



# MOOT PROBLEM

Oral Hearings  
April 5<sup>th</sup> – 8<sup>th</sup> 2018

Organised by:  
The Moot Society of Sri Lanka Law College

INAUGURAL H V PERERA QC MEMORIAL MOOT COURT COMETITION  
ON INTERNATIONAL COMMERCIAL ARBITRATION



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**XAREGON INTERNATIONAL ARBITRATION CENTRE**

*Quality Engineering Company (Pvt) Limited, Claimant*

v.

*Eastern Water Pumps (Pvt) Limited, Respondent*

**Notice of Arbitration and Statement of Claim****I. Parties**

1. Quality Engineering Company (Pvt) Limited (hereinafter sometimes referred to as “QECL”), the Claimant, is a private limited liability company organized under the laws of the Republic of Xaregon. It is located at No. 64, King’s Rook Street, Knight City, Xaregon. The telephone number is (+00400300900). In these proceedings the Claimant will be represented by Mr. Roblox Armor email: robloxarmor@whomail.com
2. QECL is a company specialised in water sector infrastructure development.
3. Eastern Water Pumps (Pvt) Limited (hereinafter sometimes referred to as “EWPL”), the Respondent, is a company incorporated under the laws of the Republic of Sixhearts. It is located at No. 52, Joker Road, Ace City, Sixhearts. The telephone number is +115452545254 and the general e-mail address is eaternwaterpumps@boomail.com
4. EWPL is a manufacturer of water pumps used in agricultural and industrial water and irrigation systems. The Respondent had supplied pumps for one of the projects developed by the Claimant approximately two years prior to the events that have led to the dispute hereinafter described being referred to arbitration.

**II. Facts**

5. On or about 10th June 2015 the Managing Director of QECL, Mr. Eric Chessboard, in an email, informed the Director of Sales of EWPL, Mr. Deck Suits, that QECL was interested in submitting a bid in response to an invitation to tender that had been published by the National Water Board [hereafter “NWB”] for the development of an irrigation project in



the Northern Province of Xaregon (**Claimant's Exhibit No. 1**). Mr. Eric also stated that QECL would be interested in purchasing water pumps for the project from EWPL. In response, Mr. Deck emailed Mr. Eric, informing him that EWPL would be interested in working with QECL to submit a competitive bid and that, if the bid was successful, in furnishing the pumps for the project (**Claimant's Exhibit No. 2**).

6. The following day, QECL via email shared its draft bid prepared with the intention of responding to the aforesaid invitation to tender, with EWPL. Upon receiving the said proposal, EWPL replied QECL via email and suggested which pumps would be needed for the project and the discounted prices (regular prices discounted by 20%) at which EWPL could offer such pumps to QECL for the project.
7. On 20<sup>th</sup> August 2016, QECL was awarded the contract for the irrigation project by the NWB. Soon after the award of the contract, QECL wrote to EWPL announcing the success of the bid (**Claimant's Exhibit No. 3**).
8. The contract for the sale of the pumps, which is the subject matter of this arbitration, was signed by the authorised representatives of the two companies on 1<sup>st</sup> September 2016 (**Claimant's Exhibit No. 4**). The contract required the pumps were to meet the technical specifications spelled out in Schedule 1 to the Contract. The contract contained the CIF (Incoterms 2000) trade term and provided that delivery to QECL was to be at the port of Xaregon on or before 15 January 2017. It was important to QECL that this delivery date was kept, as any delay in delivery would have an adverse impact on QECL's ability to perform under its contract with NWB.
9. On 1 December 2016 the Provincial Council of the Northern Province of Xaregon passed a new Environmental Regulation restricting the use of beryllium in copper and steel products that were to be used in enclosed spaces due to adverse health effects associated with beryllium. When the new regulation was issued, NWB informed QECL and QECL immediately notified EWPL. (**Claimant's Exhibit No. 5**)
10. While the pumps to be used in the outdoor portions of the project would not be affected by the new regulation, the Type-X pumps, to be used to draw water from the reservoir, would be housed in an enclosed space (a pump house). As a result, EWPL had to procure new steel for the Type-X pumps required for the project since the pumps manufactured by EWPL in the usual course of business was manufactured through a process which used beryllium as a hardening agent.
11. According to the information made available to QECL by EWPL, the later had undertaken to complete the manufacturing and supplying of all the pumps ordered under the contract between the parties on or before 15<sup>th</sup> January 2017. However, because of the need to procure new steel for the Type-X pumps, EWPL had experienced a delay in completing the manufacturing of Type -X pumps. The entire quantity of



pumps as per the contract were eventually loaded on a ship for delivery to Xaregon on 30<sup>th</sup> January 2017 and the expected arrival date of the ship was 10<sup>th</sup> February 2017.

