HEARING DATE AND TIME: April 30, 2014 at 11:00 a.m. (prevailing U.S. Eastern Time)
RESPONSE DEADLINE: April 16, 2014 (extended to April 21, 2014) at 4:00 p.m. (prevailing U.S. Eastern Time)
REPLY DEADLINE: April 25, 2014 at 4:00 p.m. (prevailing U.S. Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case**
ARCAPITA BANK B.S.C.(c), *et al*.,	:	**Case No. 12-11076 (SHL)**
Debtors.	:	**Jointly Administered**

REPLY IN SUPPORT OF OBJECTION TO CLAIM NO. 383

Arcapita Bank B.S.C.(c) ("***Arcapita Bank***") hereby submits this Reply in support of its Third Omnibus Objection to Claims (Dkt. No. 1051; ¶ ¶ 59 – 63 – filed April 26, 2013) specifically as to the proof of claim No. 383 filed by G.P. Zachariades Overseas, Ltd. ("***GPZ***") against Arcapita Bank. The objection to proof of claim No. 383 of GPZ has been adjourned many times in the last twelve months, but was most recently set for hearing on April 30, 2014. [Notice of Hearing on Debtors' Objection to Proof of Claim No. 383; Dkt. 1900 - filed on March 27, 2014.] GPZ has not filed any Opposition or any response of any kind to the Claims Objection Proceeding and, therefore, the relief requested in the Claim Objection Proceeding is unopposed. Based on the record before the Court, Claim No. 383 filed by GPZ should be allowed in Class 5(a) in the amount of **Bahraini Dinar ("BD") 2,602,104, ($6,902,341.07**) and otherwise should be disallowed.

BACKGROUND UNDERLYING CLAIM NO. 383

1. In 2007, Arcapita Bank's non-debtor affiliate Riffa Views B.S.C.(c) ("***Riffa***") and a joint venture comprised of GPZ and Sembawang Engineers and Constructors Pte. Ltd. ("***SEC***") entered into a contract ("***Contract***") for the GPZ/SEC joint venture to construct 323 residential villas (the "***Villas***") for Riffa in the Kingdom of Bahrain. In December of 2009, GPZ, SEC and Riffa entered into a supplemental agreement (the "***Supplemental Agreement***") and a novation agreement, by which, among other things, GPZ replaced the GPZ/SEC joint venture as the contractor on the Villas.

2. As part of the Supplemental Agreement, on December 7, 2009, Arcapita Bank executed an undertaking in favor of GPZ by which Arcapita Bank guaranteed the obligations of Riffa to GPZ under the Contract and the Supplemental Agreement up to a maximum of BD 5.0 million (approximately $13,263,000) (the "***Guarantee***").

3. GPZ contends that Riffa failed to make three payments allegedly due to GPZ totaling approximately BD 2,329,773 and that GPZ then made a demand on Arcapita Bank for payment.

4. The Contract and Supplemental Agreement provided for the resolution of disputes through mandatory binding arbitration before the International Chamber of Commerce ("***ICC***") and, on March 30, 2011, GPZ submitted a "Request for Arbitration" against Arcapita Bank and thereby commenced an arbitration proceeding entitled *In the Matter of an Arbitration Under the Rules of Arbitration of the International Chamber of Commerce; G.P. Zachariades Overseas Ltd. vs. Arcapita Bank B.S.C.(c); Case No. 17855/ARP* (the "***ICC Arbitration***"). GPZ alleged in the ICC Arbitration that it was entitled to "no less than BD 2,822,024.873," or approximately $7,485,703.18.

PROCEDURAL HISTORY

5. On March 19, 2012 (the "***Petition Date***"), Arcapita Bank and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. As of the Petition Date, the ICC Arbitration had been completed and only the issuance of the final award by the ICC Arbitration panel remained pending. However, the ICC Arbitration was automatically stayed by the commencement of the Chapter 11 Cases.

6. On August 29, 2012, GPZ filed proof of claim number 383 (the "***Filed Claim***"), against Arcapita Bank based on the Guarantee alleging an unsecured claim of (a) BD 2,822,024.873 plus additional interest, fees, costs and expenses which was then the subject of the pending ICC Arbitration and (b) a contingent and unliquidated claim for the difference between any amount awarded in the ICC Arbitration "up to the full amount of the Guarantee (BD 5,000,000 or $13,263,000)" for further work GPZ claimed it may be due for further work performed constructing the Villas. Filed Claim at ¶ 9. (A copy of the Filed Claim is attached hereto as **Exhibit A**.) GPZ also reserved the right to supplement its Filed Claim as to amounts in excess to the amounts claimed in the ICC Arbitration, up to the BD 5.0 million cap. Filed Claim ¶ 11. However, GPZ has never filed an amended or supplemental proof of claim or submitted any other evidence in support of its contingent and unliquidated claim.

7. On April 26, 2013, the Debtors filed their Third Omnibus Objection to Claims (Dkt. No. 1051) (the "***Claim Objection Proceeding***"), pursuant to which they objected to the Filed Claim on the basis that it is contingent and unliquidated, disputed as to amount and that a portion of the Filed Claim was then the subject of the pending ICC Arbitration. Claim Objection Proceeding at ¶¶ 59 – 63.

8. On July 22, 2013, this Court entered an Order granting Arcapita Bank's Motion to Modify the Automatic Stay (in which GPZ joined) to allow the issuance of the final award in the

pending ICC Arbitration and thereby "finally liquidate the amount of the Claim In Arbitration portion of the Filed Claim as the amount of the liability of Arcapita as determined therein." [Order ¶ 5; Dkt. No. 1371.]

9. On October 21, 2013, the ICC issued its "Final Award" in the ICC Arbitration. (A copy of the Final Award of the ICC is attached hereto as **Exhibit B.**) The total amount awarded in the ICC Arbitration, including costs, expenses and arbitrator's fee, *but* without interest accruing after the Petition Date was **BD 2,602,104**.

10. As GPZ reflected in the Filed Claim, based on the BD 5.0 million limit of the Guarantee, after subtracting the ICC Final Award (BD 2,602,104), any remaining claim GPZ might have against Arcapita Bank could not exceed BD 2,397,896. However, Arcapita Bank disputes its liability for any amount in excess of the amount awarded in the ICC Arbitration and its liability for interest after the Petition Date and GPZ has not supplemented or amended its Filed Claim or provided any other evidence in support of a claim amount in excess of BD 2,602,104.

11. The hearing on the Claim Objection Proceeding as to GPZ' Filed Claim has been adjourned several times over the last twelve months to allow the parties to discuss the amount of any remaining contingent claim. Despite several discussions, no resolution has been reached. Based on the Notice of Hearing filed on March 27, 2014 [Dkt. No. 1900] the hearing was most recently set for April 30, 2014 and GPZ was to file any opposition to the Claims Objection Proceeding by April 16, 2014. Arcapita Bank agreed to extend the time within which GPZ was to file its opposition - first to April 18 and then to 1:00 p.m. EDT on April 21. <u>However, GPZ did not file any opposition or any other response of any kind to the Claims Objection Proceeding</u>

and, therefore, based on the record the relief requested in the Claim Objection Proceeding is unopposed.

12. To the best knowledge of Arcapita Bank, since the completion of the ICC Arbitration there is no proceeding pending before the ICC, or any other tribunal, to liquidate any claim in favor of GPZ and against Arcapita Bank.

RELIEF REQUESTED

13. Based on this Claim Objection Proceeding, the Filed Claim, and this Reply, which is the only record before the Court, the Filed Claim of GPZ should be allowed against Arcapita Bank in Class 5(a) only in the amount of **BD 2,602,104 --** which is the total amount awarded in the ICC Arbitration minus interest accruing after Petition Date. Applying the conversion rate applicable as of the Petition Date of 2.6526, in U.S. dollars, GPZ' Filed Claim should be allowed in the amount of **$6,902,341.07**.

Dated: New York, New York
April 25, 2014

Respectfully submitted,

/s/ Craig H. Millet

Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
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New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR REORGANIZED DEBTOR
ARCAPITA BANK B.S.C.(c)

EXHIBIT A

GCG Number: 7059569

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One):	Case No.		
☑ Arcapita Bank B.S.C.(c)	12-11076	☐ Windturbine Holdings Limited	12-11079
☐ Arcapita Investment Holdings Limited	12-11077	☐ AEID II Holdings Limited	12-11080
☐ Arcapita LT Holdings Limited	12-11078	☐ Railinvest Holdings Limited	12-11081
		☐ Falcon Gas Storage Company, Inc.	12-11790

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): G.P. Zachariades Overseas Ltd.

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

G.P. ZACHARIADES OVERSEAS LTD
P O. BOX 5632
MANAMA
KINGDOM OF BAHRAIN
BH
Attention: Kostis Pallikaropoulos

Telephone number: +973 17598800
Email Address: k.pallikaropoulos@gpzgroup.com

Court Claim Number:

(If known)

Filed on: _____

Name and address where payment should be sent (if different from above):

FILED - 00383
SDNY
ARCAPITA BANK B.S.C. (C)
12-11076 (SHL)

Telephone number:
Email Address:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

Your Claim is Scheduled As Follows:

THE GARDEN CITY GROUP INC.
AUG 29 2012

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form, EXCEPT AS FOLLOWS: If the amount shown is listed as any of DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

1. Amount of Claim as of Date Case Filed: $ See attached

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: See attached
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor: _____ _____ _____ _____

3a. Debtor may have scheduled account as: _____ (See instruction #3a)

3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other

Describe: _____

Value of Property: $ _____

Annual Interest Rate _____ **%** ☐ Fixed or ☐ Variable **(when case was filed)**

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Basis for perfection: _____

Amount of Secured Claim: $ _____

Amount Unsecured: $ _____

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).

☐ Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).

☐ Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).

Amount entitled to priority: $ _____

Control Number: 1210577711

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. *(See instruction #6)*

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7. **Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "**redacted**".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: _____

8. **Signature:** (See instruction #8) Check the appropriate box.

☑ I am the creditor ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: K. PALLIKAROPOULOS

Title: DIRECTOR

Company: G.P. ZACHARIADES (OVERSEAS) LTD

Address and telephone number (if different from notice address above):

(Signature) 18 August 2012 (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571. **Modified B10 (GCG) (12/11)**

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the Debtor, exceptions to these general rules may apply. The attorneys for the Debtors and their court-appointed claims agent, GCG, are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED CLAIM FORM AS FOLLOWS: **IF BY MAIL:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, P.O. BOX 9881 DUBLIN, OHIO 43017-5781. **IF BY HAND OR OVERNIGHT COURIER:** ATTN: ARCAPITA BANK B.S.C.(c), C/O GCG, 5151 BLAZER PARKWAY, STE A, DUBLIN, OH 43017. **ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED.**

THE **GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 30, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)**
THE **GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS SEPTEMBER 17, 2012 AT 5:00 P.M. (PREVAILING EASTERN TIME)**

Items to be completed in Proof of Claim form

Bankruptcy Court Information:
All of these chapter 11 cases other than Falcon Gas Storage Company, Inc. were commenced on March 19, 2012. Falcon Gas Storage Company, Inc. filed its chapter 11 petition on April 30, 2012. You should select the Debtor against which you are asserting your claim from the list provided.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity to whom the Debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with GCG as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506 (a)
A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

INFORMATION

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim
To receive a date-stamped copy of your claim form, please provide a self-addressed stamped envelope and a copy of your proof of claim form when you submit the original to GCG.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

List of Debtors and Case Numbers

Indicate on the face of the Proof of Claim form the Debtor against which you assert a claim.
Choose only one Debtor for each Proof of Claim form.

