

**At Asian International Arbitration Center**

**MEMORIAL  
FOR  
RESPONDENT**

**Claimant**

**Respondent**

**Pracheen Kalakaar**

**Chawla & Associates**

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## II. Abbreviations

<b>Term</b>	<b>Official name / Formal name</b>
AIAC	Asian International Arbitration Centre known as the Kuala Lumpur Regional Centre for Arbitration before 28 February 2018
Art.	Article
AT&C	Auction Terms and Conditions
C.	Clarifications to the moot problem
Ed.	Edition
FC	Further Clarifications to the moot problem
MP	Moot problem
Mr. Sadhu	Mr. Hari Sadhu
Mr. Wong	Mr. Gregory Wong
P.	Page
Para.	Paragraph(s)
Sec.	Section

the Artwork	the Bamboo and the Panda
the Claimant	Pracheen Kalakaar
the Parties	the Claimant and the Respondent
the Respondent	Chui's
USD	United States Dollar(s)

### III. Index of Authorities

#### Articles and Works of Publicists

<b>Abbreviation</b>	<b>Books/Articles</b>	<b>Page No</b>
Markesinis & Munday	B.S. Markesinis, R.J.C. Munday  An Outline of the Law of Agency Second Ed.  Published by Butterworths Law (1986)	23
Peden & Carter	Elisabeth Peden, John Carter  Entire Agreement and Similar Clauses  Journal of Contract Law, Vol. 22, No. 1, pp.  1-15, 2006  Sydney Law School Research Paper No.  07/53	22

Cases

<b>Abbreviation</b>	<b>Cases</b>	<b>Page No.</b>
Crampsey case	Crampsey v Deveney [1969] S.C.R. 267  Supreme Court of Canada  1968-12-20	24
Poussard case	Poussard v Spiers and Pond  [1876] 1 QBD 410  25 April 1876  Divisional Court, England	26
Bettini case	Bettini v Gye [1876] 1 QB 183  Queen's Bench, England	26
Bentsen case	Bentsen v Taylor, Sons & Co  [1893] 2 QB 281  England	27
Bunge case	Bunge Corporation v Tradax Export SA  [1981] UKHL 11	28

	England	
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Statutes

<b>Abbreviation</b>	<b>Citation</b>	<b>Page No.</b>
the AIAC Arbitration Rules	the AIAC Arbitration Rules 2018	30, 31, 32
the AIAC Fast Track Arbitration Rules	the AIAC Fast Track Arbitration Rules 2018	32

#### **IV. Statement of Jurisdiction**

This Tribunal has jurisdiction over this matter because the Claimant and the

Respondent agree to have the arbitration held in Hong Kong with the help of AIAC.

## **V. Questions Presented**

The Parties agreed that the issues to be decided in the arbitration are as follows:

1. Did the Respondent granted a valid payment extension?
2. Is the Claimant entitled to the possession of the Artwork?
3. Does the Arbitral Tribunal have the jurisdiction to vacate the Award on Interim Measures made by the Emergency arbitrator?
4. Shall the Arbitral Tribunal vacate the Award on Interim Measures made by the Emergency Arbitrator?

## VI. Statement of Facts

2018/11/10	The Respondent received the delivery of the Bamboo and the Panda.
2018/11/12	<p>The Respondent issued 50 invitations for the next open house which was scheduled for 12<sup>th</sup> December 2018.</p> <p>The Claimant received an invitation to the auction to the third and final open house for 2018.</p>
2018/12/12	<p><b>Before leaving for the open house:</b></p> <p>Mr. Sadhu received the necessary paperwork authorizing him to bid on the auction items as a proxy for the Claimant.</p> <p><b>After arriving at the open house:</b></p> <p>Mr. Sadhu completed the registration process and he was introduced to Mr. Wong.</p> <p>The Claimant received a call from Mr. Sadhu which asked for the increase of the maximum bid amount.</p> <p>The Claimant agreed to increase the maximum bid amount and instructed Mr. Sadhu to request for an extension for the payment if the</p>

Claimant was successful in bidding the Artwork.

**Prior to the open house commencing:**

The Respondent's staff who was present was the head auctioneer, 6 members of the Respondent's sales team, 4 members of the finance team, and an administrative assistant.

(a number of members from the sales team were absent, the members of the finance team doubled-up as sales consultants.)

**25min prior to the auction:**

Mr. Sadhu told Mr. Wong that some extra time may be required if the bid was successful, and he requested for 5 more working days in return to the 20% deposit.

