Neutral Citation Number: [2020] EWHC 1030 (Comm)

Case No: CL-2018-000797,
CL-2018-000798

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

IN THE MATTER OF THE ARBITRATION ACT 1996
AND IN THE MATTER OF APPLICATIONS UNDER
SECTION 69 OF THE ARBITRATION ACT 1996
AND IN THE MATTER OF TWO ARBITRATION CLAIMS

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 30/04/2020

Before :

MR JUSTICE BUTCHER

- -

Between :

JIANGSU GUOXIN CORPORATION LTD (formerly known as SAINTY MARINE CORPORATION LTD)	**Claimant**
- and -	
PRECIOUS SHIPPING PUBLIC CO. LTD	**Respondent**

- -
- -

Andrew Stevens and Gideon Shirazi (instructed by **Campbell Johnston Clark Ltd**) for the **Applicant**
Roderick Cordara QC, Adam Board and Andrew Dinsmore (instructed by **Watson Farley and Williams LLP**) for the **Respondent**

Hearing dates: 18 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE BUTCHER

Mr Justice Butcher:

1. There are for determination two appeals by the Claimant, to which I will refer as 'the Seller', brought pursuant to s. 69 Arbitration Act 1996, permission having been granted by Teare J. The appeals arise out of two partial final awards which are dated 20 November 2018 ('the awards'), made by tribunals consisting of Michael Baker-Harber, Ian Gaunt and Simon Gault ('the tribunal').

2. These appeals relate to disputes as to two vessels, Hulls 21B and 22B, which the Seller had contracted to build pursuant to shipbuilding contracts made with the Respondent, to which I will refer as 'the Buyer', dated 26 February 2014 ('the SBCs'). The SBCs were, as far as is material for these appeals, in identical terms.

The Contracts

3. The SBCs are on amended SAJ forms. They contain a number of terms which are of relevance to the determination of the issues on these appeals. In the Appendix to this judgment I have set out the most germane.

Factual Background

4. The dispute in relation to Hulls 21B and 22B arises in the context of 11 arbitrations between the Seller and the Buyer concerning a series of 14 bulk carriers of SDARI 64k design which were to be designed and constructed by the Seller in China. All the shipbuilding contracts in respect of the 14 hulls were agreed in late 2013 or early 2014.

5. After the first two hulls, 09B and 10B were delivered, the Seller tendered 17B, 18B, 19B and 20B, but they were rejected by the Buyer. The Buyer contended that all the ships had been designed and/or built in a defective manner, such that they were susceptible to stern tube bearing failures under navigation. The Seller says that the rejection of hulls 17B – 20B was unlawful, including because any design defect in respect of the stern tube bearing had been rectified before tender of those hulls. The awards under appeal do not deal with the merits of that dispute. What is significant for present purposes, however, is that the Seller contends that the rejection and cancellation of those hulls, which it contends was wrongful, resulted in their being left at the Seller's yard, occupying berths there, and delaying the launch and construction of Hulls 21B and 22B.

6. The contractual Delivery Date for Hulls 21B and 22B was 31 August 2015. On 29 January 2016, 151 days after the contractual Delivery Date, the Buyer stated that it was terminating the contracts for Hulls 21B and 22B under Article III. 1 and Article VIII.3 of the SBCs by reason of the lapse of more than 150 days of 'non permissible delays'. The Seller treated this as a repudiatory breach which it says that it accepted on 3 February 2016, thereby, on any view, bringing the contracts to an end.

The Dispute in Outline

7. This led to disputes which have been referred to arbitration. The Seller's case has been:
   (1) That the 'prevention principle' applies. It contends that time was set 'at large' as a result of what it contends was the unlawful rejection of hulls 17B-20B, which had

resulted in the occupation of berths at the yard and the delay of Hulls 21B and 22B, and constituted an act of wrongful prevention on the part of the Buyer; and/or

(2) That there had not been 150 days of 'non permissible delay' by the time of the Buyer's purported termination. It contends that construction was delayed and, to the extent relevant, it is entitled to an extension of time, due to (i) late payment by the Buyer of instalments of the Contract Price; (ii) investigations and modifications in relation to the stern tube bearing issue; and (iii) the effect of the cancellation of the contracts for hulls 17B-20B.

8. The Buyer's position has been that:
(1) The SBCs provide a complete code of the circumstances in which the Seller was entitled to claim extensions of time. The relevant contractual machinery had never been exercised to extend time, and therefore the Seller was not entitled to an extension, even if (which the Buyer denied) it would otherwise have been entitled to such an extension.
(2) There is no room for the 'prevention principle' on the facts of these cases.

The Awards

9. The parties agreed that the tribunal should exercise its power under s. 47 Arbitration Act 1996 to make a partial final award on certain preliminary issues. The parties ultimately agreed on two of those issues, and the tribunal had to resolve the other two, which were as follows:
(1) 'Was the Seller entitled to extend the Delivery and/or Cancellation Date in circumstances where it failed to and/or did not operate, and/or exercise any relevant contractual machinery (including Article XI of the SBC)?' This was referred to as 'the Second Issue'.
(2) 'Is there any scope for the application of the prevention principle in light of the express terms of the SBC (including relevant arguments on implied terms)?' This was referred to as 'the Third Issue'.

10. As the tribunal recorded, the parties had agreed that these questions should be answered 'leaving aside any issues as to variation of the SBC and on the assumption that no evidence as to matrix' was admitted at that stage. It is also pertinent to note here that the Seller's position is that, while the so-called 'Second Issue' asks whether there can be any extension of Delivery and/or Cancellation Dates 'where it failed to and/or did not operate and/or exercise' any relevant contractual machinery, it does not accept that no such machinery was operated. It says that that was not a matter which was included within the preliminary issues. What was in issue was whether there could be extensions irrespective of whether any contractual machinery was operated. I accept that that accurately reflects what was and was not to be decided by the tribunal in the awards, which, as I have said, concerned preliminary issues.

11. The awards commenced by a consideration of the 'prevention principle', by reference to certain authorities to which I will refer below. The tribunal then considered the 'Third Issue'. As it said, the Seller accepted that there was no room for the application of the 'prevention principle' if the contract provides for an extension of time in respect of the relevant events. It identified the relevant events for the purposes of the 'Third Issue' as being the allegedly wrongful cancellations of hulls 17B-20B and resulting occupation of berths which delayed the launch of Hulls 21B and 22B. It then considered whether, assuming that the wrongful cancellations and resulting berth occupation were

'beyond the control of the Seller', that would be a cause falling within Article VIII.1. It concluded that it was. In reaching that conclusion, the tribunal considered that the contract considered in Zhoushan Jinhaiwan Shipyard Co Ltd v Golden Exquisite Inc [2014] EWHC 4050 (Comm) by Leggatt J was, in the relevant respects, in materially different terms from the SBCs, and that if that decision was not distinguishable it was, in this respect, wrong. The tribunal found that, as a result, by virtue of Article VIII.4, any delays caused by the Buyer's wrongful cancellation and occupation of the berths (assuming it was beyond the Seller's control), was a permissible delay for which the Seller would be entitled to an extension of time if it had operated the contractual machinery for claiming one. The tribunal also considered that such a delay would be excluded from the calculation of both the 150 and 180 day periods after which the Buyer was entitled to cancel the SBCs under Article III.1(c) or Article VIII.3. On this basis there was no room for the application of the 'prevention principle'.