12. On the 31<sup>st</sup> of January, upon departure of the ship, EWPL presented the documents called for under the letter of credit to the confirming bank and the credit was paid. Thus, EWPL was paid in full for the pumps, even though the goods had not by then reached Xaregon.
13. Although the ship was expected to reach Xaregon on 10<sup>th</sup> February 2017, due to an accident involving another ship and extensive damage caused to the ship carrying the pumps, the goods eventually arrived in Xaregon only on 18<sup>th</sup> February 2017 (**Claimant's Exhibit No. 6**)
14. In the meantime, following the General Elections held in Xaregon in January 2017, a new Government had been formed with effect from 1 February 2017. The new Government issued a Regulation under the National Environmental Act prohibiting the use of any products containing beryllium with effect from 15<sup>th</sup> February 2017.
15. On 16<sup>th</sup> February 2017 NWB cancelled the contract awarded to QECL on the grounds that (1) QECL has failed to secure the delivery of the pumps required for the project on or before the agreed deadline, and (2) the use of the pumps specified in the contract awarded to QECL would be in violation of the new Regulation.
16. On 17<sup>th</sup> February, QECL notified EWPL of the cancellation of the contract by NWB and demanded the return of the purchase price that had been paid to EWPL by means of the documentary credit on the basis that it was no longer legally possible to implement the project using the pumps QECL had undertaken to supply and that in any event EWPL has breached the contract by failing to deliver on time as undertaken. (**Claimant's Exhibit No. 7**)
17. On 18<sup>th</sup> February, QECL through its Attorneys wrote to EWPL stating that the damages arising out of the cancelled contract between QECL and NWB had been calculated at US\$ 5, 550,000 and as the cancellation of the contract between NWB and QECL was a direct consequence of the breach of contract by EWPL, the said amount should be paid to QECL by EWPL in addition to returning the purchase price already recovered by EWPL. (**Claimant's Exhibit No. 8**)
18. In response to the letter sent by QECL through its Attorney, EWPL replied through its own Attorney stating that it had fulfilled its contractual obligations by supplying the goods. (**Claimant's Exhibit No. 9**).



### III. Applicable law

19. The contract has no choice of law clause. Xaregon and Sixhearts are parties to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
20. Xaregon has adopted the UNCITRAL Model Law on International Commercial Arbitration (but not the 2006 amendments). Xaregon is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

### IV. Arbitration Jurisdiction

21. The arbitration clause found in paragraph 18 of the contract provides as follows:

*18. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, which the parties fail to settle by mutual agreement shall be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules. The seat of arbitration shall be Knight City, Xaregon. The language of the arbitration shall be English. The number of arbitrators shall be three.*

### V. Substantive Legal Conclusions

22. EWPL was in fundamental breach of the contract because the pumps were delivered later than the date the contract called for delivery. Further, as a result of the delay in delivery, QECL was adversely affected by the Change in Law following the passing of the new environmental regulation by the Government of Xaregon.

### VI. Appointment of Arbitrator

23. The Claimant appoints the following individual as its party-appointed arbitrator:

Mr. Takur Dhania  
Tel: +2423265009  
Email: takurdhanial@arbmial.com



## VII. Relief Requested

24. The Claimant requests the Tribunal to find:

- a. that the tribunal has jurisdiction to consider the dispute that has arisen between the Claimant and the Respondent;
- b. that there was a breach of the contract by the Respondent;
- c. that the breach of the contract constituted a fundamental breach;
- d. as a result of the Respondent's breach of contract, loss and/or damage in a sum of US\$ 5,550,000.00 was caused to the Claimant;
- e. that Respondent is liable for damages arising out of the breach of the contract in the amount of US\$ 5,550,000.00;
- f. the Respondent is obligated to reimburse the Claimant of the purchase price of the pumps in the amount of US\$1,214,550;

25. The Claimant requests the tribunal to order the Respondent:

- a. to reimburse the Claimant the purchase price of the pumps in the amount of US\$1,214,550;
- b. to pay damages in the amount of US\$ US\$ 5,550,000.00;
- c. to pay interest on the said sums; and
- d. to pay the costs of arbitration.