Arcapita Bank B.S.C.(c) 12-11076
Arcapita Investment Holdings Limited 12-11077
Arcapita LT Holdings Limited 12-11078
Windturbine Holdings Limited 12-11079
AEID II Holdings Limited 12-11080
Railinvest Holdings Limited 12-11081
Falcon Gas Storage Company, Inc. 12-11790

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11
ARCAPITA BANK B.S.C.(c), *et al.*,	:	
	:	Case No. 12-11076 (SHL)
Debtors.	:	
	:	(Jointly Administered)

ATTACHMENT TO PROOF OF CLAIM
FOR G.P. ZACHARIADES (OVERSEAS) LTD.

G.P. Zachariades (Overseas) Ltd. (the "Claimant"), by an authorized representative, submits this proof of claim (the "Claim") against Arcapita Bank B.S.C.(c). (the "Debtor"). The claims set forth herein are derived from various transactions with or involving the Debtor and/or certain of its debtor or non-debtor subsidiaries and affiliates. A description of the particulars of the claims is set forth below.

Introduction

1. On March 19, 2012 (the "Petition Date"), the Debtor and certain of its affiliates, as debtors and debtors in possession, voluntarily filed a petition for relief under Chapter 11 of Title 11 of the United States Code.

The Claim

2. The Debtor issued an undertaking, dated December 7, 2009 (the "Guarantee"), which guaranteed for the benefit of the Claimant certain obligations of one of the Debtor's non-debtor subsidiaries, Riffa Views B.S.C. (c) ("Riffa Views") in connection with the construction of 323 residential villas in the Kingdom of Bahrain (the "Villas") up to an amount of BD 5,000,000. A copy of the Guarantee is annexed hereto.

3. Prior to issuance of the Guarantee, Riffa Views and a joint venture comprised of the Claimant and Sembawang Engineers and Constructors Pte. Ltd. ("SEC") (the "Joint

Venture") entered into a contract dated July 15, 2007 (the "Contract") pursuant to which the Joint Venture was to construct the Villas.

4. Subsequently, the Claimant, SEC and Riffa Views entered into a supplementary agreement (the "Supplementary Agreement") and a novation agreement (the "Novation"), each dated December 7, 2009. Pursuant to these agreements, among other things, the Claimant agreed to replace the Joint Venture as the contractor and complete construction of the Villas and certain terms of the Contract pertaining to price were amended. The Debtor also issued the Guarantee for the benefit of the Claimant in connection with the Supplementary Agreement.

5. Under the terms of the Contract and the Supplementary Agreement, the Claimant was entitled to receive monthly payments, in an amount to be certified each month by the independent engineer appointed by Riffa Views. The Guarantee was provided "*as a security to pay GPZ the total amount due in any one month*" (Supplementary Agreement, Clause 7.1.3). Under the terms of the Guarantee, the Debtor undertook "*as principal debtors, that Riffa Views shall duly and timely perform its obligations*" and agreed to pay any monthly amount due "*upon receipt of GPZ's first written demand.*"

6. In connection with the construction of the Villas by the Claimant pursuant to, *inter alia*, the Contract and Supplementary Agreement, Riffa Views failed to make certain payments to the Claimant in accordance with the Contract and Supplementary Agreement due on or before April 27, 2010, May 27, 2010 and June 28, 2010, which totaled in aggregate not less than BD 2,329,773. In accordance with the Guarantee, the Claimant provided notice of each such payment default to the Debtor including, without limitation, by communications dated June 15, 2010 and October 17, 2010 (the "Demands").

7. On March 30, 2011 a Request for Arbitration was submitted by the Claimant against the Debtor in respect of, *inter alia*, amounts then owing by the Debtor to the Claimant under the Guarantee [*Case No. 17855/ARP: G.P. Zachariades Overseas Ltd vs. Arcapita Bank B.S.C.(c)*] (the "ICC Arbitration").[1] In addition to the amount of the unpaid monthly payments, the Claimant's claims in the ICC Arbitration also include:[2] (i) a claim for damages for breach of Clause 4 of the Guarantee, calculated as contractual interest (at an annual rate of 7.30%) from the dates of Riffa Views' payment defaults; and (ii) a claim for costs in the amount of BD 178,730.67 (plus any additional fees and expenses charged by the ICC and the arbitral tribunal) in accordance with the applicable arbitral rules.

8. As of the Petition Date, the amounts owing by Riffa Views to GPZ subject of the Demands under the Guarantee were still outstanding and the ICC Arbitration was pending. Specifically, with respect to the ICC Arbitration at the time of the filing all submissions had been made by each of the Claimant and the Debtor to the arbitrator (such that the proceedings are closed) and the parties were awaiting issuance of an award by the arbitrator. In this regard, the Claimant expressly reserves the right to move for relief from the automatic stay with respect to issuance of the award in the ICC Arbitration.

9. Accordingly, Claimant holds a claim against the Debtor on account of the Guarantee for those amounts subject of the Demands in the amount of not less than BD 2,822,024.873 or $7,485,703.18,[3] plus additional interest, fees, costs and expenses.[4]

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[1] The Request for Arbitration together with the accompanying exhibits as well as the other submissions in the ICC Arbitration are voluminous in nature and Claimant believes that such documents are already in the Debtor's possession. However, such documents will be made available to the Debtor and the Official Committee of Unsecured Creditors upon written request therefore and subject to any appropriate confidentiality restrictions.

[2] In addition to the claims set out in this Claim, the Claimant has also advanced alternative claims for damages under Bahrain law.

[3] This amount includes interest as of the Petition Date at the prevailing bank overdraft rate of 7.30%. The Claim amount is calculated in U.S. dollars using a conversion rate of 2.6526 as of the Petition Date.

Additionally, the Claimant holds a claim against the Debtor under the Guarantee up to the full amount of the Guarantee (BD 5,000,000.00 or $13,263,000.00)[5] in connection with work performed in addition to that work subject of the Demands, including, without limitation, completing construction of certain Villas as well as construction of certain additional Villas pursuant to, *inter alia*, the Contract and Supplementary Agreement and with respect to which Riffa Views has not made payment. In this regard, the Claimant expressly intends to reserve the right to amend the Claim to specify such increased amounts as subject to the Guarantee.

Reservation of Rights

10. The Claimant expressly reserves the right to amend or supplement this Claim at any time, in any respect and for any reason, including but not limited to, for the purposes of (a) fixing, increasing, or amending the amounts referred to herein, and (b) adding or amending documents and other information and further describing the claims. The Claimant does not waive any right to amounts due for any claim asserted herein by not stating a specific amount due for any such claim at this time, and the Claimant reserves the right to amend or supplement this Claim, if the Claimant should deem it necessary or appropriate, to assert and state an amount for any such claim.

11. This Claim is made without prejudice to the filing by the Claimant and any related entities of additional proofs of claim for any additional claims against the Debtor and debtor or non-debtor entities affiliated with the Debtor of any kind or nature, including, without limitation, claims for administrative expenses, additional interest, late charges, and related costs and

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[4] Claimant reserves the right to assert a claim for reasonable out-of-pocket expenses including legal fees incurred by reason of the enforcement and protection of its rights.

[5] The Claim amount is calculated in U.S. dollars using a conversion rate of 2.6526 as of the Petition Date.

expenses, and any and all other charges and obligations reserved under the applicable documents, and claims for reimbursement in amounts that are not fully ascertainable.

12. The filing of this Claim is not intended to be and shall not be deemed to be or construed as a waiver or release of any right to claim specific assets; any rights of setoff, recoupment, or counterclaim; or any other right, rights of action, causes of action, or claims, whether existing now or hereinafter arising, that the Claimant has or may have against the Debtor, its affiliated entities or any other person, or persons, and the Claimant expressly reserves all such rights.

13. Nothing herein modifies, alters, amends and/or waives any right the Claimant may have under applicable law or any agreement or understanding to assert and recover from the Debtor, its affiliated entities or any other person or persons, upon rights, claims, and monies.

14. In executing and filing this claim, the Claimant does not submit itself to the jurisdiction of this Court for any other purpose than with respect to this Claim. This Claim is not intended to be, and shall not be construed as (i) an election of remedies, (ii) a waiver of any past, present or future defaults, or (iii) a waiver or limitation of any rights remedies, claims or interests of the Claimant.

Notices

15. All notices, communications and distributions with respect to this Claim should be sent to:

G.P. Zachariades (Overseas) Ltd.
P.O. Box 5632
Manama
Kingdom of Bahrain
Telephone: +973 17598800
Fax: +973 17598801
Attention: Kostis Pallikaropoulos

With a copy to:

Clifford Chance US LLP
31 West 52nd Street
New York, NY 10019
Telephone: (212) 878-8000
Attention: Jennifer C. Demarco, Esq.
Sarah Campbell, Esq.

ARCAPITA

December 7th, 2009

G.P. Zachariades Overseas Ltd
P.O. Box 5632
Manama
Kingdom of Bahrain

Subject: Parent Company undertaking issued by Arcapita Bank BSC(c) in the interest of "Riffa Views B.S.C.(c)" (Riffa Views) in the sum of BD 5,000,000 for the benefit of G.P. Zachariades Overseas Ltd (GPZ) in connection with the Agreement and the Contract between Riffa Views, G.P. Zachariades Overseas Ltd (GPZ) , Sembawang Engineers and Constructors Pte. Ltd (SEC) and the Joint Venture between GPZ and SEC (GPZ-S)

Dear Sirs

(a) By virtue of an agreement dated 15 July 2007 ("the Contract"), Riffa Views has contracted GPZ-S to construct residential villas in the Lagoons estate within Riffa Views Signature Estate, a golf residential project in Riffa Bahrain (the "Project");

(b) On 7th Dec 2009, Riffa Views and GPZ-S entered into a final and legally binding agreement in order to settle certain pending issues and to amend the Contract accordingly the ("Agreement"). Pursuant to the terms of (and the definitions included in) the Agreement, GPZ-S has undertaken inter alia, to novate/assign to GPZ the Contract;

(c) Pursuant to Clause 7 of the Agreement, Riffa Views has undertaken to procure that Arcapita Bank BSC(c) shall deliver to GPZ a written undertaking to pay GPZ Five Million (BD 5,000,000) under sub-clause 3.6.5 of the Agreement.

(d) As a result, Arcapita Bank BSC(c) hereby agrees to issue the undertaking (the "PCU") in order to guarantee, to the benefit of GPZ the fulfilment by Riffa Views of its obligations under sub-clause 3.6.5 of the Agreement, the terms and conditions of which (PCU) are detailed below.

