration Rules (As revised in 2017)	14, 20, 23, 32, 33, 34, 35, 62, 64
The Arbitration Law of Cambodia	The Commercial Arbitration Law of the Kingdom of Cambodia (2006)	31
The Commercial Law of Cambodia	Law on Commercial Enterprises of the Kingdom of Cambodia (2005)	39
NY convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)	25, 30

The UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006	25, 35
The Companies Act	Companies Act 2006 (UK)	38

IV. Statement of Jurisdiction

This Tribunal has jurisdiction over this matter because Claimant and Respondent agree to have the arbitration held in Cambodia using the KLRCA Rules.

V. Questions Presented

The Parties agreed that the issues to be decided in the arbitration are as follows:

1. Is the agreement to arbitrate incapable of being performed due to impecuniosity of Respondent?

2. Should the request of Claimant to join Vader as a party to the Arbitration be granted by the Tribunal?

3. Was there a valid acceptance of the Respondent's offer?

4. What relief should the Tribunal grant?

VI. Statement of Facts

The Parties to this arbitration are Chuizi Leishen's LLC (hereinafter "**Claimant**") and Robustesse Espacial Solucion Corp (hereinafter "**Respondent**"; jointly referred to as **"Parties"**).

Claimant is a commercial company duly incorporated under the laws of China in 2000. Its main commercial activity is construction. Claimant employed Mr. Kalai Deewarvala (hereinafter "**Mr. Deewarvala**"), a Malaysian-Indian construction specialist, as the representative of Claimant for the purpose of negotiating the contract between Parties and heading all the B&R projects.

Respondent a Limited Company duly incorporated under the laws of Cambodia in January 2013. Respondent is fully owned by Vader, which is a commercial company in UK. Both companies' main business activity is the production and selling of bricks. The management Director of Respondent is Mr. Armando Paredes (hereinafter "**Mr. Paredes**") who is a Mexican specialist in baking bricks and building walls.

1950	Vader Ltd (hereinafter "Vader") was duly incorporated under the laws of the United Kingdom.
2000	Chuizi Leishen's LLC (hereinafter "Claimant") was duly incorporated under the laws of China.
2013	Claimant began to explore the markets in the Southeast Asian countries as China's Belt & Road Initiative (hereinafter "B&R").
January 2013	Vader established Robustesse Espacial Solucion Corp (hereinafter "Respondent") under the laws of Cambodia in order to go into the Asian market.
February 2013	A Russian national, Ms. Zolushka Pupkina arranged for Mr. Chap and Ms. Lee (hereinafter "CEOs") to meet to discuss business.
September 2013	Mr. Paredes and Mr. Deewarvala (hereinafter the "Representatives") had signed the "Contract".

November 2014	The Representatives met in Paris. Mr. Deewarvala explained that the operation with Respondent was very important to Claimant's company and they intended to increase the number of deliveries.
November 2015	The Representatives crossed emails and decided to extend the agreement throughout 2016 for 4 more deliveries and a second 15% price increase.
July 2016	The Parties started to communicate and to seek a new round of negotiations.
23th November 2016	The Representatives had a final Skype call.
Mid-March 2017	Claimant contacted Respondent to confirm the date of the next delivery. The Parties realized there was a misunderstanding.

VII. Summary of Pleadings

ISSUE 1: IMPECUNIOSITY OF RESPONDENT HAS NOT CAUSED THE ARBITRATION AGREEMENT INCAPABLE OF BEING PERFORMED

The agreement to arbitrate shall be performed despite the impecuniosity of Respondent. Contract is the law with binding force between parties under the principle of pacta sunt servanda. The financial obligations were apparent when the parties signed the contract containing the agreement to arbitration. A commercial contract will not become void or incapable of being performed because the buyer cannot pay for goods. Likewise, a party's financial incapacity to meet its monetary obligations cannot render an arbitration argument void or incapable of being performed, but rather render a breach of contract. Furthermore, while Claimant paid the whole advance on costs and chose to continue the proceedings, Respondent failed to meets its burden of proof regarding substantive validity of arbitration agreement. In this case, Respondent's impecuniousness is not a ground to avoid its contractual obligations.

ISSUE 2: VADER SHOULD BE BOUND BY THE ARBITRATION AGREEMENT

Vader should join as a party to the arbitration under Rule 9 of the KLRCA Rules. The arbitral tribunal have a power to decide its own jurisdiction under the principle of competence-competence. Some doctrines can bind a non-signatory party to an arbitration agreement. Vader should be bound by the arbitration agreement under the group of companies doctrine. Respondent is a subsidiary of Vader and fully owned by Vader. In addition, Vader had been involved in process to conclude the Contract. In any events, Vader shall join as Respondent in accordance with good faith. The corporate group should have clearly expressed that Vader would not be bound by the arbitration agreement.

ISSUE 3: CLAIMANT VALIDITY ACCEPTED RESPONDENT'S OFFER

Claimant validity accepted Respondent's offer. Art. 2.1.6 (1) of the UNIDROIT defines that an acceptance is "a statement made by or other conduct of the offeree indicating assent to an offer." Indian head nodding can be a conduct to indicate asset because no specific form is required for the indication of assent. Under Art. 2.1.6 (2) of the UNIDROIT, an acceptance become effective when it reaches to the offeror. In the present case, Claimant told Respondent that the Contract between the Parties was

important for Claimant and the representatives had had several meetings to negotiating their business. Considering these circumstances, Respondent could have understood the meaning of Claimant's Indian head nodding.