(Signed)

Mr. Roblox Armor

Attorney-at-Law for the Claimant; Date: 30 July 2017



Claimant's Exhibit No. 1  
Quality Engineering Co. (Private)  
Limited

64, King's Rook Street  
Knight City, Xaregon

Tel. +00400300900  
[qecl@whomail.com](mailto:qecl@whomail.com)

Eric Chessboard  
Managing Director  
ericchessboard@whomail.  
com

10<sup>th</sup> June 2015

Mr. Deck Suits  
Director of Sales  
Eastern Water Pumps (Pvt) Ltd.  
52, Joker Road  
Ace City, Sixhearts

Sent by e-mail

Dear Mr. Deck,

It was a pleasure talking to you on the telephone yesterday. I look forward to working with you and your colleagues on the bid we are intending to submit to the National Water Board for the irrigation project IR 08-45E.

As I told you, the National Water Board is planning to renew its irrigation works in the Northern Province of Xaregon. They are looking for a firm to furnish and install new pumps and to do certain other associated work.

The project appears to be similar to the one on which we collaborated in Hershia two years ago. Our personnel will be in contact with you within the week for discussion about the proper pumps for the various elements of the project. Naturally, we would expect to purchase the pumps from you if we are awarded the project contract. A large number of small to medium sized pumps for distribution of the water will be necessary as well as three medium sized pumps for drawing water from the Reek Reservoir.

I am sure that working together we can prepare a bid for the project that has a high likelihood of success.

Sincerely,  
(Signed)  
Eric Chessboard  
Managing Director



Claimant's Exhibit No. 02

## Eastern Water Pumps (Pvt) Ltd

52, Joker Road  
Ace City, Sixhearts

+115452545254  
eaternwaterpumps@boomail.com

Deck Suits  
Director of Sales

decksuits@boomail.com

11<sup>th</sup> June 2016

Mr. Eric Chessboard  
Managing Director  
Quality Engineering Company (Pvt) Ltd.  
54, King's Rook Street  
Knight City, Xaregon

Sent by e-mail

Dear Mr. Eric,

It was great hearing about the projects the National Water Board seeks to implement. Eastern Water Pumps (Pvt) Ltd would be interested in working together with Quality Engineering Company (Pvt) Ltd to submit a competitive bid.

Given the nature of projects we have collaborated on in the past, I believe that we can submit a bid that would be successful. If the bid is successful, we look forward to furnishing the pumps for the project. We have a new range of state of the art pumps which would be suitable for the conditions in the Northern Province.

I will make arrangements to obtain the necessary information for the bid. I have the utmost confidence this endeavour will be a success.

Sincerely,  
(Signed)  
Deck Suits  
Director of Sales



Claimant's Exhibit No. 3  
Quality Engineering Co. (Private)  
Limited

64, King's Rook Street  
Knight City, Xaregon

Tel. +00400300900  
[gecl@whomail.com](mailto:gecl@whomail.com)

Eric Chessboard  
Managing Director  
ericchessboard@whomail.  
com

20<sup>th</sup> August 2016

Mr. Deck Suits  
Director of Sales  
Eastern Water Pumps (Pvt) Ltd.  
52, Joker Road  
Ace City, Sixhearts

Sent by e-mail

Dear Mr. Deck,

As I told you on the telephone earlier today, we have been awarded the contract for the irrigation project IR 08-45E in Xaregon.

I would like to underline the importance of meeting the delivery date called for in the contract (which remains the same as that in the draft contract). Our contract with the National Water Board has strict performance times with substantial penalties attached to delays and any delay in your delivery of the pumps would endanger our ability to meet at least some of the performance times. The people in Xaregon are nervous about the political situation, which is leading them to be very strict in ensuring that all will be done properly.