ARCAPITA BANK B.S.C.(c) P.O. Box 1406, Manama, Kingdom of Bahrain Telephone: +973 17 218133 Facsimile: +973 17 217755 www.arcapita.com

ARCAPITA

NOW THEREFORE, ON THE BASIS OF THE FOREGOING, IT IS HEREBY AGREED AS FOLLOWS:

1 We acknowledge that we have examined the Agreement and the Contract and we fully and unconditionally agree upon their content and furthermore we undertake, as principal debtors, that Riffa Views shall duly and timely perform its obligations arising out of or in connection with sub-clause 3.6 of the Agreement, waiving any exception that we may have in that regard.

2 In the event that GPZ notifies us in writing, at the above address, that Riffa Views has not paid under sub-clause 3.6.5 we will pay to GPZ upon receipt of GPZ's first written demand the following:

2.1 The amount due in any one month shown in the Payment Schedule under column (5) in Appendix C of the Agreement to a cumulative maximum of BD 5,000,000 (Bahrain Dinars Five Million) less any amounts already paid to GPZ under sub-clause 3.6.5 of the Agreement.

3 Our undertakings in paragraphs 1 and 2 above relate only in so far as such sums have not previously been paid to GPZ by Riffa Views.

4 We further undertake to indemnify and hold GPZ harmless from and against any damage, loss and expenses that GPZ may incur as a direct consequence of any breach of Riffa Views' obligations arising out of or in connection with the provisions of Article 7 of the Agreement.

5 This PCU shall remain in force until the term of all covenants made by GPZ-S in the Contract and by GPZ in the novated / assigned Contract have expired.

6 Any alteration in our participation in Riffa Views shall in no way affect the validity of this PCU.

7 Arcapita Bank acknowledge the rights of GPZ and Riffa Views to agree changes to the terms and conditions of the Contract and / or the Agreement and hereby confirm that any changes to the terms of the Contract and / or the Agreement which may be made without Arcapita Bank's knowledge will not relieve Arcapita Bank of any of its liabilities as described under this PCU.

8 In connection with GPZ's funding arrangements, GPZ reserve the right to assign the benefit of this PCU to banks and or other funding entities.

ARCAPITA

9 This PCU is subject to and shall be governed by the laws of the Kingdom of Bahrain. All disputes arising out of or in connection with this PCU shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said Rules. The seat of arbitration shall be Manama, Kingdom of Bahrain, and the language shall be English.

10 Terms used but not defined herein shall have the meaning attributed to them in the Agreement and the Contract.

Best Regards

Mohammed Chowdhury
Executive Director

Signed for acceptance

GPZ legal representative

From: (212) 668-2870 Origin ID: SXYA
Assistant Operations Manager
Jessica Gomez
1 BOWLING GRN FL 5
UNITED STATES BANKRUPTCY COURT SDNY
NEW YORK, NY 10004

J1220120716O325

Ship Date: 24AUG12
ActWgt: 1.0 LB
CAD: 100098347/INET3300

Delivery Address Bar Code

Ref # ACD

RMA #:
Return Reason:

SHIP TO: (614) 289-5400 BILL SENDER
Arcapita Bank B.S.C.(c)
The Garden City Group, Inc.
5151 BLAZER PKWY STE A

DUBLIN, OH 43017

RETURNS MON FRI

TRK# 0221 7988 2289 7960

WED - 29 AUG A1
STANDARD OVERNIGHT

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43017
OH-US
LCK

Emp# 663145 28AUG12 WTCA 515C1/A270/AA44

515G2/0C34/AA44

1. Select the 'Print' button to print 1 copy of each label.
2. The Return Shipment instructions, which provide your recipient with information on the returns process, will be printed with the label(s).
3. After printing, select your next step by clicking one of the displayed buttons.

Note: To review or print individual labels, select the Label button under each label image above.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, *costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value.* Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

EXHIBIT B

International Chamber of Commerce
The world business organization

International Court of Arbitration • Cour internationale d'arbitrage

AWARD

ICC International Court of Arbitration • Cour internationale d'arbitrage de la CCI
38 Cours Albert 1er, 75008 Paris, France
Tel +33 (0)1 49 53 28 28 Faxes +33 (0)1 49 53 29 29 / +33 (0)1 49 53 29 33
E-mail arb@iccwbo.org Website www.iccarbitration.org

ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 17855/ARP/MD/TO

G.P. ZACHARIADES OVERSEAS LTD.

(Cyprus)

vs/

ARCAPITA BANK B.S.C. (C)

(Bahrain)

This document is an original of the Final Award rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration.

ICC CASE NO. 17855/ARP/MD/TO

IN THE INTERNATIONAL CHAMBER OF COMMERCE INTERNATIONAL COURT OF ARBITRATION

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

G.P. ZACHARIADES OVERSEAS LTD

Claimant

-and-

ARCAPITA BANK BSC (c)

Respondent

FINAL AWARD

TABLE OF CONTENTS

A. INTRODUCTION

The Parties

1. This is the final award given in this arbitration between the above named Claimant and Respondent. The Claimant is a limited liability company incorporated in the Republic of Cyprus and is registered in the Kingdom of Bahrain as a "Foreign Branches Company" with the registration number 4595. The Claimant's registered office is at:

PO Box 5632,
Manama,
Kingdom of Bahrain

2. The Claimant is represented by:

(a) Clifford Chance LLP,
Third Floor,
The Exchange Building,
Dubai International Financial Centre,
PO Box 9380,
Dubai,
United Arab Emirates

For the attn of:

Mr. James Abbott: By email: james.abbott@cliffordchance.com

Mr. Sandy John Hall: By email: sandy.hall@cliffordchance.com

Ms. Melissa McLaren: By email: melissa.mclaren@cliffordchance.com

Ph: +971 (0) 4 362 0444

Fax: +971 (0) 4 362 0445

Ref: JSA/SJH

(b) Hassan Radhi & Associates,
605 Diplomat Tower,
Diplomat Area,
L Manama,
Kingdom of Bahrain

For the attn of: Hassan Radhi: By email: Hassan.radhi@hassanradhi.com

Mr. Jalil Al Aradi: by email: jalil.alaradi@hassanradhi.com

Ph: +973 1 753 5252
Fax: +973 1 753 3358

Ref: HR/JA

3. The Respondent is a Bahrain Joint Stock Company (closed) organised and existing under the laws of the Kingdom of Bahrain (registration no. 36403). The Respondent's registered office is at:

PO Box 1406,
Manama
Kingdom of Bahrain

4. The Respondent owns 60% of the shares in Riffa Views B.S.C. (c) ("Riffa") and is a closed joint closed Joint Stock Company.

5. The Respondent is represented by:

Messrs. Trowers & Hamlins,
7th Floor, West Tower,
Bahrain World Trade Centre,
P.O. Box 3012,
Manama
Kingdom of Bahrain

For the attn of:

Mr. Robert Horne: By email: rhorne@trowers.com

Ms. Paula Boast: By email: pboast@trowers.com

Ph: +973 17515626

Fax: +973 17131003

The Nature of the Dispute

6. The dispute between the parties arises out of a Parent Company Undertaking ("PCU") dated 7 December 2009 under which, amongst other things, the Respondent undertook to pay to the Claimant, upon first written demand, any sums which Riffa had failed to pay to the Claimant pursuant to the Contract dated 15 July 2007 made between the Claimant and Sembawang Engineers & Constructors Pte. Limited ("SEC") on the one part ("the Joint Venture") and Riffa on the other part. The PCU was entered into pursuant to a Supplementary Agreement dated 7 December 2009 and made between the Claimant of the first part, SEC of the second part, the joint venture of the Claimant and SEC of the third part and Riffa of the fourth part. In short the dispute arises because the Claimant claims that, when called upon to make payments under the PCU in respect of payments allegedly due but unpaid by Riffa under the Contract, as amended by the Supplementary Agreement, the Respondent failed, and continues to fail, to make such payments which amount in total to the sum of BD 2,329,773.

The Construction Contract

7. Under the Construction Contract ("the Contract") made on 15 July 2007 between the Joint Venture comprising the Claimant and SEC on the one hand as the Contractor and Riffa on the other hand as the Employer, the Joint Venture agreed to construct and complete 323 residential villas at the Riffa area of the Kingdom of Bahrain, comprising contract package BE5200 ("the Works") for a contract price of BD 42,923,826.308. The Engineer appointed under the Contract to supervise the Works was Mohamed Salahuddin Consulting Engineering Bureau (hereafter "MSCEB" or "the Engineer").

8. The General Conditions of Contract ("GCC") applying to the Contract were the FIDIC Conditions of Contract for Works of Civil Engineering Construction (4th Edition 1987) incorporating amendments and reprinted 1992. The GCC were extensively amended by Conditions of Particular Application as agreed between the parties.

The Supplementary Agreement

9. During the first 26 months of the execution of the Works, several disputes arose between the Joint Venture and Riffa which led to the Joint Venture making significant claims for, amongst other things, delay and disruption and variations. The Joint Venture also alleged that monies properly due to it under the Contract had not been certified by the Engineer and/or paid timeously by Riffa.

10. After considerable negotiations between the parties, the Supplementary Agreement was agreed and executed on 7 December 2009 by the Claimant, the Joint Venture, SEC and Riffa. Amongst the many provisions of the Supplementary Agreement, the following key provisions were made:

(1) All claims submitted by the Joint Venture in respect of work executed up to 31 October 2009 were finally settled in the total sum of BD 8,310,728.

(2) The disputed Variations Account up to 31 October 2009 was finally settled in the total sum of BD 2,787,321.

(3) Thus, in respect of the works completed prior to 31 October 2009, the parties agreed that the total value of those works, including all claims arising out of them and before taking account of any payments made by Riffa, amounted to the sum of BD 38,396,990.

(4) The Contract Price under the Contract was increased to a lump sum price of BD 53,500,000.

(5) Accordingly, after deducting the amount of BD 38,396,990 from the Revised Contract Sum, Riffa was to pay to the Claimant to the total sum of BD 15,103,010 for completion of the works inclusive of a bonus payment of BD 1,500,000.

(6) In lieu of the payment provisions contained in Clause 60.1 of the GCC, the Claimant would be entitled to recover BD 44,166 for each villa completed in any month (regardless of the state of completion (or otherwise) of the villa as at the date of the Supplementary Agreement, or of the type and size of the villa.)

(7) The parties further agreed that, as at the date of the Supplementary Agreement, of the total of 323 villas included in the scope of work, 308 villas remained to be

handed over. Thus the amount payable by Riffa, per villa, agreed at BD 44,166, was calculated on the basis that 308 villas remained to be handed over which, when multiplied by BD 44,166 per villa equals the sum of BD 13,603,010 which was the total Revised Contract Price less the bonus payment of BD 1,500,000.

(8) The parties agreed that the Contract would be novated to the Claimant alone which, thereafter, would be come the Contractor.

(9) By Clause 7 of the Supplementary Agreement Riffa agreed to obtain from the Respondent three letters of undertaking under which the Respondent would agree to pay upon a written demand received from the Claimant any sums to which the Claimant became entitled under the Contract (as amended by the Supplementary Agreement) and which had not been paid by Riffa within 14 days of the date for payment contained in the Contract (as amended).