ISSUE 4: THE TRIBUNAL SHOULD GRANT RELIEFS WHICH CLAIMANT CLAIMS

Claimant requests four reliefs. Firstly, to declare that the contract is enforceable. Secondly, to set the terms of the Contract in writing. Thirdly, to order Respondent to deliver the bricks. Finally, to order Respondent to pay all costs of the arbitration. As to first and third reliefs, although parties agreed to extend the contract to deliver the bricks for 2017 and 2018, Respondent had not performed its obligation. Regarding second relief, it could prevent additional problem happening in the future. As to final relief, Respondent's unreasonable conduct has an adverse impact on costs allocation.

VIII. Pleadings of Claimant

ISSUE 1: IMPECUNIOSITY OF RESPONDENT HAS NOT CAUSED THE ARBITRATION AGREEMENT INCAPABLE OF BEING PERFORMED

Arbitration is a privately-funded dispute resolution mechanism. It is the product of party consent. In institutional arbitration, when two parties concluded a contract containing an arbitration clause, the parties have agreed that if a dispute arises, they will resort to arbitral tribunal, pay the advance on costs which is calculated in accordance with a predictable cost schedule for the calculation of the arbitrator's fees and administrative charges, and at the same time they are expected to fund their attorney's fees[1]. In the case at hand, subject to the KLRCA Rules, these financial obligations were apparent when the parties signed the Contract containing the agreement to arbitration. The fact that Respondent now lacks money to pay for arbitration cannot render the arbitration agreement void because contract is the law with binding force between parties under the principle of pacta sunt servanda [I]; the impecuniosity of one party is not in itself sufficient to consider that the arbitration agreement incapable of being

[1] Patricia Zivkovic, P. 33-52

performed [II]; Claimant paid the entire advance on costs [III]. Burden of proof of substantive validity of arbitration agreement is on Respondent and Respondent failed to meets its burden [IV].

I. Contract Is the Law with Binding Force Between Parties under The Principle of Pacta Sunt Servanda

A paramount feature of the law of contract is its sanctity. Under the principle of pacta sunt servanda, the contract has to be respected and the binding force of the contract has to be recognized. In the *Sapphire* case award, for instance, the arbitrators expressly stated "The rule *pacta sunt servanda* is the basis of every contractual relationship. It is a fundamental principle of law, which is constantly being proclaimed by international courts, that contractual undertakings must be respected[2]".

The principle of *pacta sunt servanda* implies that the contract is the law of the parties, agreed to by them for the regulation of their legal relationship, and generates the obligation of each party to a contract to fulfill its promises. Once a party has concluded

[2] *Sapphire case*

an arbitration agreement, it waived all the protection which the state usually provides in order to assure the effectiveness of access to courts. Claimant and Respondent by consent subject their future disputes to arbitration, taking jurisdiction away from courts. This agreement is binding unless the parties reach a different agreement, which did not happen in the case. Contract has to be adapted to changed circumstances in this case, taking into account that such change relates to the party's failure to satisfy the contractual condition for performance, rather than the capability of the contract to be performed[3]. Therefore, parties must adhere to this, in spite of the change of Respondent's financial situation.

II. The Impecuniosity of One Party Is Not in Itself Sufficient to Consider That the Arbitration Agreement Incapable of Being Performed or Void

Respondent contends that the agreement to arbitrate had become void because Respondent cannot now perform it[4]. It is undisputed that the arbitration agreement will become incapable of being performed in some circumstances. In the vocabulary of the

[3] Hans van Houtte
[4] Problem, para. 57

NY Convention and the UNCITRAL Model Law, the arbitration agreement is presumptively valid, unless is it found to be "null and void", "inoperative", or "incapable of being performed". However, not of these conditions is satisfied in our case.

The categories of substantive invalidity of international arbitration agreements contained in the Convention and most national arbitration legislation are limited to cases where such agreements are invalid on generally-applicable contract law grounds. For instance, mistake, fraud, unconscionability, frustration, impossibility. The lists of grounds for challenging the substantive invalidity of international arbitration agreements are exclusive[5].

It is common across jurisdictions that the impossibility or frustration is recognize as an excuse for non-performance of a contractual obligation. It is in principle applicable to international arbitration agreement. Nonetheless, national courts and arbitral tribunals have been reluctant to conclude that an international arbitration agreement has become

[5] Gary Born, P. 834

impossible to perform or has been frustrated. In an U.S. decision, the court rejected an impossibility defense, reasoning that the impossibility of performance refers to "the nature of the thing to be done (*i.e.* arbitration)" and not "the procedure by which that thing (*i.e.* arbitration) is accomplished[6]". Most national courts have rejected claims that an arbitration agreement is impossible to perform if one party lacks the financial resources adequately to resent its claims or defenses[7].

In *Paczy* case, when dealing with an impecunious claimant, the English court decided that "The agreement only becomes incapable of performance in my view if the circumstances are such that it could no longer be performed, even if both parties were ready, able and willing to perform it. Impecuniosity is not [...] a circumstance of that kind". The court provided a reasonable justification by elaborating in detail what it finds to meet the threshold for an arbitration agreement to become incapable of being performed by comparing an arbitration agreement with a sales contract. In this regard, the court stated "The incapacity of one party to that agreement to implement his obligations under the agreement does not [...] render the agreement one which is

[6] *Gar* case
[7] Gary Born, P. 892

incapable of performance [...] any more than the inability of a purchaser under a contract for purchase of land to find the purchase price when the time comes to complete the sale could be said to render the contract for sale incapable of performance".

In another case, *Nasharty* decision, its impecuniosity "adds nothing because inherent in any finding of waiver will be a finding that Claimant freely and voluntarily entered into an arbitration agreement which imported a transparent published costs regime [...]". The court directly invoked the P*aczy* decision to support its finding in this regard by stating: "[I]nability of one party to meet his financial obligations under the ICC or comparable Rules or procedures does not render the arbitration agreement inoperative or incapable of being performed[8]".

