

Session 27-06-2024

Second Defendant's Supporting Document

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By Amjad Raza

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1 13:53:43 change back to eu server
2 13:53:44 (2.17 pm)
3 14:17:45 chairperson: good everyone, everyone. as you know, this
4 14:17:47 is the hearing in matter diac 230179.
5 14:17:55 i'm jennifer kirby and i'm here with bill smith and
6 14:17:58 andrew mcdougall, we're your arbitral tribunal.
7 14:18:15 i just ask that if you are not speaking, please be
8 14:18:18 so kind as to mute your microphones just so that, you
9 14:18:23 know, we don't get any crossover in terms of
10 14:18:28 conversation.
11 14:18:35 mr bin touq, i understand that you're going to be
12 14:18:37 the principal speaker for claimant today. just by way
13 14:18:41 of formality, could you please introduce to us the other
14 14:18:45 people who are here for claimant today.
15 14:18:51 mr bin touq: yes, i'm obaid bin touq, and we have
16 14:18:53 hatem al amoudi from franklin morgan and we have
17 14:18:57 sager al sharhan and we have jassim al rafaei and lance
18 14:19:01 and saad al omeri.
19 14:19:06 chairperson: very good.
20 14:19:10 mr bin touq: and ali as a witness.
21 14:19:13 chairperson: yes.
22 14:19:13 ms habib, i understand that you'll be the principal
23 14:19:15 speaker for respondent today. can you please introduce
24 14:19:19 yourself and anyone else who's with you today for the
25 14:19:22 respondent, for the sake of formality.

1 14:19:26 ms habib: hi, my name is raheela, i'm a legal counsel for
2 14:19:28 the respondent, and mr jihad el haddad, senior legal
3 14:19:33 counsel, is with me to represent the respondents in
4 14:19:35 these proceedings.
5 14:19:37 chairperson: very good.
6 14:19:39 now, you have all received procedural order 2 which
7 14:19:44 has the provisional hearing agenda for today.
8 14:19:51 this is slated to be a relatively short hearing
9 14:19:53 today. we have the tribunal's opening remarks,
10 14:19:57 claimant's opening statement, followed by the
11 14:20:00 examination of witnesses or, as the case may be, just
12 14:20:04 one witness today.
13 14:20:06 we do foresee a break after that and then closing
14 14:20:09 statements from the parties, followed by discussion with
15 14:20:14 the tribunal.
16 14:20:18 now, perhaps we can just turn momentarily to this
17 14:20:24 issue that arose this morning, mr bin touq, with respect
18 14:20:29 to mr saad al sharhan and his ability or perhaps
19 14:20:34 inability to appear today.
20 14:20:36 could you please tell us a bit more about what's
21 14:20:38 happening there?
22 14:20:40 mr bin touq: yes, saad al sharhan, he have a cancer and
23 14:20:43 he's under treatment, and yesterday he's been admitted
24 14:20:47 to the hospital. he could not attend the hearing today.
25 14:20:56 chairperson: i see. okay. ms habib, would you like to

1 14:20:59 address this issue? do you have any comments on this
2 14:21:10 issue?
3 14:21:11 ms habib: we don't have any comments.
4 14:21:12 chairperson: no comments. okay.
5 14:21:13 so we will not be hearing from mr saad al sharhan
6 14:21:22 today, but we do of course still have mr erdogdu here,
7 14:21:28 so we will be able to have his examination today.
8 14:21:31 before we do that, are there any other matters of
9 14:21:35 a preliminary nature before we go to claimant's opening
10 14:21:38 statement? mr bin touq, is there anything from
11 14:21:42 claimant's side of a preliminary nature you would like
12 14:21:44 to raise?
13 14:21:47 mr bin touq: no.
14 14:21:48 chairperson: ms habib, is there anything on the
15 14:21:50 respondent's side of a preliminary nature that you would
16 14:21:52 like to raise?
17 14:21:54 ms habib: yes, i would like to draw tribunal's attention
18 14:21:57 to the email that i received today. my name was not
19 14:22:00 there. i was not copied. only mr -- it was
20 14:22:04 info@jihadelhaddad and case manager, so i was not copied
21 14:22:07 in that particular email.
22 14:22:09 so i request the tribunal to check into this matter,
23 14:22:14 like, respondent always -- should always cc my email
24 14:22:19 address. that's my request.
25 14:22:22 chairperson: okay. yes. mr bin touq, i did notice today

1 14:22:26 when the email came in that it was not copied to all of
2 14:22:31 respondent's email addresses. when i forwarded it,
3 14:22:35 i made sure that it was, so everybody has now
4 14:22:39 received it.
5 14:22:40 but it would be helpful just if --
6 14:22:47 mr bin touq: we will make sure going forward, ma'am.
7 14:22:49 chairperson: that would be very good.
8 14:22:51 mr bin touq: we apologise.
9 14:22:52 chairperson: that's fine. i assumed it was an oversight.
10 14:22:57 so with that, perhaps we can turn to claimant's
11 14:23:01 opening statement. we have foreseen 15 minutes for
12 14:23:06 claimant's opening statement.
13 14:23:09 mr bin touq, if you would like to proceed, please go
14 14:23:12 ahead.
15 14:23:13 opening submissions by mr bin touq
16 14:23:15 mr bin touq: yes. we are the company having an agreement
17 14:23:21 to appoint crc to develop their school, and a part of
18 14:23:27 the discussion and what they have been through, they
19 14:23:30 came with an agreement with the arbitration clause to
20 14:23:34 have them developing the school.
21 14:23:40 they have several discussion till they arrive to
22 14:23:44 that agreement. they have the loa and they have the
23 14:23:48 contract been signed and stamped by them, and now we are
24 14:23:54 having them not having any proper argument in terms of
25 14:24:00 why diac have no jurisdiction.

1 14:24:03 it's been very clearly stand on the contract and loa
2 14:24:08 which has been signed by them, that as per the diac
3 14:24:13 rules of 2022 and uae federal law of 2018, diac
4 14:24:20 arbitration clause been included in the contract.
5 14:24:24 as you instructed, that to make it very summary
6 14:24:29 about introduction, i would like to have the witness to
7 14:24:34 have his own statements and to carry on from there.
8 14:24:44 we already provide our memo and our standing on the
9 14:24:48 matter and we see the tribunal have jurisdiction to rule
10 14:24:55 over that and be very clearly stand in the loa and the
11 14:24:59 contract.
12 14:25:06 chairperson: do you have any further comments you would
13 14:25:08 like to make by way of opening at this point, mr bin
14 14:25:10 touq, or should we move to the examination of
15 14:25:15 mr erdogdu?
16 14:25:20 mr bin touq: we are fine with that.
17 14:25:21 chairperson: all right. with that, we can move to
18 14:25:23 mr erdogdu's examination.
19 14:25:27 we have allotted 30 minutes for this, even though
20 14:25:33 i know that, i do recall that respondent asked for
21 14:25:36 15 minutes, but we added some additional time, just in
22 14:25:40 case there's any re-direct, mr bin touq, that you may
23 14:25:43 wish to do or any questions from the tribunal. we just
24 14:25:47 wanted to have a little more wiggle room in the
25 14:25:51 schedule, if need be.

1 14:25:58 mr ali reso erdogdu

2 14:26:04 chairperson: mr erdogdu, we would like to swear you in as

3 14:26:08 a witness today. do you have a holy book for that

4 14:26:12 purpose?

5 14:26:15 witness: yes, i do.

6 14:26:17 chairperson: what holy book is that, please?

7 14:26:20 witness: it's quran.

8 14:26:21 chairperson: okay. would you be so kind as to put your

9 14:26:24 hand on the holy book, please.

10 14:26:28 witness: sure.

11 14:26:29 chairperson: if we can see, please. yes, okay.

12 14:26:33 if you would be so kind as to repeat after me,

13 14:26:36 please: i swear by the almighty god.

14 14:26:42 witness: by the almighty god.

15 14:26:43 chairperson: i'm sorry, sir. it's: i swear by the

16 14:26:46 almighty god.

17 14:26:47 witness: i swear by the almighty god.

18 14:26:50 chairperson: to say all the truth.

19 14:26:52 witness: to say all the truth.

20 14:26:54 chairperson: the whole truth.

21 14:26:55 witness: the whole truth.

22 14:26:57 chairperson: and nothing but the truth.

23 14:26:58 witness: and nothing but the truth.

24 14:27:02 chairperson: thank you, sir.

25 14:27:03 we have received, in these proceedings, a copy of

1 14:27:07 your cv, of your curriculum vitae, and we've also
2 14:27:13 received a statement, a written statement, from you
3 14:27:15 dated 28 april 2024.
4 14:27:19 do you confirm the accuracy of your cv?
5 14:27:24 witness: yes, ma'am, i do.
6 14:27:25 chairperson: and do you confirm the accuracy of the
7 14:27:28 statement you submitted dated 28 april 2024?
8 14:27:32 witness: yes, ma'am, i do.
9 14:27:34 chairperson: okay.
10 14:27:35 mr bin touq, do you want to have any direct with
11 14:27:41 this witness? if you do, it could be very brief,
12 14:27:45 five minutes or so, or are you content that we just pass
13 14:27:49 directly to cross-examination?
14 14:27:56 mr bin touq?
15 14:28:01 mr bin touq: start examine him, it's fine.
16 14:28:02 chairperson: the cross-examination can begin?
17 14:28:04 mr bin touq: yes.
18 14:28:04 chairperson: okay, very good.
19 14:28:05 ms habib, we've allotted 15 minutes for your
20 14:28:12 cross-examination, so if you'd be so kind, you can start
21 14:28:16 whenever you're ready.
22 14:28:19 cross-examination by ms habib
23 14:28:24 ms habib: so, mr ali?
24 14:28:31 a.yes.
25 14:28:31 q.i would like to ask you, my first question is what was

- 1 14:28:35 your involvement in the project?
- 2 14:28:40 a.okay. i am a civil engineer and i was the project
- 3 14:28:43 manager for the development of arbor school dubai.
- 4 14:28:47 q.so what was the duration of your being a project manager
- 5 14:28:51 on this project?
- 6 14:28:54 a.from february 2016 until the termination and after the
- 7 14:29:06 termination. i was with the company until 2022.
- 8 14:29:13 q.so is it right to say that you were involved in the
- 9 14:29:17 project from the beginning until the end, until the
- 10 14:29:20 termination?
- 11 14:29:21 a.correct.
- 12 14:29:21 q.and even after termination, you were involved with the
- 13 14:29:24 company?
- 14 14:29:25 a.correct.
- 15 14:29:27 q.so my question is, are you aware about the dubai court
- 16 14:29:32 proceedings that happened between the claimant and
- 17 14:29:34 respondent regarding this particular project? are you
- 18 14:29:37 aware?
- 19 14:29:38 a.yes, i am.
- 20 14:29:39 q.you're aware. okay. so are you also aware about the
- 21 14:29:43 outcome of the proceedings?
- 22 14:29:48 a.no, at the moment.
- 23 14:29:50 q.so you're not aware about the outcome?
- 24 14:29:54 a.i am not aware of the final stage of the court
- 25 14:29:58 proceedings.

- 1 14:29:59 q.so you're aware about the first stage of the court
2 14:30:01 proceeding that was the court of first instance? are
3 14:30:05 you aware about that judgment?
4 14:30:08 a.yes, yes.
5 14:30:09 q.so can you just clarify or can you just tell us what you
6 14:30:13 know about that particular judgment? what happened?
7 14:30:18 a.okay. as per our contract, the contractor should have
8 14:30:25 completed the project as requested on technical and
9 14:30:30 scheduled terms, but failed to do, so there were so many
10 14:30:35 reasons behind that and the contract was terminated
11 14:30:38 based on our contract. and very shortly, we had some
12 14:30:47 conflict with the contractor, a major one being they
13 14:30:52 have occupied an operating school during at the very
14 14:30:58 beginning of the first operational year of the school,
15 14:31:03 which was reported to the police.
16 14:31:08 then the court -- the legal proceedings -- many
17 14:31:15 legal proceedings have progressed.
18 14:31:21 q.okay. i will ask you next question. have you
19 14:31:31 participated in the proceedings before the experts
20 14:31:36 appointed by the court? have you ever attended any
21 14:31:40 expert proceedings?
22 14:31:43 a.please define the timing, which court and when? can you
23 14:31:47 please specify?
24 14:31:49 q.yes, court of first instance and court of appeal.
25 14:31:53 because on both stages, the experts were appointed. in

1 14:31:57 court of first instance, one expert was appointed, and
2 14:32:00 in the court of appeal, the tripartite experts were
3 14:32:03 appointed, three experts were appointed.
4 14:32:06 a.we were engaged during --
5 14:32:08 q.no, i'm asking -- sorry. i'm particularly asking about
6 14:32:12 you, whether you were personally involved in those
7 14:32:14 proceedings or not?
8 14:32:17 a.you mean attending the court cases? no. because all
9 14:32:22 the court hearings was in arabic and i can't speak
10 14:32:25 arabic.
11 14:32:25 q.no, i'm not talking about the court proceeding, but i'm
12 14:32:29 talking about the experts. because for experts, even if
13 14:32:32 you're not arabic person, you can attend before the
14 14:32:35 experts, because most of the experts are bilingual?
15 14:32:39 a.yes, they had visited our school in many occasions and
16 14:32:44 in that sense, yes, i was involved.
17 14:32:46 q.okay, you were involved.
18 14:32:48 i would like to draw your attention to your point
19 14:32:50 number 30, which says that -- in which you mention that
20 14:33:04 you have never been questioned by dubai experts. point
21 14:33:07 number 26.
22 14:33:10 a.i'm sorry, who?
23 14:33:12 q.see, in your point number 26 in your witness statement,
24 14:33:15 you have mentioned that:
25 14:33:18 "... i have never been questioned by any dubai court

- 1 14:33:21 experts, regarding the failures of the respondents."
- 2 14:33:25 a.correct, this is dubai court experts, meaning in a court
- 3 14:33:29 hearing. no. no, i haven't.
- 4 14:33:32 q.no, no. it's not the court hearings. it's the dubai
- 5 14:33:34 courts experts?
- 6 14:33:38 a.okay, we have been -- okay, we have been provided many
- 7 14:33:41 questions by the court and by the experts. my
- 8 14:33:46 involvement was preparing answers to those questions
- 9 14:33:51 with our legal team. that's what i mean i got involved
- 10 14:33:54 with dubai experts.
- 11 14:33:56 q.so it means that you have provided them answers of the
- 12 14:34:00 questions; right?
- 13 14:34:02 a.yes.
- 14 14:34:03 q.so it means that you were involved with these experts as
- 15 14:34:08 well -- directly or indirectly?
- 16 14:34:11 a.i have communicated with those experts, replying their
- 17 14:34:15 legal requests, yes.
- 18 14:34:19 q.yes.
- 19 14:34:20 a.through our lawyers, yes.
- 20 14:34:21 q.in your witness statement, when you mentioned:
- 21 14:34:23 "... i have never been questioned by any dubai court
- 22 14:34:25 experts ..."
- 23 14:34:26 it's misleading?
- 24 14:34:31 a.i took this question as i've never participated in any
- 25 14:34:36 court hearing and confronted any dubai experts in the

1 14:34:41 court, yes. my answer is based on that fact, yes.

