

Specon LLC v Ssangyong Engineering & Construction Co. Ltd (Dubai Branch); and Be

Arbitration on 3 to 21 February 2025

DIAC Case No. 220063

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By Jaswant patel

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IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF
DUBAI INTERNATIONAL ARBITRATION
CENTRE

DIAC CASE NO. 63/2022

BETWEEN

SPECON LLC

Claimant

and

(1) SSANGYONG ENGINEERING & CONSTRUCTION CO LTD (DUBAI BRANCH)

(2) BESIX CONSTRUCT LLC

Respondents

ANSWER TO THE REQUEST FOR ARBITRATION

14 July 2022

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1 Introduction

- 1.1 The Respondents respectfully submit this Answer (**Answer**) to the Claimant's Request for Arbitration dated 20 May 2022 (**Request**).
- 1.2 The Answer is filed pursuant to Article 5 of the DIAC Arbitration Rules 2022 (**Rules**).
- 1.3 This Answer comprises the Respondents' initial response to the Request, pursuant to Articles 5.1(a)-(c), (e) and (f) of the Rules.
- 1.4 In this Answer, unless otherwise stated or the context otherwise requires:
- (a) the Claimant is also referred to as "**Specon**";
 - (b) the Respondents are together also referred to as "**SBJV**";
 - (c) capitalised terms that are not defined herein shall have the same meaning as in the Rules or in the Subcontract entered into between SBJV and Specon dated 13 March 2018 (**Subcontract**), as the context requires;
 - (d) a reference to a paragraph is to a paragraph of the Request; and
 - (e) SBJV refers to Clauses within the Conditions of Subcontract as "**GC**" (for "general condition") so that a reference to Clause 1 of the Conditions of Subcontract will be "GC 1", and so on.

2 The Respondents and their representatives: Art. 5.1(a)

- 2.1 The Respondents are SsangYong Engineering & Construction Co., Ltd (Dubai Branch) (**SsangYong**) and BESIX Construct LLC (**BESIX**). BESIX was formerly named Belhasa Six Construct LLC.
- 2.2 Together, SsangYong and BESIX formed an unincorporated joint venture, now known as "SSANGYONG Engineering & Construction Co., Ltd (Dubai Branch) and BESIX Construct LLC Joint Venture".
- 2.3 SBJV is the Main Contractor employed by Atlantis The Palm 2 Development LLC (**Employer**) to carry out the main construction works for the Royal Atlantis Resort & Residences Project in Dubai, United Arab Emirates (**Project**).
- 2.4 The contact details for SBJV are as follows:

SsangYong Engineering & Construction Co., Ltd (Dubai Branch) and
BESIX Construct LLC, Joint Venture
PO Box 13055
Dubai
United Arab Emirates

Tel: +971 4 390 4556

Email: rap@ssyenc-besix.com

AtlantisSPEDispute@ssyenc-besix.com

- 2.5 SBJV has retained Clyde & Co LLP as its external legal counsel in these proceedings. Please address all future correspondence in this arbitration to:

Clyde & Co LLP
PO Box 7001
Rolex Tower
15th Floor
Sheikh Zayed Road
Dubai, United Arab Emirates

Tel: +971 4 384 4000

Fax: +971 4 384 4004

Email: michael.grose@clydeco.ae

beau.mclaren@clydeco.ae

jeremy.munce@clydeco.ae

andrew.primett@clydeco.ae

- 2.6 Copies of the Respondents' respective powers of attorney, authorising Clyde & Co. LLP to act on their behalf, will be provided shortly.

- 2.7 For the purposes of enabling the nominated tribunal to make any necessary disclosures, the Respondents have instructed Mr Stuart Catchpole QC of Atkin Chambers as counsel.

3 **Nature & circumstances of dispute: Art. 5.1(b)**

- 3.1 This dispute concerns MEP subcontract work on the Royal Atlantis Resort & Residences Project on the Palm Jumeirah. It is one of the largest and most significant developments presently underway in Dubai.

- 3.2 SBJV encountered significant and serious issues with Specon which led to SBJV terminating Specon's subcontract in November 2021. In very broad

summary, Specon failed properly to perform its obligations under the subcontract at almost any stage during its employment thereunder.

3.3 Without limiting SBJV's case, SBJV will demonstrate in these proceedings that Specon:

(a) was consistently late in providing its engineering deliverables,

(b) inadequately resourced the Project; and

(c) persistently failed to comply with its contractual obligations.

3.4 Specon's failures led to SBJV incurring significant costs, including but not limited to, having to deploy significant resources in the form of personnel to supplement Specon's workforce, supplying materials, and making payments on Specon's behalf. At the time of the termination, Specon was indebted to SBJV in relation to that supply and intends to claim that amount from Specon.