I do not wish this letter to close with a negative tone. We are very pleased to have been awarded the contract with the National Water Board and we look forward to our further collaboration on this and, hopefully, further projects in the future.

Sincerely,  
(Signed)  
Eric Chessboard  
Managing Director



## Claimant's Exhibit No. 4

**Contract Excerpts**

1. Eastern Water Pumps (Private) Limited hereby sells to Quality Engineering Company (Private) Limited the pumps from its X series as described in Annex I together with three Type-X pumps for a total price of US\$1,214,550 CIF (Incoterms 2000) Knight City, Xaregon. Delivery is to be in a single shipment and effected on or before 15 January 2017. The pumps are for installation in Xaregon by Quality Engineering Company (Private) Limited under the contract between it and the National Water Board signed 20 August 2016 for the irrigation project IR 08-45E.

2. The pumps shall meet the technical specifications set out in Schedule I of the Contract. Eastern Water Pumps (Private) Limited warrants that the pumps are in compliance with all relevant regulations for importation into Xaregon and for use in Xaregon.

3. Payment to be made against documentary credit subject to UCP 600 issued by a first class bank.

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19. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, which the parties fail to settle by mutual agreement shall be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules. The seat of arbitration shall be Knight City, Xaregon. The language of the arbitration shall be English. The number of arbitrators shall be three.

(Signed)  
Quality Engineering Company (Pvt) Limited

(Signed)  
Eastern Water Pumps (Pvt) Limited

1 September 2016



Claimant's Exhibit No. 5  
Quality Engineering Co. (Private)  
Limited

64, King's Rook Street  
Knight City, Xaregon  
Tel. +00400300900  
[qecl@whomail.com](mailto:qecl@whomail.com)

Eric Chessboard  
Managing Director  
ericchessboard@whomail.  
com

1<sup>st</sup> December 2016

Mr. Deck Suits  
Director of Sales  
Eastern Water Pumps (Pvt) Ltd.  
52, Joker Road  
Ace City, Sixhearts

Sent by e-mail

Dear Mr. Deck,

I am attaching to this letter a copy of the notice received today from the National Water Board. It reports that the Provincial Council of the Northern Province of Xaregon issued a regulation restricting the use of beryllium in copper and steel products that had moving parts and that were to be used in enclosed spaces.

Since the Type-X pumps you are to send to us for the irrigation project would be enclosed in a pump house, they would be covered by the regulation. I seem to remember that the ore mined in Sixhearts has beryllium in it. If that means the steel used in producing your pumps contains beryllium, you will have to find steel from some other source in producing those pumps.

It would seem that there will be no difficulty with the field pumps you are to send us.

Sincerely,  
(Signed)  
Eric Chessboard  
Managing Director

Encl: National Water Board notice



Claimant's Exhibit No. 06

## Eastern Water Pumps (Pvt) Ltd

53, Joker Road  
Ace City, Sixhearts  
Tel. +115452525254  
eaternwaterpumps@boomail.com

Deck Suits  
Director of Sales

decksuits@boomail.com

30<sup>th</sup> January 2017

Mr. Eric Chessboard  
Managing Director  
Quality Engineering Company (Pvt) Ltd.  
64, King's Rook Street,  
Knight City, Xaregon

Sent by e-mail

Dear Mr. Eric,

We have just been notified by our freight forwarder that there has been an accident in which some ship in line ahead of the Merry Prince damaged the locks in the Tenebro Canal.

As you are aware, the ship was expected to reach Xaregon on 10<sup>th</sup> February 2017. However, due to this setback I expect it to arrive in Xaregon on 18<sup>th</sup> February 2017. I hope there will be no further difficulties.

Sincerely,  
(Signed)  
Deck Suits  
Director of Sales



Claimant's Exhibit No. 7  
Quality Engineering Co. (Private)  
Limited

64, King's Rook Street  
Knight City, Xaregon

Tel. +00400300900

[qecl@whomail.com](mailto:qecl@whomail.com)

Eric Chessboard  
Managing Director  
ericchessboard@whomail.  
com

17<sup>th</sup> February 2017

Mr. Deck Suits  
Director of Sales  
Eastern Water Pumps (Pvt) Ltd.  
52, Joker Road, Ace City, Sixhearts

Sent by e-mail

Dear Mr. Deck,

I have very bad news. The irrigation contract with National Water Board has been cancelled on the grounds that we are in breach of our contract by failing to deliver the pumps by the contract date. That is only an excuse, of course. With any normal regime it might be possible to appeal. However, the new regime in Xaregon does not seem to be one with which one can negotiate.