2 14:34:51 q.so directly or indirectly, you were involved in those --

3 14:34:55 with these experts and you have provided your opinion

4 14:34:58 about what happened during this case?

5 14:35:03 a.correct.

6 14:35:04 q.yes?

7 14:35:05 a.correct.

8 14:35:05 q.so i would like to draw the attention of the tribunal

9 14:35:09 members that when, under point number 26, mr ali is

10 14:35:15 saying:

11 14:35:15 "... i have never been questioned by any dubai court

12 14:35:18 experts ..."

13 14:35:18 can we ask for amendment? because he has been and

14 14:35:22 he has confirmed also that directly or indirectly, he

15 14:35:25 has been involved and he has replied to the questions

16 14:35:28 raised by the experts.

17 14:35:32 chairperson: ms habib, it's not customary in an

18 14:35:38 arbitration setting to actually seek an amendment of

19 14:35:42 a witness statement. it's more that the witness has now

20 14:35:45 explained his testimony, he's explained his involvement

21 14:35:49 with the experts, and so we understand his testimony in

22 14:35:53 that context and we'll take that into account.

23 14:35:58 ms habib: okay. thank you, tribunal. thank you.

24 14:36:00 now my next question is -- mr ali?

25 14:36:08 a.yes.

1 14:36:08 q.the next question to you is regarding loa, letter of
2 14:36:12 acceptance. are you aware that this letter of
3 14:36:16 acceptance was signed in april 2017?
4 14:36:19 a.yes.
5 14:36:20 q.are you also aware that the contract was signed in
6 14:36:24 20 july 2017?
7 14:36:27 a.yes.
8 14:36:28 q.around three months after?
9 14:36:30 a.yes.
10 14:36:30 q.i would like to draw your attention to the contract.
11 14:36:38 i'm not sure whether you have a copy in front of you or
12 14:36:40 not. there is a clause 5.3(b), which says, "priority of
13 14:36:47 contract documents ..."
14 14:36:48 in this particular list, i can see that the contract
15 14:36:52 agreement is at first position, which means the highest
16 14:36:57 priority in this case should be given to the contract.
17 14:37:00 and the second number is loa.
18 14:37:04 the court has decided its case based on the
19 14:37:08 contract. so i just want to know one thing. are you
20 14:37:11 aware that this loa was never submitted before the
21 14:37:16 court?
22 14:37:18 a.i cannot -- i have to refer to my lawyers for the exact
23 14:37:22 submittal of those documents to the court.
24 14:37:25 q.can i tell you that the case was filed in 2018 and the
25 14:37:31 case actually ended in 2024. in last six years this loa

1 14:37:38 document, which you are saying that you have witnessed
2 14:37:42 our client signing this, has never been submitted by
3 14:37:45 your lawyers to the court.
4 14:37:48 so how now we can say that this loa has overnight
5 14:37:52 become so important that whatever happened in six years
6 14:37:56 should be set aside and we should just follow loa?
7 14:38:00 a.okay. my answer to that is i don't have the full exact
8 14:38:06 submission registers to the court, but i would be very
9 14:38:11 surprised if that loa has not been submitted to any
10 14:38:16 court hearing. so i --
11 14:38:19 q.this has been --
12 14:38:20 a.for six years -- just a second. for six years, i will
13 14:38:23 be surprised, which is a part of the contract, which is
14 14:38:26 not submitted to the court. because i know that, i'm
15 14:38:29 aware that there are many documents been submitted,
16 14:38:33 multiple times to the court, to the experts, and i will
17 14:38:37 be very surprised if loa is not included in those
18 14:38:40 submittals.
19 14:38:41 q.yes, but i would like to confirm, it has been confirmed
20 14:38:45 by the claimant in their submissions before this
21 14:38:49 tribunal that this loa was never submitted before the
22 14:38:52 court proceedings?
23 14:38:55 a.i have to refer to my lawyers for the exact document
24 14:38:58 register dating.
25 14:39:00 ms habib: okay.

1 14:39:16 mr el haddad: mr ali, so you said that you had been
2 14:39:16 participating, or been working in the company since the
3 14:39:17 beginning of the project --
4 14:39:19 chairperson: i'm sorry, mr el haddad, it's not
5 14:39:22 conventional to switch lawyers in the middle of
6 14:39:25 a cross-examination. what is happening here?
7 14:39:30 mr el haddad: no, actually, mrs kirby, i thought that we
8 14:39:34 are both representing the respondent. i will do
9 14:39:34 whatever you instruct, at the end of the day, but if you
10 14:39:40 allow me to ask a question.
11 14:39:43 chairperson: well, i think it would be best if the
12 14:39:48 cross-examination is handled by ms habib, so that we
13 14:39:52 don't double-team the witness with lawyers here
14 14:39:55 unexpectedly.
15 14:39:57 i think mr el haddad, if you have a question that
16 14:40:00 you would like asked, perhaps ms habib can ask it.
17 14:40:05 mr el haddad: sure, no problem.
18 14:40:07 ms habib: no problem. i will ask. thank you, tribunal.
19 14:40:11 yes, mr ali?
20 14:40:13 a.yes.
21 14:40:15 q.another question is, are you aware that various experts
22 14:40:19 examined the evidences submitted by us, by respondent,
23 14:40:24 and issued a report -- (overspeaking) --
24 14:40:30 a.please define what you mean by "experts". are they
25 14:40:35 court experts?

1 14:40:36 q.yes, the court-appointed experts have submitted two
2 14:40:40 reports in this matter. in the court of appeal they
3 14:40:43 have submitted -- requested by the claimant, the court
4 14:40:50 has appointed tripartite experts, which means that three
5 14:40:54 experts were appointed only on the request of the
6 14:40:58 claimant. that is your company, al mutatawera.
7 14:41:03 the court of appeal has accepted that particular
8 14:41:06 report as final. so are you aware about this report?
9 14:41:10 because you were answering those questions.
10 14:41:13 a.no. that's a general question. you have to be specific
11 14:41:16 which report, because i have to be -- i don't have the
12 14:41:20 full documents with me. i can answer this in writing to
13 14:41:24 the court. if you specify the exact date and refer to
14 14:41:28 the exact report, i will be able to give you an accurate
15 14:41:32 answer.
16 14:41:33 chairperson: one moment, one moment. i just want to
17 14:41:35 interject here. just so that we don't drive the court
18 14:41:38 reporter crazy, please be careful, ms habib and
19 14:41:45 mr erdogdu, please be careful not to talk over each
20 14:41:49 other, because it's very difficult for the court
21 14:41:52 reporter to take down correctly what's being said if two
22 14:41:57 people are talking at the same time.
23 14:41:58 i know it's natural in conversation for that to
24 14:42:00 happen, but here, please, please try to let each other
25 14:42:05 finish before you begin talking again, so that the

1 14:42:09 record is clean.

2 14:42:12 ms habib.

3 14:42:14 ms habib: yes. thank you, tribunal.

4 14:42:17 mr ali, if you like, i can give you the final expert

5 14:42:21 report, which was given in the case number court of

6 14:42:26 appeal number 706/2021 and appeal number 1529. it was

7 14:42:33 submitted on 19 march 2023. if you like, i can give you

8 14:42:38 the engineers' names as well?

9 14:42:42 a.i am not aware of that report.

10 14:42:44 q.are you aware about the eng gassan masood(?) and

11 14:42:47 eng sukriya saleem(?)?

12 14:42:50 a.no, i'm not. if this is 2023, i am not aware of that

13 14:42:55 report.

14 14:42:55 q.no, this is not 2023. this is the final expert report,

15 14:43:00 which was submitted in 2022.

16 14:43:04 a.i cannot answer that question. i have to see the

17 14:43:07 report. without seeing, i cannot answer that question.

18 14:43:13 q.are you aware that your company has given counterclaims

19 14:43:18 to the experts saying that our client has not completed

20 14:43:22 the project and there were some outstanding works? have

21 14:43:27 you done that?

22 14:43:28 a.yes.

23 14:43:30 q.if you have done that, does that mean that you have also

24 14:43:33 made the counterclaim? because the expert report

25 14:43:38 clearly states that you have made several counterclaims,

1 14:43:41 including 3.27 million, and then another one is
2 14:43:48 7.27 million, 1.58 million. so all these experts have
3 14:43:53 pointed out that these are the counterclaims or claims
4 14:43:58 that your company has made before the experts, seeking
5 14:44:03 the expert to give an expert report based on your
6 14:44:06 counterclaims and deduct our client's claim. are you
7 14:44:10 aware about this?
8 14:44:11 a.as a project manager, i have reviewed the works
9 14:44:16 completed, i have reviewed the balance of works and
10 14:44:20 i have quantified those pending, and there were defects.
11 14:44:28 i have worked in quantifying those incomplete and the
12 14:44:32 defects and any other monies referred to the contract
13 14:44:37 agreement. yes, i have been involved in those
14 14:44:41 calculations.
15 14:44:42 but as a whole, as a complete claim, a claim package
16 14:44:46 is discussed through our lawyers and submitted.
17 14:44:51 q.yes, i understand.
18 14:44:52 chairperson: ms habib, you're technically out of time
19 14:44:56 already, in terms of your 15 minutes. do you have --
20 14:45:01 ms habib: one more minute only.
21 14:45:02 chairperson: okay, yes. one more question. go ahead,
22 14:45:04 and then we'll wrap it up.
23 14:45:08 ms habib: mr ali, so you are confirming that you have
24 14:45:13 quantified your claim before the experts?
25 14:45:17 a.i am confirming what i just told you. i am a technical

1 14:45:22 project manager. i am aware of the bill of quantities
2 14:45:25 of the works and the variations and i have been involved
3 14:45:30 in reviewing, because we had an engineer, we had
4 14:45:35 a consultant. i reviewed the consultant's studies,
5 14:45:42 compared it with our contract and made our objections or
6 14:45:48 confirmations regarding the incomplete work and the
7 14:45:53 defective work.
8 14:45:55 q.so you have -- i would like to summarise that you have
9 14:46:00 quantified the damages sustained by your company and you
10 14:46:04 have presented these documents before the experts to
11 14:46:09 calculate the claims?
12 14:46:13 chairperson: ms habib.
13 14:46:15 ms habib: that's it.
14 14:46:16 chairperson: i was going to say, you're trying to sneak
15 14:46:17 in another question there. but we do have closing
16 14:46:21 statements, so obviously if you would like to give your
17 14:46:26 own summary or interpretation of the witness's answers,
18 14:46:31 you're free to do that during your closing statements.
19 14:46:34 but i think the witness's testimony was very clear and
20 14:46:38 we have that on the record.
21 14:46:40 so i think we can stop the cross-examination for
22 14:46:44 now.
23 14:46:46 mr bin touq, is there any re-direct examination that
24 14:46:50 you would like to do in light of respondent's
25 14:46:54 cross-examination?

1 14:46:57 mr bin touq: yes.

2 14:46:57 now, what we have today, we are discussing about the

3 14:47:00 jurisdiction. ali was involved in the starting of the

4 14:47:04 project, in term of negotiation and in terms of the

5 14:47:08 progress of the project till its completion.

6 14:47:11 chairperson: i'm sorry, mr bin touq --

7 14:47:13 mr bin touq: i will ask ali couple of questions.

8 14:47:15 chairperson: okay, yes, go ahead, we have budgeted

9 14:47:18 five minutes.

10 14:47:20 re-examination by mr bin touq

11 14:47:22 mr bin touq: ali, are you involved on the discussion with

12 14:47:22 the contractor, regarding the loa and the contract?