Mr. Sadhu contacted the Claimant that the extension for the payment was tentatively approved by Mr. Wong.

The Claimant conveyed its agreement to the said AT&C to Mr. Sadhu.

**Auction:**

The Claimant successfully bid the Artwork at the price of

	<p>\$HKD2,650,000.</p> <p><b>After the auction:</b></p> <p>Mr. Sadhu briefly talked with Mr. Wong and asked if the balance could be paid in INR instead of HKD.</p> <p>He presented a cheque for the deposit of HKD\$530,000, which was 20% of the auction price and informed the sales desk that he would like to pay the balance in INR.</p> <p>The AT&amp;C were executed.</p> <p><b>After the conclusion of the open house:</b></p> <p>Mr. Wong sent an email to the head of finance to query whether they could approve the request for the invoice of the balance to be converted from HKD to INR.</p> <p>The request was approved after a few layers of approval.</p>
2018/12/13	The Claimant received a revised invoice allowing to pay in INR (the payment date was not specified).
2018/12/20	The Claimant payed HKD\$2,120,000 by electronic transfer to the

	<p>Respondent and the payment was deposited.</p> <p>The Respondent contacted the Seller and notified that the balance was yet to be received, and the Seller verbally advised the Respondent that written instructions to re-list the Artwork would be sent shortly.</p>
2018/12/24	<p>The Claimant attended the Respondent's premise to view and arrange for the delivery.</p> <p>The Claimant provided the Respondent with the proof of payment for the balance of the auction price and while the clearance was being verified, the Claimant was guided to the viewing room.</p> <p>The Artwork tore while they were viewing it, and the Claimant was ushered away from the Artwork and its premises.</p> <p>Mr. Sadhu contacted the Claimant's bank and was notified that the cheque would clear by the end of that day.</p> <p>The Claimant received a notification from the bank that the transfer of the balance was successful.</p> <p>The Seller's written instructions to re-list the Artwork was received by</p>

	the Respondent.
2018/12/26	The Claimant attempted to enter the Respondent's premises to collect the Artwork.  The Respondent told the Claimant that the balance was not successfully transferred within the contractual payment deadline.
2019/1/2	The Claimant submitted its notice of arbitration.
2019/2/1	The Respondent requested for the appointment of an emergency arbitrator.
2019/2/4	Mr.E ordered that the interim measures application was to be heard only via oral submissions.
2019/2/11	The hearing of interim measures took place at the AIAC.
2019/2/15	The interim award in favour of the Respondent was issued.
Not Clear	The Respondent resold the Artwork.
2019/2/18	The prospective buyer had not collected the Artwork but successfully paid for it.
2019/2/19	The Terms of Reference were prepared by the Parties and the

	arbitration commenced.
2019/2/5-20	Chinese New Year
2019/5/22	The date of constitution of the tribunal pursuant to the AIAC Fast Track Arbitration Rules 2018.

## **VII. Summary of Pleadings**

### ISSUE 1: The Respondent did not grant a valid payment extension

The Respondent never made any representation to the Claimant that Mr. Wong has been authorized to extend the payment timeline and the Claimant was fully aware of this fact. Even if Mr. Wong had apparent authority, the Parties did not agree to extend the payment. Furthermore, even if the oral agreement to extend the payment was concluded, the oral agreement cannot be used as an evidence because the entire agreement clause which was included in AT&C prevents any other agreement outside the contract to supersede the agreement of the contract. With regard to the ratification, elements to invoke the ratification doctrine are not met. Therefore, the Respondent's conduct to keep silence shall not be regarded as a ratification.

### ISSUE2: The Claimant is NOT entitled to the possession of the Artwork

There was no other agreement between parties to vary the payment term. This means that the Claimant breached the contract and did not pay within due date. In addition, in accordance with the T&C, if payment doesn't be done within 5 working days, the Respondent can exercise discretion to re-list immediately. Therefore, the Claimant

lost rights when payment was delayed even one day. If the Claimant insists on material breach, the Respondent allege that as you can see from the contract, the parties emphasis on the payment dead line. This means that in this contract, the time is of the essence. So the Claimant made a serious breach of contract.

### ISSUE 3: The Arbitral Tribunal Does NOT Have the Jurisdiction to Decide on the

#### Interim Measure Application

Interpreting the Arbitration Clause of AT&C, the AIAC Arbitration Rules 2018 should be applied to this case, and so the emergency arbitrator has the jurisdiction. Therefore, the arbitral tribunal does not have the jurisdiction to decide on the interim measure application.

