



The XII

# NLSTIAM

National Law School Trilegal **International Arbitration Moot**

## CLARIFICATIONS

17<sup>th</sup> - 19<sup>th</sup> May, 2019

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## CLARIFICATIONS FOR XII NLSTIAM

1. Did the Respondent fill the form in order to generate the Ricardian contract as required under Paragraph 6 of the statement of facts of the Claimant?

Ans. No clarification needed.

2. Is Section 9 of the Arbitration Act of Pindia in parimateria with that of the Arbitration and Conciliation Act of India?

Ans. Yes.

3. What does the warranty agreement include?

Ans. No clarification needed.

4. Whether Agreements under Clause 27 as mentioned in Ex. C-6 are in readable form or coded?

Ans. No clarifications required.

5. Are the date and time of delivery of spare parts disputable?

Ans. No.

6. Is Exhibit C6, as mentioned in para 5 of the Response to the Notice of Arbitration, rightly referred? If not, what is the Exhibit for the email dated June 28?

Ans. The correct email is dated July 18, 2018 (Exhibit C7). The reference to C6 and June 28 is incorrect.

7. Is there a dispute resolution clause in any of the 'smart contracts' mentioned under Clause 27 (Exhibit C6) and is there any kind of reference in the 'smart contracts' to the Ricardian Contract (general or specific)?

Ans. The 'smart contracts' refer to the parent contract.

8. Is it an undisputed fact that the dispute resolution clause (Clause 45) is part of the Ricardian Contract (the document under the 'Contracts' tab)?

Ans. Yes.

9. Is there a hyperlink to the 'legal' tab in the Ricardian Contract (the document contained under the 'Contracts' tab) and if so where?

Ans. No clarification required.



**10.** Is there anything in the code of the 'smart contracts' which allows them to be modified or terminated?

Ans. No clarification required.

**11.** Was there a price list for the spare parts (on which the price of \$420,000 for the calibrated displays was based) and if so where was it available?

Ans. The list was part of the parent contract as a Schedule with the price of each spare part listed. The price of displays was mentioned.

**12.** Was there any code or conditions in the 'smart contracts' which entitled the claimant to ask the respondent to debit \$420,000 using their 'Signature Key' after the money had been refunded?

Ans. No.

**13.** Is there a possibility that the 'calibrated displays' are counterfeit and is the Respondent alleging this?

Ans. A friend of the Respondent (from his days as a Tax Officer) in the Customs Office told the Respondent that the goods had been released subject to an undertaking over email by the Claimant that the goods are genuine and that the Claimant had agreed in the undertaking to face all "*civil and criminal consequences if, upon investigation, the goods were found to be counterfeit*". The release of blockchain enabled goods had been recently introduced in Dhina as the goods could easily be traced.

The Respondent's friend categorically told the Respondent that the calibrated displays did not meet the blockchain requirements. The explanation furnished by Kulian Basanne over the phone was that since the displays had to be altered to meet the age requirements of Dhina, they did not meet the exact parameters of the blockchain.

**14.** What were the contents of the warranty clause and where was it available?

Ans. No clarification required.

**15.** Are Pindia and Dhina parties to the New York Convention or any other international convention or treaty dealing with arbitration?

Ans. Aliababwa Elec? R. ib

**22.** Did all 1,000 Washing machines in Dhinu register damaged displays and place orders for its replacement?

Ans. Yes.

**23.** Did all 1000 displays of the washing machines get affected by the voltage issue?

Ans. Refer to clarification 22.

**24.** Can the washing machine work without a well-functioning display?

Ans. It is not so advanced!



more information, providing the same like the annexure for the same?

Ans. No.

**32.** Considering smart contracts only terminate once the code stipulates. Till when are the current smart contracts under Clause 27 valid/running or do not need renewal?

Ans. Till the machine detects that it (the machine) is no longer usable.

**33.** What were the contents of the 'products' tab as mentioned on wash-o-matics.com? Did it also mention the prices of different spare-parts?