12. In relation to 'the Second Issue' the tribunal found that this embraced a number of sub-issues, namely:
(1) Whether a failure to serve a notice under Article VIII.2 allows the Buyer to ignore permissible delay in the calculation of the cancellation date.
(2) Whether service of a notice under Article VIII.2 is a condition precedent to any extension of time under Article V.1 or Article XI.4(a).
(3) If not: (i) in case of a modification under Article V, if no agreement is reached as to the extension of time for delivery, whether the Seller is prevented from claiming any such extension of time; and (ii) in case of a default by the Buyer, whether the Seller needs to do anything in order to postpone the Delivery Date under Article XI.4(a).

13. In relation to these points, the tribunal's reasoning and conclusions were as follows:
(1) In relation to the first sub-issue, that the notice provision in Article VIII.2 applies when the Seller claims that it is entitled to an extension of time for delivery under Article VIII.1. The tribunal said, in paragraph [67] of the awards: 'We do not think that the parties can possibly have intended that the notice provision in Article VIII.2 should not apply just because the delay fell within Article VIII.1 and was therefore a permissible delay'. Accordingly, unless the Seller served the notices for which Article VIII.2 provided, it was not entitled to an extension of the Delivery Date. On this point, the tribunal agreed with the analysis of Leggatt J in paragraphs [63]-[68] of Zhoushan, where he considered the case on the hypothesis that buyer's breach delays were potentially within Article VIII.1.

(2) In relation to the second sub-issue, the tribunal considered that Article VIII.2 was capable of applying more generally than to delays within Article VIII.1, but it should not be applied to other provisions 'which either have their own notice provision or where a notice under Article VIII.2 is not necessary to make the SBC work'. However, if there were no such separate provision, and a notice was necessary to make the SBC work, then Article VIII.2 was applicable irrespective of whether the delay was within Article VIII.1. In this respect the tribunal disagreed with the view of Leggatt J in paragraph [70] of Zhoushan, and agreed with the award published as *London Arbitration 9/13* in LMLN on 29.5.2013. The tribunal considered that Article V.1 and Article XI.4 (a) were each cases of other provisions which did have their own notice requirements or where a notice under Article VIII.2 was not necessary, and accordingly Article VIII.2 was not applicable. By contrast, the tribunal considered that the Article VIII.2 regime was applicable to Article III.1(c).

(3) In relation to the first part of the third sub-issue, the tribunal considered that, in a situation in which the parties had not reached an agreement on the relevant modification, and on any consequential change in the Contract Price and Delivery Date, but the Seller had nevertheless carried out the modification, the Seller needed to serve a notice under Article VIII.2, and if it did not do so, would be prevented from claiming an extension of time.

(4) In relation to the second part of the third sub-issue, the tribunal concluded that in the case of Buyer's Default, the Seller has to communicate that it is exercising its option to postpone the Delivery Date for the period of continuance of the Buyer's Default under Article XI.4(a), but does not have to serve notices under Article VIII.2.

14. Accordingly, the tribunal gave the following overall answers to the two broadly expressed issues before it:
    (1) In relation to 'the Second Issue', that the answer was 'No – the Seller was not entitled to extend the Delivery and/or Cancellation Date in circumstances where it failed to and/or did not operate, and/or exercise any relevant contractual machinery'.
    (2) In relation to 'the Third Issue', that the answer was 'No – there is no scope for the application of the prevention principle in light of the express terms of the SBC (including relevant arguments on implied terms).'

15. It is on the questions of law involved in those determinations that these appeals are brought.

The Hearing of the Appeals

16. On these appeals, the Seller has been represented by Andrew Stevens and Gideon Shirazi, and the Buyer by Roderick Cordara QC, Adam Board and Andrew Dinsmore. Each of Mr Stevens and Mr Cordara QC made oral submissions. This was by way of a telephone link, because of the Covid 19 pandemic, but was highly effective. Each counsel made focused, clear and helpful submissions, and I did not consider that anything of significance was lost by reason of the fact that the parties were not in the same physical location as the judge.

17. On the appeals, Mr Stevens submitted that there were essentially two issues: (a) whether the 'prevention principle' applies to these SAJ form contracts; and (b) whether the Seller has to give notice of delay events, or do anything, as a pre-condition for the Seller to rely on delay events when the Buyer purports to terminate for accumulated delay. He submitted that the key problem with the tribunal's decision on (a) is that a Buyer could cause 180 days of delay, but would nevertheless, on the tribunal's construction of the SBCs, be entitled on day 181 to terminate the contract under Article III.1(d). He submitted that the tribunal reached this result by giving Article VIII.1 a meaning which it did not properly bear. In relation to (b), the tribunal had been led by its erroneous construction of Article VIII.1 to find that there was a requirement for Article VIII.2 notices where there was any extension of time or delay provision which did not have an express notice requirement. He also submitted that the tribunal had been wrong in relation to the specific issues arising as to Article V.1 and Article XI.

18. For his part, Mr Cordara QC submitted that the tribunal had been correct. He submitted, in outline, that the SBCs had provided a contractual regime for seeking extensions of time, and left no room for the application of the 'prevention principle'. He submitted that the alleged causes of the delay here at issue were ones which were 'mundane, predictable' issues, such as non-payment, modifications and delay of previous vessels. It would be highly unlikely, and uncommercial, that the parties had agreed that in the event of the occurrence of this type of matter time might become 'at large', without any notice to the Buyer during the term of the SBCs that that had happened. In his submission the SBCs contained a 'complete code' in relation to each of the delay events alleged. He argued that Article VIII.2 required written notice in respect of 'any' delay, which applied to all the causes of delay relied on by the Seller. Further, on the true construction of Article VIII.1 the delays relied on, other than modifications, were 'permissible delays' that might, in principle, entitle the Seller to an extension of time, but only if appropriate notices were served. He also argued that with respect to modifications, the same conclusion followed from Article V.1, and in respect of non-payment of instalments, from Articles XI.2 and XI.4(a). Further there was no scope for the operation of the 'prevention principle' given the provisions of the SBCs, which provided a 'complete code' for the relevant delays, in the way I have just summarised.

Legal Background

19. Before turning to evaluate the competing arguments, it is necessary to refer to two aspects of the law which are relevant, and which form the backdrop, to the parties' positions in this case.

Implied terms as to prevention

20. There was some debate in front of the arbitrators as to whether a term or terms should be implied into the SBCs to the effect that a party should not prevent performance by the other party. On the appeals, there was little debate on this point. I accept that a term is to be implied into the SBCs, as into very many contracts, that neither party should prevent the other from performing its obligations under the contract. The term to be implied is subject to limitations. These were set out in a passage in *Lewison, The Interpretation of Contracts*, which is referred to and approved by Picken J in Plantation Holdings (FZ) LLC v Dubai Islamic Bank PJSC [2017] EWHC 520 (Comm) at [158]. Those limitations include: (1) that the implied term must not be illegal, contrary to public policy or ultra vires the contracting party; (2) that the term is limited to the active prevention of performance, and probably does not extend to passivity in the face of the action of some third party; and (3) that the act complained of must be wrongful, either as being a breach of the express or implied terms of the contract, or wrongful independently of the contract.