13 14:47:26 a.yes.

14 14:47:28 q.are you aware that diac was a jurisdiction been

15 14:47:32 confirmed by the contractor and the consultant?

16 14:47:35 a.yes.

17 14:47:35 q.accepted by al mutatawera?

18 14:47:37 a.yes.

19 14:47:38 q.there was any revision or any changes toward that?

20 14:47:44 a.no.

21 14:47:46 q.you confirm that diac was only jurisdiction been

22 14:47:51 confirmed and accepted by signing the loa and stamp and

23 14:47:55 also the contract?

24 14:47:58 a.yes.

25 14:48:00 q.are you aware that who started the proceeding in dubai

- 1 14:48:03 court is al mutatawera or the contractor?
- 2 14:48:07 a.the contractor.
- 3 14:48:10 q.what was the main argument related to that? they
- 4 14:48:14 proceed in dubai court. however, they was aware that
- 5 14:48:17 the jurisdiction of arbitration was included in the loa
- 6 14:48:21 and the contract?
- 7 14:48:22 a.yes. they knew, they were aware that the jurisdiction
- 8 14:48:29 was the dubai arbitration, but the proceedings started
- 9 14:48:34 through dubai courts.
- 10 14:48:38 q.did you attend the signing of the loa and the contract?
- 11 14:48:42 a.yes.
- 12 14:48:44 q.you involved with the negotiation and the terms been
- 13 14:48:47 included that arbitration and diac was only jurisdiction
- 14 14:48:51 for this matter?
- 15 14:48:53 a.yes, and there were some pre-contract signatures,
- 16 14:48:58 communication with the contractors. so, yes, before the
- 17 14:49:04 contract signature, the contract draft was shared with
- 18 14:49:07 the contractor. they had some comments. we have the
- 19 14:49:09 communication and emails over that. yes, i was
- 20 14:49:14 involved.
- 21 14:49:14 q.did they involve any time the jurisdiction of the
- 22 14:49:16 agreement and any level under discussion?
- 23 14:49:21 a.no.
- 24 14:49:23 q.did any revision happen toward that clause on the
- 25 14:49:27 agreement?

1 14:49:28 a.no.

2 14:49:40 mr bin touq: okay.

3 14:49:40 chairperson: mr bin touq, do you have anything further?

4 14:49:43 mr bin touq: yes, we are fine. now, as per him as

5 14:49:45 a civil engineer, he's not aware on the legal proceeding

6 14:49:49 and what has been questioned to him by them is not

7 14:49:54 relevant, because he's only doing his engineering work

8 14:49:58 related to the matter and he's not aware about the legal

9 14:50:01 proceeding --

10 14:50:03 chairperson: mr bin touq, what i would propose is

11 14:50:06 similarly to what i said to ms habib. you do have your

12 14:50:08 closing statement to make.

13 14:50:11 mr bin touq: yes.

14 14:50:12 chairperson: so i think the points you're making now are

15 14:50:15 perhaps better addressed in that context.

16 14:50:18 mr bin touq: yes.

17 14:50:18 chairperson: for now, while we have the witness,

18 14:50:21 mr smith, do you have any questions for mr erdogdu?

19 14:50:42 mr smith: i don't have anything at the moment. i think

20 14:50:45 just to echo your comments, i think we'll just take the

21 14:50:56 witness's evidence as we heard it and anything else can

22 14:50:59 be dealt with in submissions.

23 14:51:03 chairperson: okay. very good.

24 14:51:06 witness: may i add something?

25 14:51:08 chairperson: not right now, mr erdogdu.

1 14:51:11 mr mcdougall, do you have any questions for the
2 14:51:14 witness?
3 14:51:16 mr mcdougall: i do, if i may.
4 14:51:17 chairperson: please.
5 14:51:18 questions by tribunal
6 14:51:19 mr mcdougall: nice to meet you, mr erdogdu. i'm andrew
7 14:51:21 mcdougall, i'm one of the members of the tribunal. can
8 14:51:25 you hear me okay?
9 14:51:26 a.yes, sir, nice to meet you too.
10 14:51:28 mr mcdougall: i was wondering if you could help us
11 14:51:30 understand just the way this contract was put into place
12 14:51:35 from your perspective.
13 14:51:37 why was there a letter, an loa as it's referred to,
14 14:51:42 a letter of acceptance, and then a contract document?
15 14:51:47 could you just explain to us how that came about in that
16 14:51:50 structure?
17 14:51:52 a.yes. the understanding was to commence the early works
18 14:51:56 and the mobilisation and the permitting for the school
19 14:52:01 project. so to earn -- it was basically kicking off the
20 14:52:07 early work. so within loa, we manage to apply for nocs
21 14:52:12 to the government institutions and there was a very
22 14:52:15 tight schedule, so it's mutually agreed with the
23 14:52:19 contractor that they can start some early works and some
24 14:52:23 early registrations. so based on that, loa came before
25 14:52:28 the contract, so we had an loa arrangement.

1 14:52:33 mr mcdougall: who drafted the loa, if you know?
2 14:52:40 a.i think we had -- it was by legal team. we drafted --
3 14:52:49 i can't fully recall, but it was exchanged a couple of
4 14:52:53 times for comments. so by a legal counsellor, it was
5 14:53:02 drafted.
6 14:53:03 mr mcdougall: were you involved in that process or not?
7 14:53:05 a.yes, i am.
8 14:53:07 mr mcdougall: what was your involvement?
9 14:53:09 a.just a -- yes, just a note. i particularly remember
10 14:53:15 installing the dubai arbitration clause into the
11 14:53:20 contract framework.
12 14:53:22 mr mcdougall: who installed that? you did or somebody
13 14:53:25 else?
14 14:53:25 a.i have discussed the ways, the correct ways to install
15 14:53:28 it with the legal team.
16 14:53:33 mr mcdougall: whose legal team?
17 14:53:34 a.it was our legal team. we have proposed. that's how
18 14:53:40 it's installed in the contract, yes, on the draft.
19 14:53:46 mr mcdougall: was there any resistance to that by the
20 14:53:48 other party?
21 14:53:51 a.as far as i recall, we have exchanged many emails
22 14:53:55 regarding the contract draft. we received some comments
23 14:53:59 from the contractor. as far as i recall, there is no
24 14:54:03 mention or any comments on that clause.
25 14:54:06 mr mcdougall: so then after the loa, you had the contract

1 14:54:09 as you mentioned. what was your involvement, if any, in
2 14:54:12 the contract drafting?
3 14:54:15 a.the contract was prepared by our consultant, national
4 14:54:18 engineering bureau, reviewed by both parties,
5 14:54:22 contractors and the investor's legal team. both parties
6 14:54:27 have put their comments on and the final contract
7 14:54:31 document was prepared.
8 14:54:35 mr mcdougall: what was your involvement?
9 14:54:37 a.i was, as the client -- as the investing side,
10 14:54:41 i reviewed the contract as per my experience on the
11 14:54:46 technical chapters regarding the schedule, the
12 14:54:49 deliveries, et cetera, on the contract.
13 14:54:57 mr mcdougall: i think that covers what i wanted to ask
14 14:54:59 you. thank you very much, madam president.
15 14:55:05 mr smith: madam president, can i just ask a follow-up,
16 14:55:07 just based on what mr mcdougall had asked -- sorry,
17 14:55:10 mr ali.
18 14:55:11 just to clarify, i think you said a minute ago in
19 14:55:15 response to the questions that you had installed
20 14:55:18 arbitration into the contract.
21 14:55:21 but my understanding is that that's a standard
22 14:55:24 provision in the general conditions, that were
23 14:55:27 incorporated by reference into the agreement.
24 14:55:30 are you saying that you -- or maybe i'll just ask
25 14:55:38 you directly. can you just explain what you meant by

1 14:55:41 you installed arbitration into the agreement?

2 14:55:43 a.installed, meaning -- okay, let me explain. install,

3 14:55:47 meaning receiving the draft from our consultant, we

4 14:55:49 proposed to install the dubai arbitration clause into

5 14:55:57 the contract. that was a proposal and i was involved

6 14:56:01 discussions with our legal team, to propose to install

7 14:56:05 that clause into the contract. so that's what i mean

8 14:56:07 "install".

9 14:56:10 mr smith: can i just probe that one more time, and this

10 14:56:12 is just for a matter of clarity. there's nothing

11 14:56:16 sinister about it. but what i'm saying is that in the

12 14:56:19 general conditions, arbitration is already there. so it

13 14:56:22 doesn't need to be installed. but are you saying that

14 14:56:25 in the special conditions, you've instructed the changes

15 14:56:29 to make it the diac, as opposed to the standard form

16 14:56:34 arbitration agreement?

17 14:56:35 a.sir, i don't give instructions. this was

18 14:56:38 a recommendation, this was our change request to

19 14:56:43 negotiate with the contractor for dubai international

20 14:56:50 arbitration court. i am not fully aware of the

21 14:56:53 original, what we have received, the exact clause what

22 14:56:57 we have received from our consultant. i have to refer

23 14:57:00 to the original proposed contract document and then what

24 14:57:04 i'm trying to explain is, after discussion with our

25 14:57:07 legal team, from the client's side, we propose to

1 14:57:11 install dubai arbitration clause into the contract.

2 14:57:17 this was negotiated accordingly and, to my

3 14:57:20 understanding, signed and agreed by the contractor.

4 14:57:28 mr smith: sorry, everyone. just one question. this was

5 14:57:31 a competitive tendered project, wasn't it?

6 14:57:34 a.correct.

7 14:57:37 mr smith: the form of contract that was anticipated, was

8 14:57:40 that provided to the tenderers from the outset, or was

9 14:57:44 that later negotiated?

10 14:57:49 a.part of contract, yes, it was part of the contract, of

11 14:57:52 the tender package, yes.

12 14:57:55 mr smith: i have nothing further.

13 14:57:59 chairperson: mr mcdougall, do you have any further

14 14:58:02 questions?

15 14:58:03 mr mcdougall: no, i don't. thank you. i'm content.

16 14:58:07 chairperson: okay.

17 14:58:09 i don't have any questions, but, ms habib, coming

18 14:58:12 back to you, in light of the discussion that the

19 14:58:15 tribunal has had with the witness, is there anything

20 14:58:19 further you would like to ask by way of

21 14:58:22 cross-examination?

22 14:58:26 ms habib: i have no further questions related to what the

23 14:58:29 witness has said, but i just realise i have one more

24 14:58:33 question to ask, but if the tribunal allows me, then

25 14:58:38 only i will ask the question.

1 14:58:40 chairperson: well, if it's unrelated to what the tribunal
2 14:58:43 has been asking, then i think we should not revert to
3 14:58:46 it, because that would have been part of your original
4 14:58:50 time.
5 14:58:51 ms habib: yes. just it's a small question, if the
6 14:58:55 tribunal agrees, then only the witness can reply, if you
7 14:59:02 allow me. i just want to know who has prepared the
8 14:59:05 termination notice. that's it.
9 14:59:09 chairperson: well, i don't ...
10 14:59:15 ms habib: it's a very important question.
11 14:59:17 chairperson: let me ask my co-arbitrators what they
12 14:59:20 think. mr smith, should we allow this question?
13 14:59:26 mr smith: i have no objection to it. i don't see the
14 14:59:27 relevance, but i have no objection.
15 14:59:29 chairperson: okay. mr mcdougall?
16 14:59:33 mr mcdougall: i have exactly the same comment as
17 14:59:34 mr smith.
18 14:59:35 chairperson: okay. i will also say it's not clear to me
19 14:59:39 what the relevance of this question is in light of the
20 14:59:41 scope of the issues that we're dealing with, but
21 14:59:45 ms habib, why don't you go ahead and ask the question
22 14:59:49 and hopefully mr erdogdu can answer it very succinctly.
23 14:59:57 further cross-examination by ms habib
24 15:00:00 ms habib: mr ali, as we were discussing also you said the
25 15:00:07 agreement was terminated. so are you aware about this

1 15:00:10 termination letter that was served to us, to the
2 15:00:15 respondent? are you aware about that letter?
3 15:00:17 a.yes, yes.
4 15:00:18 q.are you aware that the letter was issued on 1 october?
5 15:00:23 a.yes.
6 15:00:25 q.and the letter says that you are terminating as per
7 15:00:29 65.9?
8 15:00:33 a.i don't have 65.9. i can't see it.
9 15:00:37 q.yes, but it was mentioned about --
10 15:00:39 mr mcdougall: i'm sorry, madam president, this is one
11 15:00:42 question, it's now three.
12 15:00:44 mr bin touq: yes, we are going again and again.
13 15:00:44 mr mcdougall: i'm sure i'm speaking for all of us in
14 15:00:47 saying that counsel is abusing what was a very clear
15 15:00:51 instruction from the tribunal.
16 15:00:54 chairperson: ms habib, if you want to just ask the one
17 15:00:58 question that you --
18 15:01:01 ms habib: okay.
19 15:01:01 chairperson: but none of these background questions; just
20 15:01:04 your one question.
21 15:01:07 mr bin touq: it's already been asked now.
22 15:01:09 ms habib: the question is whether this letter was
23 15:01:14 prepared by you, mr ali, or not. because it doesn't
24 15:01:18 have the time period which is allowed by the agreement
25 15:01:21 for termination.