Commercial contracts did not become void because the buyer cannot pay for goods. Likewise, an arbitration agreement does not become void because one party cannot afford the expenses for the dispute resolution it voluntarily agreed to. As institutional

[8] [Zivkovic, P]

arbitration imported a transparent published cost regime, by signing the agreement to arbitrate, the parties also accept potential financial burdens imposed by the agreement. A party's financial incapacity to meet its monetary obligations cannot render an arbitration argument void or incapable of being performed, but rather render a breach of contract.

III. The Arbitration Agreement Is Capable of Being Performed Due to Claimant's Readiness to Pay the Whole Advance on Costs

Some courts have concluded that such the failure of one party to pay its share of the advance on costs or deposit, for the arbitrator's fees and expenses, gives the non-defaulting party, which is Claimant in this case, the option to terminate the arbitration agreement (and pursue litigation in national courts) or to pay the defaulting party's share of the advance and proceed with the arbitration[9]. In one court's words, "[i]f one of the parties fails to make the advance on costs incumbent upon it, the other party may elect either to pay the entire sum of the advance or to waive its rights to [have recourse

[9] *Graphics* decision

to] arbitration[10]". As for this case at hand, Claimant has paid for the initial security deposit for the impecunious Respondent[11]. Claimant chose to continue proceeding with the arbitration.

IV. Burden of Proof of Substantive Validity of Arbitration Agreement Is on Respondent and Respondent Failed to Meets Its Burden

International arbitration agreements are presumptively valid and enforceable. The language of Art. II (3) of NY Convention rests on the premise of presumptive validity of international arbitration agreements. The burden of proof of substantive invalidity of an international arbitration agreement is on Respondent, the party resisting enforcement of the agreement[11] Respondent, the party challenging the validity of the arbitration agreement should prove its claims under generally-applicable rules of contract law, under standards of proof requiring a clear showing of invalidity. The Respondent has moreover waived its right to make its argument on impecuniousness because it did not raise this argument in its response to the notice of arbitration and because it participated

[10] *DFT* decision
[11] Problem, para. 48; AC., para. 2

in the constitution of the tribunal without raising the point. Respondent has not proven its claim that it is in financial difficulty. Respondent, although is impecunious, has not declared bankruptcy, and claims to be considering court litigation, which would also require financing.

The above facts of this case suggest that Respondent's impecuniousness argument is a last-minute "guerrilla tactics" meant to derail the arbitration and enable Respondent to avoid its contractual obligations.

V. Conclusion

From the above reasons, the arbitration agreement shall be performed despite of impecuniosity of Respondent. Therefore, Respondent's impecuniousness is not a ground to avoid its contractual obligations.

ISSUE 2: VADER SHOULD BE BOUND BY THE ARBITRATION AGREEMENTJOIN

I. The Tribunal Can Decide Whether or Not a Non-signatory Party Shall Be Bound to an Arbitration Agreement

A. The Principle of Competence-competence Is Recognized in International Law

The principle of competence-competence provides the arbitral tribunal with the power to decide on its jurisdiction[12] . Additionally, in Cambodia, which is the seat of arbitration, arbitration tribunals are allowed to rule on their jurisdiction[13].

Thus, under the principle of competence-competence, the tribunal has the authority to decide its own jurisdiction including jurisdiction over non-signatories of the arbitration agreement.

The applicable arbitration rules affirm the tribunal's authority to join non-signatories

[12] Redfern & Hunter, P. 340
[13] Art. 24 of the Arbitration Law of Cambodia

The Parties agreed that the arbitration would proceed under the KLRCA Rules as the applicable arbitration rules. The KLRCA Rules affirm that the tribunal can order non-signatory parties to join to the arbitration.

1. The Parties Can Be Joined under Rule 9.1 of the KLRCA Rules

Rule 9.1 of the KLRCA Rules states that "any party to an arbitration…may request …Additional Parties to be joined as a party to the arbitration, provided that all parties to the arbitration and the Additional Party give their consent in writing to the joinder, or provided that such Additional Party is *prima facie* bound by the arbitration agreement".

In this case, Respondent and Vader has not consented to joinder of Vader to the arbitration[14]. The issue is therefore whether or not Vader is *prima facie* bound by the arbitration agreement.

[14] Problem, para. 63

Prima facie refers to the standard of proof under which it is sufficient for the party with the burden of proof to establish a fact or raise a presumption unless disproved or rebutted[15]. The prima facie standard of proof is relatively low[16].

For the reasons as submitted below (II, III), Vader should be bound to the arbitration agreement, and Claimant is entitled to request an additional party to be joined to the arbitration under Rule 9.1 of the KLRCA Rules.

2. A non-signatory Party Can Be Bound by an International Arbitration Agreement

Signing an arbitration agreement is not a precondition to be bound by that agreement. Under both civil and common law systems, an agency or representative can conclude a contract on behalf of entities who actually perform the contract. In this way, although Vader is a non-signatory party in this case, it may be bound to an arbitration agreement in some circumstances.

According to commentator Gary Born, general principle of contract and agency law are applied in deciding whether non-signatory parties are parties to an arbitration

[15] Cornell
[16] Thomson Reuters

agreement. In few instances, there are specialized rules which apply only to international arbitration agreements.

In this case, Claimant submits that Vader, Respondent's parent company, should join as Respondent to the arbitration under Rule 9 of the KLRCA Rules on the grounds of the group companies doctrine (II) and on the basis of good faith in international trade (III).