Ans. Refer to clarification 11. The Products tab only listed the products sold by the Claimant.

form of smart contracts, expanded in terms of the specific clauses and explained anywhere else in the parent contract?

Ans. No.

**39.** The machine Instawash is a patented device. What are the contents of its accepted patent application? Is Instawash's use of blockchain technology also patented?

Ans. No clarification needed. The entire product i.e. *Instawash* along with the use of blockchain technology is patented.

**40.** Is there a stipulated price list for the spare parts that was made accessible to the Respondent? What is the prevailing market price of displays in the given trade of washing machines and/or a reasonable price?

Ans. Refer to clarification 11.

relevant documents, FAQs and explanations under the legal tab on the Wash-o-matics website.

Ans. Refer to Clarification 12.

**44.** Is the parent contract the same as the Ricardian Contract referred to in paragraph 6 of the Notice of Arbitration, or are they two separate contracts?

Ans. It is the same.

**45.** Is the Claimant claiming payment for the spare parts despite not having concluded their investigation referred to in paragraph 11 of the Notice of Arbitration, or have they concluded the investigation? If so, what are the results of the investigation?

Ans. Refer to clarification 13.

**46.** What was the nature of the bug identified? Has there been a prior instance of a bug in Instawash?

Ans. There has been no bug prior to this.

**47.** Is suspension of the contracts the only interim relief sought by the Respondent?

Ans. The geographical location where the machine would have been installed.

**53.** Did the Respondent appoint a Technician?

Ans. No clarification.

**54.** Is the contract referred in Exhibit C4, Paragraph 4, Line 3 by the Claimant a Ricardian Smart Contract?

Ans. Yes

**55.** Whether the installation services are to be provided by the Claimant or the Respondent?

Ans. Respondent

**56.** Has the Claimant given any Response to the email mentioned by Respondent Counsel on Page 20, Para. 2, Line 5. If yes, what was the response of the Claimant?

Ans. No.

**57.** Whether the Contract was created on the website or through the App?

Ans. No clarification required.

Ans. Try doing a good search 😊

62. How does the 'Ricardian contract' contain 'smart contracts' - does the 'Ricardian contract' define the intentions and actions that will be undertaken under the 'smart contracts'?

Ans. There is no mention of the smart contracts anywhere else apart from Clause 27.

63. Although the Respondent claims to be completely unaware of any agreement between the parties relating to spare parts (he suggests that the Claimant "unilaterally" shipped the spare parts), why does he mention in Exhibit C5 that he hopes "all the spare parts required will also be delivered in-time, just like the machines"? Further, if he claims that the Claimant shipped them unilaterally, why did he boast about the autonomy in the machines by saying "it automatically detects and orders the spare part required"?

Ans. No clarification required.

64. What is meant by the judge's statement that "the dispute relates to verification of the authenticity and genuineness of the calibrated displays" in the judgement at paragraph 15 of the Notice of Arbitration?

Ans. Refer to clarification 13.

machines to be supplied without entering into the template Ricardian contract?

Ans. No.

**69.** Was the contract available to the respondent for his perusal before the respondent entered the signature keys on the app (as mentioned in Exhibit C4)?

Ans. No clarification required.

**70.** If according to the respondent, the smart contracts were codes, what information was made available to the respondent in readable form?

Ans. No clarification required.

**71.** Is the interim order granted by the Pindian Court within the ambit of issue 3.1.2?

Ans. No.

**72.** Was the contract between Washomatics and Aliababwa a form of standard contract that Washomatics always entered into with prospective buyers?

Ans. No clarification required.

**73.** Is the price of the calibrated displays mentioned in the website – [www.washomatics.com](http://www.washomatics.com)?

Ans. Refer to clarification 11.

Ans. No clarification required.

**78.** When the calibrated displays were flagged as counterfeit by Dhina customs, was any question relating to the patent right of the claimant raised?

Ans. Refer to clarification 13.

**79.** Which law shall be treated as the domestic law of Pindia?

Ans. No clarification required.