1 15:01:26 a.the letter is prepared as per the contract terms and
2 15:01:31 conditions and served accordingly.
3 15:01:37 chairperson: okay, ms habib. i think we're done with
4 15:01:39 that.
5 15:01:40 ms habib: okay.
6 15:01:41 chairperson: mr bin touq, in light of the discussion that
7 15:01:45 the tribunal had with the witness and this most recent
8 15:01:49 piece of cross-examination, is there anything that you
9 15:01:52 would like to ask the witness by way of re-direct?
10 15:01:57 mr bin touq: there is no further question. it's clear.
11 15:02:00 chairperson: okay. with that, i think mr erdogdu, we can
12 15:02:06 release you from testifying now so your examination is
13 15:02:11 now complete.
14 15:02:13 if you would like to remain with us to observe the
15 15:02:17 proceedings, you're welcome to do so, but you are also
16 15:02:20 free to go if you do not wish to stay with us.
17 15:02:27 witness: i will stay. thank you.
18 15:02:29 chairperson: okay. in that case, if you would just be so
19 15:02:31 kind as to mute your microphone -- yes, please feel free
20 15:02:37 to remain with us.
21 15:02:38 (witness withdrew)
22 15:02:39 chairperson: now we have foreseen a break here, because
23 15:02:44 we're going to be moving to closing statements. each
24 15:02:48 side has reserved 15 minutes for closing statements.
25 15:02:53 how much of a break would the parties like? i'm

1 15:02:57 thinking somewhere maybe 15 minutes? certainly no more
2 15:03:02 than 30 minutes.
3 15:03:04 but perhaps mr bin touq, could you give us your
4 15:03:07 opinion as to how long a break you would like to have
5 15:03:10 before closing?
6 15:03:12 mr bin touq: 15 minutes will be fine.
7 15:03:14 chairperson: okay.
8 15:03:15 ms habib, would 15 minutes also be okay for
9 15:03:18 respondent?
10 15:03:19 ms habib: please, agreed.
11 15:03:21 chairperson: okay. then we will now take a 15-minute
12 15:03:23 break and so we'll reconvene at 18 after the hour.
13 15:03:31 (3.03 pm)
14 15:03:37 (a short break)
15 15:03:39 (3.18 pm)
16 15:18:57 chairperson: we now have closing statements from the
17 15:18:59 parties.
18 15:19:00 we anticipate hearing from respondent first and then
19 15:19:05 followed by claimant.
20 15:19:08 ms habib, are you there? now i see you.
21 15:19:15 if you would like to begin, please feel free to
22 15:19:18 proceed.
23 15:19:26 actually, i'm sorry, ms habib, if you could maybe
24 15:19:29 adjust your camera a bit, because we can -- that's much
25 15:19:33 better. we can see you much better now.

1 15:19:39 ms habib: so can i start?

2 15:19:42 chairperson: yes, please feel free to start when you're

3 15:19:44 ready.

4 15:19:45 closing submissions by ms habib

5 15:19:47 ms habib: good afternoon, the members and the chairperson

6 15:19:49 of the tribunal and good afternoon everyone who are

7 15:19:54 attending this hearing here with us.

8 15:19:58 i would like to make the closing remarks regarding

9 15:20:01 the hearing and the testimony of mr ali.

10 15:20:12 as everybody has heard what mr ali has said, it

11 15:20:16 means it is very clear now that mr ali was directly or

12 15:20:21 indirectly involved and participated in answering the

13 15:20:25 questions raised by the expert --

14 15:20:34 mr al sharhan: i'm sorry to interrupt, i think our lawyer

15 15:20:35 is trying to join, he's waiting to be let in, please.

16 15:20:38 mr obaid and hatem.

17 15:20:40 chairperson: is mr bin touq not with us?

18 15:20:44 mr al sharhan: he's waiting to be let in, please. sorry

19 15:20:47 for the interruption, gentlemen and ladies.

20 15:20:52 chairperson: no, i thank you for the interruption. this

21 15:20:56 is very strange.

22 15:21:00 okay, i see now, all right. it wasn't popping up on

23 15:21:03 my screen.

24 15:21:11 mr al sharhan: thank you very much.

25 15:21:12 chairperson: no, that's very good. thank you.

1 15:21:23 mr bin touq, are you with us now?

2 15:21:27 mr bin touq: yes.

3 15:21:28 chairperson: very good. i couldn't tell that you were

4 15:21:30 not with us before.

5 15:21:31 ms habib, will you please start over from the

6 15:21:34 beginning of your remarks.

7 15:21:38 ms habib: yes, sure. thank you, tribunal.

8 15:21:40 so good afternoon, everyone. as we have already

9 15:21:45 seen and heard the testimony of mr ali, during the

10 15:21:50 cross-examination he has confirmed that he was directly

11 15:21:53 or indirectly involved and participated in the questions

12 15:21:57 raised by the experts and have answered the queries of

13 15:22:02 the court's appointed experts. in a way, he has

14 15:22:08 produced some kind of deductions to the experts and

15 15:22:13 i can confirm that part of those deductions have been

16 15:22:17 accepted by the experts, court experts, court-appointed

17 15:22:21 experts.

18 15:22:22 so in this matter, i can say that the experts were

19 15:22:30 quite fair when they were taking the claims and

20 15:22:33 counterclaims and the deductions raised by both parties.

21 15:22:37 so i would like to draw the attention of the

22 15:22:43 tribunal that i have already included all, a summary of

23 15:22:48 the experts' findings in my respondent's objection dated

24 15:22:54 18 march, whereby i have already explained that some of

25 15:22:59 the deductions which were requested by the claimants

1 15:23:03 have been accepted by the court-appointed expert.
2 15:23:06 so it means that not all the points raised by the
3 15:23:11 claimants were rejected and it means that the claimants
4 15:23:15 were actually participating in the proceedings by
5 15:23:20 quantifying their deductions, by quantifying their
6 15:23:22 claims, before the expert.
7 15:23:23 so if the claimants today are claiming that they
8 15:23:25 have never participated by any means during this
9 15:23:30 six years, is a misleading statement, which i believe
10 15:23:34 the tribunal should address this matter, because it
11 15:23:38 cannot be possible for two parties to be involved in
12 15:23:43 a big and long and very, you know, time-consuming and
13 15:23:49 expensive litigation for six years, involving such a big
14 15:23:54 amount, while one party is not participating.
15 15:23:57 this is not at all a correct or true statement which
16 15:24:02 the claimants are making throughout these proceedings.
17 15:24:06 second point is that i would like to draw the
18 15:24:11 attention of the tribunal to the court of cassation
19 15:24:16 judgment and its finding of 631/2020, whereby the court
20 15:24:20 clearly mentioned that the clause, the arbitration
21 15:24:24 clause has been invalid and court has decided that --
22 15:24:29 court has actually separated the arbitration clause with
23 15:24:33 arbitration agreement.
24 15:24:35 court has said that the contract is valid and the
25 15:24:41 stamp over the arbitration clause page confirms that the

1 15:24:44 agreement is valid, the contract is valid, while the
2 15:24:47 arbitration clause in particular is invalid.
3 15:24:51 there are many reasons that the courts have to find
4 15:24:55 out; even the court of cassation twice have decided that
5 15:25:00 the arbitration agreement or the arbitration clause is
6 15:25:04 invalid because it doesn't specify or it doesn't mention
7 15:25:08 the signature of the parties, which is mandatory as per
8 15:25:12 the law of arbitration of uae 2018.
9 15:25:19 this is the one point.
10 15:25:21 the third point is regarding the res judicata
11 15:25:27 matter. i would like to draw the attention of the
12 15:25:29 tribunal on the judgment, recently judgment, recent
13 15:25:35 judgment issued on 8 january. it's court of cassation
14 15:25:39 appeal number 1121/2023 and 1099/2023, whereby the court
15 15:25:46 of cassation has clearly mentioned that it is not
16 15:25:51 permissible for any party to raise the issue of
17 15:25:56 jurisdiction again before the court because, as
18 15:25:59 mentioned earlier, as the tribunal is aware, that this
19 15:26:03 is not one-stage litigation.
20 15:26:07 this litigation has been through many, many stages.
21 15:26:10 even this litigation case was twice referred to the
22 15:26:15 court of cassation and both court of cassation have
23 15:26:17 accepted that the arbitration clause is invalid.
24 15:26:22 therefore, they accepted the jurisdiction of dubai
25 15:26:25 courts and they allowed the parties to participate and

1 15:26:30 provide their merits.

2 15:26:33 court of appeal case number -- second court of

3 15:26:38 appeal before which the claimant itself has made

4 15:26:43 a special request to the court to appoint tri-party

5 15:26:49 committee of experts who can evaluate and estimate the

6 15:26:54 amount of damages or the amount of claim made by the

7 15:27:00 claimant -- claimant and the respondent at the same

8 15:27:04 time.

9 15:27:05 so now they cannot come back and they cannot say:

10 15:27:07 oh, we never participated. because this should not be

11 15:27:10 accepted. we have been through six years, six long

12 15:27:13 years of litigation before dubai courts again and again.

13 15:27:19 for example, when 631 court decided that the matter --

14 15:27:23 that the cassation court has the jurisdiction over the

15 15:27:26 matter, the court referred back the case to court of

16 15:27:29 appeal to decide on the merits.

17 15:27:31 therefore, during that period, the claimant has

18 15:27:35 requested -- which i have also attached in my response,

19 15:27:38 the claimant has specifically sought the permission of

20 15:27:45 the appeal court to appoint a committee of experts, not

21 15:27:50 the experts which was appointed by the court before in

22 15:27:53 the court of first instance. they rejected and they

23 15:27:57 said: please appoint three tri-party experts so they can

24 15:28:01 look into this matter.

25 15:28:02 can we say now that after all these six years,

1 15:28:06 claimant is right, claiming that loa is the final and
2 15:28:09 binding document, loa should be accepted because it was
3 15:28:13 our client has signed and they have witnesses? no, it
4 15:28:16 cannot be done, that, because it's against the
5 15:28:20 res judicata principle of uae and around the world.
6 15:28:25 i don't know, and i have never, ever seen any case
7 15:28:30 where the court has rejected, the highest supreme court
8 15:28:33 has rejected the arbitration clause. still, the
9 15:28:38 claimant is saying that the arbitration clause is valid
10 15:28:45 and only the arbitrator has the right to decide on
11 15:28:49 competence-competence. its sole jurisdiction. but that
12 15:28:54 competence-competence is valid when the court has not
13 15:28:57 annulled the clause of arbitration. but in this case,
14 15:29:01 court has clearly declared that the arbitration clause
15 15:29:04 is invalid and annulled.
16 15:29:13 my request to the arbitration tribunal is to look
17 15:29:17 into this matter, because i have never come across any
18 15:29:21 arbitration tribunal which can or which has the right or
19 15:29:25 powers to set aside a final and binding judgment issued
20 15:29:29 by the highest court of a country and say that they have
21 15:29:34 the right or they have the powers to arbitrate, or they
22 15:29:38 have the powers to let the parties again retry this
23 15:29:46 matter.
24 15:29:49 there is a path drawn by the uae law which allows
25 15:29:53 that even the supreme court judgment can be set aside

1 15:29:57 and claimant has already using that particular power and
2 15:30:01 has already made the application before the committee in
3 15:30:05 dubai courts.
4 15:30:05 closing submissions by mr el haddad
5 15:30:10 mr el haddad: actually, just if you allow me, because,
6 15:30:12 you know, we've been practising for the last 20 years in
7 15:30:15 the uae and we know the uae very well. we are like --
8 15:30:20 we are litigators.
9 15:30:25 actually, the law has drawn a legal path. the law,
10 15:30:28 the uae procedural law or the new amendments has drawn
11 15:30:32 a legal path, which enables any claimant to retract
12 15:30:38 a supreme court decision. that, definitely, that legal
13 15:30:43 path is not through any arbitration panel. it's not in
14 15:30:47 the uae, it's not anywhere else all over the world.
15 15:30:52 so basically, filing this arbitration case and
16 15:30:56 insisting on involving an arbitration panel, with due
17 15:31:02 respect, of course, and with appreciation to the efforts
18 15:31:06 that the tribunal is obviously doing in this case, but
19 15:31:14 it is a very weird case. you can say it's a very weird
20 15:31:18 case. because it is against the mandatory provisions of
21 15:31:23 the uae law.
22 15:31:26 i can understand, ms kirby, because you're not
23 15:31:30 a lawyer practising probably in the uae, but we have
24 15:31:34 pointed out in our previous submissions the articles of
25 15:31:39 law which are applicable, and obviously which enables

1 15:31:45 any litigant to retract a supreme court decision.
2 15:31:49 definitely this path, the claimant knows it, the
3 15:31:54 claimant knows it very well. so he should have followed
4 15:31:57 this path and obviously he should have, you know,
5 15:32:02 complied with the provisions of the uae.
6 15:32:06 that's it. i believe we said everything we want to
7 15:32:08 say.
8 15:32:10 ms habib: thank you.
9 15:32:12 mr el haddad: thank you.
10 15:32:12 chairperson: okay, thank you very much.
11 15:32:15 we can now move to the claimant's closing.
12 15:32:19 mr bin touq, whenever you would like to begin,
13 15:32:22 please go ahead.
14 15:32:24 closing submissions by mr bin touq
15 15:32:28 mr bin touq: thank you, again. we heard the argument, we
16 15:32:30 heard the witness and we have, since the beginning of
17 15:32:33 this process, since they have participated in the
18 15:32:37 tender, we have an arbitration clause, we have
19 15:32:43 a discussion and we have signed, as per the uae law of
20 15:32:48 arbitration, should be in writing and should be accepted
21 15:32:53 by both parties.
22 15:32:55 now, al mutatawera and crc are based in dubai and
23 15:33:01 they decided together to have the arbitration clause as
24 15:33:06 diac.
25 15:33:07 it's been confirmed, it's never been denied by them