II. Vader Should Be Regard as a Party to the Arbitration Agreement under the Group of Companies Doctrine

A. The Group of Companies Doctrine Can Bind a Non-signatory to an Arbitration Agreement

The group of companies doctrine has been developed as a specialized rule which is applicable to non-signatory issues in international arbitration agreements. This principle "aims to extend, under certain conditions, the arbitration agreement signed only by one or some of the companies of a group also to the non-signatory companies of the same group[17]".

[17] Pietro Ferrario

B. Under the Laws of Cambodia, Which Is the Seat of Arbitration, the Group of Companies Doctrine Applies

1. The Tribunal ShouldCconsider the Laws of Cambodia in Deciding the Application of the Group of Companies Doctrine

In an international transaction, parties can choose the law applicable to their arbitration agreement, and the tribunal should resolve their dispute under the law[18].

In this case, the Parties agreed that the seat of arbitration should be Cambodia[19].

As a result, it is critical matter whether the group of companies doctrine is acceptable under the laws of Cambodia.

2. The Group of Companies Doctrine Is Recognized in French Legal System

One of leading cases regarding the group of companies doctrine is *Dow Chemica* case. The arbitral tribunal affirmed that a parent company is subject to effects of an arbitration agreement which its subsidiary concluded in some circumstances. Paris Court of Appeals affirmed the arbitration Award of *Dow Chemica* case[20].

[18] Art. 28 of the UNCITRAL Model Law
[19] Problem, para. 15
[20] Paris Court of Appeals (1984)

In addition, in *Dallah* case, the tribunal accepted Dallah claimed that the tribunal had jurisdiction over the government of Pakistan, which had not signed to the contract. Although the government alleged annulment of the arbitration award before Paris Court of Appeals, the Court rejected the government's request on the ground of the group of companies doctrine.

Hence, under French legal system, the group of companies doctrine is accepted.

3. French Court's Decisions Apply within Cambodia's Legal System

Cambodia was one of French colony from 1863 to 1953. Thus, at that time, Cambodia's legal system was based on French legal system. However, under the autocratic regime of the Khmer Rouge, Cambodia's entire legal system was abolished. As a result, the new legal system was different from the previous one. Although it is a hybrid legal system, French legal system still has influence to its basis[21]. Hence, the group of companies doctrine can be accepted under Cambodia's legal system.

[21] Hor Peng

C. Three Requirements of the Group of Companies Doctrine Have Been Clarified by Arbitration Cases

Considering ICC arbitration awards concerning the group of companies doctrine, the common requirements of the doctrine can be found from tribunals' reasoning.

For instance, in *Dow Chemical* case, Dow Chemical Company ("Dow")'s full owned subsidiaries made a contract including ICC arbitration clauses with Isover Saint Gobain. The tribunal upheld the right of Dow to commence the ICC arbitration reasoning:

"[I]rrespective of the distinct juridical identity of each of its members, a group of companies constitutes one and the same economic reality (une realité economique unique) […]. [T]he arbitration clause accepted by certain of the companies of the group should bind the other companies which, by virtue of their role in the conclusion, performance, or termination of the contracts containing [the arbitration] clauses, and in accordance with the mutual intention of all parties to the proceedings, appear to have been veritable parties to these contracts or to have been principally concerned by them and the disputes to which they may give rise".

Likewise, in the final award in *ICC No. 11160*, the tribunal mentioned that "active participation of [non-signatory] in the negotiation, preparation and conclusion of the Contract, and in some respects in the performance under it, determines that the intention of the parties can be reasonably inferred as to the extension of said Contract and the arbitration clause to [the non-signatory]".

On this basis of ICC arbitration cases, the conditions of the group of companies doctrine are as follows:

(1) an existence of a group, (2) a non-signatory's participation in the negotiation, performance or perform the contract and (3) an intention by the parties to bind a non-signatory party to an arbitration agreement[22].

D. Vader Is Bound to the Arbitration Agreement under the Group of Companies Doctrine

1. An Existence of a Group

A group of companies is constituted by a parent company and its subsidiaries which are controlled by the parent company[23].

[22] Pietro Ferrario
[23] Arts. 1159(1), 1161(5) of the Companies Act

In Cambodia, if a company is incorporated by a foreign company and at least 51% of its capital is held by the foreign company, the company is regarded as a subsidiary[24]. In this case, Respondent was wholly owned by Vader[25]. In addition, Respondent and Vader had the same business purpose and activities which are producing and selling the bricks[26]. Thus, Vader and Respondent constituted a group of companies.

2. A Non-signatory's Participation in the Negotiation, Performance or Perform the Contract

At the beginning, Vader established Respondent as a subsidiary in the Kingdom of Cambodia ("Cambodia") to carry out its Asian business[27]. This was because Vader's CEO, Mr. Auld Chap, saw the possibility that the UK might leave the EU and decided to prepare for the off chance of a Brexit[28].

In this, case, before the Parties concluded the Contract for the first time, the CEOs of Claimant and Vader had a meeting to discuss about their business as potential commercial partners[29]. In the meeting, the CEOs found a mutual business opportunity

[24] Art. 283 of the Commercial Law of Cambodia
[25] Problem, para. 8
[26] Problem, para. 8
[27] Problem, para. 6
[28] Problem, para. 6
[29] Problem, para. 9

and they came to an accord on most of the terms of their future venture[30]. Hence, most of the terms of the Contract with Claimant were concluded by Vader.