21. In the present case, no issue as to (1) arises. I accept, therefore, that it was an implied term of the SBCs that neither party should actively and wrongfully (in the sense of being a breach of contract or independently wrongful) prevent the other from performing its obligations under the contract.

The 'Prevention Principle'

22. The history of the 'prevention principle' is a long one. In North Midland Building Ltd v Cyden Homes Ltd [2018] EWCA Civ 1744, Coulson LJ said this, at [10-12]:

> [10] In the 19th century, the courts concluded that it was wrong in principle for an employer to hold a contractor to a completion date, and a concomitant liability to pay liquidated damages, in circumstances where at least a part of the subsequent delay was caused by the employer. Thus, in Holme v Guppy (1838) 3 M&W 387, the defendant failed to give possession of the site for four weeks following execution of the contract. Parke B found that there were clear authorities to the effect that 'if the party be prevented by the refusal of the other contracting party from completing the contract within the time limited he is not liable in law for the default …'
>
> [11] Similarly in Dodd v Churton [1897] 1 QB 566, where the employer ordered extra work which delayed completion. Lord Esher said:
> '... where one party to a contract is prevented from performing it by the act of the other, he is not liable in law for that default; and accordingly a well-recognised rule has been established in cases of this kind, beginning with Holme v Guppy, to the effect that, if the building owner has ordered extra work beyond that specified by the original contract which has necessarily increased the time requisite for finishing the work, he is thereby disentitled to claim the penalties for non-completion provided by the contract.'
>
> [12] As a result of these decisions, construction contracts began to incorporate extension of time clauses, which provided that, on the happening of certain events (which included what might generically be described as 'acts of prevention' on the part of the employer), the date for completion under the contract would be extended, so that liquidated damages would only be levied for the period after the expiry of the extended completion date. Such clauses were not, as is sometimes thought, designed to provide the contractor with excuses for delay, but rather to protect employers, by retaining their right both to a fixed (albeit extended) completion date and to deduct liquidated damages for any delay beyond that extended completion date.

23. One case concerning an extension of time clause was Multiplex Constructions (UK) v Honeywell Control Systems [2007] BLR 195. There Jackson J, having conducted a review of the authorities on the 'prevention principle', said this at [56-58]

> [56] From this review of authority I derive three propositions:
> (i) Actions by the employer which are perfectly legitimate under a construction contract may still be characterised as prevention, if those actions cause delay beyond the contractual completion date.
> (ii) Acts of prevention by an employer do not set time at large, if the contract provides for extension of time in respect of those events.
> (iii) In so far as the extension of time clause is ambiguous, it should be construed in favour of the contractor.
> [57] The third proposition must be treated with care. It seems to me that, in so far as an extension of time clause is ambiguous, the court should lean in favour of a construction which permits the contractor to recover appropriate extensions of time in respect of events causing delay. This approach also

> accords with the principle of construction set out by Lewison in *The Interpretation of Contracts* (3rd edition, 2004). That principle reads as follows:
>
> Where two constructions of an instrument are equally plausible, upon one of which the instrument is valid and upon the other of which it is invalid, the court should lean towards that construction which validates the instrument.
>
> [58] That principle is supported by a line of authority as set out in para. 7.14 and is encapsulated in the latin maxim *verba ita sunt intelligenda, ut res magis valeat quam pereat*.

24. It is to be noted from Jackson J's second proposition in paragraph [56] that the prevention principle is of wider application than cases of breach of the contract. It is, accordingly, potentially applicable in circumstances wider than breach of express terms or of the implied term as to non-prevention which is commonly, and as I have found is here, to be implied.

25. In Adyard Abu Dhabi v SD Marine Services [2011] EWHC 848 (Comm), the 'prevention principle' was considered in the context of a shipbuilding contract. After considering the decision in Multiplex Constructions, Hamblen J said this at [242-243]:

> [242] The authorities on the prevention principle show that:
>
> (1) In a basic shipbuilding contract, which simply provides for a Builder to complete the construction of a vessel and to reach certain milestones within specific periods of time, the Builder is entitled to the whole of that period of time to complete the contract work.
>
> (2) In the event that the Buyer interferes with the work so as to delay its completion in accordance with the agreed timetable, this amounts to an act of prevention and the Builder is no longer bound by the strict requirements of the contract as to time.
>
> (3) The instruction of variations to the work can amount to an act of prevention.
>
> [243] However, as Jackson J stated in the Multiplex v Honeywell case, the prevention principle does not apply if the contract provides for an extension of time in respect of the relevant events. Where such a mechanism exists, if the relevant act of prevention falls within the scope of the extension of time clause, the contract completion dates are extended as appropriate and the Builder must complete the work by the new date, or pay liquidated damages (or accept any other contractual consequence of late completion)...

26. In the Adyard Abu Dhabi case, Hamblen J was faced with an argument on the part of the yard that, in the event of an adjustment without an agreement, the parties were left in a contractual 'limbo' (as he put it), and that the 'prevention principle' applied. At [255] he said that, while there was some ambiguity in how the contract was drafted, he favoured the buyer's construction, which was that there was a contractual regime permitting the award of an extension of time for, amongst others, the following reasons:

> … (2) It avoids the unsatisfactory consequence of the parties being in a contractual 'limbo'.
>
> (3) It is inherently unlikely that the parties would have intended there to be such a 'limbo', particularly in an obviously foreseeable situation such as a failure to agree an adjustment.

> (4) This is all the more so given the potentially extreme circumstances of the application of the prevention principle, as explained by Colman J in Balfour Beatty v Chestermount Properties (1993) 62 BLR 1, 27. A trivial variation may lead to the loss of the right to liquidated damages for a long period of culpable delay and, in this case, loss of the right to rescind as well.
> …
> (7) As stated by Jackson J in Multiplex v Honeywell where there is ambiguity the court should lean in favour of a construction which makes the contract work.

27. It is also pertinent to note what was said in the North Midland Building case, to which I have already referred, as to the juridical nature of the 'prevention principle'. As Coulson LJ said at [30], 'the prevention principle is not an overriding rule of public or legal policy'. It will not apply if the parties have provided for an extension of time in the relevant event(s) (paragraph [31]). Further, even in circumstances in which it might be applicable, there is no reason why the parties should not contract out of some or all of its effects (paragraph [36]).

Analysis

28. The parties did not approach the issues which arise in the same order, or under exactly the same headings.

Is there room for the 'prevention principle' to apply?

29. I propose to commence by considering whether there is scope for the application of the 'prevention principle' as a result of the delay allegedly occasioned by the Buyer's wrongful termination of previous contracts and wrongful occupation of berths necessary for the construction of the relevant vessels.

30. The central issue which arises here is whether Article VIII.1 is wide enough to cover this cause of delay. If it is, then express provision has been made for an extension of time, and the 'prevention principle' will not apply. The argument that it is not, is based on Article VIII.1 being, effectively, a force majeure clause which is confined to matters beyond the control of either party.

31. I do not consider that Article VIII.1 can be regarded as restricted in that way. It is not called a force majeure clause. It is not, moreover, couched in terms of matters and events beyond *the parties'* control, but beyond 'the control of the SELLER or of its sub-contractors'. It applies, on its terms, to any of the enumerated causes and to any 'other causes' beyond the Seller's (or its subcontractors') control. Giving their ordinary meaning to the words used, it therefore covers matters caused by the Buyer, assuming that they are outside the control of the Seller or its sub-contractors.