3.5 Since the termination, SBJV has been completing Specon's scope of work and intends to claim from Specon its costs of doing so together with associated losses and damages incurred as a result of Specon's failures. It reserves its rights under Article 5.4 of the Rules in that respect.

3.6 SBJV provides the following preliminary response to the claim and relief sought in accordance with Article 5.1(c) of the Rules. SBJV does not address every allegation or assertion made. Except where expressly admitted by SBJV, each and every allegation made by Specon in the Request is denied.

4 **Arbitration Agreement & Arbitrator Nomination: Art. 5.1(e) and (f)**

4.1 **Arbitration Agreement and Applicable Law**

4.1.1 As to paragraphs 7 and 8, SBJV:

(a) admits that GC25.1 is in the terms excerpted in paragraph 7 and that it provides for certain steps to be carried out in relation to the dispute resolution process; and

(b) otherwise denies the allegations and will rely upon all the terms of the Subcontract for their full meaning and effect.

4.1.2 As to paragraph 9, SBJV admits that GC25.2 is in the terms excerpted.

4.1.3 As to paragraph 10, SBJV:

- (a) admits that:
 - (i) GC25.2 provides for arbitration under the DIAC Rules to be seated in Dubai;
 - (ii) the applicable rules are the DIAC Rules 2022;
 - (iii) the law governing the arbitration shall be the applicable federal laws of the United Arab Emirates and the laws and regulations in force in Emirate of Dubai; and
 - (iv) the venue of all arbitration hearings shall be the Emirate of Dubai,
- (b) otherwise denies the allegations and will rely upon all the terms of the Subcontract for their full meaning and effect.

4.1.4 SBJV admits paragraph 11 except that the references to DIAC as the appointing body should be references to the Arbitration Court.

4.1.5 Paragraphs 12 to 13 are noted without admission.

4.1.6 In accordance with Article 5.1(e) of the Rules, SBJV confirms its 30 June 2022 nomination of Mr Adrian Cole for appointment to the Tribunal, whose contact details are:

Mr Adrian Cole
Adrian Cole FZ LLE
PO Box 965097
Abu Dhabi, UAE

Tel: +971 (0) 50 810 7412

Email: adriancole.arbitration@gmail.com

4.1.7 A copy of Mr Cole's CV was enclosed with SBJV's 30 June 2022 nomination.

4.1.8 SBJV admits paragraph 14.

5 **Response to claim & relief sought: Art. 5.1(c)**

5.1 **Background**

5.1.1 SBJV generally accepts Specon's description of the Project set out in paragraphs 15 to 17 except to note that the image included at paragraph 17 is an artistic impression of the Project.

- 5.1.2 In respect of paragraph 18, the Project was originally divided into a number of packages of work. As the procurement progressed, some packages were combined whilst others were sub-divided.
- 5.1.3 As to paragraph 20, SBJV admits that on 3 April 2017 it issued the letter exhibited at C-2 entitled "*Commencement Instruction for Combined M2/M3 Provisional Sum Package*" which letter amongst other things provided a limited instruction to Specon to proceed subject to a cap of USD100,000.
- 5.1.4 As to paragraph 22, SBJV does not admit that the Form of Sub-Contract Agreement is as alleged by Specon but notes that the Form of Sub-Contract Agreement was dated 13 March 2018. SBJV shall rely on all of the terms of the Form of Sub-Contract Agreement for their full meaning and effect.
- 5.1.5 While it is admitted that (as is both necessary and obvious in a multi-level development), the Project was identified by different levels, areas and sub-areas, SBJV denies that it was required to handover the areas to Specon sequentially as alleged in paragraph 26.
- 5.1.6 Specon is put to proof of each of the allegations made in paragraph 28 concerning the critical dependence of its programme activities and is invited to make early disclosure of all of its programmes in native format (together with any contemporaneous explanation of the basis for each such schedule) to the extent that these have not previously been provided to SBJV to enable SBJV and its experts to review the same while Specon prepares its Statement of Claim.
- 5.1.7 In respect of the allegations made by Specon at paragraphs 30 to 45, Specon is required to plead (with proper particulars of causation and loss) and prove:
- (a) each material fact, event, act or omission on which reliance is placed as having caused or contributed to a critical delay;
 - (b) how any of the matters alleged, which are denied, delayed the critical path of the works including, but not limited to, identifying the critical path(s) of the works at the time the matter occurred or is alleged to have had an effect; and
 - (c) how it complied with the conditions of the Subcontract relevant to claiming extensions of time, particularly GC14.2 and GC18.

For the avoidance of doubt, SBJV does not accept that Specon can prove that it is entitled to an extension of time simply, for example, by making generalised assertions that a drawing was “late” or numbers of drawings were “late” or “revised”. It must plead and prove cause and effect with proper particulars being given of the chain of causation.