3. An Intention by the Parties to Bind a Non-signatory Party to an Arbitration Agreement

The Parties has not mentioned clearly their intention to bind Vader to the arbitration agreement. However, in this case, Vader financed, monitored, and directed the business of Respondent until Vader focused on undertaking due diligence on its European operations on account of the Brexit in 2016[31]. Moreover, through the negotiation between the CEOs of Claimant and Vader, Main terms of the Contract with Claimant had been already agreed by Vader[32]. In addition, Vader was a 100% shareholder of Respondent and established Respondent for its business[33].

Considering these circumstances, it is obvious that Vader was intended to be bound to the arbitration agreement.

[30] Problem, para. 10
[31] Problem, para. 27
[32] Problem, para. 10
[33] Problem, paras. 6, 8

E. Conclusion

The three requirements of the group of companies doctrine are met in this case.

Therefore, Vader should join as a party to the arbitration under the doctrine.

III. In Any Event, Vander Should Join as a Party to the Arbitration in Accordance with Good Faith

A. The Principle of Good Faith can Extend Arbitration Agreements to a Third Party

In this case, the Parties agreed that the Contract was governed by the UNIDROIT.

Hence, the Parties had the obligation to "act in accordance with good faith and fair dealing in international trade[34]".

There are circumstances in which non-signatory parties are regarded to be bound to the arbitration agreement under the principle of good faith.

ICC No. 4A_450/2013 is a similar case to this case. In the case, the tribunal decided that a non-signatory, which was one of group of companies, was not bound to an arbitration agreement. On the other hand, Swiss Supreme Court remanded the case back to the

[34] Art. 1.7(1) of the UNIDROIT

tribunal because the Court found that the tribunal improperly rejected its jurisdiction over the non-signatory.

According to Swiss Supreme Court, under the principle of good faith, the non-signatory can be considered to be bound to the arbitration agreement if the corporate group do not communicate which entities will be bound to the arbitration agreement.

B. Vader Has Behaved as Though It Were a Party to the Arbitration Agreement

In this case, Respondent was established for Vader's purpose to carry out business in the Asian market and constituted therefore the group of companies with Vader[35].

Moreover, the CEOs of Claimant and Vader had a meeting to discuss as future business partners and agreed almost all terms of future contract[36].

Likewise, although Vader had had a legal relationship with Claimant through the CEOs' negotiation, Vader and Respondent as the corporate group has not clarified which are or are not considered to be bound by the arbitration agreement.

[35] Problem, paras. 6, 8
[36] Problem, para. 10

C. Conclusion

The corporate group should have clearly expressed that Vader would not be bound by the arbitration agreement.

Therefore, Vader is bound by the arbitration agreement since the opposite result would violate the principle of good faith.

IV. Conclusion

For the above reasons, Vader, although it was a non-signatory party to the Contract, has is bound by the arbitration agreement. Therefore, Vader should be joined as a party to the arbitration.

ISSUE 3: CLAIMANT VALIDITY ACCEPTED RESPONDENT'S OFFER

I. Background Relevant to Issue 3

Claimant is a commercial company whose main activity is construction[37]. Claimant wanted to expend its business to the South Asia as China's Belt & Road Initiative ("B&R") offered many construction opportunities outside of China[38]. In 2013, the Parties concluded the Contract for the first time[39]. The Contract was structured as an exclusive

[37] Problem, para. 2
[38] Problem, para. 3
[39] Problem, para. 13

distribution agreement even though Respondent wanted to contract with multiple counterparts[40]. Besides, Claimant told Respondent that the operation between the Parties was very important for Claimant and Claimant wanted to increase the number of deliveries[41]. After that, the Parties renewed the Contract without forming written contract although the first contract was made in writing[42].

In 2016, the Representatives had the final Skype call[43]. Through the negotiation, Respondent told Claimant that Respondent would deliver the bricks for 2017 and 2018 if Claimant paid 35% bonus at the end of every year from 2016 and asked yes or no[44]. Claimant responded by doing an Indian head nod which indicated Claimant's acceptance of Respondent's proposal[45].

However, Respondent alleged the Contract has not concluded because Respondent interpreted the side-ways nod as a refusal to its offer[46].

In this case, Respondent's submission is unreasonable since the Contract should be formed under the UNIDROIT principle.

---

[40] Problem, para. 14
[41] Problem, para. 20
[42] Problem, para. 24; C., para. 14
[43] Problem, para. 30
[44] Problem, para. 34
[45] Problem, para. 35
[46] Problem, para. 36

II. The Contract Has Been Concluded Between the Parties Because Claimant's Indication of Assent Reached to Respondent under the UNIDROIT Art. 2.1.1

A. The UNIDROIT Do not Require Anything When Concluding a Contract

The UNIDROIT Art. 1.2 stipulates that no form is required in concluding a contract. Therefore, the Contract can be formed by Skype communication including this case.

B. Respondent Made a Proper Offer Defined in the UNIDROIT Art. 2.1.2

The UNIDRIT Art.2.1.6 (1) defines “acceptance”, “a statement made by or other conduct of the offeree indicating assent to an offer”. In other words, an acceptance is something corresponding to an offer, so it is important to examine whether there is a valid offer. According to the UNIDROIT Art. 2.1.2, an offer becomes effective if it is sufficiently definite and indicates offer's intention to be bound by it. In this case, Respondent made a proper offer.

1. Respondent's Proposal in the Skype Call Satisfied the Requirements

According to UNIDROIT Official comments, “Even essential terms, such as the precise description of the goods … etc., may be left undetermined in the offer without necessarily rendering it insufficiently definite: all depends on whether or not the offeror … intend

to enter into a binding agreement, and whether or not the missing terms can be determined by interpreting the language of the agreement in accordance with Art. 4.1 et seq., or supplied in accordance with Art. 4.8 or 5.1.2[47]".