### ISSUE 4: The Arbitral Tribunal Shall NOT Vacate the Award on Interim Measures

#### Made by The Emergency Arbitrator

Since the Respondent satisfied the requirement under lex arbitri for granting interim measure, the interim award made by the emergency arbitrator shall not be vacated.

## VIII. Pleadings of the Respondent

### **ISSUE 1: The Respondent Did Not Grant a Valid Payment Extension**

The Respondent did not grant a valid payment extension because of two reasons.

I. The Respondent never made any representation to the Claimant that Mr. Wong has the authority to extend payment timeline and Claimant was fully aware of this fact.

II. Even if Mr. Wong had apparent authority, the Parties did not agree payment extension

III. Even if the oral agreement was concluded, that cannot be an evidence

IV. With regard to the ratification, elements to invoke the ratification doctrine are not met.

**I. The Respondent Never Made Any Representation to the Claimant That Mr. Wong Has the Authority to Extend Payment Timeline and the Claimant Was Fully Aware of This Fact.**

On the auction date, the Respondent introduced Mr. Wong as a sales contact to whom

Mr. Sadhu could direct "any and all sales related queries".<sup>1</sup> The representation which

the Respondent made was merely suggesting that Mr. Wong was in charge of dealing

inquiries to his designated sales.<sup>2</sup> Therefore, Mr. Sadhu had never been informed by

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<sup>1</sup> MP P.12 Para.6

<sup>2</sup> MP P.30 Para.3.3.1

the Respondent that Mr. Wong had the authority to act outside his authority to handle questions.

Moreover, the Claimant was aware of the fact that Mr. Wong lacked the authority to act outside his authority as a sales consultant from the conversations Mr. Sadhu and Mr. Wong made before the bid. According to the conversations, Mr. Wong expressly and repeatedly told Mr. Sadhu that he cannot vary AT&C, and Mr. Sadhu was well aware of this situation.<sup>3</sup>

A former acquaintance with Mr. Wong when Mr. Wong worked for another auction house.

At that time, Mr. Wong was responsible for negotiating the payment and delivery terms of auction items and he worked as a designated sales consultant for the Claimant.<sup>4</sup>

However, on the auction day, Mr. Wong worked as a senior account executive for the Respondent. Although Mr. Wong acted as a temporary sales consultant on the auction day, the job-scope of sales consultant in the Respondent's was limited to recording amounts of final bids for merchandise at auction sales, receiving money from final bidders at auctions, locating lot and item number of articles up for bidding on record

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<sup>3</sup> MP P.13 Para.11

<sup>4</sup> C P.5 Para.10

sheets, and receiving deposit money or full payment from final bidders.<sup>5</sup> Therefore, the job-scope of Mr. Wong did not include negotiating the payment terms on the auction day, and moreover, it did not include the authority to grant payment extension.

Mr. Wong regularly updated his LinkedIn profile, including his current affiliation, which has been liked and commented by Mr. Sadhu.<sup>6</sup>

Therefore, the Respondent never made any representation to the Claimant that Mr. Wong has the authority to extend payment timeline and the Claimant should have been well aware of the fact that Mr. Wong was lack of authority to extend payment timeline.

## **II. Even If Mr. Wong Had Apparent Authority, the Parties Did Not Agree Payment Extension**

It is an internal practice that the Claimant would be well aware of as a similar procedure is followed in many other auction houses in the Asia-Pacific region.<sup>7</sup> Furthermore, the spaces in the Annexure A to AT&C were deliberately left blank.<sup>8</sup>

From these facts, it is natural to understand that the parties did not agree anything special. Therefore, AT&C should be respected.

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<sup>5</sup> C P.5 Para.13

<sup>6</sup> FC P.1 Para.1

<sup>7</sup> C Para.15

<sup>8</sup> MP P.13 Para.11/C P.6 Para.15&7

### **III. Even If the Oral Agreement Was Concluded, That Cannot Be an Evidence**

“Entire agreement clauses ...express an agreement between the parties as to the effect of the document in which they are contained. ... Each is agreeing in favour of the other not to put forward as an express term of the contract any term not set out in the document. Unless the entire agreement clause has been impugned, any attempt to prove that oral terms were agreed during the negotiation of the document is simply a breach of contract. In other words, entire agreement clauses do more than merely prevent or preclude reliance on particular evidence. Thus, ... the parties are estopped by the entire agreement clause from proving the existence of terms which are contrary to the document”.<sup>9</sup>