With the cancellation of the irrigation contract we have no further use for the pumps that are now due to arrive in port tomorrow. Consequently, we are in turn forced to cancel our contract with you.

I must point out that the cancellation of the irrigation contract is due to your failure to deliver regulatory compliant pumps to us by the contract deadline. I must also point out that you were aware of the tight time schedule and the importance of delivery by the contract dates.

Naturally, I must now ask you to arrange for the return of the purchase price of the pumps. You may also expect to hear from our lawyers in regard to the loss caused to us from the cancellation of the irrigation project.

I await your instructions as to what you wish us to do with your pumps when they arrive. We are willing to arrange for them to be discharged from the ship and to be stored for your account. If you intend to re-export them, we will be able to place them in a customs warehouse so that there will be no customs duty to be paid.



These are unfortunate developments for our two companies as well as for the people of Xaregon. I hope that it will not adversely affect the possibility of our collaboration on some future irrigation projects.

Sincerely,

(Signed)

Eric Chessboard

Managing Director



## Claimant's Exhibit No. 8

Roblox Armor  
Advocate at the Court  
75 Court Street  
Knight City, Xaregon  
Tel. (0) 146-9845  
robloxarmor@whomail.com

18<sup>th</sup> February 2017

Mr. Deck Suits  
Director of Sales  
Eastern Water Pumps (Pvt) Ltd.  
52, Joker Road  
Ace City, Sixhearts

Sent by courier

Dear Mr. Deck,

I represent Quality Engineering Company (Private) Limited.

On 17 February 2017 Quality Engineering Company (Private) Limited avoided the contract between it and Eastern Water Pumps (Private) Limited signed 1 September 2016 for the furnishing of pumps to be installed in Xaregon in the irrigation project IR 08-45E.

The damages arising out of the cancellation of the contract between Quality Engineering Company (Private) Limited and the National Water Board has been calculated to be US\$ 5,550,000.00. I bring to your attention that the cancellation of the contract between the National Water Board and Quality Engineering Company (Private) Limited was a direct consequence of the breach of contract by Eastern Water Pumps (Private) Limited.

Therefore, I have been instructed to make demand on Eastern Water Pumps (Private) Limited the sum of US\$ 5,550,000.00 for the damages arising out of the cancellation of the contract in addition to the reimbursement of the purchase price of the pumps that were originally contracted for on 1 September 2016.

The pumps are currently stored in the warehouse of Quality Engineering Company (Private) Limited. You are kindly requested to give instructions as to the disposition of them.

Sincerely yours,  
(Signed)  
Roblox Armor



## Claimant's Exhibit No. 9

Ms. Darian Coleridge  
Lawyer  
14 Capitol Boulevard  
Ace City, Sixhearts  
Tel. +11888333222  
dariancoleridge@boomail.com

19 February 2017

Mr. Roblox Armor  
Advocate at the Court  
75 Court Street  
Knight City, Xaregon

Dear Mr. Armor,

Your letter of 18 February 2017 addressed to Mr. Deck Suits, Director of Sales of Eastern Water Pumps (Private) Limited has been referred to me for reply.

The pumps were regulation compliant for export to Xaregon when the contract was signed. So long as the pumps were manufactured in compliance with the specifications contained in the contract, and they were, the date of the contract is the relevant date for determination whether they were regulation compliant.

Since it was the change in the regulations in Xaregon subsequent to the date of signing the contract that caused the delay in manufacturing the three Type-Xs, which in turn caused the delay in shipping the pumps, the consequences of that delay must be borne by Quality Engineering Company (Private) Limited.

I have been instructed to inform you that Eastern Water Pumps (Private) Limited is not currently considering the possibility of pursuing any claim against Quality Engineering Company (Private) Limited for the extra costs that it incurred for your account when it imported steel from outside Sixhearts to make the Type-Xs. It recognizes that Quality Engineering Company (Private) Limited has already suffered enough from the actions of the government of Xaregon.