The PCU

11. On 7 December 2009 and pursuant to Clause 7 of the Supplementary Agreement, the Respondent gave to the Claimant a parent company undertaking in the interest of Riffa in the sum of BD 5,000,000 in connection with the Contract. Under the PCU, amongst other things, the Respondent agreed as follows:

> *"(1) We acknowledge that we have examined the Agreement and the Contract and we fully and unconditionally agree upon their content and furthermore we undertake as principal debtor, that Riffa Views shall duly and timely perform its obligations arising out of or in connection with sub-clause 3.6 of the Agreement, waiving any exception that we may have in that regard".* (The reference to "the Agreement" is a reference to *"the Supplementary Agreement"* as defined herein.)

(2) In the event that GPZ notifies us in writing, at the above address, that Riffa Views has not paid under sub-clause 3.6.5 we will pay to GPZ upon receipt of GPZ's first written demand the following:

2.1 The amount due in any one month shown in the Payment Schedule under column (5) in Appendix C of the Agreement to a cumulative maximum of BD 5,000,000 (Bahrain Dinars five million) less any amounts already paid to GPZ under sub-clause 3.6.5 of the Agreement".

(3) Our undertakings in paragraphs (1) and (2) relate only insofar as such sums have not previously been paid to GPZ by Riffa Views.

(4) We further undertake to indemnify and hold GPZ harmless from and against any damage, loss and expenses that GPZ may incur as a direct consequence of any breach of Riffa Views' obligations arising out of or in connection with the provisions of Article 7 of the Agreement.

(5) This PCU shall remain in force until the term of all covenants made by GPZ-S in the Contract and by GPZ in the novated/assigned Contract have expired".

12. Under Clause 9 of the PCU provision was made for the arbitration of any disputes arising under it in the following terms:

"9. This PCU is subject to and shall be governed by the laws of the Kingdom of Bahrain. All disputes arising out of or in connection with this PCU shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The seat of arbitration shall be Manama, Kingdom of Bahrain, and the language shall be English".

It is thus clear that the governing law of the PCU is that of the Kingdom of Bahrain and that the seat of the arbitration is Manama, Bahrain.

Appointment of Arbitrator

13. On 30 March 2011 the Claimant issued to the International Court of Arbitration of the International Chamber of Commerce in Paris its Request for Arbitration of its disputes with the Respondent.

14. On 23 June 2011 the ICC International Court of Arbitration ("the Court") decided, pursuant to Article 9(3) of the applicable Rules of Arbitration 1998 ("the Rules") to appoint myself, Richard Fernyhough QC, as Sole Arbitrator upon the proposal of the United Kingdom National Committee. I duly accepted that appointment and thereafter entered upon this reference.

B. PROCEDURAL HISTORY

15. On 30 March 2011 the Claimant served its Request for Arbitration.

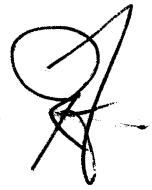
16. On 12 July 2011 the Respondent served its Answer to that Request.

17. On 28 September 2011 I submitted to the parties for their signature copies of the Terms of Reference, after taking into account the parties' comments on my draft of that document.

18. On 28 October 2011 I issued a Provisional Timetable to the parties which dealt with the service of factual witness statements (if any) and with the disclosure of documents. I also directed that, during the week beginning 12 December 2011, there should be an arbitral meeting between the arbitrator and the parties in order to discuss the future conduct of the reference and, in particular whether or not it was necessary for there to be a hearing.

19. On 21 November 2011 the terms of reference in this matter were signed and dated by the arbitrator after they had been executed by the parties.

20. On 14 November 2011, as directed, the Respondent served two witness statements of fact from Yasser Al Raee and from Cheruvari Kakadan Pradeep.



21. By letter dated 23 November 2011 the Claimant indicated that much of the factual evidence given in the two witness statements served by the Respondent was irrelevant to the issues to be decided in this arbitration and should be ignored by the arbitrator. Accordingly the Claimant indicated that it did not intend to call any factual evidence of its own.

22. On 15 December 2011 I held a meeting with the parties by telephone at which Mr. James Abbot from Clifford Chance appeared on behalf of the Claimant and Mr. Peter Hawkes from Trowers & Hamlins appeared for the Respondent. At that meeting both counsel confirmed that their clients were content to have this arbitration determined on paper and without the need for any oral hearing. As a result of that meeting, I gave further directions for the exchange of written submissions and directed, as requested by the parties, that, in the first place, I would deliver a Partial Award leaving over questions, such as the payment of costs, for a Final Award. In the end no Partial Award was ever issued and all remaining issues between the parties are disposed of in this Final Award.

23. Thereafter, after certain revisions were made to the timetable, the parties exchanged the first round of written submissions on 1 February 2012 followed by the second round of written reply submissions on 14 February 2012. In preparing this Award I have taken into account all the written submissions of the parties together with the many exhibits thereto, including reports of various decided cases which are relevant to some of the issues to be decided.

24. On 29 February 2012, in order to expedite the arbitral process and to save costs, I directed the parties to exchange written submissions on the appropriate costs orders to be included in the Final Award. In compliance with this direction, the parties exchanged written submissions on costs in late March 2012. I confirm that I have not looked at those

submissions until I had finished determining all issues in the arbitration other than all questions of costs.

25. On 11 March 2012 the parties entered into a formal agreement that:-

(1) the Sole Arbitrator may sign outside the Kingdom of Bahrain any partial, interim or final award issued in the proceedings; and

(2) the parties would not challenge the validity or enforcement of any arbitral award issued in the proceedings by the Sole Arbitrator on the basis that such award was not signed in the Kingdom of Bahrain.

26. On 30 March 2012 I received from the Respondent's solicitors a copy of an order made on 22 March 2012 by the U.S. Bankruptcy Court of the Southern District of New York by which restraining orders were made concerning my attempt to deal with the Respondent's assets including the bringing or continuation of any legal proceedings. Based on that order, the Respondent applied for a stay of these arbitral proceedings.

27. By letter dated 15 May 2012, and, having received the representations of the parties, I granted an indefinite stay of these proceedings until my further direction. Thereupon all further work on this arbitration ceased.

28. On 18 July 2013 the same U.S. Bankruptcy Court granted a motion to allow the Final Award in this arbitration to be issued notwithstanding its order of 22 March 2012.

29. On 24 July 2013, in light of this development, I invited the Secretariat of the ICC to complete their scrutiny of my Draft Award and return it to me for signature in due course. Thereby the stay which I had granted earlier was lifted.

30. By email to the parties dated 12 September 2013 I formally closed the arbitral proceedings pursuant to Article 22 of the Rules.

C. HISTORY OF THE DISPUTE

31. Following the making of the Supplementary Agreement in December 2009, the Claimant continued carrying out the works and was paid by Riffa in accordance with the revised payment provisions contained in Clause 3.6 of the Supplementary Agreement. Payments were made monthly under Interim Payment Certificates ("IPCs"). By 8 April 2010 Riffa had paid to the Claimant sums due under IPC Nos. 38, 39 and 40 to a total amount of about BD 2,650,000.

32. On 13 April 2010 the Engineer certified IPC 41 in the amount of BD 1,315,135 in relation to the Works completed up to 31 March 2010. The gross value of the work included in IPC 41 was calculated in accordance with Clause 3.6.5B of the Supplementary Agreement and payment was due within 14 days of the date of the receipt of the certificate, i.e. on or before 27 April 2010.

33. Riffa did not pay the amount due to the Claimant under IPC 41 by 27 April 2010 or at all. On 28 April 2010 the Claimant gave notice of non-payment to the Engineer.

34. On 13 May 2010 the Engineer certified IPC 42 in the sum of BD 499,407 in respect of the works completed up to 30 April 2010. Payment of that sum was due on or before 27 May

2010 but Riffa did not pay IPC 42 as certified or at all. By letter dated 29 May 2010 the Claimant gave notice of non-payment to the Engineer.

35. On 14 June 2010 the Engineer certified IPC 43 in the sum of BD 515,231 in respect of the works completed up to 31 May 2010. Payment of that certificate by Riffa was due on or before 28 June 2010. However Riffa did not pay to the Claimant any amount certified as due and payable under IPC 43 either on or before 28 June 2010 or at all. By letter dated 29 June 2010 the Claimant gave notice of non-payment to the Engineer.

36. On 15 June 2010, by letter to Riffa, the Claimant gave notice of termination of its employment under the Contract under GCC 69.1 on the ground of non-payment by the Respondent of an amount due under the IPCs. The termination took effect 14 days after the date of the notice, namely on 29 June 2010.

37. Significantly neither Riffa nor the Engineer nor the Respondent has at any stage challenged the fact that IPCs 41, 42 and 43 were never paid by Riffa and/or the validity of the Claimant's termination of its employment under the Contract on that ground.

38. On 15 June 2010, in accordance with Clause 2 of the PCU, the Claimant gave notice to the Respondent that Riffa had failed to pay IPCs 41 and 42 and demanded from the Respondent immediate payment of the amounts due under those IPCs pursuant to the terms of the PCU.

39. On 14 August 2010 the Claimant, by letter to the Respondent demanded immediate payment of the total sum of BD 2,329,773 being the total amount certified as due to the Claimant under IPCs 41, 42 and 43.

40. The Respondent failed to reply or otherwise respond to the Claimant's letters of demand and also failed to make any payment to the Claimant in respect of the sums due under IPCs 41, 42 and 43, despite repeated demands from the Claimant to that effect.

41. The facts, briefly stated above, are not disputed by the Respondent and in fact are confirmed in the two witness statements served on behalf of the Respondent. There are other factual statements made in those two witness statements which are disputed by the Claimant but it is the Claimant's position that none of those disputed facts is relevant to any of the issues to be determined in this arbitration and, for that reason, both the Claimant and the Respondent were content for this arbitration to be decided without an oral hearing.

42. On 14 October 2010 the Claimant submitted its final account submission to the Engineer.

43. By letter dated 25 October 2010 the Engineer notified the Claimant that the amount payable for 26 villas at BD 44,166 each, totalling BD 1,148,316 claimed under IPC 38 had already been paid in full pursuant to IPC 36. Accordingly the Engineer considered that there had been an overpayment to the Claimant in the sum of BD 1,148,316.

44. By letter dated 11 November 2010 the Claimant disputed the statements made and the figures presented by the Engineer in his letter dated 25 October 2010 and gave chapter and verse as to why the Claimant considered that no double payment had been made as alleged. These arguments were further developed by the Claimant in its letter dated 27 December 2010 to the Engineer.

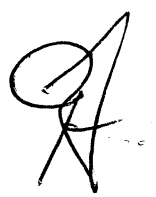
45. By letter to the Engineer dated 28 December 2010 the Claimant requested him to provide his decision pursuant to GCC 67.1 on the correct amount due under the Contract to the Claimant following the termination of its employment.

46. On 20 March 2011 the Engineer provided his decision to the Claimant which rejected the Claimant's arguments.

47. By letter dated 15 May 2011 and sent to Riffa, the Claimant served notice that it was dissatisfied with the Engineer's decision and, in accordance with Clause 67.1 of the Contract, gave notice to Riffa of its intention to commence arbitration in relation to (a) the correct valuation of the Final Account and (b) whether Riffa must release the Performance Bond following termination of the Contract. So far as I am aware, the Claimant has taken no further steps to pursue an arbitration against Riffa in accordance with the above notice to that effect.

