

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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In the Matter of the Application of	:	
	:	
INTERNATIONAL ENGINEERING &	:	Index No.
CONSTRUCTION S.A.,	:	RJI No.
	:	Date filed:
Petitioner,	:	
	:	
For an Order under Article 75 of the Civil	:	<b><u>PETITION TO VACATE</u></b>
Practice Law and Rules to vacate the Parties'	:	<b><u>ARBITRAL AWARD</u></b>
arbitral award,	:	
	:	
-against-	:	
	:	
GE OIL & GAS, LLC (f/k/a GE OIL & GAS,	:	
INC.), GE INTERNATIONAL OPERATIONS	:	
(NIGERIA) LTD., BAKER HUGHES	:	
ENERGY SERVICES LLC, PRESSURE	:	
CONTROL SYSTEMS NIGERIA LTD.,	:	
BAKER HUGHES CO., and BAKER HUGHES:	:	
HOLDINGS LLC,	:	
	:	
Respondents.	:	
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Petitioner International Engineering & Construction S.A. ("IEC"), by and through its undersigned attorneys, White & Case LLP, respectfully submits this Petition under Article 75 of the New York Civil Practice Law and Rules ("CPLR") to vacate an arbitral award rendered on October 30, 2020, in the International Centre for Dispute Resolution ("ICDR") / American Arbitration Association ("AAA") Case No. 01-18-0002-9174 ("Award"), in connection with a dispute involving the engineering, supply, and construction of two liquefied natural gas ("LNG") production plants sold by Respondent GE Oil & Gas, LLC ("GE"). For the reasons below and in the accompanying Memorandum of Law, the Award should be vacated and the case remanded to a new panel.

### PRELIMINARY STATEMENT

1. This Article 75 proceeding seeks an order pursuant to CPLR 7511 to vacate the Award issued on October 30, 2020, for GE and GE International Operations (Nigeria) Ltd. (“GE Nigeria”) (together “Respondents” with other affiliated entities).

2. Judicial review of the Award is also governed by the Federal Arbitration Act (“FAA”) because the arbitration agreement and the Parties’ legal relationship arise out of foreign commerce. 9 U.S.C. § 1, 10; *Metrosvyaz Ltd. v. Whale Telecom Ltd.*, No. 600061/05, 2006 N.Y. Misc. LEXIS 298, at \*5-6 (Sup. Ct., N.Y. Cty. Sept. 21, 2006).

3. IEC and its subsidiary Greenville Liquefied Natural Gas Co., Ltd. (“Greenville”) (together “Claimants”) initiated arbitration against the Respondents on July 31, 2018, pursuant to a contract for the sale of two LNG plants executed by IEC and GE on September 13, 2013 (“Equipment Contract”), as well as a services agreement executed by IEC and GE Nigeria on the same date regarding the installation of the plants (“Services Agreement”).

4. The three-member Tribunal rendered the Award on October 30, 2020, finding that GE repeatedly breached the Equipment Contract, but holding that its liability was limited by the liability limitation provisions contained therein, which capped and limited GE’s damages to “direct” damages. One arbitrator dissented from the majority’s decision on GE’s limited liability (“Dissent”).

5. The Award represents a manifest disregard of the law. By requiring IEC to show *specific, individual* instances of gross negligence and willful misconduct, the Tribunal disregarded New York law, which clearly provides that gross negligence and willful misconduct can be established through *cumulative* conduct, not just specific or isolated instances of gross negligence. The Tribunal also manifestly disregarded the Equipment Contract by ordering IEC to pay GE for mechanically completing the plants, even though the

Contract expressly conditions payment on GE's performance of all its obligations, and even though GE failed to perform those obligations and then abandoned the project and forced IEC to mechanically complete the plants. Finally, the Tribunal's decision to award GE payment for mechanical completion was also completely irrational under New York law because it not only ignored express contractual language, but it also awarded GE payment for work that it never performed and that was only completed by Claimants after GE abandoned the project altogether. The Award should be vacated.

### PARTIES

6. Petitioner IEC is a foreign corporation organized and existing under the laws of Luxembourg with registered address at Rue de Neudorf 36 L-2222, Luxembourg, Luxembourg.

7. Respondent GE is a corporation organized and existing under the laws of Delaware with primary business office at 17021 Aldine Westfield Rd., Houston, Texas 77073. GE is a designer and manufacturer of small-scale LNG plants and signed the Equipment Contract with IEC on September 13, 2014.

8. Respondent GE Nigeria is a foreign corporation organized and existing under the laws of Nigeria with registered and principal address at Mansard Place, Plot 927/928 Bishop Aboyade Cole Street, Victoria Island, Lagos, Nigeria. GE Nigeria is active in the oil and gas business and executed the Services Agreement with IEC on September 13, 2014.