According to AT&C, the contract includes the entire agreement clause.<sup>10</sup> The clause is expressly written that “This agreement constitutes the entire agreement between the Parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the Parties.” This suggests that any other agreements made outside the contract would be superseded by the agreement of the contract. AT&C expressly state that the payment should be transferred within 5

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<sup>9</sup> Peden & Carter

<sup>10</sup> MP P.20 Clause 10

working days from the auction date.<sup>11</sup> Furthermore, the annexure does not include any changes to the payment deadline. If there are any changes to the terms, the changes would be written in the annexure to AT&C.<sup>12</sup> For these reasons, the agreement which the Claimant claims to extend the payment cannot be taken into consideration based on the entire agreement clause.

Therefore, the oral agreement which Mr. Sadhu and Mr. Wong made to extend the payment deadline cannot be taken into consideration unless their agreement superseded the terms by changing the terms of the payment deadline or by including in the annexure A.

#### **IV. With Regard to the Ratification, Elements to Invoke the Ratification Doctrine Are Not Met**

There are certain methods to invoke the ratification doctrine. “Ratification may be either express or implied.” Silence, however, could not amount to ratification.<sup>13</sup> It was suggested that since silence does not provide clear and unequivocal evidence of the approval by the principal and adoption of his agent’s actions, silence could not be

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<sup>11</sup> MP P.7 Clause 1.3

<sup>12</sup> FC P.2 Para.3

<sup>13</sup> Markesinis & Munday

regarded as ratification.<sup>14</sup>

In the present case, the Respondent neither expressly or impliedly ratified the oral agreement and instead, it kept silence. Furthermore, the conduct that the sales desk received the cheque which is equal to 20% of the auction price should be not regarded as a ratification but received 10% deposit and 10% payment of the auction price. Mr. Sadhu handed over a cheque, which is equal to 20% of the auction price and notified the sales desk that the Claimant would like the invoice for the outstanding balance converted to Indian Rupees.<sup>15</sup>

According to Art. 1.2 and 1.3 of AT&C, unless otherwise agreed, the Claimant must deposit 10% of the auction price within one hour from the completion of the auction with the Respondent and pay the remaining 90% of the auction price within 5 working days from the auction date. Since there is no special agreement in relation to this article between parties, the Respondent received 20% of the auction price only for the reason that the Respondent believed that the Claimant intended to deposit 10% and pay 10 % of the auction price in Hong Kong dollar and then pay 80% of the auction price in

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<sup>14</sup> Crampsey case

<sup>15</sup> MP P.14 Para. 15

Indian Rupees.<sup>16</sup>

Therefore, the Respondent's conduct by standing still at the time the invoices were raised shall not amount as an acceptance of Mr. Wong's unauthorized action.

Therefore, elements to invoke the ratification doctrine are not met.

To sum up, the Respondent did not grant a valid payment extension.

**ISSUE2: The Claimant Is NOT Entitled to the Possession of the Artwork**

The Respondent submits that the Claimant is not entitled to the possession of the Artwork with the following reasons.

I. There was no other agreement between parties to vary the payment terms stated in AT&C dated 12th December 2018.

II. The Claimant paid the balance of the auction price for the Artwork outside the timeframe stipulated AT&C dated 12th December 2018.

**I. There Was No Other Agreement Between Parties to Vary the Payment Terms Stated in AT&C Dated 12th December 2018.**

As mentioned in the issue of payment extension, there was no evidence showing that Mr. Wong was authorized to approve payment extensions and there was no written approval annexed to the Claimant's consent to varying the payment terms.

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<sup>16</sup> MP P.17 Art. 1.2&1.3

In accordance with Art.10 of AT&C, this agreement constitutes the entire agreement between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties.<sup>17</sup>

Therefore, there was no other agreement between parties to vary the payment terms stated in AT&C dated 12th December 2018.

Moreover, it is true, there is a rule that in common law jurisdiction, party can terminate contract if only it is a material breach. Then, whether the party can terminate the contract depends on the breached clause, whether it is a condition or a warranty (c.f. Poussard case and Bettini case).

Whether it is condition or warranty is determined by the will of the parties or circumstances.