48. On 2 June 2011 the Engineer provided his review of the Claimant's final account submission ("the Engineer's Assessment") made under GCC 65.8 (Payment if Contract terminated). The Engineer's Assessment showed the sum of BD 155,654 being payable by the Claimant to Riffa.

49. On 2 November 2011, after making further adjustments to the Engineer's Assessment, the Engineer provided an adjusted Assessment under GCC 65.8 which showed that the sum of BD 1,083,985 was owing from the Claimant to Riffa. With that letter was enclosed a Final Payment Certificate signed by the Engineer.



D. UNDISPUTED FACTS

50. The following facts relevant to the Claimant's claims in this arbitration are agreed between the parties:

(1) That IPCs 41, 42 and 43 were validly issued by the Engineer on the dates shown on them and for the amounts contained within them.

(2) That Riffa did not pay any of those three IPCs within the time provided under the Supplementary Agreement or at all and those sums remain unpaid at the date of this Award.

(3) That, by its notice served on 15 June 2010 the Claimant gave a valid notice of termination of its employment under Clause 69.1 of the Contract. It is also accepted that the employment of the Claimant under the Contract came to an end on 29 June 2010.

(4) That the Claimant made valid written demands on the Respondent for payment of the total sums certified in IPCs 41, 42 and 43 viz. BD 2,329,773, pursuant to Clause 2 of the PCU.

(5) That, following such written demands, the Respondent has failed to pay any sum to the Claimant in respect of IPCs 41, 42 and 43 as at the date of this Award.

51. In this arbitration the Claimant seeks to recover from the Respondent the total sums certified under IPCs 41, 42 and 43, vis. BD 2,329,773 together with interest on that sum and damages for breach of contract on the ground that the Respondent was in breach of the

terms of the PCU in failing to respond to the Claimant's written demands for payment. Those claims depend upon the proof of the facts set out in the preceding paragraph which, as I have stated, are not disputed by the Respondent. Thus, subject to consideration of the defences raised in this arbitration by the Respondent, at this stage I conclude that the Claimant has satisfied the burden of proving its entitlements to the sums claimed.

52. However, the Respondent has raised a number of defences to the Claimant's claims both in relation to the terms and meaning of the PCU and in relation to facts which have occurred, in relation to the assessment of the Final Account under the Contract, which, it argues, show that the Claimant, far from being entitled to recover any further sums either from Riffa or from the Respondent, is, in fact, indebted to Riffa under the Contract in the sum of BD 1,083,985. The Respondent has raised a number of disparate defences and arguments throughout its written submissions which I shall seek to summarise and categorise in the following section.

E. THE ISSUES BETWEEN THE PARTIES

The relationship between the Contract, the Supplementary Agreement and the PCU

53. The Respondent argues that these three contracts are all part of the same group of contracts and they should be construed with regard to one another. In particular the Respondent suggests that the underlying intent of the Supplementary Agreement was the earliest possible completion of villas which would allow potential purchasers to take occupation of them at once. But, as the Claimant points out, there are no provisions in the Supplementary Agreement which provide for the early handover of certain villas or which lays down an agreed new sequence of construction and completion. The most that can be said is that there was provision made for the parties to meet to agree a new schedule of handovers of the villas. So far as the PCU is concerned, the Respondent maintains that it forms part of the

Supplementary Agreement and so should be construed in accordance with it. The Claimant rejects this approach and submits that the PCU is a standalone agreement between different parties to the parties to the Supplementary Agreement. As such, it should be construed on its own terms and without reference to the Supplementary Agreement, still less to the Contract.

54. In my view the position of neither party is correct on this point. It is obvious that the Contract and the Supplementary Agreement must be read and construed together since the Supplementary Agreement was intended to amend and modify the Contract in a number of respects, not least that the identify of the Contractor was changed. Equally the Supplementary Agreement (to which the Respondent was not a party) made detailed provision in Clause 7 for the terms of the three Parent Company Guarantees to be provided by the Respondent. The PCU, with which this Award is concerned, was ultimately provided by the Respondent to the Claimant in accordance with Clause 7. Thus, in my judgment, when construing the terms of the PCU one must have regard, as part of the factual background or context to, the terms of the Supplementary Agreement from which it sprang. In terms of the construction of the PCU, I consider that, if its terms are clear and unambiguous, then there is no need to have recourse to the terms of Clause 7 of the Supplementary Agreement which gave birth to it. On the other hand, if I were to find that the terms of the PCU were not clear or were ambiguous, then I would consider that it would be right, in order to arrive at clarity or resolve the ambiguity, to have recourse to the wording of the Supplementary Agreement to do so. Thus I do not consider that, strictly speaking, the PCU is a "*standalone agreement*" but it may be treated as such, if its terms are clear and unambiguous.

The relevance of facts occurring on site after the date of the Supplementary Agreement

55. The Respondent complains that, for its own commercial purposes, the Claimant completed villas on site in a sequence which would maximise its recovery of monies from the Respondent due to the payment provisions set out in the Supplementary Agreement. In short, the Respondent complains that the Claimant hurried on to complete the villas which were already closest to completion so that it could recover the agreed sum of BD 44,000 odd per villa even though it had expended very little cost to achieve that. The Respondent suggests that the Claimant should have proceeded to complete first the villas which would be easiest for the Respondent to sell and for the purchasers to occupy thereby increasing the Respondent's cashflow.

56. The Respondent also complains that the Claimant failed to engage with the Respondent in order to agree a phased schedule for the completion of the villas to suit the Respondent's needs but simply completed the villas of its own choosing in order to maximise its recovery of funds from the Respondent. This, so the Respondent asserts, led to *"inevitable overpayment"* to the Claimant since it was receiving far more money from the Respondent than it was expending in completing its chosen villas.

57. In answer to this allegation, the Claimant denies that, under the Supplementary Agreement, it was under any obligation to complete the villas in any particular sequence and points out that the payment mechanism laid out in the Supplementary Agreement did not purport to compensate the Claimant for monies expended on completing the villas after the date of the Supplementary Agreement, but was merely a convenient funding methodology by which the agreed total sums to be paid by the Respondent would be allocated to all the incomplete villas, regardless of their state of completion.

58. More fundamentally, the Claimant denies that the facts alleged by the Respondent, even if true, would be of any relevance in determining the issues in the arbitration. Those issues, it is said, all relate to the terms of the PCU, and are not dependent in any way on whether or not the Claimant was in breach of the Supplementary Agreement as alleged. The Claimant's position is that it was entitled under the Contract to be paid by Riffa in respect of the three IPCs issued by the Engineer and, upon Riffa's non-payment, it was entitled to recover the sums due from the Respondent under the PCU. Whether or not the Claimant was in breach either of the Contract or of the Supplementary Agreement, as alleged by the Respondent, was simply of no relevance to the Claimant's entitlement to be paid the IPCs.

59. On this issue, I find in favour of the Claimant's argument. It seems to me that, once it is accepted that the three IPCs were validly certified by the Engineer and that they were not paid by Riffa then a sufficient legal basis has been laid for making valid claims against the Respondent under the PCU. Whether or not the Claimant was in breach of the terms of the Supplementary Agreement, whether as alleged by the Respondent or at all, is not relevant to the Claimant's entitlement to payment of the IPCs from the Respondent. Accordingly, I make no findings as to the Respondent's allegations of breach but merely observe that, if they are well founded, they could give rise to claims for damages for breach of contract which, so far, Riffa has not pursued.

Post-Termination Accounting Issues

60. As appears from the brief history of the dispute set out above, following the termination of the Claimant's employment under the Contract, the Engineer proceeded to assess the Claimant's entitlements to further payments in accordance with GCC 69.3 and 65.8. That process was concluded by the issue of the Engineer's Final Certificate which, based upon his assessment, showed that there were no further sums due to the Claimant but rather that

the Claimant was bound to repay the Respondent in respect of overpayments made to the extent of BD 1,083,985. The Claimant, for its part, has consistently disputed the Engineer's methodology and conclusions in his assessment and these disputes are the subject of separate proceedings in the Courts of the Kingdom of Bahrain.

61. Based upon these facts, the Respondent argues that, whatever may have been the position at the termination of the Claimant's employment under the Contract on 29 June 2010, later events showed that, for various reasons, including the case of double payment, the Claimant had been significantly overpaid by the Respondent, which was conclusively established by the Engineer's final assessment made in November 2011. Accordingly, so the Respondent argues, there are no sums due to the Claimant from Riffa under the Contract since, in effect, the later assessments of entitlement made by the Engineer undo the valid and unqualified IPCs issued by him over a year earlier. Equally, the Respondent submits that there can be no sums due to the Claimant from the Respondent under the PCU since liabilities under the PCU reflect and follow liabilities accruing under the Contract, as amended by the Supplementary Agreement. For these reasons, the Respondent submits that the Claimant's claims should be dismissed in there entirety.

62. In answer to these submissions, the Claimant makes two fundamental points. The first is that, once liability had crystallised under the PCU as a result of the Claimant making written demands on the Respondent for payment of the sums due under the IPCs, the liability of the Respondent was established at that time. Whatever further events may have taken place in respect of the accounting processes under the Contract could not affect that position. Neither under the general law of Bahrain nor under the terms of the PCU was the Respondent entitled to delay payment and then take advantage of the subsequent events to show that no further sums were due to the Claimant under the Contract. For, to allow that

to occur, would be to defeat the very purpose of the PCU which was designed to protect the Claimant from non-payment by Riffa of monthly payment certificates properly issued under the Contract and to make such payments under the PCU expeditiously once the default had occurred.

63. The Claimant also disputes the facts relied upon by the Respondent and, in particular, the allegation of double payment as well as the Engineer's Assessment which it has sought to challenge in separate proceedings.

Discussion and Decision

64. Of course I have been appointed Arbitrator only under the PCU and I have no jurisdiction or power to make determinative findings under the Contract or under the Supplementary Agreement. Thus I can make no findings on the allegations of double payment and on the Engineer's Assessment of the Claimant's entitlement following termination which are at the root of this part of the Respondent's case. By a letter to the parties dated 23 February 2012, I drew attention to these difficulties and invited the parties' comments and suggestions as to how I should proceed with this part of the case in light of the difficulties I had identified.

65. By letter dated 27 February 2012 the Claimant responded to my letter of 23 February. The Claimant takes the view that I do not have jurisdiction to determine any of the issues raised by the Respondent which pertain to the issue of alleged double payment, the overall accounting process following the termination of the Contract, or any other issues arising under the Contract. The Claimant maintains that the accounting issues raised by the Respondent are irrelevant to my determination of the issues in this arbitration and points out that it has only responded to them in its written submissions without prejudice to its primary position.

66. By letter dated 29 February 2012 the Respondent also replied to my letter of 23 February. The Respondent's principal position is that, whilst it agrees that I have no jurisdiction over the issues arising under the Contract, nonetheless it does not follow that those issues are irrelevant to my decisions in this arbitration. However the Respondent does maintain that I have jurisdiction to determine whether an overpayment under the Contract is relevant to determining liability under the PCU for, if the answer is in the affirmative, then the Respondent submits that the Claimant's case must fail. The Respondent alleges that the Claimant has made no case and offered no argument to support an underlying entitlement to the monies demanded under the PCU. It has asserted that the PCU is an on demand instrument and that the Respondent must pay. (I should say that I do not understand this to be the Claimant's case for it has always maintained that the Respondent was in breach of the PCU by failing to pay the three IPCs which were, at all material times, valid and enforceable certificates under the Contract, see, for example, paragraph 41 of the Claimant's written submissions in reply.)