**80.** Are the laws of Pindia in parimateria with those of the Republic of India, as only Section 17 of the arbitration act of Pindia has been given to be in parimateria with that of Indian Arbitration and Conciliation Act, 1996 whereas the Respondent has made a reference to Section 9 of Pindia? Page 15, para 5 of the fact sheet, "the Respondent could reply to the email of the claimant dated 28<sup>th</sup> June, 2018 (Exhibit C6)". Whether it stands corrected as 18<sup>th</sup> July, 2018 (Exhibit C7)?

Ans. Refer to clarification 58.

**81.** Whether the "Smart Contracts" inscribed in Clause 27 of the parent contract merely contain codes required for performance and enforcement of three smart contracts or do they also include the terms for the same?

Ans. No clarification required.

Ans. No clarification required.

**85.** Details regarding clause 27 of the contract as referred to in exhibit 6.

Ans. No clarification required.

**86.** As referred on page 16 clause 12, what are the spare parts that the respondent is mentioning to supply to the customers?

Ans. No clarification required.

**87.** Para 5 of page 15 mentions an email dated 28 June 2018 (Exhibit C6). However there is no email sent on this date.

Ans. Refer to clarification 6.

**88.** Para 12 of Page 4 states that the calibrated displays should reach the Respondent "within 15 days of shipment." The calibrated displays were shipped on 2 July 2018 (para 10, page 4). Since the words "within 15 days of shipment" is used and the displays were shipped on 2<sup>nd</sup> July 2018, does the 15 day time period begin running on 2<sup>nd</sup> or 3<sup>rd</sup> July 2018?

Ans. No clarification required.

**89.** Para 13 page 4 states that the Claimant's servers received confirmation that the goods have reached the Respondent. The previous paragraphs indicate that only Instawash machines are connected and can communicate with the Claimant's servers. Was the confirmation received through Instawash or some other means?

the smart contracts at the same time. Will mutually contradictory prayers lead to the Respondent being judged negatively?

Ans. No clarification required.

**91.** Can the question of vacating the Pindian Court order (pages 4 and 5) be argued before the Arbitral Tribunal?

Ans. No.

**92.** Exhibit C5 on Page 11 indicates that all Instawash machines have been sold to customers. What rights does the Respondent retain over the machines which make them liable to pay for the calibrated displays? Alternatively, shouldn't the customer pay for these displays directly?

Ans. The sale is not a retail sale. There is no privity of contract between the consumers and the Claimant. Also, the Claimant has no presence in Dhina. The Respondent is required to provide the spare parts, service and warranty extensions to the consumers in accordance with the 'smart contracts'.

**93.** In para 7, page 16 of the case study the respondent is contesting the validity of the smart contracts but the respondent agrees on the contract of machines so whether the contract of machines is a smart contract or not?

Ans. No clarification required.

**94.** Whether the parent contract is a smart contract or not? In para 5, page 15, it is provided that the respondent is unable (or did not get time) to reply the E-MAIL dated June 28, 2018 but there is no E-MAIL mentioned in the case study on this date and the provided hint exhibit C6 is not an E-MAIL?

Ans. Refer to clarification 6.

**95.** What are the undisputed facts of the problem?

Ans. No clarification required.

**99.** Can the warrant be reproduced?

Ans. Not required.

**100.** On page 6 para 18, line 3, does "claimant" have to be replaced with "respondent"?

Ans. Refer to clarification 82.

**101.** Clause 46 containing governing governing law on page 6 contains UNCITRAL Model Law while page 12 does not. Clarify.

Ans. No clarification required.

**102.** Is the arbitral tribunal being established an ad hoc tribunal?

Ans. Yes.

**103.** Can you provide us with the entirety of clause 27 along with any other terms and conditions?

Ans. No clarification required.

**104.** Are Dhina and Pindia common law countries or civil law countries?

Ans. Common law.

**105.** Specify the email referred to in Paragraph 5 on Pg 15 in the response of notice of arbitration by the Respondents.