1 15:33:11 that they did not sign. they never deny they did not
2 15:33:15 stamp. they never deny they are not aware of that
3 15:33:20 clause in the contract.
4 15:33:22 now, they started the proceeding in dubai court,
5 15:33:25 which has no relevance in this hearing today. we have
6 15:33:29 the tribunal to examine that they have jurisdiction as
7 15:33:34 per the documents provided on the submission and been
8 15:33:39 signed by both parties.
9 15:33:40 now, is the arbitration clause been done in writing
10 15:33:44 as per the law? yes. it's been signed? yes. it's
11 15:33:48 been stamped? yes. and they did not have any argument
12 15:33:54 denying signing the loa, signing the contract.
13 15:34:02 you have the jurisdiction over this matter,
14 15:34:04 regardless whatever proceeding been done, carry on by
15 15:34:09 them in dubai court. we did not went to dubai court.
16 15:34:12 we know there is arbitration clause and this was an
17 15:34:13 argument as well in dubai courts.
18 15:34:17 now, we would like the tribunal to examine, based on
19 15:34:22 the witness, based on the submission, based on the
20 15:34:25 signed loa, based on the contract, that you have
21 15:34:29 jurisdiction. and they said it's been carried on for
22 15:34:34 a time. now we enter, we submit the application. they
23 15:34:39 accept, they contribute, they pay the fee for diac for
24 15:34:44 50,000. they deny to pay the other share of that cost.
25 15:34:49 now we are here in the process to examine the

1 15:34:52 jurisdiction and we see the tribunal have jurisdiction,
2 15:34:55 and diac is only jurisdiction been signed, accepted by
3 15:35:00 both parties.
4 15:35:01 it's never been denied, it's not been argued that
5 15:35:07 the authorised person from crc, they do not sign and
6 15:35:11 stamp, knowing that the jurisdiction of arbitration of
7 15:35:16 diac is only jurisdiction and you have the jurisdiction
8 15:35:21 over this matter.
9 15:35:22 ali confirmed that in his statements. he's from the
10 15:35:25 beginning in the project till the end of the project and
11 15:35:28 there was no objection from them, since the starting
12 15:35:33 process till the end, about having diac as only
13 15:35:38 jurisdiction on this matter.
14 15:35:42 we had very clearly referring to different law
15 15:35:48 stating that, and we would request the tribunal to
16 15:35:52 examine the jurisdiction over the document been provided
17 15:35:56 and to rule in our favour on this.
18 15:36:07 chairperson: is there anything further you would like to
19 15:36:09 say, mr bin touq?
20 15:36:12 mr bin touq: the final point. also different question
21 15:36:15 been raised about the proceeding in dubai court, asking
22 15:36:18 the witness about it. it's not relevant because we are
23 15:36:22 here, examine the jurisdiction as per the contract, as
24 15:36:27 per the loa, as per the acceptance from them.
25 15:36:31 now, they start the proceeding in dubai court and

1 15:36:34 al mutatawera did not start any proceeding in dubai
2 15:36:36 court. once they have the notification, they reply to
3 15:36:40 that. the argument was been raised on all level that
4 15:36:44 jurisdiction is only diac and there is no power to
5 15:36:50 examine the assessment of tribunal over their
6 15:36:55 jurisdiction based on that.
7 15:36:57 questions by tribunal
8 15:37:01 chairperson: thank you, mr bin touq.
9 15:37:06 i know that the tribunal has questions for counsel.
10 15:37:10 as we've foreseen, now that we've had the closing
11 15:37:13 statements, there are certain issues that the tribunal
12 15:37:16 would like to just ask -- get counsel's input on. there
13 15:37:20 are things that we would like to know as we go into our
14 15:37:25 discussions about these issues.
15 15:37:28 maybe i can kick off the discussion by asking just,
16 15:37:33 you know, during the course of these proceedings, both
17 15:37:35 of you have provided us various updates with respect to
18 15:37:40 the status of the proceedings in the dubai courts and in
19 15:37:45 particular, of course, we have this revocation
20 15:37:48 application that's been put in by claimant.
21 15:37:51 can we please have an update as to the status of
22 15:37:55 that application in particular and anything else going
23 15:37:58 on in the dubai courts potentially related to this
24 15:38:02 matter that you would like to tell us?
25 15:38:04 mr bin touq, could you please begin.

1 15:38:07 mr bin touq: yes, the case is still under review and has
2 15:38:10 been postponed four times now. we have the date on
3 15:38:16 30 april, it's been postponed to 7 may and 21 may and
4 15:38:21 25 june. as of today, there is no ruling been issued
5 15:38:26 toward that case.

6 15:38:28 chairperson: so are you anticipating, then -- when you
7 15:38:31 say it's postponed, we're now on 27 june, so 25 june has
8 15:38:37 gone by. what is the current date?

9 15:38:41 mr bin touq: they did not make any update yet. we follow
10 15:38:43 up with them and usually they take two weeks to post the
11 15:38:49 decision, but it's been postponed for fourth time now.

12 15:38:55 chairperson: but --

13 15:38:56 mr bin touq: there's no ruling been issued yet and no
14 15:38:59 formal date been given.

15 15:39:01 chairperson: i understand then that you're just awaiting
16 15:39:03 a decision; there's no hearing coming up.

17 15:39:05 mr bin touq: yes, yes.

18 15:39:08 chairperson: ms habib, can i hear from the respondent
19 15:39:11 with respect to this same issue?

20 15:39:15 mr el haddad: actually, that retraction application that
21 15:39:22 our colleague is referring to, it's correct, it has been
22 15:39:26 pending and been adjourned for the fourth consecutive
23 15:39:30 time, and a decision was not to be issued on 25 june,
24 15:39:36 but so far there is no decision posted yet on dubai
25 15:39:42 courts website.

1 15:39:45 but i will add, if you don't mind, ms jennifer,
2 15:39:51 because it's very important to note down that this
3 15:39:53 application, the retraction conditions specified in the
4 15:40:00 applicable law has clearly pointed out that this
5 15:40:05 application should be submitted within one-year
6 15:40:09 timeframe from the date on which the supreme court
7 15:40:14 decision or the supreme court judgment was issued.
8 15:40:17 so obviously, if you look into our case, the first
9 15:40:20 cassation case which has nullified the arbitration
10 15:40:25 clause, case 631, december 2020, this judgment was
11 15:40:32 issued in 2020, december 2020, and it had nullified the
12 15:40:37 arbitration clause, consider it as invalid and null and
13 15:40:41 void.
14 15:40:41 so the retraction application should have been
15 15:40:44 placed, should have been submitted within one year from
16 15:40:48 that date. so the last delay was meant to
17 15:40:51 be december 2021.
18 15:40:55 so even this we are not expecting ourselves -- of
19 15:40:59 course, the matter is dependent or is basically left to
20 15:41:03 the court.
21 15:41:04 chairperson: mr el haddad, if i may, i just, you know,
22 15:41:08 i just want to confirm that we're very familiar with
23 15:41:12 your submissions in this case and when these decisions
24 15:41:17 were handed down, and we're also familiar with the
25 15:41:21 points in the code that you have directed us to. we

1 15:41:24 have looked at them. so we are aware of that.

2 15:41:28 i just want one point of clarification, though.

3 15:41:32 with respect to -- you know, we have these two decisions

4 15:41:36 from the court of cassation. but i understand that the

5 15:41:39 first decision of the court of cassation was handed down

6 15:41:42 on 14 march 2021. the case was filed with the court of

7 15:41:47 cassation in 2020, but i think the decision came

8 15:41:51 down march 14, 2021.

9 15:41:54 mr el haddad: correct, march 2021, correct.

10 15:41:56 chairperson: so you see, we're very familiar with what is

11 15:42:00 going on and i just -- of course i'm going to allow

12 15:42:03 mr bin touq to respond to what you just said, but really

13 15:42:06 at this point, what i was seeking really was just an

14 15:42:10 update on anything that has occurred.

15 15:42:15 before i come back to you, mr bin touq,

16 15:42:18 mr el haddad, is there anything else with respect to

17 15:42:22 proceedings in the dubai courts in general that relate

18 15:42:26 to this proceeding that we should know about? anything

19 15:42:29 other than the revocation or retraction?

20 15:42:35 mr el haddad: yes, of course. basically, i'll just let

21 15:42:39 you know about the enforcement proceedings that we've

22 15:42:42 taken or that we filed before dubai courts.

23 15:42:46 al mutatawera had already paid so far in the

24 15:42:51 execution case, the amount of 14 million dirhams has

25 15:42:57 been already paid and has been already deposited before

1 15:43:02 the court.

2 15:43:04 so this amount is of course a partial settlement or

3 15:43:08 was a partial settlement of the total -- out of the

4 15:43:13 total judgment amounts. al mutatawera basically

5 15:43:16 requested the court to suspend the execution proceedings

6 15:43:21 and -- before that, has sought the court authorisation

7 15:43:26 to allow a payment plan for the remaining amount.

8 15:43:31 so that application is on the system with dubai

9 15:43:34 courts and the court has accepted their suggested

10 15:43:39 payment plan. they were supposed now to pay the

11 15:43:42 remaining amount on monthly instalments as of -- the

12 15:43:47 first instalment will be due on 25 july.

13 15:43:51 so this is exactly what is going on right now in the

14 15:43:55 enforcement proceedings.

15 15:43:57 chairperson: okay. mr bin touq, in light of respondent's

16 15:44:01 comments, would you like to add anything with respect to

17 15:44:04 this issue of the status of everything going on in the

18 15:44:08 dubai courts?

19 15:44:10 mr bin touq: we explain that the case still not been

20 15:44:13 having any ruling yet and we see the proceeding in dubai

21 15:44:16 courts still going on, and it have no relevance to

22 15:44:22 examine the jurisdiction over the contract, which has

23 15:44:25 been signed and accepted by crc.

24 15:44:32 in dubai court, we got a stay and suspension waiting

25 15:44:36 for the ruling and this is the current status.

1 15:44:43 chairperson: i have another question related to
2 15:44:46 claimant's application in front of the judicial
3 15:44:51 authority. this has come in as exhibit c8. i'm
4 15:44:56 wondering what the status of that application is, mr bin
5 15:45:00 touq, if you wouldn't mind letting us know.
6 15:45:04 mr bin touq: we file the application and still they did
7 15:45:07 not finalise the quorum and who will review the case.
8 15:45:12 chairperson: on what day was that application filed?
9 15:45:14 i couldn't tell from the application itself.
10 15:45:18 mr bin touq: one minute. let me check, if you allow me.
11 15:45:34 (pause).
12 15:45:36 i don't have it in front of me. if i you allow me
13 15:45:39 some time.
14 15:45:41 chairperson: it's not imperative that i know. i just was
15 15:45:44 wondering for the --
16 15:45:46 mr bin touq: it was filed in march and still there is no
17 15:45:49 decision on that.
18 15:45:50 chairperson: it was filed at some point in march of this
19 15:45:52 year?
20 15:45:53 mr bin touq: yes.
21 15:46:03 chairperson: mr bin touq, in that application before the
22 15:46:09 judicial authority, is claimant asking the judicial
23 15:46:12 authority to stay this arbitration?
24 15:46:20 mr bin touq: again?
25 15:46:22 chairperson: in that application before the judicial

1 15:46:25 authority, has claimant asked the judicial authority to
2 15:46:32 stay this arbitration?
3 15:46:34 mr bin touq: no, to give a stay under proceeding in dubai
4 15:46:38 courts.
5 15:46:39 chairperson: can we just look at page 8 of exhibit c8.
6 15:46:43 i just want to understand. it may be a translation
7 15:46:48 issue. but i want to look at this.
8 15:47:03 do you have it in front of you?
9 15:47:05 mr bin touq: i'm opening. one minute.
10 15:47:13 it's been filed on 5 february, ma'am.
11 15:47:17 chairperson: 5 february it was filed?
12 15:47:18 mr bin touq: yes.
13 15:47:25 chairperson: do you have exhibit c8, page 8?
14 15:47:27 mr bin touq: yes, i think it's translation error.
15 15:47:29 chairperson: you see the english there.
16 15:47:32 mr bin touq: yes.
17 15:47:32 chairperson: so you see what's causing me to ask the
18 15:47:34 question.
19 15:47:35 mr bin touq: yes.
20 15:47:35 chairperson: so what is the accurate translation of this
21 15:47:39 section?
22 15:47:40 mr bin touq: it's to give a stay on the proceeding in
23 15:47:43 dubai courts.
24 15:47:44 chairperson: so no stay of this arbitration?
25 15:47:46 mr bin touq: no, no.