67. Bearing in mind these submissions, I approach this matter as one of principle and to be determined by the true purpose, meaning and effect of the PCU which, is, of course, governed by the laws of the Kingdom of Bahrain.

68. It is perfectly obvious from the terms of the PCU what its purpose was. It was designed to give protection to the Claimant against non-payment by Riffa of the monthly payment certificates issued by the Engineer and quantified in accordance with Clause 3.6 of the Supplementary Agreement. Recital (d) of the PCU confirms that the Respondent ("*... hereby agrees to issue the undertaking (the "PCU") in order to guarantee, to the benefit of GPZ, the fulfilment by Riffa Views of its obligations under sub-clause 3.6.5 of the Agreement, the*

terms and conditions of which (PCU) are detailed below"). In Clause 1 of the PCU the Respondent acknowledges that it will make payments "*as principal debtors*" if Riffa fails to perform its obligations. In Clause 2 the Respondent agreed to pay the Claimant "*upon receipt of its first written demand ...*" if Riffa had not paid under sub-clause 3.6.5 of the Supplementary Agreement. In short the main purpose of the PCU was to protect the Claimant's cash flow.

69. In my view those provisions of the PCU make it quite clear that the Respondent's obligations to pay arose upon receipt of a written demand from the Claimant after Riffa had failed to pay sums certified in IPCs in accordance with the Supplementary Agreement. There is no hint or suggestion that the Respondent's liability to pay, once it had arisen, could be postponed or modified because of any issues arising under the Supplementary Agreement, including any issues as to the accounting process to be carried out after the termination.

70. In this context I should mention Clause 3 of the PCU which provides as follows:

> "*Our undertakings in paragraphs 1 and 2 above relate only insofar as such sums have not previously been paid to GPZ by Riffa Views*".

71. In reliance upon this clause, the Respondent argues that, on the facts of this case, the Claimant had in fact been paid part of the sums it claimed under IPCs 41, 42 and 43 due to the double payment which it alleged had taken place in respect of the same villas in IPCs 36 and 38. However, I do not consider that this clause avails the Respondent in these circumstances. On the face of it, the sums certified for payment under IPCs 41, 42 and 43 were in respect of different works and different villas handed over to those contained in IPCs 36 and 38. Whatever may be the true position relating to those two certificates and the allegation of double payment, that cannot affect the sums payable under the three later

certificates which are the subject of these proceedings. On the wording of Clause 3, *"such sums"*, i.e. those certified under IPCs 41, 42 and 43, *"have not previously been paid to GPZ by Riffa Views"*. Accordingly this argument fails.

72. As stated above, if the Respondent were entitled to rely upon subsequent events, such as the re-calculation of sums due to the Claimant under the Contract, as a ground for not paying sums otherwise due under the PCU, the PCU would not have the effect which the parties to it so obviously intended. It would, in fact, give very little (if any) protection to the Claimant against non-payment by Riffa of the IPCs, which I find to be the primary *raison d'etre* of the PCU.

73. The second main reason why I do not consider that this limb of the Respondent's defence can succeed is that the facts upon which the Respondent relies are hotly disputed by the Claimant and are the subject of separate legal proceedings. Since I am not appointed arbitrator under the Contract or the Supplementary Agreement, I plainly have no jurisdiction or power to make binding findings as to those disputed facts in this arbitration. (This much is agreed by the parties). Any findings I made would not be binding upon Riffa, in any event, since it is not a party to this arbitration. If I am not able to make any such findings, then it is difficult to see how I can properly form any views on those disputed facts at all.

74. But, in any event, for the reasons already given above, on my reading of the PCU, the facts relied upon by the Respondent under this limb of its argument are simply not relevant to the issue as to whether or not the Respondent is liable to the Claimant under the PCU. For these reasons I do not consider that it is either necessary or appropriate for me to embark upon an investigation into those disputed facts which relate to the issue of the alleged double

payment and the assessment by the Engineer of the Claimant's entitlement under the Contract and Supplementary Agreement following termination.

75. But, before leaving this part of the case, I should make two further pertinent observations. The three IPCs relied upon by the Claimant were certified by the Engineer who no doubt at the time considered that the sums he certified as due under them were properly payable under the terms of the Supplementary Agreement. The Respondent has not argued that, at the time those certificates were issued, those sums were not properly due. Had the Engineer considered, at any time, that any alterations needed to be made to any of the three certificates, he could have done so under GCC 60.4. This power has never been exercised by the Engineer and so, even at today's date, the validity of those three certificates remains unchallenged either by the Engineer or by the Respondent. This is of course regardless of what is the total amount of the Claimant's entitlement following the termination, which is another matter entirely.

Conclusions

76. For the reasons set out above, I hold that:

(1) IPCs 41, 42 and 43 have not been challenged by the Respondent or modified by the Engineer and remain valid certificates under the Supplementary Agreement.

(2) Upon the true construction of the PCU, once liability to pay the Claimant had crystallised under it following a written demand to that effect, that liability remained in place regardless of future events including, but not limited to, the assessment carried out by the Engineer following termination pursuant to Clause 65.8 , which showed that the Claimant had been overpaid to a significant extent.

(3) Events occurring after the crystallisation of liability under the PCU are irrelevant to my determination of the Claimant's claims under it.

(4) Even if those events are not irrelevant, I have neither the jurisdiction nor the power to make binding findings in respect of such events since they arose under the Contract and the Supplementary Agreement over which I have no jurisdiction.

(5) Further, since those events are the subject of other legal proceedings in the Courts of the Kingdom of Bahrain, I do not think that it would be wise or appropriate for me to investigate those events or to make any findings in respect of them.

F. THE PARENT COMPANY UNDERTAKING

Categorisation

77. The PCU is, by Clause 9, expressly made subject to and to be governed by the laws of the Kingdom of Bahrain. So far as the construction of contracts is concerned, the parties have referred to the provisions of Articles 125, 127, 128 and 129 of the Bahrain Civil Code (Decree No. 19 of 2001) (the "Civil Code"). Those provisions are extremely familiar and well known and need not be set out verbatim in this award. Suffice to say that those provisions provide that the contract makes the law of the parties and, where its wording is clear, it cannot be deviated from in order to ascertain by means of interpretation the intention of the parties. And, so far as performance of the contract is concerned, it must be performed in accordance with its provisions and in compliance with the requirements of good faith and ethics of dealing.

78. The parties have also, in aid of the true construction of the PCU, referred to other provisions of the encoded law of Bahrain which relate in terms to different types of contracts such as guarantees, sureties and the like. So I will start this section by referring to these arguments which I consider to be of relevance in attempting to categorise the PCU into one of the recognised forms of surety. However, I must give one clear and important word of warning here, which is repeated over and again in the decided cases. That is that, whilst it may be helpful to categorise the instrument in question into e.g. a guarantee, an indemnity, a performance bond, an on-demand bond etc., the proper interpretation of the instrument is found, not from its correct categorisation, but from the actual words used by the parties in it.

The Law of Commerce Articles 331 and 334

79. The Claimant argues that since the Respondent is a bank and it gave the PCU in that capacity, then it falls within the terms of Articles 331 and 334 of the Law of Commerce which should be applied to it. These provide as follows:

> *"Article 331*
>
> *A letter of guarantee is an undertaking issued by a bank at the request of one of its customers (called "the applicant") to pay a certain amount or an ascertainable amount of money to the beneficiary on demand within the fixed period of the letter. The letter of guarantee shall state the purpose for which it has been issued.*
>
> *Article 334*
>
> *The bank may not refuse payment to the beneficiary on ground relating to the bank's relationship with the applicant or to the relationship between the applicant with the beneficiary."*

80. The Claimant relies upon a decision of the Bahrain Court of Cassation (No. 77/2001) and of the Egyptian Court of Cassation (appeal 684 of the year 48G) in support of the proposition for which it contends, namely that a guarantee given by a bank is a standalone instrument

and must be construed on its own terms quite independently of the contractual relationship between its customer (on whose behalf the guarantee was given) and the beneficiary of the guarantee.

81. The Respondent submits, however, that by reason of Article 274, Articles 331 and 334 of the Law of Commerce have no application to the present case because, although it accepts that the Respondent is a bank, it does not accept that the Respondent gave the PCU in its capacity as bankers for Riffa. It points out that the Respondent was a 60% shareholder in Riffa and the guarantee is itself described, not as banker's guarantee or payment bond, but as a "Parent Company Guarantee". Thus the PCU was given by the Respondent in its capacity as a parent company and not as a bank. Article 274 of the Law of Commerce provides as follows:

> *"Article 274*
>
> *The provisions of this Part shall apply to transactions contracted by banks with their customers whether they are traders or non-traders whatever may be the nature of such transactions."*

82. On this point I conclude that the Respondent's argument is to be preferred. I think that the title of the PCU is of significance and it is clear that, the Respondent had a direct personal interest in the outcome of the development being undertaken by Riffa, since it was a 60% shareholder in Riffa. This was not a transaction carried out in the ordinary course of business of a bank and, for that reason, I do not consider that it falls within Article 274 which governs Part 3 (Banking and Commercial Operations) of the Law of Commerce.

83. For its part the Respondent submits that the true nature of the PCU is a suretyship under Articles 742 and 763 of the Civil Code which provide as follows:

"Article 742

Suretyship is a contract under which a person guarantees the performance of the debtor's obligation by undertaking to the creditor to fulfil it if the debtor fails to do so.

Article 763

A surety who is jointly and severally liable may avail himself of all defences which a surety who is not jointly and severally liable may invoke in respect of a debt."

84. Based on these articles, the Respondent submits that since the PCU is a surety, the Respondent can avail itself of any defences available to Riffa under the Contract and Supplementary Agreement.

85. In response to this argument, the Claimant submits that Bahrain law draws a distinction between simple instruments of guarantee, where the obligation of the guarantor arises only when the liability of the principal debtor has been established and instruments whereby the guarantor is jointly liable as principal debtor, without reference to the underlying liability of the principal. Under Article 756 of the Civil Code, where a creditor holds only a simple instrument of guarantee, he must proceed against the principal debtor before proceeding against the guarantor. On the other hand, creditors holding a guarantee where the guarantor is liable as a principal debtor and that liability is distinct from the liability of the original debtor, so that they are jointly and severally liable, can proceed directly against the guarantor. (Article 756(1)).

86. In support of this view, the Claimant relies upon Clause 1 of the PCU which expressly provides that the Respondent gives its undertaking to the Claimant *"...as principal debtors..."*. Thus, so the argument runs, the Claimant has no need to pursue Riffa for payment, it may merely take these arbitral proceedings against the Respondent. Further the

Claimant relies on Articles 72-74 of the Law of Commerce for the proposition that, in the case of a commercial guarantee such as the PCU, the guarantor (the Respondent) is to be regarded as being jointly liable with the debtor (Riffa) so that the Respondent owes a primary and separate obligation to the creditor (the Claimant). Again the result is that the creditor may claim directly against the guarantor under the commercial guarantee without pursing the principal debtor.