32. That the phrase 'or other causes beyond the control of the SELLER or of its subcontractors' should be given a meaning which embraces matters other than what might be described as 'conventional' force majeure events which are beyond the control of either party, appears to me to be indicated by the fact that that phrase is used in addition to the phrase, 'or by force majeure of any description, whether of the nature indicated by the forgoing or not'. While recognising that the clause will, on any view, contain duplication of provision for some matters this combination and juxtaposition of

phrases suggests that the parties intended that there could be some content to the sub-clause 'other causes beyond the control of the SELLER or its subcontractors' which is or arguably might not be within 'force majeure of any description'. One category of such matters would be matters within the control of the Buyer but not the Seller.

33. For my part, unlike the tribunal, I do not consider that the phrase 'whether of the nature indicated by the forgoing or not' applies to 'everything that precedes it' (paragraph 32 of the awards). In my view, it applies to the phrase 'or by force majeure of any description'. Nevertheless, for the reason I have given, the use of this phrase after 'other causes beyond the control of the SELLER or its subcontractors' supports a reading whereby those words are given their natural and wide meaning.

34. The general position in relation to an extension of time clause has been said to be that it should, in the case of ambiguity, be construed in favour of the contractor. As made clear by Jackson J in *Multiplex* at [56]-[57], what this should involve is the court leaning in favour of a construction which permits the contractor to recover appropriate extensions of time in respect of events causing delay. Here, paradoxically, it is the Seller which is contending that a cause of delay is *not* covered by Article VIII.1 and is therefore not subject to the extension of time prescribed in that Article. It does so in order to argue that the relevant cause of delay is not dealt with by the contract at all, in the sense that no extension is provided for it, and therefore the 'prevention principle' is applicable. In my judgment this is not a construction which the court should favour. Even if Article VIII.1 were ambiguous, which I do not consider that it is, the construction to which the court should lean is that which tends to give the Seller the benefit of the extension of time provided for in the Article, in relation to matters which are not within its control. That militates in favour of giving a wide, not a narrow meaning to the phrase 'other causes beyond the control of the SELLER'.

35. Furthermore, unless this cause of delay is recognised as falling within Article VIII.1 it does not fall within the tripartite division recognised in Article VIII.4 of permissible and non-permissible delays and 'other extensions of a nature which under the terms of this Contract permit postponement of the Contract Delivery Date'. And yet that division appears clearly intended to be exhaustive, and 'to cover the whole field' as it was put by Leggatt J in Zhoushan at [35].

36. I recognise that, in concluding that Buyer-induced delays outside the control of the Seller and not the result of conventional force majeure events are within Article VIII.1, I am differing, as did the tribunal, from the construction given to a similarly, albeit not identically, worded provision (Article VIII.1 in both cases) by Leggatt J in Zhoushan. It is significant, however, that Leggatt J accepted that, 'taken at face value' the words 'or other causes beyond the control of the builder' would include a breach of contract by the buyer (paragraph [59]). The principal reason which led Leggatt J to give the words a narrower construction, as he explained in paragraph [62] of his judgment, was that he considered that all buyer's breach delays which were intended to permit a postponement of delivery were dealt with elsewhere in the contract. In the Zhoushan case the only buyer's breach delay which it was suggested was unprovided for elsewhere was breach by the buyer of Article IV. For the reasons given by Leggatt J in paragraphs [46-49], however, it was not safe to assume that commercial parties would have intended that a breach of Article IV should lead to a postponement of the delivery of the vessel. On that basis there appeared to Leggatt J to be no good reason to construe

Article VIII.1 as extending to buyer's breach delays. What the present case has highlighted, however, is that there may be other Buyer's breaches, including of the implied term as to non-prevention, which cannot readily be considered as being provided for elsewhere in the contract. In light of that, I consider that the best interpretation of the contract is to give their face value to the contested words of Article VIII.1.

37. The other reasons which Leggatt J gave for preferring a narrower construction were two-fold. The first was that, if a wider interpretation is given, there would be duplication in relation to delays caused by breaches of Articles V.4 and XI, as there would be two different regimes for an extension of time in place. I consider that the degree of duplication is limited. Article XI sets out a regime for postponement of the Delivery Date which does not depend on showing delay to the construction of the vessel or of a performance which is required as a prerequisite of an extension of delivery by reason of one of the causes specified in Article VIII.1. A default within Article XI might or might not cause delay. Thus on any view Article VIII.1 does not cover all the same territory as Article XI and cannot simply be regarded as duplicative of it. More generally I am of the view that a construction where there may be duplication of provision for some causes of delay is preferable to a construction which leads to no provision for foreseeable causes of delay, provided of course that that is an available construction of the words used. To the extent that there is duplication, I would consider that the best interpretation is that the more specific regime is intended to apply instead of the less specific.

38. The other point which weighed with Leggatt J in giving Article VIII.1 the narrower construction was that if buyer's breaches fall within Article VIII.1, they are 'permissible delays', and can contribute towards the period of time which may permit cancellation under the contract. As he said, the court should not readily adopt a construction which allows a buyer to rely on its own breach to permit cancellation. This point, or a version of it, was relied on very heavily by the Seller in the present case. The Seller's contention was that if it is recognised that delays caused by the Buyer of the type which I am considering here are within Article VIII.1, then they constitute 'permissible delays'. This is because Article VIII.4 defines 'permissible delays' as being delays on account of the causes provided for in Article VIII.1, save for extensions of a nature expressly provided for elsewhere in the SBC. The delays in question, namely the wrongful cancellation of earlier contracts and wrongful occupation of the berths preventing launch of the relevant Hulls, are not 'other extensions of a nature which under the terms of this Contract permit postponement of the Contract Delivery Date': they are not in other words, to use Leggatt J's terminology in Zhoushan, 'excluded delays'. If they are 'permissible delays', then they go towards the 180 days after which, under Article VIII.3 and Article III.1(d), the Buyer would be entitled to cancel the contract.

39. The Buyer by contrast contends that this problem does not arise because, under Article VIII.3, delays which are due to 'default in performance by the Buyer' are not included in the period of 180 days. If the Seller's case were correct as to the nature and cause of the delays, they would have been due to 'default in performance by the Buyer'. To that, the Seller answers that 'default in performance by the Buyer' is limited to defaults within Article XI.1; and, in any event, that Article III.1(d) provides for a right of cancellation after 180 days of permissible and non-permissible delays, and does not

exclude from 'permissible delays' any caused by Buyer's default. This shows, according to the Seller, that it cannot be right to treat the relevant delays as falling within Article VIII.1 in the first place. They must be regarded as unprovided for under that Article or any other extension regime, and thus give rise to the potential operation of the 'prevention principle'.