1 15:47:50 chairperson: could i please hear from respondent in terms
2 15:47:52 of this application before the judicial authority?
3 15:48:01 mr el haddad: yes, it's still pending.
4 15:48:05 chairperson: nothing further to add on that, though?
5 15:48:09 mr el haddad: no.
6 15:48:11 chairperson: i also had a question related to the issue
7 15:48:15 of costs. i saw that in both parties' submissions, both
8 15:48:20 parties have asked us to award them costs, if they
9 15:48:25 prevail.
10 15:48:27 so i just want to ask, mr bin touq, does claimant
11 15:48:30 agree that we have the power to make an award of costs
12 15:48:34 in this case?
13 15:48:36 mr bin touq: yes.
14 15:48:37 chairperson: i would like to ask the same of respondent.
15 15:48:39 does respondent agree that we have the power to make an
16 15:48:42 award of costs in this case?
17 15:48:48 mr el haddad: yes, of course.
18 15:48:51 chairperson: i also wanted to flag for the parties that
19 15:48:58 the tribunal is not inclined to get cost submissions
20 15:49:02 from the parties at this stage. no matter what we
21 15:49:06 decide with respect to jurisdiction, we'll come back to
22 15:49:09 the parties on costs. we aren't going to deal with this
23 15:49:12 right now.
24 15:49:14 so obviously, if we decide we have jurisdiction, the
25 15:49:17 issue of costs can be put off until some time long into

1 15:49:21 the future. even if we decide we don't have
2 15:49:24 jurisdiction, we'll come back to the parties with a view
3 15:49:28 to getting submissions on costs and making a cost
4 15:49:31 determination soon after that.
5 15:49:35 whatever we do now will necessarily be a partial
6 15:49:38 award, not a final award in this case, no matter what we
7 15:49:44 decide.
8 15:49:46 maybe with that, if i can turn to my co-arbitrators,
9 15:49:52 mr smith, is there anything that you would like to raise
10 15:49:56 at this stage, any questions you may have for counsel?
11 15:50:00 mr smith: i did have a couple.
12 15:50:03 just following on from your questioning in relation
13 15:50:06 to the two pending cases or two pending reviews locally.
14 15:50:16 i just wanted to ask -- and i'll ask in the same way you
15 15:50:20 did, first to mr bin touq and then ask for a response
16 15:50:23 from al jazeera.
17 15:50:25 first question, or possibly the only question is:
18 15:50:32 did the respondent participate in either of those
19 15:50:38 processes, or is it simply an application that is
20 15:50:42 decided based on the claimant's application?
21 15:50:48 mr el haddad: yeah, thank you for the question. no, as
22 15:50:51 per the law, it's a one-sided application, where the
23 15:50:58 opponent does not have the right obviously to
24 15:51:01 participate or to reply or to make a submission, to make
25 15:51:08 a submission to address the claimant's application.

1 15:51:14 so obviously i can say it's one, it's an
2 15:51:18 application, it's a one-sided application done by or
3 15:51:23 filed by al mutatawera. we haven't participated.
4 15:51:29 mr smith: thank you for clarification.
5 15:51:30 just asking mr bin touq if that's correct.
6 15:51:33 mr bin touq: there is two cases. one case, he's right,
7 15:51:36 we file it by al mutatawera. in other case, they file
8 15:51:41 their reply to that case.
9 15:51:43 mr el haddad: yeah, i was talking about the retraction
10 15:51:46 application, not about both applications. just to make
11 15:51:49 it clear.
12 15:51:49 mr smith: similarly, just in terms of the dubai courts
13 15:51:52 proceedings, all of this started as many of these cases
14 15:51:58 do, with a precautionary attachment application. have
15 15:52:00 the bank guarantees been returned?
16 15:52:07 mr el haddad: bank guarantee, i believe so, yes. i have
17 15:52:10 to get back to the client to reconfirm, but obviously we
18 15:52:13 believe so, yes.
19 15:52:15 mr smith: so that's not part of the execution case?
20 15:52:22 mr el haddad: can i just get back to you on this?
21 15:52:24 mr smith: i'll ask mr bin touq as well. he may be able
22 15:52:26 to clarify.
23 15:52:27 mr bin touq: yes, it's already back to them and it stays,
24 15:52:32 remain, and they have the bond back.
25 15:52:36 mr smith: thank you. then while you're there, mr bin

1 15:52:38 touq, i had a more technical question in relation to the
2 15:52:44 letter of acceptance. it features in your submissions
3 15:52:50 to the tribunal, but i just wanted to ask what the
4 15:52:54 claimant says is the effect of the letter of acceptance
5 15:52:59 in this case. what's your reliance on it?
6 15:53:03 mr bin touq: it refer to the clause, it's very clearly
7 15:53:07 stamped and signed by both party, the acceptance of the
8 15:53:09 clause of arbitration of diac, and followed by the
9 15:53:14 contract and it's been already included, and it's never
10 15:53:18 been changed on any subcontract.
11 15:53:22 mr smith: but are you saying to us that we can find
12 15:53:26 jurisdiction from, i think it's clause 4.2 in the letter
13 15:53:32 of acceptance, or are you saying that the letter of
14 15:53:35 acceptance is evidence that there is agreement of the
15 15:53:38 arbitration clause within the contract proper?
16 15:53:43 mr bin touq: yes.
17 15:53:44 mr smith: so you're saying, rather than being
18 15:53:46 a standalone arbitration agreement, it is evidence of
19 15:53:51 the parties' agreement later in the formal contract that
20 15:53:53 was signed?
21 15:53:59 mr bin touq: what's been explained, that because of the
22 15:54:00 process and the project fast-track, they signed the loa
23 15:54:04 and later they signed the contract.
24 15:54:12 mr smith: i might not have been sufficiently clear. so
25 15:54:16 you're saying that it's evidence that they agreed with

1 15:54:22 the arbitration clause in the contract that was signed,
2 15:54:27 rather than the clause in the letter of acceptance being
3 15:54:31 a standalone arbitration agreement.
4 15:54:33 mr bin touq: yes.
5 15:54:40 mr smith: just for the sake of good order, i'm just
6 15:54:43 wondering whether that's something that the respondent
7 15:54:47 would like to respond to or whether that can just be
8 15:54:53 left as it is.
9 15:54:55 mr el haddad: actually, yes. that loa letter was before
10 15:55:00 the contract and obviously, that document, the claimant
11 15:55:07 himself has acknowledged that it was never been
12 15:55:10 submitted to the court.
13 15:55:12 i'm wondering here, if this document was so
14 15:55:15 important, and this document would have obviously
15 15:55:20 supported their allegations in terms of the
16 15:55:24 applicability of the arbitration clause, so why it was
17 15:55:28 not submitted before the court?
18 15:55:31 again here i want to ask another question. our
19 15:55:36 colleague mr obaid was saying that we have never
20 15:55:38 accepted, we have never accepted the jurisdiction of
21 15:55:42 dubai courts, which is not true. they decided to file
22 15:55:47 an arbitration case after six years. they decided to
23 15:55:53 file an arbitration case.
24 15:55:55 getting back to your question, so if this loa was so
25 15:56:01 important, and if that loa would have changed on the

1 15:56:06 supposition that this loa, the submission of this loa to
2 15:56:11 the court would have changed the outcome of the supreme
3 15:56:15 court decision or would have pushed the court to accept
4 15:56:19 the jurisdiction of diac.
5 15:56:22 so let's put this as, like, supposedly. why it has
6 15:56:26 never been submitted? that's a question here. the
7 15:56:30 claimant can't write now, say that it was a mistake. if
8 15:56:35 it was a mistake, as he said earlier, that's his mistake
9 15:56:39 and they should bear the consequences of that mistake.
10 15:56:42 if diac had jurisdiction, why diac case was not
11 15:56:47 filed since 2018. the claimant himself is saying that
12 15:56:52 in the current claim that the tribunal is deciding on,
13 15:56:57 they are claiming, they are making huge claims.
14 15:57:00 all these claims were made before the court.
15 15:57:05 basically, two committees were appointed in compliance
16 15:57:10 with al mutatawera request. the court have given them
17 15:57:15 three experts. so if diac has jurisdiction, why the
18 15:57:19 case has not been filed since 2018? if they are
19 15:57:23 rightful in their claim, why they didn't do this case in
20 15:57:27 2018?
21 15:57:28 actually, we know for a fact that if we consider the
22 15:57:34 unlawful termination of the contract that took place,
23 15:57:37 which was not in compliance with the contractual terms,
24 15:57:41 if we consider this, we would understand that
25 15:57:45 al mutatawera back then had the intention to terminate

1 15:57:48 the contract and not to pay. that's the only reasonable
2 15:57:53 explanation. otherwise, al mutatawera would have filed
3 15:57:58 an arbitration case in 2018 and claimed what they are
4 15:58:03 alleging to be entitled for.

5 15:58:09 mr smith: i think that goes a long way beyond what
6 15:58:11 i initially asked and probably verges on being testimony
7 15:58:14 from the bar table.

8 15:58:18 i don't think it's necessarily anything that we need
9 15:58:20 to speculate on, why they might have taken decisions
10 15:58:26 that they did.

11 15:58:33 i suppose the question that follows up from
12 15:58:35 initially what you said there is just in relation to the
13 15:58:42 loa not having been put before the court of cassation.

14 15:58:46 is it the respondent's position that the res judicata
15 15:58:52 would therefore apply to any argument that could have
16 15:58:54 been made at the time? i note that you put forward
17 15:58:56 a couple of articles in support of your submissions, but
18 15:59:00 is that the gist of what you're saying?

19 15:59:08 mr el haddad: actually, the law has drawn a legal path in
20 15:59:13 the event that any litigant who basically, for a valid
21 15:59:16 reason, couldn't submit a document before the court,
22 15:59:20 there is a legal path drawn by the law, which allows him
23 15:59:24 to refile or to -- to refile the case and get the court
24 15:59:29 look again into his case, which has never been followed
25 15:59:32 by the claimant.

1 15:59:35 so if this document was not submitted for a valid
2 15:59:39 reason, like for being missed or for being, let's say,
3 15:59:44 stolen or kept in a place, locked place or whatever,
4 15:59:49 there is a legal path that the claimant can, you know,
5 15:59:57 follow, which they didn't.

6 16:00:01 mr smith: but let me be devil's advocate on that view,
7 16:00:05 then, and just to tease this out and not to make the
8 16:00:09 claimant's case for it. but the claimant's position
9 16:00:11 here is that all disputes should be taken to
10 16:00:13 arbitration. so it would stand to reason, wouldn't it,
11 16:00:18 that it wouldn't commence its own case in relation to
12 16:00:21 that.

13 16:00:22 but the question i asked you that i don't think
14 16:00:25 i got an answer to was: this failure to submit the loa
15 16:00:31 in the court cases on the part of the claimant, in your
16 16:00:34 submission, is that part of the res judicata submission
17 16:00:38 that you made before us?

18 16:00:45 ms habib: regarding the res judicata, the court of
19 16:00:48 cassation is highlighting the fact that the question
20 16:00:52 that was raised by the claimant, that the jurisdiction
21 16:00:56 is diac arbitration, that's when the dubai courts, court
22 16:01:02 of cassation has said: no, this matter has already been
23 16:01:06 decided by the supreme court or court of cassation
24 16:01:08 already and now they cannot again look into this matter
25 16:01:12 in another appeal.

1 16:01:13 as you're aware, there were two cassation courts
2 16:01:16 matters. one is 631 in which the court of cassation
3 16:01:20 decided no arbitration, invalidity. they returned the
4 16:01:24 matter to court of appeal. but when it went again, they
5 16:01:28 again went for court of cassation, in second court of
6 16:01:31 cassation appeal. court said: this matter has already
7 16:01:34 been decided by us and we cannot again look into this
8 16:01:38 matter. that's what the court said.
9 16:01:41 mr smith: okay.
10 16:01:47 then the next question i've got for you, while
11 16:01:50 you're there, ms raheela, and this is one that again
12 16:01:56 goes to something that's probably the heart of this case
13 16:02:00 for us: on the one hand, you say we've got a court of
14 16:02:04 cassation decision, and i think the words you used are
15 16:02:08 that the court of cassation has annulled the arbitration
16 16:02:12 clause or invalidated it.
17 16:02:16 ms habib: yes.
18 16:02:17 mr smith: yet, we sit here as a tribunal in front of you
19 16:02:21 and we are required to comply with the federal
20 16:02:24 arbitration law. as you know, clause 19 of the federal
21 16:02:28 arbitration law says that it's for the arbitral tribunal
22 16:02:33 to make a decision on its jurisdiction, including any
23 16:02:43 plea based on the absence, invalidity or failure of the
24 16:02:46 arbitration agreement to cover the subject matter of
25 16:02:49 a dispute.