I have also been instructed to inform you that Eastern Water Pumps (Private) Limited is willing to assist you in disposing of the pumps, if you so wish. No sales commission would be charged for that assistance. Eastern Water Pumps (Private) Limited wishes to remain in a good relationship with you in the expectation that there will be further occasions for collaboration.



However, please note that Eastern Water Pumps (Private) Limited shall not accept any responsibility for the cancellation and/or termination of the contract between the National Water Board of Xaregon and the Quality Engineering Company (Private) Limited. In the circumstances, Eastern Water Pumps (Private) Limited denies any legal obligation and or liability to pay Quality Engineering Company (Private) Limited the sum of US\$ 5,550,000.00 claimed as damages arising out of the cancellation of the aforesaid contract between the National Water Board of Xaregon and the Quality Engineering Company (Private) Limited.

Yours truly,  
(Signed)  
Darlan Coleridge



XAREGON INTERNATIONAL ARBITRATION CENTRE

Quality Engineering Company (Pvt) Limited, Claimant

v.

Eastern Water Pumps (Pvt) Limited, Respondent

## Answer and Statement of Defense

1. As indicated in the Statement of Claim, Eastern Water Pumps (Pvt) Limited [hereafter “EWPL”] is a corporation organized under the laws of Sixhearts. It is located at No. 52, Joker Road, Ace City, Sixhearts. The telephone number is +115452525254 The general e-mail address is eaternwaterpumps@boomail.com
2. EWPL will be represented by its counsel, Ms. Darian Coleridge. Her telephone number is +11888333222 and her e-mail address is dariancoleridge@boomail.com
3. EWPL appoints Mr. Caro Gokay as its party chosen Arbitrator 2 to the tribunal. His address is 37, Faith Avenue, Cookie City, Cairo. His telephone number is +85638633009 His e-mail address is carogokay@inde.com
4. EWPL denies that there is any merit in the allegations levelled against it by the Claimant in the Statement of Claim. In particular, EWPL denies that it was deficient in its performance of the contract. On the contrary, it fulfilled every requirement of the contract.

### I. Jurisdiction

5. As provided in the arbitration clause as found in clause 18 of the contract (Claimant’s Exhibit No. 3), it is only if the dispute has not been settled by mutual agreement that the dispute shall be resolved by arbitration in accordance with the UNCITRAL Rules. The Claimant has failed to take any initiative to pursue a settlement of the dispute by mutual agreement. In fact, the Claimant has unilaterally terminated the contract between the parties and thereafter referred the purported dispute to arbitration. Hence, it is EWPL’s position that the necessary precondition for arbitration has not been fulfilled. Therefore, the arbitral tribunal has no jurisdiction over the dispute.



## II. Merits

6. Clause 2 of the contract (Claimant's Exhibit No. 3) provides that:
  - a. *The pumps shall meet the technical specifications set out in Annex I. EWPL warrants that the pumps are in compliance with all relevant regulations for importation into Xaregon as per the contract.*
7. EWPL warranted that the pumps to be delivered were in compliance at the time of signing the contract. It did not undertake any obligations as to changes in the regulations that might occur prior to delivery. In any event the regulation relied on by the Claimant to avoid the contract had been passed after EWPL had delivered the pumps on board the Ship. Thus, EWPL's obligations have been duly fulfilled.
8. When the contract was signed with QECL, EWPL had in stock a quantity of Type-X pumps which met the technical specifications of the contract. If EWPL had not been informed of the new regulation passed by the Northern Provincial Council, the shipment could have been made on time. The delay in the supply was caused due to EWPL being informed of the new environmental regulation in the Northern Province pursuant to which EWPL had to procure steel which did not contain beryllium for manufacturing Type-X pumps. EWPL insisted at the time, and insists today, that the extra cost and the delay in having the entire order of pumps ready for shipment was the consequence of the aforesaid change in the specifications requested by QECL and thus any associated loss should be borne by QECL (**Respondent's Exhibit 1**).
9. The additional costs incurred by EWPL in sourcing steel which did not contain beryllium for manufacturing Type-X pumps is US\$ 1,575,000/-. This additional cost was not covered by the Letter of Credit opened by QECL in terms of the contract between the parties. Thus, the said cost of US\$ 1,575,000/- remains a sum payable by QECL to EWPL in terms of the contract between the parties.
10. The delay in the shipment which was caused as a result of the mid-sea collision with another vessel was an impediment beyond the control of EWPL. Thus, EWPL should be exonerated from any liability under CISG Article 79.
11. The Government of Xaregon passing a new environmental regulation prohibiting the use of any products containing beryllium with effect from 15<sup>th</sup> February 2017, is beyond the control of EWPL. In any event, by the time the said regulation was passed, EWPL had delivered the goods on board the ship. Thus, EWPL should not be held responsible and/or liable for any losses allegedly incurred by QECL resulting from the delay in the shipment and the inability to implement the project awarded to QECL by NWB.