9. Respondent Baker Hughes Energy Services LLC is a corporation organized and existing under the laws of the State of Delaware with primary business office at 17021 Aldine Westfield Rd., Houston, Texas 77073.

10. Respondent Pressure Control Systems Nigeria Ltd. is a foreign corporation organized and existing under the laws of Nigeria with registered and principal address at Mansard Place, Plot 927/928 Bishop Aboyade Cole Street, Victoria Island, Lagos, Nigeria.

11. Respondent Baker Hughes Co. is a corporation organized and existing under the laws of Delaware with primary business office at 17021 Aldine Westfield Rd., Houston, Texas 77073.

12. Baker Hughes Holdings LLC is a corporation organized and existing under the laws of Delaware with primary business office at 17021 Aldine Westfield Rd., Houston, Texas 77073.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction pursuant to CPLR 7501 *et seq.*, because the Parties agreed in writing to arbitration in New York, and there is no pending action related to the Award. CPLR 7501-7502, 7511.

14. Venue in New York County is proper pursuant to CPLR 7502 because the arbitration was held, and the Award was rendered, in New York City.

### **STATEMENT OF FACTS**

15. IEC and GE entered into the Equipment Contract on September 13, 2013, for the sale of two modular LNG plants that GE agreed to deliver in 9 and 12 months. IEC also entered into the Services Agreement with GE Nigeria regarding the installation of the plants. Both contracts are governed by New York law, and they contain arbitration clauses designating New York as the seat.

16. On July 30, 2018, IEC and Greenville initiated arbitration against GE, GE Nigeria, and related entities, claiming multiple breaches of the Equipment Contract and Services Agreement for the over four-year delay in delivery and operation of the plants. Claimants also argued that GE's conduct amounted to gross negligence or willful misconduct and thus that the limited liability provision in the Equipment Contract should not apply.

17. On August 14, 2018, Respondents counterclaimed for payment under the contracts and, in particular, the milestone payment for mechanical completion of the plants.

The main hearing on the merits was held in New York on December 9 until December 20, 2019, with closing statements made at a later hearing in Milan on January 21, 2020. After several rounds of pleadings before and after the hearing, the Tribunal issued its Award on October 30, 2020.

18. The Tribunal found that IEC was entitled to the full amount of liquidated damages for GE's late delivery of both plants and that GE had failed or refused to remedy numerous defects—some life-threatening. The Tribunal further found that GE was solely responsible for the delays and defects, which prevented mechanical completion of the plants and their operation. The Tribunal also acknowledged that GE had left the site in 2019, and that as a result IEC was forced to remedy the defects and achieve mechanical completion itself.

19. Nevertheless, the Tribunal found no gross negligence or willful misconduct on the part of Respondents, and therefore enforced the limited liability provision of the Equipment Contract, thereby awarding IEC only its direct damages arising from GE's numerous breaches of the Equipment Contract and depriving IEC of the substantial lost profits that it would have earned if GE had performed. The Tribunal specifically ruled that it “would need to be pointed at specific instances” that amounted to gross negligence or willful misconduct and thus refused to account for the cumulative effect of GE's course of poor performance and breaches. Award ¶ 774. In addition, the Tribunal expressly acknowledged that GE was responsible for the mechanical completion of the project, but nonetheless awarded GE a milestone payment for mechanical completion after the Claimants mechanically completed the plants. *Id.* ¶¶ 939-43.

20. One arbitrator—Mr. Paul F. Saba—dissented from the majority on its decision on limited liability. He stressed that the delays, multiple defects, piecemeal delivery of the plants' parts, and fact that GE failed to remedy defects within a reasonable time “were too many, too serious, and too prolonged for GE to escape major liability.” Dissent ¶¶ 15-16 (“the record in this case amply supports a finding of gross negligence and a very different outcome”).

Arbitrator Saba properly focused on the cumulative effect of GE's breaches. Arbitrator Saba also found that some of the defects themselves amounted to gross negligence for being an extreme departure of ordinary care and a disregard of a known or obvious safety risk. *Id.* ¶¶ 10-12. Arbitrator Saba further criticized the majority for awarding GE the mechanical completion payment even though GE did not remedy the defects or achieve mechanical completion. *Id.* ¶ 20.

21. Attached as Exhibit 1 is a true and correct copy of the Parties' Award issued on October 30, 2020, and delivered to the Parties on the same date.

22. Attached as Exhibit 2 is a true and correct copy of Arbitrator Saba's Dissent delivered on the same date as the Award.

23. Attached as Exhibit 3 is a true and correct copy of the Equipment Contract between GE and IEC of September 13, 2014.

24. Attached as Exhibit 4 is a true and correct copy of the Services Agreement between GE Nigeria and IEC of September 13, 2014.