In this case, as an offer, Respondent told Claimant that if Claimant accept to continue with the annual pricing rule and additional bonus, it would continue the supply[48]. Since, before this offer, the Parties concluded a contract only by conversation at the time of the First Incentive[49] , it is reasonable to understand that Claimant had intention to be bound by the offer. In addition, since this offer is based on the Contract signed by September 2013[50], the missing terms can easily be determined.

Therefore, it is said that there was a valid offer.

[47] UNIDROIT Official comments
[48] Problem, para. 34
[49] Problem, para. 21
[50] Problem, para. 13

A. There Was a Valid Acceptance of the Respondent's Offer under the UNIDROIT Art. 2.1.6

The UNIDRIT Art. 2.1.6 (1) defines that an acceptance is "a statement made by or other conduct of the offeree indicating assent to an offer". In other words, an acceptance is something corresponding to an offer.

1. "Other conducts" in the UNIDROIT Art. 2.1.6 Includes Gestures

the UNIDROIT Art. 2.1.6 (1) stipulates that not only a statement but also other conduct indicating assent to an offer can be an acceptance. Furthermore, no specific form is required for the indication of assent in accordance with the UNIDROIT Art.1.2[51]. Therefore, there is no doubt to say that an Indian head nod can be a conduct indicating assent, which is a proper acceptance under the UNIDROIT Art.2.1.6 (1).

Mr. Deewarvala who is the representative of Claimant responded by doing an Indian head nod, a side-ways nod. An Indian head nod means an acceptance in some countries[52].

[51] Kleinheisterkamp, P. 262
[52] Problem, para. 35

2. The Indication of Assent Has Reached to Respondent

An acceptance becomes effective when the indication of accent reaches the offeror according to the UNIDROIT Art. 2.1.6 (2). This article should be interpreted in accordance with the UNIDROIT Art. 1.10[53]. It stipulates that where notice is required it may be given by *any means appropriate to the circumstances* [emphasis added]. Therefore, Respondent's indication of assent is to reach Claimant if the means, the Indian head nod, is appropriate to the circumstances. In this case, the representatives had a skype call and Mr. Paredes who is the representative of Respondent had seen that Mr. Deewarvala did an Indian head nod[54]. The problem is whether or not Mr. Paredes was able to understand the real meaning.

3. The Indian Head Nod Is Appropriate to the Circumstances in This Case

A conduct of a party should be interpreted according to parties' common intention and understanding of a reasonable person of a same kind as the other party in the same circumstances in accordance with the UNIDROIT Art. 4.2.

[53] Kleinheisterkamp, P. 202
[54] Problem, paras. 30, 36

In applying the UNDROIT Art. 4.2, Art. 4.3 should apply, which stipulates that regard shall be had to all the circumstances including practices which the parties established between themselves, negotiations between the parties.

Respondent submits that Indian head nod is appropriate because of these circumstances.

a. The Parties Have Established the Practice of Concluding a Contract by Behavior

On November 2014, in Paris, Mr. Paredes accepted Mr. Deewarvala's offer and the two gentlemen shook hands when they agreed on the First Incentive[55]. At that moment, the Parties concluded a contract under which Claimant paid a 15% price increas and Respondent performed 4 more deliveries during 2015. This shows that the Parties have established a practice to conclude a contract by behavior.

Therefore, it is not odd for Respondent to indicate an assent by Indian head nod.

[55] Problem, para. 22

b. In the Process of Negotiation, Respondent Should Have Understood the Meaning of Indian Head Nod

As stated above, Mr. Paredes and Mr. Deewarvala met and had a conversation in Paris on November 2014[56]. In addition, before concluding Second Incentive, just before the offer and acceptance in this case, they had 4 hours negotiation on Skype call[57]. These facts show that it is likely that Mr. Paredes had seen Mr. Deewarvala's gestures during negotiation. Therefore, he must have been familiar with Mr. Deewarvala's gestures and should have understand the meaning of Indian head nod.

c. In the Process of Negotiation, Respondent Had Known That the Transaction Between the Parties Was Important for Claimant

On November 2014, at the time of the First Incentive, Mr. Deewarvala explained to Mr. Paredes that the operation with Respondent was very important[58]. In addition, Respondent knew that Claimant wanted to extend the Contract. At the time of the Second Incentive on the Skype call, although Respondent wanted to terminate the Contract, Mr.

[56] Problem, para. 20
[57] Problem, paras. 30, 33
[58] Problem, para. 20

Paredes suggested to increase the price and tried to continue the Contract. That is because he knew that Claimant wanted to extend the Contract.

Therefore, Respondent should have been aware of Respondent's intention when Mr. Deewarvala made Indian head nod.

Considering these circumstances, it is said that the Parties had common intention or a reasonable person would understand that Claimant indicated its acceptance appropriately.

III. Conclusion

Since Claimant indicated an assent appropriately, it is said that the acceptance reached Respondent. Therefore, it is effective in accordance with the UNIDROIT Art. 2.1.6 (2), which means that there was a valid acceptance of the Claimant's offer.

ISSUE 4: THE TRIBUNAL SHOULD GRANT RELIEFS WHICH CLAIMANT CLAIMS

Claimant requests the Arbitral Tribunal

I. To Declare That the Contract Is Existent and Enforceable

A. The Contract Is Existent and Enforceable

As claimant submitted in issue 3, the Contract had been concluded validly under the UNIDROIT Art. 2.1.1. Therefore, the Contract is existent and enforceable.