*“The question raised by the demurrer is, ... whether his failure to do so justified the defendant in refusing to proceed with the engagement, and fulfil his, the defendant's part. And the answer to that question depends on whether this part of the contract is a condition precedent to the defendant's liability, or only an independent agreement, a breach of which will not justify a repudiation of the contract, but will only be a cause of action for a compensation in damages. We think the answer to this question depends on*

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<sup>17</sup> MP P.20 Art.10

*the true construction of the contract taken as a whole”*<sup>18</sup>

*“There is no way of deciding that question except by looking at the contract in the light of the surrounding circumstances and then making up one’s mind whether the intention of the parties, as gathered from the instrument itself, will best be carried out by treating the promise as a warranty sounding only in damages or as a condition precedent by the failure to perform which the other party is relieved of his liability”*.<sup>19</sup>

In this case, AT&C indicate that “If such discretion is exercised, this agreement between the Seller, Purchaser and the Auction House for the sale of the Auctionable Item(s) will immediately terminate”.<sup>20</sup> This “immediately” means, that if December 19 is past one day, the Respondent has exercised discretion. In addition, as mentioned above there was no evidence showing that Mr. Wong was authorized to approve payment extension.

In other words, if following the will of the parties, it is up to the Respondent to decide whether or not to terminate the contract when the 20th day is reached, and even if the payment is ahead of the discretion, the Respondent can terminate the contract.

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<sup>18</sup> Bettini case

<sup>19</sup> Bentsen case

<sup>20</sup> MP P.17 Art.1.4

In addition to the above, in the case of mercantile contracts, time is usually essential and clauses related to time require precise compliance by the Parties.

*“But I do not doubt that, in suitable cases, the courts should not be reluctant, if the intentions of the parties as shown by the contract so indicate, to hold that an obligation has the force of a condition, and that indeed they should usually do so in the case of time clauses in mercantile contracts.... In conclusion, the statement of the law...appears to me to be correct, in particular in asserting (1) that the court will require precise compliance with stipulations as to time wherever the circumstances of the case indicate that this would fulfil the intention of the parties, and (2) that broadly speaking time will be considered of the essence in "mercantile" contracts....”<sup>21</sup>*

As above, it is clear that the Respondent has terminated the contract effectively.

## **II. The Claimant Paid the Balance of the Auction Price for the Artwork Outside the Timeframe Stipulated in AT&C Dated 12th December 2018**

Since the payment extension was not accepted by the Respondent, the Claimant had to pay all the auction price within 5 working days from the auction date in accordance with Clause 1. 4 of AT&C.

In this case, the auction was held on 12<sup>th</sup> December 2018 so the deadline would be at

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<sup>21</sup> Bunge case

least 19<sup>th</sup> December 2018. However, the Claimant cleared its payment on 24<sup>th</sup> December 2018. This means that the Claimant failed to pay within 5 working days. Therefore, according to Clause 1.4 of AT&C, the Seller may exercise its direction to re-list the auctionable Items with the Respondent and if such direction is exercised, the agreement between the Seller, Purchaser and the Auction House will immediately terminate.

In this case, on 20<sup>th</sup> December 2018, the Seller verbally advised the Respondent that written instructions to re-list the Good (bamboo panda) would be sent across shortly.<sup>22</sup>

From this fact, the Respondent submits that the direction to relist the Good was exercised on 20<sup>th</sup> December 2018 and on that day, the agreement to sell the Goods was terminated.

To sum up, the Claimant is not entitled to the possession of the Artwork.

**ISSUE3: The Arbitral Tribunal Does NOT Have the Jurisdiction to Decide on the Interim Measure Application**

The Respondent submits that the arbitral tribunal has no jurisdiction to vacate the award on interim measures made by the emergency arbitrator for the following reasons.

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<sup>22</sup> C Para.7

## **I. Parties Have Contractually Agreed to Arbitrate at AIAC**

According to clause 8.1 of AT&C, “any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration using the expedited procedures framework available at the Asian International Arbitration Centre”. Namely, any relevant disputes belong to the abovementioned scope shall be filed to the Asian International Arbitration Centre, but this clause does not choose which arbitration rules shall apply. Clause 8.1 only indicates that parties shall use the expedited procedures framework available at the Asian International Arbitration Centre. Therefore, parties shall use all types of expedited procedures available at the AIAC, including a possibility to appoint an emergency arbitrator, to settle their disputes. Under this condition, the Respondent requested the Director of the AIAC to appoint an emergency arbitrator for this matter pursuant to Rule 8 of the AIAC Arbitration Rules on 1<sup>st</sup> February 2019. Following such application, the Director of the AIAC appointed Mr. E as the emergency arbitrator on the second day. Meanwhile, pursuant to the letter form the AIAC dated 2<sup>nd</sup> February 2019, this arbitration was initially commenced under AIAC Arbitration Rules on the 2<sup>nd</sup> January 2019 in accordance with Rule 2(2) of the AIAC Arbitration

Rules.