40. I cannot accept that the Seller is correct as to the proper construction of the SBCs in this regard. In my judgment, what was intended, and is effected, by the exclusion from the period of 180 days specified in Article VIII.3, is any delays caused by a default in performance by the Buyer. I consider that that would embrace a breach of the implied terms as to non-prevention, though doubtless it would not embrace steps taken by the Buyer which involved no breach of contract or were not independently wrongful. I do not consider that it is limited to default as specified in Article XI.1. It does not say that it is, and delays due to defaults within Article XI are dealt with in the further phrase 'and excluding delays due to causes which, under Article … XI … hereof, permit extension or postponement of the time for delivery of the VESSEL'. While, on my preferred construction, delays within the first phrase ('due to default in performance') will overlap with delays covered by the second ('delays due to causes … under Article XI…'), they would not be coterminous, and the first phrase would add something not within the second. That appears to me a better construction than one whereby the first adds nothing to the second.

41. There remains, however, the further point on which Mr Stevens for the Seller particularly relied. It is that, even if Article VIII.3 excludes delays which are due to Buyer's defaults other than those within Article XI.1, there is no such exclusion provided for by Article III.1(d), where the right of cancellation arises if there are 180 days of permissible and non-permissible delays, and no exception is made in respect of delays 'due to default in performance by the Buyer'. I consider that the better view, however, is that the cancellation right in Article III.1(d) is intended to be the equivalent of that in Article VIII.3. Indeed, I think that it is Article VIII.3 which should be regarded as the primary provision relating to the right to cancel for excessive delay, and that the final sentence of Article III.1(d) is intended to be a reference to and a saving of the cancellation right embodied in Article VIII.3. I would accordingly read Article III.1(d) as implicitly excluding delays caused by the Buyer's default from the period of 180 days. This interpretation would mean that while such delays are subject to the extension of time provisions of Article VIII.1 (and the notification requirements of Article VIII.2, to which I will return), they could not be relied upon by the Buyer for the purposes of cancelling the contract under Article III.1(d) or Article VIII.3. That appears to me to be the interpretation of the contract which best accords with its language and commercial sense.

42. Again, I acknowledge that this construction is not the same as that indicated by Leggatt J in Zhoushan, at paragraph [43]. Once again, however, his view was formed in the context of an argument that the only buyer's breach which might give rise to a delay, and which was not otherwise catered for by an express regime and thus constituted an 'excluded delay', was a breach of Article IV. Once it is recognised, as the alleged facts of this case illustrate, that there may be other buyer's breaches which are not catered for by those other regimes, but which may significantly delay construction, then it appears to me that the intent of the exclusion of delays 'due to default in performance by the Buyer' in Article VIII.3 is to exclude all delays of that sort from the calculation

of the 180 day period to the extent that they are not excluded from that calculation by the other exclusory phrases (relating to delays in delivery of Buyer's supplied items and the delays due to causes for which provision is made under Articles V, VI, XI and XII).

43. If I am correct in relation to the construction of Article VIII.1 set out above, then provision was made for an extension of time for delay resulting from the Buyer's allegedly wrongful acts leading to the occupancy of the berths. On that basis there is no room for the application of the 'prevention principle' as a result of the occurrence of such delays.

44. The Seller placed no emphasis on the suggestion that the lack of a provision for an extension of time in the case of delays caused by modifications or by defaults of the Buyer in paying instalments led to the application of the 'prevention principle'. I consider that this was realistic. In the case of modifications there is a clear procedure whereby the Seller can require the agreement of an extension of time, and that if no agreement is reached, then it does not have to conduct the modification. As to defaults within Article XI.1, there is a regime for extension of time under Article XI.4(a). I will deal with further issues in relation to these two regimes in due course, but in neither area does there appear to me to be any room for the application of the 'prevention principle'.

Notification: The Ambit of Article VIII.2

45. The Buyer contends that the tribunal was correct to find that, whether or not the causes of the delays in question are within Article VIII.1, there needed to have been compliance with the notification machinery specified in Article VIII.2, unless another express term of the SBCs provided otherwise. The main significance of this point is in relation to the delay which it is alleged was caused by the Buyer's wrongful repudiation of the earlier contracts and occupation of the berths.

46. If this cause of delay is within Article VIII.1, as on my preferred view it is, then the notice regime in Article VIII.2 is clearly applicable to it. The Article VIII.2 regime must apply at least to cases within Article VIII.1 which are not covered by any other more specific notification/agreement regime. There is no more specific regime for delays in the category I am presently considering. On this basis, if no relevant notice was given, then, except in the cases of power failures or cut-offs of communications (which I do not understand to be relevant here), that would preclude the Seller from claiming an extension of the Delivery Date. This is what is provided for in Article VIII.2, last paragraph.

47. If I am wrong as to the construction of Article VIII.1, and it is not wide enough to embrace delays caused by the Buyer which are beyond the control of the Seller, the question arises as to whether the provisions of Article VIII.2 would nevertheless be applicable. The tribunal found that the provisions of Article VIII.2 were applicable even in cases not within Article VIII.1, but not in cases where the relevant cause of delay was a matter which either had its own notice provision, or where a notice under Article VIII.2 was not necessary to make the contract work.

48. On the assumption that Article VIII.1 is given a narrower interpretation, and there can be cases of Buyer-induced delay which do not fall either within it or within any of the more specific regimes in the SBC, then I would give to Article VIII.2 a construction whereby its notification requirements apply in the case of such delays. The language of Article VIII.2 is wide enough to admit of that construction, because it is in terms of 'any delay on account of which the SELLER claims that it is entitled under this Contract to an extension of time for delivery…".

49. In Zhoushan at paragraph [70] Leggatt J expressed the view that, although not expressly stated, Article VIII.2 applied only to causes of delay referred to in Article VIII.1. As I have set out above, my preferred reading of the contract is that notification under Article VIII.2 is required only in cases falling within Article VIII.1, though I give to Article VIII.1 a wider meaning that did Leggatt J, and I also consider that if the cause of the delay is one to which there is a more specific regime applicable, the Article VIII.2 notification regime is implicitly inapplicable. However, if the position is, as was not contemplated by Leggatt J, that there were foreseeable instances of Buyer-induced delay neither within Article VIII.1 nor another regime then in my judgment the better construction of Article VIII.2 is that it does apply to such matters even though they are not within Article VIII.1.

50. In this regard, I note in particular what Leggatt J said at paragraph [54] of his judgment in Zhoushan, as follows:

> As [counsel for the buyers] showed, the contract wording is replete with provisions requiring any extension of the delivery date to be communicated and agreed between the parties (or ascertained by arbitration). Furthermore the operation of the cancellation clauses depends on the parties knowing where they stand. Those provisions depend for their efficacy on the parties being able to calculate with precision and know at any given time how many days of (i) permissible delay and (ii) non-permissible delay have occurred. The parties could no doubt have made a contract which left them each to perform their own calculation and then argue about the causes of delay after a cancellation has occurred. However, they have tried to avoid such an anarchic situation. Instead, they have adopted a scheme which provides for notices to be given and agreement reached, or any dispute resolved by arbitration if necessary, whenever an event occurs which the Yard wishes to say justifies an extension of time for delivery.

51. I respectfully entirely agree with that, and I consider it an accurate description of the nature of the SBCs in this case. I consider that the parties have clearly attempted to provide for notification of the matters relevant to a claim for an extension of time. I consider that the court should lean in favour of a construction under which there are notification requirements in relation to any, or at least any reasonably foreseeable, causes of delay. In my judgment, a construction of the SBCs whereby, if the alleged cause of delay is not within Article VIII.1, nevertheless Article VIII.2 is applicable is available on the words of Article VIII.2, and is clearly preferable to a construction whereby such delays are not covered by any notification requirement.