II. To Order Respondent to Perform Its Obligation Which It Had to Perform in March and June of 2017

B. Respondent Did not Perform Its Obligation under the Contract under the UNIDROIT Art. 7.1.1

1. Definition of "Non-performance" under the UNIDROIT Art. 7.1.1

The UNIDROIT Art. 7.1.1 stats that non-performance is failure by a party to perform any of its obligation under the Contract, including defective performance or late performance.

2. The Contents of Respondent's Obligations

In the present case, Respondent has an obligation to make eight deliveries of bricks in 2017 and 2018. According to the Contract which was concluded in 2014, Respondent

has an obligation to deliver the bricks that are specially made to order on the last working day of March, June, September and December[59]. Moreover, as Claimant submitted in issue 3, the Parties agreed to extend the Contract throughout 2017 and 2018. Therefore, Respondent has an obligation to make eight deliveries of bricks in in 2017 and 2018.

3. Respondent Did not Perform Its Obligations

Although Respondent has obligation to deliver the bricks eight times in 2017 and 2018, Respondent did not deliver the bricks after the last delivery of 2016[60]. Therefore, Respondent did not perform its obligation.

[59] Problem, para. 15
[60] Problem, para. 40

C. Claimant Is Entitled to Request Respondent to Perform Its Obligation under the UNIDROIT Art. 7.2.2

1. The UNIDROIT Art. 7.2.2 Confers a Right on an Aggrieved Party to the Performance

According to the UNIDROIT Art. 7.2.2, "Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance unless the requirement does not meet exceptions".

2. Specific Performance by Respondent Is Needed Because It Is Difficult to Obtain the Bricks From Another Source and Monetary Remedy or Damages Is not Enough for the Loss of Claimant

In the present case, the bricks are state-of-the-art, special sized, tailor-made and color-coated[61]. In other words, the bricks are specially made to order. In addition, Claimant had obtained the bricks only from Respondent. Therefore, if Respondent would not perform its obligation, Claimant would have to spend too much time and money to find

[61] Problem, para. 15

new source to obtain the bricks. The costs are unpredictable, so monetary remedy or damages are not enough. Therefore, specific performance of Respondent is needed.

3. The Claim of Claimant Does not Meet Exceptions under the UNIDROIT Art. 7.2.2

a. The First Exception under the UNIDROIT Art. 7.2.2. Is "Performance is impossible in law or in fact"

In the present case, there are no legal prohibition or regulation for Respondent to perform its obligation. Furthermore, there are no problems to perform its obligation in fact. There is no evidence that Respondent has lost its ability to make and deliver the bricks. The only concern is impecuniosity of Respondent. However, Respondent is able to gain enough money to provide the bricks from Vader, that is its parent company. Vader has been a very strong company in the brick producing and selling market for many years. Moreover, its portfolio expanded to include clients from different European countries[62]. Considering these facts, Vader is a big

[62] Problem, para. 5

company that can support Respondent to providing the bricks regarding funds. As a result, Respondent still is able to perform its obligation.

b. The Second Exception is "Performance or, Where Relevant, Enforcement Is Unreasonably Burdensome or Expensive"

UNIDROIT official comments gives a case as an example which falls within this exception. It is the case that an oil tanker has sunk in coastal waters in a heavy storm. Although it would be technically possible to lift the ship from the bottom of the sea and perform the contract, performance is regarded as unreasonably burdensome since the costs for the non-performing party would vastly exceed the value of the oil[63]. This example suggests that when the costs to perform an obligation vastly exceed the value of the contract, it can be said that performance or enforcement is unreasonably burdensome or expensive. In the present case, there are no circumstances that make costs vastly exceed the value of the bricks. No accident or disaster that makes costs immensely high had happened. Therefore,

[63] UNIDROIT Official comments

it is not unreasonably burdensome or expensive for Respondent to perform its obligation.

c. The Third Exception Is "The Party Entitled to Performance May Reasonably Obtain Performance from Another Source"

As Claimant submitted above, Claimant cannot obtain the bricks from another source reasonably because of two reasons. One is the bricks are specially to made and the other is Claimant had been supplied them only from Respondent. Therefore, the request of Claimant does not meet this exception.

d. The Forth Exception Is "Performance Is of An Exclusively Personal Character"

According to UNIDROIT Official comments, the exception does not apply to obligations undertaken by a company.

In light of that, the performance that Claimant requests Respondent to perform does not meet this exception.

e. The Final Exception Is "The Party Entitled to Performance Does not Require Performance within a Reasonable Time

After It Has, or Ought to Have, Become Aware of the Non-Performance"

In the present case, Claimant required Respondent to perform its performance on 15 August, 2017 by serving Respondent with a Notice of Arbitration[64]. Claimant had become aware of Respondent's non-performance in middle-March of 2017[65]. It took about five months to require Respondent to perform its obligation. In *Jackson* decision*, which is from England and Wales High Court Decisions,* the judge concluded that a reasonable notice period would be 9 months. In this case, Jackson Distribution Limited ("Jackson") was the sole distributor of Tum Yeto Inc's ("TYI") range of "Dekline" products in the United Kingdom and the Republic of Ireland. The judge concluded that the contents of e-mail party communicated was the contract. However, the parties did not agree that the period of notice to terminate the contract. Therefore, the judge found the reasonable notice period with taking account of facts below:

i. The length of relationship between the parties (just 2.5 years);

ii. The lack of formal arrangement between the parties;

[64] Problem, para. 44
[65] Problem, para. 43

iii. The extent of Jackson Distribution's early investment in the arrangement (about £35,000);

iv. What percentage of the distributor's turnover was represented by the Dekline products (less than 50% in the short term);

v. Both parties' acceptance that Jackson Distribution would not sell products which competed with the Dekline range (even although there was no clause to this effect);

vi. The seasonal nature of the business; Orders are different for the autumn/winter season and the spring/summer season;

vii. It would take three years to find a new brand to distribute and achieve profitability.