## **II. The Emergency Arbitrator Had the Jurisdiction to Decide on the Respondent's Request for Interim Measures**

Pursuant to Rule 4(6) and Schedule 2 of the AIAC Arbitration Rules 2018, the Director of the AIAC appointed an emergency arbitrator for this matter. In Procedural Order No.1 dated 4<sup>th</sup> February 2019, the emergency arbitrator ordered that the interim measures application was to be heard via only oral submissions. On 11<sup>th</sup> February 2019, the hearing took place at the AIAC with both the Claimant's and the Respondent's Representatives present. During this process, the Claimant showed no opposition to the appointment of emergency arbitrator and interim measures hearing. Namely, the Claimant agrees that the Respondent's request for the appointment of emergency arbitrator and interim measures is reasonable under the governing arbitration rules, the AIAC Arbitration Rules 2018.

## **III. Arbitration Clause Should Not Be Interpreted as a Choice of the AIAC Fast Track Rules**

On contrary to what the Claimant submitted, the Respondent claims that the arbitration clause of AT&C should not be interpreted as a choice of the AIAC Fast Track Rules.

Comparing model arbitration clause of AIAC arbitration rules 2018 and AIAC Fast Track arbitration rules 2018, it could be found that:

AIAC rules-“any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules”

AIAC Fast Track rules-“any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Fast Track Arbitration Rules”

From above two model arbitration clauses, it is clear that Art.8.1 of AT&C does not explicitly choose AIAC Fast Track Rules as its arbitral rules. It only explicitly chooses the expedited procedures framework available at the Asian International Arbitration Centre. Namely, any expedited procedures framework available at the AIAC can be used by parties.

The Claimant submits that the average duration comparison in three types of panel conducted at the AIAC in 2017 indicating that the fast track arbitration rules cost least time; thus, the expedited procedures framework available at the AIAC should be

deemed as arbitration conducted under the fast track arbitration rules. However, the wording of the Arbitration clause of AT&C is wider. It does not stipulate to use the cost least procedure.

Since the Claimant did not file any challenge applications upon the notification of the emergency arbitrator.<sup>23</sup>, the Claimant should accept the AIAC Arbitration Rules.

In Conclusion, since the interim measure made by the emergency arbitrator is valid, the arbitral tribunal does not have the jurisdiction to decide on the interim measure application.

**ISSUE4: The Arbitral Tribunal Shall NOT Vacate the Award on Interim Measures Made by The Emergency Arbitrator**

The Respondent submits that the substantive prerequisites to issue an interim measure were definitely met under the lex arbitri, which is AIAC Arbitration Rules.

Art. 26 Clause 3 of AIAC Arbitration Rules stipulates the standards to be met for granting interim measure. An arbitral tribunal may grant interim measures to take action that would prevent current or imminent harm. The party requesting such relief, must satisfy that:

(a) Harm not adequately reparable by an award of damages is likely to result if the

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<sup>23</sup> C Para. 27

measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

The Respondent maintains that it satisfied both of the requirements.

**I. As to the Requirement (a)**

The Harm caused by this transaction is not adequately reparable by an award of damages because the value of the Artwork cannot be quantified without reselling by auction. Because of the tear of the Artwork, its value is highly increased, and auction is the only way to determine how much it would be. In order for the Respondent to hold another auction, the award which grants the Respondent's possession of the Artwork is necessary. Thus, the harm caused by this transaction is not reparable by an award of damages.

**II. As to the Requirement (b)**

The Respondent showed a reasonable possibility that the Respondent will succeed on

the merits of the claim because actually the award on interim measures made by the emergency arbitrator was in favour of the Respondent.

Since the Respondent satisfied the both requirements under *lex arbitri*, the arbitral tribunal shall NOT vacate the award on interim measures made by the emergency arbitrator.

## **IX. Request for Relief**

In light of the submissions made above, the Claimant respectfully requests the tribunal to find:

1. All of the Claimant's allegation shall be rejected
2. The Claimant shall pay all arbitral costs including the Claimant's representative's costs and expenses.