Modifications

52. The issue in relation to modifications is that the Seller contends that the parties agreed to modify the construction and design of the vessels and that in consequence construction was delayed, but there was no agreement in writing as to the extension of time which the Seller would be allowed for this. The Seller contends that in such circumstances it is entitled to an extension, and that there is no requirement for it to serve any notification as to the delay in order to do so, whether under Article VIII.2 or otherwise.

53. Modifications are dealt with by Article V of the SBCs. Under Article V.1 two scenarios are contemplated. The first is that the parties agree to modify the vessel, and agree any adjustment of the delivery date and price or other terms of the contract. That agreement has to be recorded in a written agreement. The second is that the Buyer proposes a modification but, for whatever reason, the parties fail to agree on any changes to the contract necessitated by such a modification. In such a case the Seller has no obligation to comply with the Buyer's request and may proceed to build the vessel pursuant to the unmodified contract. In neither situation is there the possibility of an extension of time which is not the subject of a written agreement. It may be noted that the same applies in relation to Article V.2, which concerns alterations sought as a result of changes in Class or other regulatory rules.

54. The Seller posits a third situation, which is that the parties agree to modify the vessel but do not agree the costs, time or other consequences. It is difficult to see how such a situation can arise. Article V.1 is clear. If there is no agreement on consequential amendments, the Seller may proceed without making the modification. The contract does not contemplate a request for an unagreed extension of time following a modification. Consistently with that, in my view, the contract does not provide for a notification regime relating to such a request.

55. I should add that I do not regard this as creating any commercial absurdity – or indeed hardship to the Seller. In the circumstances which are envisaged, namely that the Seller is prepared to make the modification but contends that it requires an extension of time or a change in the price, but the parties cannot agree on such changes at that point, the parties would be able to make and, given that the Seller could otherwise refuse to make the modification, might very well make, an ad hoc agreement that the modification would take place and any change in the delivery date or price should be resolved subsequently or determined by arbitration. That, however, is an agreement to which the parties might come: it is not provided for in the SBCs themselves.

56. Because I do not consider that the SBCs envisage a claim for an extension of time in the circumstances under consideration, I do not consider that there is a regime for a notification of such a claim, and in particular, for the reason I have given, do not consider that Article VIII.2 was intended to apply.

Buyer's Default in Payments

57. The Seller alleges that the Buyer was in default in failing to pay the third, fourth and fifth instalments of the purchase price. The issue of whether there was any obligation to pay those instalments is not a matter which is the subject of these appeals. What is in issue is the Seller's contention that, in the event of a default by the Buyer in paying instalments, it is entitled to a day-by-day extension of time under Article XI.4 without

its being required to do anything to postpone the Delivery Date. The Buyer contends, on the other hand, that the Seller must serve a default notice under Article XI.2 as to the relevant delay; and that the Seller must exercise its 'option' to extend time for delivery under Article XI.4(a). The tribunal found that the Seller was not obliged to serve a notice under Article VIII.2, but was required to communicate to the Buyer that it was exercising its option to postpone the Delivery Date for the period of the Buyer's default.

58. The requirement for a notice under Article XI.2 is not directly concerned with delay. It is rather concerned with ensuring that there is communication between the parties as to the fact of the occurrence of a Buyer's default. I do not consider that a Notice under Article XI.2 is a prerequisite for a postponement of the Delivery Date pursuant to Article XI.4(a). There is no language which makes such an extension conditional on the service by the Seller of a notice under Article XI.2. Instead, Article XI.4(a) refers to 'any default by the Buyer … as defined in Paragraph 1 of this Article' as giving rise to a postponement of the Delivery Date, and not a default within Article XI.1 which has been notified under Article XI.2.

59. There remains, however, the question of what is entailed by the provision in Article XI.4(a) that the postponement is 'at the Seller's option'. In my judgment what this provides for is that the Seller may choose that the Delivery Date should be postponed. If it does not so choose, then the Delivery Date is not postponed. Given that both parties need to know where they stand, I consider that it is implicit that there must be communication of whether the Seller has chosen that the Delivery Date should be postponed. In almost all cases, that choice would need to be made and communicated before the contractual Delivery Date. I say 'almost all' because it is possible, for example, to envisage a case of a bankruptcy of the Buyer just before the contractual delivery date, of which the Seller is only informed after it. In such a case it might be that the Seller could then exercise the Article XI.4(a) option after it became aware of the bankruptcy. Such exceptional circumstances apart, however, I consider that if there has been no communication before the Delivery Date that the Seller has chosen that the Delivery Date should be postponed, then it remains the same.

60. I therefore agree with the conclusion reached by the tribunal in paragraph 78 (and 87) of the awards on this issue, namely that the Seller does have to communicate to the Buyer that it is exercising its option to postpone the Delivery Date. I also agree with the tribunal's conclusion that this does not have to be by way of notice under Article VIII.2, which would not be apposite to this situation. What exactly would be required by way of communication is not a matter which arises on these appeals.

Conclusion

61. For the reasons set out above, I consider that the tribunal gave the right answers to the 'Second Issue' and 'Third Issue'. Accordingly the appeals are dismissed.

APPENDIX

ARTICLE II WARRANTY OF QUALITY

1 …

2 TERMS OF PAYMENT:

The CONTRACT PRICE shall be paid by the BUYER to the SELLER in installments as follows:

… (c) Third Installment

The sum of United States Dollars Two Million Seven Hundred and Ninety Thousand only (US$2,790,000.00), representing ten percent (10%) of the CONTRACT PRICE should become due and payable and be paid by the BUYER to the SELLER within five (5) Banking Days after (i) the keel laying for the VESSEL as evidenced by the Class that the number of blocks, not less than 10 blocks of about 50 tonnes each, have been laid in the dry-dock from which the VESSEL will be launched, and (ii) the BUYER'S receipt of the Third Installment Refund Guarantee in the form annexed hereto as Exhibit 'A' issued by the SELLER's bank acceptable to the BUYER via authenticated SWIFT …

…

The date stipulated for payment of each of the installments mentioned above is hereinafter in this Article and in Article XI referred to as the 'Due Date' of that installment.

ARTICLE III ADJUSTMENT OF THE CONTRACT PRICE

The CONTRACT PRICE of the VESSEL shall be subject to adjustments as hereinafter set forth.

1 DELIVERY

(a)No adjustment shall be made, and the CONTRACT PRICE shall remain unchanged for the Thirty (30) days of delay in delivery of the VESSEL beyond the Delivery Date as defined in Article VII hereof ending as of twelve o'clock midnight Chinese Standard Time of the Thirtieth (30^{th}) day of delay.

(b)If the delivery of the VESSEL is delayed more than Thirty (30)days after the date as defined in Article VII hereof, then, in such event, beginning at twelve o'clock midnight Chinese Standard Time of the Thirtieth (30^{th}) day after the date on which delivery is required under this Contract, the CONTRACT PRICE of the VESSEL shall be reduced as follows by the sum of United States Dollars as follows:-

In case the days of delay are more than 30 days:

From the 31^{st} to 60^{th} day USD 7,500.- per day
From the 61^{st} to 90^{th} day USD 10,000.- per day
From the 91^{st} to 180^{th} day USD 12,500.- per day

Unless the parties hereto agree otherwise, the total reduction in the CONTRACT PRICE shall be deducted from the Final Installment of the CONTRACT PRICE and in any event (including the event that the BUYER consents to take the VESSEL at the later delivery date after the expiration of One Hundred and Eighty (180) days delay of delivery as described in Paragraph 1(c) of this Article or in Paragraph 3 of Article VIII) shall not be more than United States Dollars One Million Six Hundred Fifty Thousand Only (USD 1,650,000.-) being the maximum.