Facts i and ii are almost same as the present case. Parties have done business for three years and the Parties had not formal arrangement. Fact v and vii are also similar to the present case. In the present case, only Respondent had supplied the bricks. In addition, Claimant would spend very long time to find a new source. Moreover, it is hold that the higher the percentage of the distributor's turnover

become, the longer the period of reasonable notice become. This means that how much parties get earns from the other party affects the reasonable period of notice. In the present case, the Parties are 100 percent dependent as to the deals of bricks. This fact makes the period of reasonable time long. Considering these facts, it cannot be said that five months is not a “reasonable time” to request Respondent to perform its obligation.

4. Conclusion

As Claimant submitted above, Respondent must perform its obligation because monetary remedy or damages is not enough for the loss of Claimant and the claim of Claimant does not meet five exceptions to request Respondent to perform its obligations. The claim of Claimant fulfills all the requirements of the UNIDROIT Art. 7.2.2, so Claimant is entitled to require Respondent to perform its obligation.

III. To Set the Terms of the Contract in Writing

A. Definition of "to Set the Terms of the Contract in Writing"

The UNIDROIT Art.1.11(4) defines writing as any communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

B. Writing of the Contract can Reduce Dispute between the Parties

This dispute was caused by uncertainty of the Contract. The Parties had not executed formal contract to record the agreement when they had extended the Contract in 2014 and 2016[66]. In addition, there were no communications between the Parties to make sure that whether the Contract had been terminated or not. These are the reasons why misunderstanding happened. To prevent additional problem happening between parties in the future, the terms of the Contract needs to be set in writing.

[66] Problem, paras. 22, 24

IV. To accept to Supplement Claim to Order Respondent to Bear All Costs of the Arbitration

A. The Arbitral Tribunal can Determine the Proportion of Costs to Be Borne by the Parties under Rule 13 (9) of Part I of the KLRCA Rules

Rule 13 (9) of Part I of the KLRCA Rules states that notwithstanding Rule 13, the arbitral tribunal may determine the proportion of costs to be borne by the parties.

1. The Definition of "All costs of the Arbitration"

Claimant claims that Respondent should pay administrative fees, arbitrator fees and expenses, and counsel fees and expenses as "all costs of the arbitration".

2. There Are Factors That Should Be Taken into Account When Arbitrators Consider the Allocation for Costs

According to Art. 2 and Commentary on Art. 2 of Drafting Arbitral Awards Part III, Costs of International Arbitration Guidelines 2016[67], there are four factors that arbitrators should consider whether it is appropriate to allocate liability for both the procedural and party cost.

[67] Chartered Institute of Arbitrators

The factors are:

i. The outcome of the proceedings in terms of relative success of the parties;

ii. The conduct of the parties;

iii. Any offers to settle the dispute;

iv. Any other factor which they consider to be relevant.

3. Respondent should pay all costs of the arbitration considering factors in the present case

Regarding factors (i), (ii) and (iv), there is nothing to consider. It is because the outcome is not clear, the Parties do not have any offers to settle the dispute and there are not factors that relevant. As to factor (ii), the commentary states that factors that may have an adverse impact on costs allocation include instances where a party and/or its counsel has acted unreasonably or has obstructed the proceedings. In the present case, although the Parties agreed arbitration clause and Respondent can obtain funds from Vader, it claims that it cannot take part in this arbitration because of its impecuniosity. The claim and conduct are unreasonable. Therefore, this conduct should be considered as a factor that has an adverse impact for Respondent. Respondent's conduct meets

factor (ii), so Respondent should be pay all cost of the arbitration under Rule 13 (9) of Part I of the KLRCA Rules.

B. Claimant Supplements a Claim That Claimant Should Pay All Costs of the Arbitration

1. Claimant Has a Right to Supplement a Claim That Claimant Should Pay All Costs of the Arbitration under Art. 22 of Part Ⅱ of the KLRCA Rules

According to Art. 22 of Part Ⅱ of the KLRCA Rules, during the course of the arbitral tribunal proceedings, a party may amend or supplement its claim or defence […] unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. In addition, a claim or defence may not be amended or supplemented in such a manner that they fall outside the jurisdiction of the arbitral tribunal.

2. The Claim Meets Requirements

Firstly, to claim that the other party should bear the costs of arbitration is widely accepted, so the claim is appropriate to allow. Secondly, Respondent has already

claimed that Claimant should pay all costs of the arbitration in a preliminary meeting[68]. Respondent had already prepared to submit their claim on this point, so this supplement does not have regard to the delay in making it or prejudice to other Parties or any other circumstances. Finally, the arbitral tribunal has a power to decide the allocation, so they do not fall outside the jurisdiction of the arbitral tribunal. In light of these factors, the claim that Respondent should pay all costs of the arbitration meets requirements and Claimant is entitled to submit.

V. Conclusion

As submitted above, Claimant respectfully request the arbitral tribunal to grant four reliefs. They are to declare that the Contract is valid, to order Respondent to deliver the bricks, to set the terms of the Contract in writing and to order Respondent to pay all cost of the arbitration.

[68] Problem, paras. 49, 58

IX. Request for Relief

In light of the submissions made above, Claimant respectfully requests the tribunal to find:

1. The agreement to arbitrate is not incapable of being performed due to impecuniosity of Respondent.

2. The request of Claimant to join Vader as a party to the Arbitration should be granted by the Tribunal.

3. There was a valid acceptance of Respondent's offer.

4. The Tribunal should grant reliefs which Claimant claims.