1 16:02:50 now, i don't think you will dispute that the federal
2 16:02:53 arbitration law is a valid piece of federal
3 16:02:57 legislation --
4 16:02:58 mr el haddad: no, no, absolutely.
5 16:02:59 mr smith: -- in the uae, but how do we reconcile those
6 16:03:02 two things? because you're saying to us on the one
7 16:03:06 hand, we can't make a decision because the court of
8 16:03:08 cassation has got in first. but on the other hand, i've
9 16:03:12 got a statute here that is signed by the ruler of dubai
10 16:03:16 that seems to indicate to us that that's a decision that
11 16:03:20 we are supposed to make.
12 16:03:21 so, before you answer, the second bit of the
13 16:03:26 question or the background to the question is: the
14 16:03:29 second part of article 19 says that if we do make an
15 16:03:33 award on jurisdiction, it's then for the court, which in
16 16:03:38 that case would be the court of appeal of dubai, to
17 16:03:41 decide whether or not we got that decision right.
18 16:03:45 how do we reconcile the procedure in the federal
19 16:03:48 arbitration law with what the court of cassation has
20 16:03:51 done in this case?
21 16:03:53 and, mr bin touq, i hope you were listening because
22 16:03:56 i don't think i want to repeat the question again,
23 16:03:58 because the same question is coming to you to explain
24 16:03:59 that as well.
25 16:04:01 mr bin touq: it's very clear. the tribunal have the

1 16:04:03 power to examine the jurisdiction over the case, and
2 16:04:08 this will be subject to being re-examined by dubai
3 16:04:10 courts. it's not the other way around. this is what
4 16:04:14 the law says.
5 16:04:17 mr smith: sorry, ms raheela, what's your answer to that
6 16:04:20 question?
7 16:04:21 mr bin touq: yes, tribunal have the right to examine the
8 16:04:25 jurisdiction over the contract between both parties, and
9 16:04:28 after that, they have the right to appeal it in dubai
10 16:04:32 courts.
11 16:04:35 mr smith: sorry, just to ask the respondent now for their
12 16:04:38 answer to that question.
13 16:04:39 mr el haddad: well, actually, if we read all together
14 16:04:43 article 8, what you said is very clear. i mean, you
15 16:04:46 have your own -- you can decide on the jurisdiction,
16 16:04:53 absolutely. no one is questioning that. but in the
17 16:04:55 same time, you cannot basically revive or make a dead
18 16:05:06 arbitration clause as alive. the arbitration clause has
19 16:05:09 been nullified, has been considered null and void, and
20 16:05:14 obviously, when an arbitration clause is invalidated by
21 16:05:20 the highest court in any jurisdiction in the world, no
22 16:05:24 one can obviously argue that.
23 16:05:29 so yes, correct, what you said is 100 per cent
24 16:05:33 correct, when an arbitration clause is not nullified or
25 16:05:38 is not annulled by the court, by the highest court.

1 16:05:49 mr bin touq: the examine of jurisdiction is related to
2 16:05:51 the assessment of tribunal. can be reviewed by the
3 16:05:56 court after that. not the other way around.

4 16:06:00 mr el haddad: when there is no final supreme court
5 16:06:02 decision. this is possible, yes. yes, mr obaid, that's
6 16:06:07 correct. but when there is no cassation decision,
7 16:06:09 you're applying the arbitration clause.

8 16:06:13 mr smith: thank you. i think this gets to the heart of
9 16:06:15 where i was going and thank you both for your oral
10 16:06:17 submissions on that.

11 16:06:19 i suppose my closing point here is that, to me, it
12 16:06:24 seems a little bit like: what came first, the chicken or
13 16:06:27 the egg. you both heard this thing. because i think
14 16:06:32 the respondent's position is that we have no
15 16:06:34 jurisdiction because the court of cassation has already
16 16:06:37 killed the arbitration agreement. whereas i think
17 16:06:39 mr bin touq is saying, well, actually, the only way that
18 16:06:44 the arbitration agreement can be annulled is if we make
19 16:06:49 a decision and then, if that's appealed and then the
20 16:06:54 court of appeal finds --

21 16:06:55 mr el haddad: can i ask a question to --

22 16:06:57 mr smith: ask us a question?

23 16:06:59 mr el haddad: yes.

24 16:07:00 mr smith: i think that's a matter for the chair.

25 16:07:02 mr el haddad: actually, question in the same context.

1 16:07:04 it's not a question.

2 16:07:06 so let's suppose that the tribunal decides on the

3 16:07:10 jurisdiction. what happens? the matter, then, they

4 16:07:16 have to validate the arbitration clause before the court

5 16:07:19 of appeal. can the court of appeal contradict a supreme

6 16:07:24 court decision? can a court of appeal, which is a lower

7 16:07:30 court, then they can nullify a supreme court decision?

8 16:07:38 that's a question.

9 16:07:41 so obviously --

10 16:07:45 mr bin touq: they can --

11 16:07:46 mr el haddad: -- that power to any arbitration panel in

12 16:07:50 any part of the world is given, correct. but only when

13 16:07:56 an arbitration clause is still valid or is still not

14 16:08:01 nullified or has not been nullified.

15 16:08:05 so that is exactly. so we agree, we share the same

16 16:08:13 interpretation. but only there is a small difference,

17 16:08:16 is that you cannot survive death. a death is a death.

18 16:08:21 it's death. you cannot survive it.

19 16:08:26 mr smith: mr bin touq, would you like to respond and then

20 16:08:28 i think that's the end of my question.

21 16:08:30 mr bin touq: the point now, the examination of the

22 16:08:31 arbitration clause is a sole power of tribunal to decide

23 16:08:36 and can be reviewed by the appeal court after that.

24 16:08:39 it's not other way around.

25 16:08:42 now, you have a cassation ruling, it's not about the

1 16:08:44 assumption of assessment of tribunal jurisdiction over
2 16:08:48 a contract signed by loa, signed, stamped by you. you
3 16:08:52 did not deny that. you did not deny signing the
4 16:08:56 contract and we have diac as a jurisdiction.
5 16:09:00 the sole power to tribunal to decide and examine
6 16:09:04 that the contract between both parties have arbitration
7 16:09:08 clause, has been in writing, has been signed, has been
8 16:09:11 stamped and, based on their award, both party can go and
9 16:09:18 assist in the appeal court. this is what the law says.
10 16:09:23 mr smith: thank you both. that was very, very helpful.
11 16:09:28 back to the chair.
12 16:09:33 chairperson: mr mcdougall, do you have questions that you
13 16:09:36 would like to discuss with counsel?
14 16:09:39 mr mcdougall: i do. thank you. can you hear me?
15 16:09:43 mr bin touq: yes.
16 16:09:45 mr mcdougall: i'll try and take this in pieces.
17 16:09:49 i just want to make sure that i've understood the
18 16:09:53 factual background and to confirm whether there's
19 16:09:58 agreement or disagreement on the following factual
20 16:10:01 background.
21 16:10:05 there was a tender. the tender included a diac
22 16:10:14 arbitration clause. there was a letter of agreement
23 16:10:21 entered into after the tender, which contains a diac
24 16:10:27 arbitration clause, and there was a contract agreement
25 16:10:36 entered into after the letter of acceptance agreement

1 16:10:44 and it too contained a diac arbitration clause.

2 16:10:48 i just want to ask each party if i've stated those

3 16:10:52 facts correctly, and i'll start with the claimant.

4 16:10:56 mr bin touq, do you have the factual background

5 16:10:59 right? i'm not asking for a submission, i just want to

6 16:11:02 know, do i have the facts right?

7 16:11:05 mr bin touq: yes.

8 16:11:06 mr mcdougall: okay. then respondent, have i stated those

9 16:11:09 facts correctly or not?

10 16:11:14 mr el haddad: that's correct.

11 16:11:15 mr mcdougall: okay. my next question, which is also

12 16:11:19 a factual one. am i correct -- and if you want to look

13 16:11:28 at it, you're welcome to look at it, it's exhibit c1,

14 16:11:31 the letter of acceptance. am i correct that the letter

15 16:11:34 of acceptance, on the page that has the arbitration

16 16:11:39 agreement, has the parties' signatures? is that

17 16:11:43 a correct fact?

18 16:11:45 i'll start with the claimant, "yes" or "no"?

19 16:11:47 mr bin touq: yes.

20 16:11:48 mr mcdougall: and respondent, is that a correct fact,

21 16:11:50 "yes" or "no"?

22 16:11:51 ms habib: yes.

23 16:11:52 mr mcdougall: then am i also correct that the letter of

24 16:11:56 acceptance provides that the parties will enter into

25 16:12:02 a -- quote, unquote -- formal contract?

1 16:12:06 is that correct, mr bin touq, for the claimant?

2 16:12:08 mr bin touq: yes.

3 16:12:09 mr mcdougall: is that correct for the respondent?

4 16:12:11 ms habib: yes.

5 16:12:13 mr el haddad: that is correct.

6 16:12:14 mr mcdougall: then am i also correct, is it also right

7 16:12:18 that the contract agreement, and this is exhibit r1,

8 16:12:24 provides in recital number 3 -- and this is on page 37

9 16:12:30 of my pdf. i don't know if that's the same numbering

10 16:12:33 for everybody else, but the contract agreement, just for

11 16:12:37 your reference, starts in my document at pdf 36. on pdf

12 16:12:44 37, we have the recitals.

13 16:12:46 recital 3 says, and i'll just read the beginning

14 16:12:50 of it:

15 16:12:50 "the following documents shall be deemed to form and

16 16:12:52 be read and construed as part of the contract ..."

17 16:12:55 and (a) is this contract agreement and (b) is the

18 16:13:01 letter of acceptance.

19 16:13:02 so am i right in reading that; do the parties agree

20 16:13:11 that the letter of acceptance forms and is to be read

21 16:13:16 and construed as part of the capital-c contract? is

22 16:13:20 that the claimant's position, mr bin touq?

23 16:13:24 mr bin touq: yes.

24 16:13:25 mr mcdougall: and respondent, do you agree with that

25 16:13:27 statement or not?

1 16:13:29 mr el haddad: the new arbitration law has clearly --

2 16:13:32 mr mcdougall: sorry, that wasn't my question. please

3 16:13:32 answer my question first. do you agree with that

4 16:13:35 statement or not?

5 16:13:36 mr el haddad: what's your question? i couldn't hear

6 16:13:38 what's your question.

7 16:13:39 mr mcdougall: the question is, do you agree that the

8 16:13:42 contract provides, in exhibit r1 in recital number 3,

9 16:13:47 that the letter of acceptance is "deemed to form and be

10 16:13:53 read and construed as part of the contract", capital c.

11 16:13:56 do you agree with that statement?

12 16:13:59 mr el haddad: absolutely.

13 16:14:01 mr mcdougall: okay.

14 16:14:04 mr el haddad: but if you allow me to answer, if you allow

15 16:14:05 me to answer.

16 16:14:07 mr mcdougall: you'll be allowed to make a submission in

17 16:14:09 a moment, i just want to be sure about --

18 16:14:10 mr el haddad: because i didn't complete my answer.

19 16:14:12 mr mcdougall: excuse me. i'm just asking if you agree

20 16:14:14 with these facts.

21 16:14:16 mr el haddad: yes, of course.

22 16:14:16 mr mcdougall: then i will ask you to make whatever

23 16:14:16 submission you want.

24 16:14:18 mr el haddad: of course, of course.

25 16:14:19 mr mcdougall: am i also right in understanding that in

1 16:14:23 the court proceedings, any of the court proceedings,
2 16:14:25 whatever level of the court, that the letter of
3 16:14:28 acceptance was not submitted by either party? is that
4 16:14:32 a correct statement? claimant, is that correct?
5 16:14:35 mr bin touq: no. we submitted it.
6 16:14:38 mr mcdougall: you think it's not correct?
7 16:14:39 mr bin touq: not correct. we submitted in the court.
8 16:14:41 mr mcdougall: why is that not correct? just tell me in
9 16:14:43 what way is it not correct.
10 16:14:44 mr bin touq: it's been submitted in the court.
11 16:14:46 mr mcdougall: okay. well, it's been submitted in the
12 16:14:48 court recently, i understand.
13 16:14:50 mr bin touq: no, it's been previously submitted to the
14 16:14:52 court.
15 16:14:52 mr mcdougall: when you say previously, how far back?
16 16:14:57 mr bin touq: it's in june.
17 16:15:00 mr mcdougall: june of this year or a different year?
18 16:15:03 mr bin touq: last year.
19 16:15:05 mr mcdougall: when the court -- let's use "court" in
20 16:15:09 a broad sense. when the court made its determination
21 16:15:12 that that was not a valid arbitration agreement, had the
22 16:15:15 letter of acceptance been put into the record of
23 16:15:17 materials before the court? "yes" or "no"?
24 16:15:21 mr bin touq: yes.
25 16:15:25 mr mcdougall: i'm puzzled here, because i had understood

1 16:15:27 your position to be that it had not been put into the
2 16:15:30 record before.
3 16:15:31 mr bin touq: i did not mention that. now, they file for
4 16:15:35 the case. our standing was we have arbitration clause
5 16:15:39 and all the way was we have arbitration clause, dubai --
6 16:15:44 mr mcdougall: let me stop you there.
7 16:15:47 mr bin touq: i will answer the question --
8 16:15:49 mr mcdougall: i'm being very specific. the letter of
9 16:15:50 acceptance --
10 16:15:50 mr bin touq: the letter of acceptance --
11 16:15:50 mr mcdougall: -- have i understood your -- excuse me,
12 16:15:51 please don't interrupt me.
13 16:15:53 mr bin touq: okay.
14 16:15:55 mr mcdougall: i will speak and then you can speak, and we
15 16:15:57 will go like that.
16 16:15:59 mr bin touq: no problem.
17 16:16:00 mr mcdougall: otherwise we are going to be here for far
18 16:16:02 too long and we have a court reporter who will not be
19 16:16:04 able to keep a transcript. understood?
20 16:16:07 mr bin touq: yes, clear.
21 16:16:08 mr mcdougall: that goes for both parties, by the way.
22 16:16:11 the letter of acceptance, i understood your written
23 16:16:14 submissions to us in this arbitration to be that the
24 16:16:17 letter of acceptance had not been provided to the court.
25 16:16:22 was the letter of acceptance provided to the court?

1 16:16:26 if so, when?

2 16:16:29 mr bin touq: it's provided to the court, it's provided

3 16:16:31 in june 2023 and provided in our two cases which is

4 16:16:35 pending for ruling.