(c) If the delay in the delivery of the VESSEL continues for a period of one Hundred and Fifty (150) days (being the total of non permissible delays and excluding extension of delivery date by reason of causes and provisions of Article V, VI, XI, XII and XIII hereof and the delays by reason of permissible delays as defined in Article VIII hereof) after the Delivery Date as

defined in Article VII, then in such event, the BUYER may, at its option, rescind or cancel this Contract in accordance with the provisions of Article X of this Contract by written notice to the SELLER at any time after the expiration of the said one Hundred and Fifty (150) days period.
…

(d) For the purpose of this Article, the delivery of the VESSEL shall not be deemed delayed and the CONTRACT PRICE shall not be reduced when and if the Delivery Date of the VESSEL is extended by reason of causes and provisions in Articles V, VI, XI, XII, and XIII hereof. The CONTRACT PRICE shall not be reduced if the delivery of the VESSEL is delayed by reason of permissible delays as defined in Article VIII hereof. However, notwithstanding anything stated herein, if the total delay (inclusive of all permissible and non-permissible delays as mentioned in this Contract exceeds One Hundred and Eighty (180) days from the Contractual delivery date as mentioned in Article VII of the Contract, BUYER shall be entitled to rescind the Contract and claim the refund of advance payments as provided in the Contract.
…

ARTICLE V MODIFICATION, CHANGES AND EXTRAS
1 HOW EFFECTED
The Specifications and Plans in accordance with which the Vessel is constructed, may be modified and/or changed at any time hereafter by written agreement of the parties hereto, provided that such modifications and/or changes or an accumulation thereof will not, in the SELLER's reasonable judgment, adversely affect the SELLER's other commitments and provided further that the BUYER shall assent to adjustment of the Deadweight and capacity, CONTRACT PRICE, time of delivery of the VESSEL and other terms of this Contract, if any, as hereinafter provided. Subject to the above, the SELLER hereby agrees to exert its best efforts to accommodate such reasonable requests by the BUYER so that the said changes and/or modifications may be made at a reasonable cost and within the shortest period of time which is reasonable and possible. Any such agreement for modifications and/or changes shall include an agreement as to the increase or decrease, if any, in the CONTRACT PRICE of the VESSEL together with an agreement as to any extension or reduction in the time of delivery, providing to the SELLER additional securities satisfactory to the SELLER, or any other alterations in this Contract, or the Specifications occasioned by such modifications and/or changes. The aforementioned agreement to modify and/or to change the Specifications may be effected by an exchange of duly authenticated letters, or telefax, or e-mail, manifesting such agreement. The letters, telefaxes and e-mails exchanged by the parties hereto pursuant to the foregoing shall constitute an amendment of the Specifications under which the VESSEL shall be built, and such letters, telefaxes and e-mails shall be deemed to be incorporated into this Contract and the Specifications by reference and made a part hereof. Upon consummation of the agreement to modify and/or to change the Specifications, the SELLER shall alter the construction of the VESSEL in accordance therewith, including any additions to, or deductions from, the work to be performed in connection with such construction. If due to whatever reasons, the parties hereto shall fail to agree on the adjustment of the CONTRACT PRICE or extension of time of delivery or providing additional security to the SELLER or modification of any terms of this Contract which are necessitated by such modifications and/or changes, then the SELLER shall have no obligation to comply with the BUYER's request for any modification and/or changes and the BUYER shall take delivery of the VESSEL as the VESSEL is pursuant to the terms and provisions of the Contract.
…

4 BUYER'S SUPPLIED ITEMS

The BUYER shall deliver to the SELLER at its shipyard the items specified in the Specifications which the BUYER shall supply on BUYER's account by the time designated by the SELLER. The SELLER shall at all times if requested (whether by the Supervisor or otherwise) provide all reasonable assistance to the BUYER in connection with any formal documentary, customs, or other requirements of the People's Republic of China in connection with the import into the People's Republic of China of the BUYER's supplied items. Before the BUYER's supplied items enter the People's Republic of China, the BUYER shall provide necessary, reasonable documentation and guidance or make an appropriate plan together with the SELLER. Should the BUYER fail to deliver to the SELLER such items within the time specified, the delivery of the VESSEL shall automatically be extended for a period of such delay, provided such delay in delivery of the BUYER's supplied items shall affect the delivery of the VESSEL. In such event, the BUYER shall pay to the SELLER all losses and damages sustained by the SELLER due to such delay in the delivery of the BUYER's supplied items and such payment shall be made upon delivery of the VESSEL. Furthermore, if the delay in delivery of the BUYER's supplied items should exceed fifteen days, the SELLER shall be entitled to proceed with construction of the VESSEL without installation of such items in or onto the VESSEL, without prejudice to the SELLER's right hereinabove provided, and the BUYER shall accept the VESSEL so completed.
…

ARTICLE VI TRIALS
1 NOTICE
The BUYER and the Supervisor shall receive from the SELLER at least twenty (20) days notice in advance and seven (7) days definite notice in advance in writing or by telefax or e-mail confirmed in writing, of the time and place of the VESSEL's sea trial as described in the Specifications (hereinafter referred to as 'the Trial Run') and the BUYER and the Supervisor shall promptly acknowledge receipt of such notice. The BUYER's representatives and/or the Supervisor shall be on board the VESSEL to witness the Trial Run, and to check upon the performance of the VESSEL during the same. Failure of the BUYER's representatives to be present at the Trial Run of the VESSEL, after due notice to the BUYER and the Supervisor as provided above, shall had the effect to extend the date for delivery of the VESSEL by the period caused by such failure to attend. However, if the Trial Run is delayed more than seven (7) days by reason of the failure of the BUYER's representatives to be present after receipt of due notice as provided above, then in such event, the BUYER shall be deemed to have waived its right to have its representatives on board the VESSEL during the Trial Run … The SELLER shall assist the BUYER on necessary visa for the BUYER's representatives to enter into China. However, should the nationalities and other personal particulars of the BUYER's representatives be not acceptable to the SELLER in accordance with its best understanding of the relevant rules, regulations and/or Laws of the People's Republic of China then prevailing, then the BUYER shall, on the SELLER's telefax or e-mail demand, effect replacement of all or any of them immediately. Otherwise the Delivery Date as stipulated in Article VII hereof shall be extended by the delays so caused by the BUYER. … In the event that the Trial Run is postponed because of unfavourable weather conditions, such delay shall be regarded as a permissible delay, as specified in Article VIII hereof.
…