### III. Relief Requested

12. The Respondent requests the tribunal to declare that it has no jurisdiction in this dispute.
13. If the tribunal were to decide that it had jurisdiction, the Respondent requests the tribunal to decide that the Respondent was not in breach of its contract with the Claimant.
14. The Respondent requests the tribunal to make an award in favour of the Respondent that a sum of US\$ 1,575,000/- is payable by QECL to EWPL in terms of the contract between the parties to compensate the Respondent for the additional costs incurred as set out in paragraph 9 of this Answer and Statement of Defense.
15. The Respondent requests the tribunal to award it its costs of this arbitration.

(Signed)

Darian Coleridge, Attorney-at-Law



Respondent's Exhibit No. 1

## Eastern Water Pumps (Pvt) Ltd

52, Joker Road  
Ace City, Sixhearts  
Tel. +1154525452545

[easternwaterpumps@boomail.com](mailto:easternwaterpumps@boomail.com)

Deck Suits  
Director of Sales

decksuits@boomail.com

2<sup>nd</sup> September 2016

Mr. Eric Chessboard  
Managing Director  
Quality Engineering Company (Pvt) Ltd.  
54, King's Rook Street  
Knight City, Xaregon

Sent by e-mail

Dear Mr. Eric:

We are very pleased to be able to return to you the signed contract for the pumps to fulfill your contract with National Water Board for irrigation project IR 08-45E.

Particularly in light of the imperative nature of the delivery dates, which you emphasize in your letter, it is fortunate that we have several Type-X pumps in inventory ready for shipment. As you may well imagine, a pump of its size and complexity takes considerable time to manufacture.

We also have some of the field pumps in inventory and it will not take us an excessive amount of time to produce the remaining ones under the contract.

Sincerely,  
(Signed)  
Deck Suits  
Director of Sales



## Xaregon International Arbitration Centre

Quality Engineering Company (Pvt) Limited, Claimant

v.

Eastern Water Pumps (Pvt) Limited, Respondent

### Procedural Order No. 1

1. QECL has instituted the arbitration to recover the purchase price for pumps that were to be used in an irrigation project in Xaregon and to recover consequential damages resulting from the delay in delivery.
2. It was agreed by the parties that prior to the consideration of evidence, written memorandum will be filed by each party summarising the factual matrix and the legal arguments relied on by each party to support their respective positions. Accordingly, the issue of jurisdiction shall be considered together with the other legal issues on which the parties shall make submissions.
3. It was agreed accordingly that each party shall submit a memorandum discussing the following issues on or before 22 February 2017. The memorandums should have an index of all case law and other authorities the parties have relied on when developing their arguments. Copies of all authorities cited by the parties should be submitted as annexures to the memorandums at the oral hearing
4. The memoranda should discuss the following issues:
  - a. Were the preconditions to arbitration as provided in clause 18 of the contract properly fulfilled?
  - b. Did EWPL have an obligation to provide pumps that were in conformity with regulations adopted after the date of the contract?
  - c. Was EWPL in breach of its obligation to deliver the pumps by the delivery date in the contract?
  - d. Did QECL fail to mitigate its losses?
  - e. Is EWPL entitled to recover the costs incurred as a result of having to source steel which did not contain beryllium for manufacturing Type-X pumps
6. Oral arguments will be scheduled in the month of April 2017.

(Signed)

Chairman of the Arbitral Tribunal

Mr. Austin Smith



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THE END

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