87. It seems to me that Clause 1 of the PCU makes it quite clear that the Respondent was undertaking liability as principal debtors to the Claimant so that it was open to the Claimant to pursue the Respondent in this arbitration without claiming against Riffa. But I also conclude that, subject always to the express wording of the guarantee in question, the guarantor can, as a general matter of Bahrain law, avail himself of any defences which would have been open to the principal debtor under the principal agreement. Thus, in order to decide whether or not the Respondent is liable under the PCU, it is necessary to consider the nature of that document. In particular whether it is a guarantee payable "on demand" (as the Claimant asserts) or one payable only on proof of "default" by Riffa (as the Respondent asserts.) And if it is found that the PCU falls into the second category, it is then necessary to consider whether or not the Claimant has established that, when the call was made on the PCU, Riffa was in default in such a manner as gave rise to liability under the PCU.

On demand or on default?

88. In support of its argument that the PCU is a guarantee, liability under which only arises on proof of non-payment by Riffa under the Contract and Supplementary Agreement, the Respondent relies upon the English decision of Blackburne J in the case of Vossloh Aktiengesellschaft v Alpha Trains (UK) Ltd (2010) EWHC 2443 (CH). In that decision the judge

gave a valuable analysis of the English law relating to all manner of sureties. The judge dealt with guarantees, indemnities and on-demand bonds as follows:-

Guarantee

"An essential distinguishing feature of a true contract of guarantee – but not its only one – is that the liability of the surety (i.e. the guarantor) is always ancillary, or secondary, to that of the principle, who remains primary liable to the creditor. There is no liability on the guarantor unless and until the principal has failed to perform his obligations. The guarantor is generally only liable to the same extent that the principal is liable to the creditor. This has the consequence that there is usually no liability on the part of the guarantor if the underlying obligation is void or unenforceable, or if the obligation ceases to exist..."

Indemnity

"...a contract of indemnity denotes a contract where the person who gives the indemnity undertakes his indemnity obligation by way of security for the performance of an obligation by another. Its essential distinguishing feature is that, unlike a contract of guarantee, a primary liability falls upon the giver of the indemnity. Unless (as is quite possible) he has undertaken his liability jointly with the principal, his liability is wholly independent of any liability which may arise as between the principal and the creditor. It will usually be implicit in such an arrangement that, as between the principal and giver of the indemnity, the principal is to be primarily liable, so that if the indemnifier has to pay first he has a right of recourse against the principal... The indemnity not only shifts the burden of the principal's insolvency onto the indemnifier but it also safeguards the creditor against the possibility that his underlying transaction with the principal is void or unenforceable."

Performance bond or guarantee

"In essence this is a particularly stringent contract of indemnity. It is a contractual undertaking by a person, usually a bank, to pay a specified amount of money to a third party on the occurrence of a stated event, usually the non-fulfilment of a contractual obligation by the principal to that third party. Sometimes the wording of the contract has the result that the liability of the person who has given the bond arises on mere demand by the creditor, notwithstanding that it may be evident that the principal is not in any way in default... It all depends on the wording of the instrument. It is often a difficult question to determine whether, on its true construction, a particular contract which provides for payment on demand is a performance or demand bond (where the obligation to pay is triggered by a demand alone or by a demand accompanied by the provision of specified documents) or whether it is a guarantee (strictly so called) where the obligation to pay is of the "see to it" kind, ie. conditional on proof by the creditor of default by the principal."

89. The relevant provision in the PCU is Clause 2 which provides as follows:

> *"Clause 2*
>
> *In the event that GPZ notifies us in writing, at the above address, that Riffa Views has not paid under sub-clause 3.6.5 we will pay to GPZ upon receipt of GPZ's first written demand the following:*
>
> *2.1 The amount due in any one month shown in the Payment Schedule under column (5) in appendix C of the Agreement to the cumulative maximum of BD 5,000,000 (Bahrain Dinahs five million) less any amounts already paid to BPZ under sub-clause 3.6.5 of the Agreement."*

90. In my view the meaning of Clause 2 is quite clear. Three events need to happen before liability under the PCU crystallises. The first is that Riffa has failed to pay a sum due under an IPC issued under the Supplementary Agreement. The second event is that the Claimant gives notice to the Respondent that Riffa has failed to pay the Claimant under Clause 3.6.5 of the Supplementary Agreement (which provides for payment by Riffa of monthly IPCs issued by the Engineer.) The third event is that the Respondent must have received a written demand from the Claimant seeking payment from the Respondent under the PCU. Thus it is not correct to categorise the PCU as an "on demand" guarantee if that phrase means that liability arises simply and solely on the written demand being made by the Claimant. In my view, this PCU is properly described as a "guarantee" since liability under it cannot arise unless Riffa has failed to pay in accordance with sub-clause 3.6.5 of the Supplementary Agreement.

91. Here the Respondent admits receiving the relevant written demands from the Claimant in respect of the three disputed IPCs and it also admits that, at the time those demands were made, Riffa had failed to pay the IPCs in accordance with sub-clause 3.6.5 of the Supplementary Agreement. However, notwithstanding these admissions, the Respondent argues that, even if liability to pay under the PCU had arisen (which it does not admit), that liability had somehow been removed when it was discovered, following the Engineer's

Assessment of the final account following termination, that, overall, the Claimant had been overpaid to the tune of over BD 1 million. In those circumstances, the Respondent argues that its liability under the PCU disappeared and is no longer in existence.

Was Riffa in breach of sub-clause 3.6.5 of the Supplementary Agreement?

92. In my view the clear answer to this question is, *"Yes"*. The Respondent does not dispute that IPCs 41, 42 and 43 were validly issued by the Engineer under Clause 3.6.5 of the Supplementary Agreement. Nor does it dispute that those certificates were never paid either by Riffa or the Respondent. The Respondent's admissions inevitably lead to an acceptance, albeit tacit, that, as at the date of the termination of the Contract, Riffa was in breach of Clause 3.6.5 of the Supplementary Agreement and of the payment provisions contained in GCC 60 of the Contract. This was not disputed by Riffa or the Respondent at the time and, as already noted, the Claimant's termination of the Contract, based on the non-payment of the three IPCs, has not been disputed.

93. In its submissions, however, the Respondent now suggests that, since some parts of the payments certified under the three IPCs were not in respect of the completion of the villas but were in respect of other matters, such as variations, somehow that makes a difference as to whether or not Riffa was in breach by non-payment. For my part I can see no ground for making any such distinction. The monthly payment certificates issued by the Engineer were bound to cover all aspects of the work carried out by the Claimant, and not just the completion of the villas provided for in the Supplementary Agreement. Once an IPC has been validly issued by the Engineer, it must be paid within the time limits imposed by Clause 60 unless it is successfully challenged by an arbitration. That did not take place and so I am unable to accede to this argument by the Respondent.

94. More pertinently, the Respondent seeks to argue that, due to the fact that it has now been found that the Claimant was paid twice in respect of some 26 villas and that, in his Final Assessment of entitlement upon termination, the Engineer has found that the Claimant has been overpaid, the three IPCs have somehow been adjusted or replaced so that they are no longer effective.

95. In further support of this argument, the Respondent relies on Article 185 of the Civil Code which provides as follows:-

> *"Article 185*
>
> *A payment which is not due may be recovered, if it was made in the performance of an obligation whose cause had not materialised or had ceased to exist."*

The Respondent argued that, by virtue of the later accounting exercises leading up to the Engineer's Assessment, it was apparent that no further monies were due to be paid to the Claimant so that any liability to pay the three IPCs which had once existed had *"ceased to exist"*.

96. This argument may quickly be disposed of. As I have already found above, it is not permissible, when addressing liability under the PCU, to have regard to later events occurring after such liability had crystallised, which may throw a different light on the overall accounting position between be parties. Once the termination of the employment of the Claimant under the Contract had taken effect, based on the admitted non-payment of the three IPCs, and once the relevant written demands had been served on the Respondent, liability to pay under the PCU had crystallised and could not be affected by later events relating to the accounting position between the Claimant and Riffa.

97. But, even if it were permissible to have regard for such later events, the three IPCs have never been modified under GCC 60.4, they have never been challenged in arbitral or court proceedings and, accordingly, they still have contractual force and effect under the terminated Contract.

Unjust enrichment

98. In reliance upon Articles 184 and 185 of the Civil Code, the Respondent relies on the doctrine of unjust enrichment. Article 185 is set out above and Article 184 of the Civil Code provides as follows:-

> *"Whoever receives, by way of payment, which is not owing to him, is bound to return it. There is, however, no obligation to restitute when the payer knew that he was not under an obligation to pay, unless he was legally incapable or unless he paid under duress."*

In reliance on these provisions, the Respondent argues that the Claimant was clearly aware, as a result of the Engineer's Assessment that no monies are due to it under the Supplemental Agreement and, consequently under the PCU because the obligations created by the three IPCs had ceased to exist. The Respondent goes so far as to suggest that, by attempting to recover the monies claimed under the PCU, the Claimant is attempting to obtain property by deception and may even be acting fraudulently.

99. In my opinion, these arguments are groundless. The Claimant is openly in this arbitration seeking to recover the sums certified under IPCs 41, 42 and 43 which were validly issued by the Engineer. Those claims have been found by me, the Arbitrator of the disputes between the parties, to be soundly based in law and under the terms of the relevant agreements. There has been no deception of any sort involved, still less any dishonesty or fraudulent conduct. If the award in this matter is satisfied by the Respondent by payment of the sums

due to the Claimant, there will be no unjust enrichment either. That is because the PCU is a freestanding agreement made between different parties to those under the Contract and Supplementary Agreement. If it turns out to be the case that, under the Contract and Supplementary Agreement, the position is that the Claimant has been overpaid, then Riffa can seek a remedy under those agreements to enforce a re-payment from the Claimant. If that remedy is successful then there will be no unjust enrichment even if there has been an overpayment. No injustice should result if that course is adopted, but it should be emphasised that the present position stems entirely from the drafting of the PCU which made payment of any unpaid IPCs an absolute obligation on the Respondent regardless of the overall accounting position between the Claimant and Riffa, either at the time a demand was made under the PCU or at any later date.

Conclusions

100. For the reasons set out above, I have reached the following conclusions in relation to the PCU. I find that:

(i) The PCU was given by the Respondent as the parent company of Riffa and not as a bank in the ordinary course of business.

(ii) The PCU, upon its proper construction, is not an *"on demand"* instrument but is a guarantee simpliciter which depends upon the default by non-payment of Riffa.

(iii) The Respondent has an obligation to pay a valid demand made under the PCU as a principal debtor and it is not necessary for Riffa to be pursued as well.

(iv) The demands for payment made by the Claimant under the PCU were valid since, at that time, Riffa was in breach of the terms of Clause 3.6.5 of the Supplementary Agreement and GCC 60.

(v) Once liability to pay had crystallised under the PCU, any later events affecting the entitlements of the Claimant under the Contract and Supplementary Agreement are irrelevant and cannot affect the crystallised liability of the Respondent.