5 16:16:37 mr mcdougall: but you're saying not before june 2023;

6 16:16:39 have i understood that properly?

7 16:16:41 mr bin touq: yes, yes.

8 16:16:43 mr mcdougall: let me just confirm with respondent. do

9 16:16:46 you agree with those facts, that that is when the letter

10 16:16:48 of acceptance was provided to the courts? only

11 16:16:52 in june 2023?

12 16:16:54 mr el haddad: i don't know. we don't know honestly when

13 16:16:56 exactly.

14 16:16:58 mr mcdougall: how is that possible that you don't know?

15 16:17:01 mr el haddad: if the claimant is saying he knows, then,

16 16:17:03 you know, i don't mind. i mean --

17 16:17:06 mr mcdougall: you're not disputing that fact.

18 16:17:09 ms habib: sir --

19 16:17:10 mr el haddad: at all. actually i have no -- actually,

20 16:17:12 for me, our position is very clear. that --

21 16:17:15 mr mcdougall: just a moment, please.

22 16:17:17 mr el haddad: no, no, you're asking me question.

23 16:17:19 mr mcdougall: no, my question was very clear. do you

24 16:17:21 dispute or not that the first time the letter of

25 16:17:24 acceptance was submitted to the courts was in june 2023;

1 16:17:27 "yes" or "no"?

2 16:17:29 ms habib: sir, in their own written submissions

3 16:17:32 respondent said that they never submitted this document

4 16:17:35 before the court. i'm just checking where it is

5 16:17:37 written. i will give you the reference.

6 16:17:39 mr mcdougall: okay. so your position is the claimant is

7 16:17:43 changing its position.

8 16:17:45 ms habib: yes.

9 16:17:46 mr mcdougall: we'll come back to that in a moment.

10 16:17:49 ms habib: yes.

11 16:17:49 mr mcdougall: there seems to be disagreement on the

12 16:17:51 letter of acceptance.

13 16:17:53 ms habib: yes. i'm checking where it is mentioned. i'm

14 16:17:56 sorry.

15 16:17:56 mr mcdougall: that's fine. no problem. please take your

16 16:17:58 time.

17 16:17:58 while you're looking. prior to june 2023, let's

18 16:18:05 take that so that we don't have an argument, did the

19 16:18:10 court -- i mean, the contract agreement refers to the

20 16:18:13 letter of acceptance. right there in the recital.

21 16:18:15 i just mentioned it. did the court ever ask to be

22 16:18:20 provided with a copy of the letter of acceptance; "yes"

23 16:18:23 or "no"? claimant?

24 16:18:25 mr bin touq: no.

25 16:18:27 mr mcdougall: respondent?

1 16:18:30 mr el haddad: we have to get back to the file actually.
2 16:18:33 we have to get back to the file to answer these details
3 16:18:36 because the case, you know, when a case already is
4 16:18:41 decided years back, you don't remember the facts.
5 16:18:46 mr mcdougall: the facts are very important for us here.
6 16:18:49 mr el haddad: absolutely.
7 16:18:50 mr mcdougall: you have had opportunities to make
8 16:18:52 submissions to us, and i'm asking you what your client's
9 16:18:55 position is with respect to the letter of acceptance and
10 16:18:59 the contract agreement and what was provided to whom,
11 16:19:01 when.
12 16:19:03 if you can't help me, you can't help me. but
13 16:19:05 i understand, according to the claimant, that prior
14 16:19:08 to june 2023, the court did not ask for a copy of the
15 16:19:13 letter of acceptance, and i'm just asking whether you
16 16:19:15 agree or disagree with that. if you can't say, that's
17 16:19:18 fine. i just want to know.
18 16:19:22 mr el haddad: yes.
19 16:19:23 ms habib: sir, i found out that it's the claimant's
20 16:19:26 response dated 1 april, point number 8, in which they
21 16:19:31 said that the claimant confirmed that this document was
22 16:19:33 never submitted throughout the dubai courts proceedings,
23 16:19:37 which was a procedural error regarding this document.
24 16:19:42 they have written.
25 16:19:46 mr mcdougall: would you like to comment on that,

1 16:19:47 claimant?

2 16:19:53 mr bin touq: it's been already submitted and now the

3 16:19:55 question was, do they know it's been submitted or not.

4 16:20:00 we said we have an error on our submission regarding the

5 16:20:04 loa, it's been submitted to the court.

6 16:20:07 mr mcdougall: i think i've exhausted the questions in

7 16:20:11 terms of the facts that i was trying to get at.

8 16:20:17 as to the rest, i think it will be for deliberations

9 16:20:19 and discussion with my co-arbitrators. i think i'll

10 16:20:23 stop there. thank you.

11 16:20:27 chairperson: i just want to have a look at my notes to

12 16:20:28 see if i have any further questions in light of what has

13 16:20:33 been discussed so far.

14 16:20:53 i have one question which i would like to ask mr bin

15 16:20:56 touq.

16 16:20:58 mr bin touq, the parties' dispute arose in

17 16:21:05 october 2018 and claimant did not file for arbitration

18 16:21:12 until july 2023. i'm just wondering why? why did

19 16:21:20 claimant wait so long to file for arbitration when it

20 16:21:26 was objecting in the dubai courts that there was, in

21 16:21:29 fact, an arbitration agreement?

22 16:21:35 mr bin touq: we as a counsel, we came in on june 2023 and

23 16:21:39 based on our discussion with them, we proceed on the

24 16:21:44 case. previously, there was -- they have no clarity how

25 16:21:50 this was going in the court and they was, from the

1 16:21:54 day one on that proceeding, which we was not involved,
2 16:21:58 they stating that they have jurisdiction.
3 16:22:01 now, not filing, this was their decision.
4 16:22:07 chairperson: so you don't know why your client waited so
5 16:22:11 long to come to the diac; is that correct?
6 16:22:16 mr bin touq: yes.
7 16:22:19 chairperson: also, as we flagged, one of the issues -- of
8 16:22:24 course we have been talking a lot about jurisdiction,
9 16:22:27 but there's also an issue of admissibility in this case
10 16:22:30 as it's been characterised, particularly in claimant's
11 16:22:34 submissions.
12 16:22:35 so another question for you, mr bin touq, is
13 16:22:40 i understand that before filing for arbitration,
14 16:22:45 claimant did not comply with any of the pre-arbitration
15 16:22:49 steps that are in sections 67.1 and 67.2 of the dispute
16 16:22:56 settlement provisions.
17 16:22:58 is my understanding correct?
18 16:23:00 mr bin touq: no, they was enter on the discussion and
19 16:23:03 there's been not entertained by them and, based on that,
20 16:23:08 they call for couple of meetings, and they was ready to
21 16:23:11 have the final accounts and settle with them, but they
22 16:23:15 try to proceed to dubai -- first of all, they close the
23 16:23:18 school and they have the labour on the site and they
24 16:23:21 been forced to call police and they call for discussion
25 16:23:25 to have as per the contract, and they do not follow, and

1 16:23:28 they proceed to dubai courts.

2 16:23:32 chairperson: sorry, sir. i'm talking about with respect

3 16:23:34 to the claims that claimant is asserting in this

4 16:23:37 arbitration.

5 16:23:39 with respect to the claimant's claims, it's my

6 16:23:44 understanding that claimant has not taken its own claims

7 16:23:50 through the pre-arbitral steps in section 67.1 and 67.2.

8 16:23:58 is that correct? is my understanding correct?

9 16:24:02 mr bin touq: no, it's been followed. it was previously

10 16:24:06 with the previous counsel and with the client

11 16:24:10 themselves, but not with us. we got involved in the

12 16:24:15 matter in june 2023.

13 16:24:17 chairperson: so you're saying that the claims that you're

14 16:24:19 bringing here have already been submitted to the

15 16:24:21 engineer?

16 16:24:24 mr bin touq: no, we do not have the claim, what we have

17 16:24:28 filed, submitted to the engineer.

18 16:24:29 chairperson: you did not submit it.

19 16:24:31 mr bin touq: it was a discussion with the consultant,

20 16:24:32 with the contractor, to have discussion as per the

21 16:24:38 contract, to have amicable settlement.

22 16:24:45 chairperson: okay, but they weren't submitted to the

23 16:24:47 engineer?

24 16:24:48 mr bin touq: no.

25 16:25:16 chairperson: apart from the issue of discussing

1 16:25:19 post-hearing written submissions, i don't have any other
2 16:25:23 questions for the parties, but i don't know, mr smith,
3 16:25:27 do you perhaps have anything further that you wanted to
4 16:25:30 raise with the parties?
5 16:25:32 mr smith: no, there's nothing. i think it's been a quite
6 16:25:37 helpful discussion for me.
7 16:25:38 chairperson: mr mcdougall, do you have anything else?
8 16:25:41 mr mcdougall: no, other than to thank both parties for
9 16:25:43 their patience with my questions. i appreciate it.
10 16:25:49 chairperson: as the parties know, we had left open this
11 16:25:53 issue of whether the parties would be invited to make
12 16:25:58 post-hearing written submissions on any points.
13 16:26:04 at this stage, the tribunal was able to discuss
14 16:26:07 during the break and the tribunal does not feel that we
15 16:26:12 need any further written submissions from the parties at
16 16:26:16 this stage. but i would like to know the parties' views
17 16:26:20 as to whether they want to make further written
18 16:26:23 submissions and if they do, on what exactly.
19 16:26:28 perhaps mr bin touq, if you would like to address
20 16:26:31 this first.
21 16:26:32 mr bin touq: i think it's all the points been clear from
22 16:26:34 our side and i don't see any need to make any further
23 16:26:37 submission.
24 16:26:39 chairperson: ms habib for respondent, what is your view?
25 16:26:49 mr el haddad?

1 16:26:51 mr el haddad: actually, we have the same feeling. we
2 16:26:52 share the same feeling.
3 16:26:55 chairperson: okay, so you don't see a need for
4 16:26:57 post-hearing written submissions.
5 16:27:01 that's a "no"? the court reporter can't get your
6 16:27:03 shaking your head.
7 16:27:05 mr el haddad: absolutely.
8 16:27:08 mr bin touq: lance, you wanted to add something?
9 16:27:11 mr sheeran: am i allowed? i can answer some of these
10 16:27:12 questions that you're asking.
11 16:27:14 i've been here since before we decided to have
12 16:27:16 a school, and right through the whole process.
13 16:27:20 you asked a question a minute ago. if i'm able to
14 16:27:23 answer it, i can answer it for you.
15 16:27:26 chairperson: mr sheeran, i'm not sure what question
16 16:27:30 you're referring to, but we don't -- we haven't provided
17 16:27:35 for you to give testimony today, which would be a whole
18 16:27:39 process. so i'm not sure what question you're referring
19 16:27:45 to. what question are you referring to?
20 16:27:47 mr sheeran: you asked a question about whether we had
21 16:27:50 gone about trying to settle this prior to arbitration.
22 16:27:55 chairperson: oh, no, that's okay. we don't need to hear
23 16:27:57 more about that at this stage. i think we're fine with
24 16:28:01 respect to that.
25 16:28:04 so it sounds like we don't need any post-hearing

1 16:28:07 written submissions. with that, i think we can bring
2 16:28:12 the proceedings to a close and in that respect, i have
3 16:28:18 questions that i would like to address to both parties.
4 16:28:21 so mr bin touq, i'm going to ask claimant these
5 16:28:25 questions first.
6 16:28:27 does claimant have any objections to the way the
7 16:28:31 proceedings have been conducted?
8 16:28:35 mr bin touq: no.
9 16:28:36 chairperson: do you agree that the parties have been
10 16:28:38 treated equally and that claimant's right to be heard
11 16:28:41 has been respected?
12 16:28:43 mr bin touq: yes.
13 16:28:46 chairperson: i would also like to ask respondent the same
14 16:28:49 questions.
15 16:28:49 so ms habib, does respondent have any objections to
16 16:28:54 the way the proceedings have been conducted?
17 16:29:03 ms habib: no objection.
18 16:29:06 chairperson: then also do you agree that the parties have
19 16:29:08 been treated equally and that respondent's right to be
20 16:29:12 heard has been respected?
21 16:29:13 ms habib: yes.
22 16:29:16 chairperson: with that, i think we are adjourned.
23 16:29:19 i would just like to thank everybody and thank our court
24 16:29:22 reporter for all their helpful work today. this has
25 16:29:26 been very useful for the tribunal.

- 1 16:29:29 i'll ask as people exit the hearing, if my
2 16:29:32 co-arbitrators could please stay on with me once
3 16:29:35 everybody else has left. i would appreciate it.
4 16:29:43 mr el haddad: ms kirby, just one question, if you don't
5 16:29:44 mind. would you share with us the recording? can we
6 16:29:48 ask for the recording?
7 16:29:49 chairperson: yes, the transcript will be available to
8 16:29:53 everybody that is here, the parties and the arbitral
9 16:29:57 tribunal, we will receive the transcript. so you will
10 16:30:00 have the transcript.
- 11 16:30:01 mr el haddad: perfect. thank you.
12 16:30:03 ms habib: thank you.
13 16:30:04 mr bin touq: thank you.
14 16:30:04 chairperson: anything else before we sign off, mr bin
15 16:30:06 touq?
- 16 16:30:07 mr bin touq: no, thank you.
- 17 16:30:09 chairperson: all right. i think we're adjourned. thank
18 16:30:10 you all very much.
19 16:30:19 (4.30 pm)