Ans. Refer to clarification 6.

**106.** Is Arbitration Act of Pindiaparmateria to Indian Arbitration and Conciliation Act, 1996? If not, then which statute is it parimateria to?

Ans. Refer to clarification 58.

Respondent) in question or are the same calibrated displays (which are now in possession of the Respondent) fully authentic?

Ans. Refer to clarification 10.

**110.** Which version of the UNCITRAL Arbitration Rules governs the contract – (1976), (as revised in 2010) or (with new article 1, paragraph 4, as adopted in 2013)?

Ans. As adopted in 2013.

**111.** Are Pindia and Dhina two different sovereign states?

Ans. No clarification required.

**112.** On what basis is the Respondent claiming that the matter relates to the authenticity of the calibrated displays?

Ans. Refer to clarification 13.

**113.** Whether the parties have ratified the New York Convention?

Ans. Yes.

**114.** Whether the parties have adopted UNCITRAL Model Law on electronic signatures and its directives on electronic signatures?

Ans. Yes.

**115.** According to the payment system of the claimant's app, the Respondent's account would only be debited after it has been authorized by the Respondent's signature key (as mentioned in exhibit C4). However, in exhibit C7 it was mentioned that an automatic debit of payment had occurred and the same had been refunded. The question for clarification here is that, how can the claimant's app automatically debit from the respondent's account without having respondent's signature key, when signature key is the only

**116.** Are the parties signatories to/part of the:

- a. United Nations Convention on the Use of Electronic Communication in International Commerce
- b. UNCITRAL Model Law on Electronic Transferable Records
- c. World Intellectual Property Organization

Ans. Yes. Signatories to all.

**117.** On page 15 of the Proposition, according to Paragraph 5, “The Claimant obtained the restraining order before the Respondent could reply to the email of the Claimant dated 28<sup>th</sup> June, 2018 (Exhibit C6)” – Which email is the above line referring to, since Exhibit C6 does not show or refer to any mail?

Ans. Refer to clarification 6.

**118.** On Page 4 of the Proposition, according to Paragraph 12, “The Contract was programmed to automatically debit money from the Respondent’s bank accounts on the date of sending the shipment of spare parts” – What does the underlined part of the sentence mean:

- a. When the spare parts are actually shipped or
- b. 12:01 AM on the date when the spare parts are actually shipped?

Ans. No clarification required.

**119.** On Page 4, according to Paragraph 14, “Wash-o-matics filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Courts in India praying for an order to restrain Ali Ababwa Electronics for using the calibrated displays” - Which Court is being referred to?

Ans. No clarification required.

**120.** What are the contents of the ‘Business Enquiry Form’ that the Respondent filled after sending the ‘Business Query Mail’?

Ans. No clarification required.

contract generated as per the agreeable terms?

b. At the time when the consignment was dispatched?

c. At the time when the consignment reached the respondent?

Ans. A.

**123.** Was the price of calibrated displays mentioned in the terms and conditions/FAQ's or in the 'smart contract'?

Ans. Refer to clarification 11.

**124.** Was the 'smart contract' as a part of the Parent Contract, readable in English to Mr. Ali Ababwa?

Ans. No clarification required.

**125.** What is the meaning of the expression 'company' used in the First Paragraph of the mail sent on 15th June by Ali Ababwa to KulianBassange - Wash-o-matics or Aliababwa Electronics?

Ans. No clarification required.

**126.** In the para 4 of the Notice of Arbitration, which patent law is governing the patent for *Instawash*?

Ans. Refer to clarification 58.

**127.** Does the smart contracts of Service Agreement or Spare parts referred to in Exhibit C6 covers installation of the machine and spare parts?

Ans. Yes.

**128.** In Para 10 of the Response to the notice of Arbitration, what is the literal sense of "as is"?

Ans. No clarification required.

**129.** The representative referred to in exhibit C5, Para 1, line 6 & 7: is of the Claimant or Respondent?

Ans. Respondent.