ARTICLE VII DELIVERY
1 TIME AND PLACE
The VESSEL shall be delivered safely afloat by the SELLER to the BUYER at SELLER'S yard, in accordance with the Specifications and with all Classification and Statutory Certificates

in accordance with the Specifications and after completion of Trial Run (or, as the case may be, re-Trial or re-Trials) and acceptance by the BUYER in accordance with the provisions of Article VI hereof on or before August 31st 2015, in the event of delays in the construction of the VESSEL or any performance required under this Contract due to causes which under the terms of the Contract permit extension of the time for delivery, the aforementioned time for delivery of the VESSEL shall be extended accordingly.
The aforementioned date or such later date to which delivery is extended pursuant to the terms of this Contract is hereinafter called the 'Contract Delivery Date'.
…

ARTICLE VIII DELAYS & EXTENSION OF TIME FOR DELIVERY
1 CAUSE OF DELAY
If, at any time before actual delivery, either the construction of the VESSEL, or any performance required hereunder as a prerequisite of delivery of the VESSEL, is delayed due to war, blockade, revolution, insurrection, mobilization, civil commotions, riots, strikes, sabotage, lockouts, local temperature higher than 35 degree centigrade and lower than minus 15 degree centigrade, local continuous raining lasts 5 days or more, Acts of God or the public enemy, terrorism, plague or other epidemics, quarantines, prolonged failure or restriction of electric current from an outside source, freight embargoes, if any, earthquakes, tidal waves, typhoons, hurricanes, storms or other causes beyond the control of the SELLER or of its sub-contractors, as the case may be, or by force majeure of any description, whether of the nature indicated by the forgoing or not, or by destruction of the SELLER or works of the SELLER or its sub-contractors, or of the VESSEL or any part thereof, by fire, flood, or other causes beyond the control of the SELLER or its sub-contractors as the case may be, or due to the bankruptcy of the equipment and/or material supplier or suppliers, or due to the delay caused by acts of God in the supply of parts essential to the construction of the VESSEL, then, in the event of delay due to the happening of any of the aforementioned contingencies, the SELLER shall not be liable for such delay and the time for delivery of the VESSEL under this Contract shall be extended without any reduction in the CONTRACT PRICE for a period of time which shall not exceed the total accumulated time of all such delays subject nevertheless to the BUYER's right of cancellation under Paragraph 3 of this Article and subject however to all relevant provisions of this Contract which authorize and permit extension of the time of delivery of the VESSEL.
2 NOTICE OF DELAY
Within seven (7) business days from the date of commencement of any delay on account of which the SELLER claims that it is entitled under this Contract to an extension of the time for delivery of the VESSEL, the SELLER shall advise the BUYER by telefax or e-mail confirmed in writing, of the date such delay commenced, and the reasons therefore.
Likewise within seven (7) business days after such delay ends, the SELLER shall advise the BUYER in writing or by telefax or e-mail confirmed in writing, of the date such delay ended, and also shall specify the maximum period of the time by which the date for delivery of the VESSEL is extended by reason of such delay. In case of failure of the BUYER to object the SELLER's notification of any claim for extension of the Contract Delivery Date within seven (7) business days after receipt by the BUYER of such notification, the time of delivery will be automatically extended according to the SELLER's notification.
Failure of the SELLER to give the BUYER notice of delay as provided in this Article except in the case of entire power failure or cut-off of the communication facilities shall preclude the BUILDER from claiming extension of the Delivery Date by reason of such failure.
3 RIGHT TO CANCEL FOR EXCESSIVE DELAY
If the total accumulated time of all non-permissible delays on account of the causes specified in Paragraph 1 of the Article III aggregate more than One Hundred and Fifty (150) days, or if the total accumulated time of all permissible days on account of the causes specified in Paragraph 1

of this Article and all non-permissible delays as described in Paragraph 1 of Article III aggregate to One Hundred and Eighty (180) days, in any circumstances, excluding delays due to arbitration as provided for in Article XIII hereof or due to default in performance by the BUYER, or due to delays in delivery of the BUYER's supplied items, and excluding delays due to causes which, under Article V, VI, XI and XII hereof, permit extension or postponement of the time for delivery of the VESSEL, then in such event, the BUYER may in accordance with the provisions set out herein cancel this Contract by serving on the SELLER telefaxed or e-mailed notice of cancellation in writing and the provisions of Article X of this Contract shall apply.

…

4 DEFINITION OF PERMISSIBLE DELAY

Delays on account of such causes as provided for in Paragraph 1 of this Article excluding any other extensions of a nature which under the terms of this Contract permit postponement of the Contract Delivery Date, shall be understood to be (and are herein referred to as) permissible delays, and are to be distinguished from non-permissible delays on account of which the CONTRACT PRICE of the VESSEL is subject to adjustment as provided for in Article III hereof.

ARTICLE X CANCELLATION, REJECTION AND RESCISSION BY THE BUYER

1 …

The BUYER shall be entitled to rescind or terminate this Contract upon occurrence of any following event:

(a) there occurs excessive delays in delivery of the VESSEL entitling the BUYER to rescind the Contract as specifically permitted in Paragraph 1(c) of Article III or Paragraph 3 of Article VIII hereof

…

ARTICLE XI BUYER'S AND SELLER'S DEFAULT

1 DEFINITION OF DEFAULT

The BUYER shall be deemed in default of its obligation under the Contract if any of the following events occurs:

(a) The BUYER fails to pay any of the First, Second, Third and/or Fourth Installment to the SELLER within three (3) Banking Days after the expiry of the payment period (5 Banking Days) for such installment under the provisions of Article II hereof, or

(b) The BUYER fails to pay the final installment to the SELLER in accordance with Paragraph 2(e) and 4a(ii) of Article II hereof; or

(c) The BUYER fails to take delivery of the VESSEL, when the VESSEL is duly tendered for delivery by the SELLER under the provisions of Article VII hereof within fourteen business days from the tendered date and without any justifiable reason thereof under this Contract; or

(d) The BUYER becomes bankrupt.

(Such bankruptcy shall be informed by the BUYER to the SELLER in written form within five working days after the BUYER becomes bankrupt.)

2 NOTICE OF DEFAULT

If the BUYER is in default of payment or in performance of its obligations as provided hereinabove, the SELLER shall notify the BUYER to that effect by telefax or e-mail after the date of occurrence of the default as per Paragraph 1 of this Article and the BUYER shall forthwith acknowledge by telefax or e-mail to the SELLER that such notification has been received. In case the BUYER does not give the aforesaid telefax or e-mail acknowledgment to

the SELLER within five (5) business days it shall be deemed that such notification has been duly received by the BUYER.

…

4 DEFAULT BEFORE DELIVERY OF THE VESSEL

(a) If any default by the BUYER occurs as defined in Paragraph 1 of this Article, the Delivery Date shall, at the SELLER's option, be postponed for a period of continuance of such default by the BUYER.

…

ARTICLE XIII DISPUTES AND ARBITRATION

…

6 ALTERATION OF DELIVERY TIME

In the event of reference to arbitration of any dispute arising out of matters occurring prior to delivery of the VESSEL, the BUYER shall not be entitled to extend the Delivery Date as defined in Article VII hereof. The arbitrator(s) or the Arbitration Board or the Expert, as appropriate, however, shall be empowered to decide as to what extent if any the Delivery Date is altered as a result of the arbitration proceedings, if at all. And the SELLER shall be permitted to extend the Contract Delivery Date in accordance with the arbitration award and the award shall include a finding as to what extent the SELLER shall be permitted to extend the Contract Delivery Date.

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