(vi) Liability on the part of the Respondent under the PCU to pay the value of the unpaid IPCs still exists at the date of this award.

(vii) Satisfaction of this award by the Respondent does not involve any deception or fraud on the part of the Claimant and will not give rise to any unjust enrichment since it flows from the terms of the contracts freely entered into between the parties.

(viii) So far as the overall accounting between the Claimant and Riffa under the Contract and Supplementary Agreement is concerned, if it is eventually found in the relevant proceedings that the Claimant has been overpaid, then Riffa will have its remedy against the Claimant in those proceedings.

Overall Conclusion

101. It follows that, for the reasons stated above, I find that there is no defence to the Claimant's claim to be paid the total sum due under the unpaid IPCs of BD 2,329,773. There will be an award in that amount.

G. DAMAGES

102. In addition to its claim to recover the sums certified under the three unpaid IPCs, the Claimant seeks to recover damages from the Respondent on a number of different bases, as follows:-

(a) For breach of its obligation as principal debtors to pay the unpaid IPCs under Clause 1 of the PCU;

(b) For breach of Clause 2 of the PCU in failing to satisfy the demand for payment of the unpaid IPCs;

(c) Under Article 135 of the Civil Code in that the Respondent has failed to honour the obligation of the third party (Riffa);

(d) By way of an indemnity against any losses suffered by the Claimant by virtue of the failure by Riffa to pay the three IPCs, under Clause 4 of the PCU.

(e) Damages under Articles 223 and 224 of the Civil Code including compensation for moral prejudice.

103. The Respondent has not made any or any detailed submissions in response to these claims but I must, nonetheless, examine them on their merits.

104. The principal head of damages claimed by the Claimant is that of interest on the unpaid IPCs from the date when they should have been paid until the date of the award. The rate of

interest is claimed on two alternative bases. Firstly at the annual rate of 7.30% which is the average of the overdraft rates charged to the Claimant by its bankers, details of which had been sent to the Engineer by letter dated 13 May 2010. This rate is the applicable interest rate under GCC 60.10 which entitles the Claimant to recover *"...interest on overdue payments at the prevailing bank overdraft rates."* The alternative rate claimed is based on the assertion, without evidential substantiation, that, as a matter of Bahrain law and practice, a rate of 9% is reasonable. On either basis, simple interest only is claimed.

105. Apart from a claim for interest by way of damages, the Claimant has put forward no other head of loss for which damages are claimed, whether calculated or otherwise, except the claims for moral hazard and loss of profit. Whilst such heads of claim are undoubtedly possible under the law of Bahrain, the Claimant has given no particulars whatever of what these heads of loss constitute nor has it sought to justify them by any evidence or calculations.

106. The claim for the recovery of interest on the unpaid IPCs by way of damages is perfectly straightforward and I have no hesitation in deciding that the Claimant is entitled to recover such damages. The Respondent was plainly in breach of the terms of the PCU both in respect of its failure to pay the unpaid IPCs directly as principal debtor and also in respect of its failure to respond to the written demand for payment under the PCU. In addition it is, in my judgment, liable to indemnify the Claimant against losses suffered as a result of the breaches by Riffa of the Contract and by the Respondent of the PCU. The natural and foreseeable loss flowing from such breaches is the loss of use by the Claimant of the sums of money certified which should have been paid. Such loss of use is a well established head of damages and is usually calculated by reference to appropriate interest rates. In this case I consider that the appropriate rate of interest is 7.3% simple interest, since that was the sum

calculated under the terms of GCC 60.10 with which the Engineer apparently agreed. I do not consider that the Claimant has established entitlement to be paid at the higher rate of 9% since there is no evidence before me that that rate is either reasonable or that it should prevail over the rate calculated under the Contract.

107. So far as any other heads of loss claimed by way of damages are concerned, the Claimant has given no particulars of such heads and has merely mentioned the claims in passing. Thus I have been provided with no basis upon which such an award could be calculated. For example, the Claimant has put forward no reasoned claim by way of loss of profits which might have been earned on the sums due from the unpaid certificates. Neither has it sought to argue that its reputation in the marketplace has been damaged by the Respondent's breaches of contract. In these circumstances I feel quite unable to make any further award of damages in favour of the Claimant since, in my view, no such damages have been established either by evidence or by argument.

H. INTEREST

108. In addition to or, in the alternative to its claim to recover interest by way of damages for breach of contract, the Claimant has also sought to recover interest on the sums awarded in this arbitration, vis. the sums unpaid under the three IPCs. Apart from its rights under the Contract, the Claimant seeks to recover interest for non-payment of commercial debt under Article 81 of the Law of Commerce which provides as follows:

> *"Article 81*
>
> *(1) Interest for delay of payment of commercial debts shall accrue upon maturity of such debts, unless the law or the agreement provides otherwise."*

The Claimant seeks to recover interest under this article at the rate of 9% which is alleged to be reasonable and in accordance with the law and practice of Bahrain. However, for the reasons stated above, I cannot accept this higher rate rather than the contractual rate of 7.3%, since no evidence has been submitted justifying it.

109. The Respondent has made no submissions on the Claimant's claim to recover interest.

110. In these circumstances I am clearly of the view that the Claimant is also entitled to recover interest on the sums awarded in this award under Article 81 of the Law of Commerce. However, the Claimant only claims simple interest and it can, naturally, only recover interest on the unpaid sums once, whether it be categorised as by way of damages for breach of contract, or merely as simple interest on unpaid debts.

111. In paragraph 170 of its opening written submissions, the Claimant has calculated the interest due to it on the unpaid IPCs at the rate of 7.3% as from the date when payment of those IPCs was due under the Supplementary Agreement. That calculation shows that, as at 31 January 2012, the total interest payable amounted to BD 291,155.411. Thereafter interest continued to accrue from 1 February 2012 until the date of this award at the daily rate of BD 103.046. Thus an additional sum by way of interest calculated at that daily rate for 628 days (BD 64,712.888) falls to be added to the Claimant's interest calculation. Adding that sum to the figure of BD 291,155.411 arrives at a grand total for interest as at the date of this award of BD355,868.299.

J. THE COUNTERCLAIM

112. In paragraph 9.1.2 of its opening written submissions the Respondent claims damages under Article 224 of the Civil Code to include compensation for moral prejudice under Articles 162-

164 of the Civil Code. It is alleged that such damages and/or compensation arise from the *"Claimant's commencement of unreasonable and unfounded proceedings against the Respondent as part of its commercial strategy to make an inappropriate recovery by way of the final account."*

113. I have no hesitation in dismissing that counterclaim and all other relief sought by the Respondent in this arbitration on the following grounds:-

(a) By letter dated 11 December 2011 the Respondent wrote in unqualified terms as follows:-

> *"The Respondent does not intend to maintain the unquantified counterclaim raised in paragraphs 12.1.2 and 12.1.5 of the Answer to the Request for Arbitration."*

The Respondent is not now able to resurrect that counterclaim after making that concession.

(b) There are no grounds upon which the Respondent would be entitled to raise a counterclaim, since I have found that the Claimant's claims are well founded, and it cannot be said that it was unreasonable to bring these proceedings.

(c) Similarly I find that the Respondent is not entitled to any other of the relief which it claims, including declarations as to the validity of its arguments advanced herein.

114. For these reasons I dismiss in its entirety the Respondent's counterclaim.

K. COSTS

115. In its written submissions dated 15 March 2012, the Claimant seeks an award of costs and expenses in its favour pursuant to Article 31 of the ICC Rules which provides, so far as material, as follows:-

> *"Article 31(1).*
>
> *The cost of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court .... and the reasonable legal and other costs incurred by the parties for the arbitration ."*

116. The Claimant seeks to recover the following sums in this respect:-

(a) the legal fees and disbursements of Clifford Chance LLP between 27 January 2011 and 15 March 2012 in the total sum of BD105,448.67;

(b) the legal fees and disbursements of Hassan Radhi & Associates (local lawyers) between 23 February 2011 and 15 March 2012 in the total sum of BD 11,110;

(c) the deposit monies paid to the ICC in a total sum of US$ 165,000 which amounts to BD 62,172.

The total of the above three claims amounts to BD 178,730.67 which is the total award which the Claimant seeks. With its submissions, the Claimant has provided a detailed breakdown of the sums claimed under sub-paragraphs (a) and (b) above.

117. The Claimant claims to recover its costs in full from the Respondent on the ground that, if it is the successful party in the arbitration (which it is) then, under the guiding principle that

costs should follow the event, it should be entitled to recover all of its costs from the losing party. In its written submissions the Claimant also argues that, if it were not wholly successful in the arbitration, it should nonetheless recover a large proportion of its costs on the ground that the conduct of the Respondent in pursuing its allegedly unmeritorious defences and by allegedly indulging in delaying tactics, should be reflected in an adverse order for costs.

118. By its letter dated 27 March 2012, as regards the appropriate award of costs, Trowers & Hamlins, on behalf on the Respondent, wrote:

> *"Our submission in respect of costs is that we expect the cost to follow the event in the usual way."*

It is thus agreed between the parties that the guiding principle which I should follow, save in exceptional circumstances, is that the successful party should receive an award of costs.

119. In this case the Claimant is plainly the successful party in every respect and accordingly is entitled to an award of costs in its favour. That being so, it is unnecessary for me to consider further the complaints made about the Respondent's conduct during the arbitration.

120. So far as the amount of the Claimant's costs is concerned, the Respondent was given the opportunity to comment on the detailed breakdown of the Claimant's costs served with its submissions. However, by email dated 29 March 2012, Trowers and Hamlins indicated that it had been instructed by its client to make no further submissions on the quantum of the Claimant's costs claim.

121. Notwithstanding the absence of any comments from the Respondent, I have considered the costs claimed by the Claimant which total BD 116,558.67 or US$ 309,018. In my view the expenditure of that amount in pursuing its claim was reasonable in all the circumstances and I see no reason to make any deduction from it.

122. The Court extended the time for delivering this Final Award on the following dates:-

- On 14 March 2013 it was extended until 28 June 2013.
- On 13 June 2013 it was extended until 30 September 2013.
- On 12 September 2013 it was extended until 31 October 2013.

L. AWARD

123. For the reasons set out above I do hereby AWARD and DECLARE as follows:-

(1) The Respondent shall pay to the Claimant the principal sum of BD 2,329,733, together with simple interest thereon and continuing until payment at the rate of BD 103.046 per day.

(2) The Respondent shall pay to the Claimant, by way of interest on the principal, the total sum of BD 355,868.299 (calculated up to 21 October 2013).

(3) The Respondent shall pay to the Claimant the sum of BD 116,558.67 in respect of the Claimant's costs and expenses incurred in this reference.

(4) The Arbitrator's fees and expenses and the ICC's costs of administering this arbitration together amount to US$ 155,772. The Claimant has deposited with the ICC the sum of US$ 165,000. Accordingly the Respondent shall, in addition pay the

sum of US$ 155,722 to the Claimant by way of reimbursement of the said deposit monies.

(5) The Respondent's counterclaims are dismissed.

Signed: .....

(Richard Fernyhough QC)

Dated this 21st day of October 2013

Delivered at Manama in the Kingdom of Bahrain.