- 5.1.8 Specon has not at any material time done so and SBJV reserves all of its rights in that respect.
- 5.1.9 SBJV rejects the allegations that it acted in bad faith and/or did not operate the contractual machinery in accordance with its obligations. Specon is put to strict proof of each and every such allegation. Given the fact that Specon has chosen to characterise SBJV’s actions as bad faith, SBJV requires that each allegation is fully particularised since such allegations should be distinctly pleaded and proved.
- 5.1.10 Specon is not and has not at any stage demonstrated any entitlement to any part of the extensions of time that it now seeks in the present Request. The claims that it did make were, therefore, properly rejected. In particular, the allegations in paragraph 44 are incorrect. SBJV reviewed Specon’s claims for extensions of time on the merits and with regard to the programmes valid at the time the claims were made.
- 5.1.11 SBJV admits that the Supplementary Agreement dated 6 June 2021 and referred to in paragraph 46 was entered into between the Parties. SBJV will rely upon all the terms of the Supplementary Agreement for their full meaning and effect.
- 5.1.12 In respect of the allegations concerning the Supplementary Agreement, the condition precedent to its operation (completion of the “Final Milestone” by 2 December 2021) was never achieved. If relevant, SBJV shall particularise its case in relation to the Supplementary Agreement and the Protocol to Agree in its further pleadings to be submitted in due course.
- 5.1.13 In any case, Specon is put to proof of its entire claim.
- 5.1.14 In the premises, SBJV denies that Specon is entitled to an extension of time and prolongation costs in the amount claimed or at all.

5.2 Termination


- 5.2.1 SBJV denies Specon's assertions in paragraph 51. SBJV will demonstrate that milestones were not achieved and that the Subcontract Works were not 93% complete on 3 November 2021. Indeed, in November 2021, the Subcontract Works were in a state of disarray which was caused by Specon's (ongoing) lack of proper management of the works and its continued failure properly to perform the same. Following termination, what should have been a relatively straightforward exercise to identify the remaining scope of work to be completed proved to be a substantial task in its own right given the significant amounts of work that Specon had not undertaken or completed and Specon's lack of proper organisation of its work and materials.
- 5.2.2 By November 2021 (and, indeed, long before), Specon had reallocated a large portion of its workforce away from the Project and was continuing in its substantial failure properly to perform its contractual obligations. SBJV was, in the circumstances, justified under the Subcontract, and at law, in terminating the Subcontract.
- 5.2.3 It is incorrect and disingenuous for Specon to assert, as it does, that it was only provided with "5 days" to comply with the failures identified by SBJV in its notice of termination. The breaches identified had persisted for a lengthy period of time and much correspondence had been exchanged between the parties in respect of them. It was clear that Specon had no intention of rectifying its failures (or was unable to do so).
- 5.2.4 It is admitted that, on 7 November 2021, SBJV made a demand under the Bonds for the amount of AED 133,154,586 and that such sum was, in aggregate, properly paid to SBJV on 14 November 2021. At the time of the notice of termination and the call on the Bonds, Specon was indebted to SBJV for amounts in excess of AED133,154,586. As such, SBJV is and was entitled to have recourse to the Bonds.
- 5.2.5 SBJV has suffered further losses and damages arising out of Specon's breaches and is in the process of identifying those losses and damages. SBJV intends to claim those amounts from Specon, including under GC24.5, and reserves its right under Article 5.4 of the Rules to bring a counterclaim in that respect.

5.3 **Relief sought by the Claimant**

- 5.3.1 SBJV denies that Specon is entitled to the relief claimed in paragraphs 65 to 65.15 of the Request (or any relief) and, as more particularly set out below, respectfully requests that the Claimant's claims be dismissed with costs awarded to SBJV.
- 5.3.2 Specifically in relation to Specon's claim for interest in paragraph 65.13 of the Request, SBJV denies that Specon is entitled to any such interest where, as noted above, Specon has no entitlement to the sums now claimed (and denies that Specon has any entitlement to an award of interest in any event).

6 **Conclusion and relief sought**

- 6.1 For the reasons set out above, SBJV:
- (a) denies that Specon is entitled to the relief sought under the Request (or any relief);
 - (b) requests that that Tribunal dismiss Specon's claims in full;
 - (c) request that the Tribunal award SBJV their legal and other costs incurred in connection with these proceedings, to be paid by Specon; and
 - (d) seek an award of interest on any sums awarded to SBJV in this arbitration at such rate as the Tribunal considers appropriate.
- 6.2 SBJV expressly reserves the right to bring counterclaims against Specon at a later stage of these proceedings in accordance with Article 5.4 of the Rules.



Respectfully submitted on behalf of the Respondents, SsangYong Engineering & Construction Co Ltd (Dubai Branch) and BESIX Construct LLC

14 July 2022