25. Attached as Exhibit 5 is a true and correct copy of Claimants' Statement of Claim and Defense to Counterclaim of March 15, 2019.

26. Attached as Exhibit 6 is a true and correct copy of Respondents' Statement of Defense and Reply on Counterclaim of September 2, 2019.

27. Attached as Exhibit 7 is a true and correct copy of the transcript of the closing hearing held in Milan on January 21, 2020.

28. Attached as Exhibit 8 is a true and correct copy of Claimants' First Post-Hearing Submission of March 3, 2020.

29. Attached as Exhibit 9 is a true and correct copy of Claimants' Reply Post-Hearing Submission of May 8, 2020.

30. Attached as Exhibit 10 is Arbitrator Stefano Azzali's Disclosure Statement of Aug. 23, 2018.

### FIRST CAUSE OF ACTION

#### VACATUR OF ARBITRAL AWARD

31. Petitioner repeats and re-alleges paragraphs 1 through 30 above, as if fully set forth herein.

32. Under the FAA, courts "may set aside an arbitration award if it was rendered in manifest disregard of the law." *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019); *see also Citigroup Global Mkts., Inc. v. Fiorilla*, 127 A.D.3d 491, 492 (1st Dep't 2015). This requires a showing that "the law that was allegedly ignored was clear," that "the law was in fact improperly applied, leading to an erroneous outcome," and the "arbitrator's awareness of the law[.]" *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 390 (2d Cir. 2003); *see also Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 481 (2006).

33. As set forth in greater detail in the accompanying Memorandum of Law, the Tribunal manifestly disregarded the law by refusing to account for the cumulative effect of GE's breaches and course of performance when deciding whether GE acted with gross negligence or willful misconduct. Under New York law (and in the United States generally), a party can establish gross negligence and willful misconduct with evidence of cumulative facts that, when viewed in aggregate, satisfy the standard. The Tribunal ignored this law and required IEC to show specific, individual acts that, standing alone, establish gross negligence or willful misconduct. The Tribunal thus refused to account for the combined effect of the wrongfulness of GE's shockingly poor performance, including significant delays, rampant defects, the failure to remedy those defects (some of which pose serious safety risks), and GE's abandonment of the site. Because the Tribunal was made aware of the "cumulative facts" standard throughout the arbitration, the Tribunal's disregard of the law was manifest and

resulted in the enforcement of the liability limitation provision in the Equipment Contract. As a result, GE was not held liable for the full extent of harm caused to IEC.

34. For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, IEC requests this Court to vacate the Final Award under FAA, 9 U.S.C. § 10.

## **SECOND CAUSE OF ACTION**

### **VACATUR OF ARBITRAL AWARD**

35. Petitioner repeats and re-alleges paragraphs 1 through 30 above, as if fully set forth herein.

36. As explained above, courts may vacate an award under the FAA for manifest disregard of the law. This includes instances where the tribunal manifestly disregards the express terms of the parties' contract by rendering a decision that "ignored and contradicted an unambiguous term of the agreement[.]" *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 110 (2d Cir. 2019).

37. Here, clause 7.1 of the Equipment Contract unambiguously states that the Contract price is "for performance of Seller's obligations" and that IEC "agreed to pay the Contract Price to Seller . . . in consideration for the performance by Seller of all its obligations under the Agreement[.]" The Tribunal read this provision out of the Contract altogether by compensating GE for mechanical completion even though the Tribunal found that GE failed to remedy the defects, had abandoned the site altogether, and that IEC mechanically completed the plants itself.

38. For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, IEC requests this Court to vacate the Final Award under FAA, 9 U.S.C. § 10.



**THIRD CAUSE OF ACTION  
VACATUR OF ARBITRAL AWARD**

39. IEC repeats and re-alleges paragraphs 1 through 30 above, as if fully set forth herein.

40. Under CPLR 7511(b)(iii), an arbitral award may be vacated when the arbitrators exceeded their powers. An excess of powers occurs when the arbitrators “give a completely irrational construction to the provisions in dispute and, in effect, make a new contract for the parties.” *Nat’l Cash Register Co. v. Wilson*, 8 N.Y.2d 377, 383 (1960); *see also Kudler v. Truffelman*, 93 A.D.3d 549, 550 (1st Dep’t 2012).

41. The Award is completely irrational for awarding GE the mechanical completion payment while ignoring that the Contract makes payment conditional on GE performing its obligations, that GE had failed to remedy the material defects, and that IEC had to mechanically complete the plants itself as a result of GE’s abandonment of the site.

42. For the foregoing reasons, and as set forth more fully in the accompanying Memorandum of Law, IEC requests this Court to vacate the Final Award under CPLR 7511.

**PRAYER FOR RELIEF**

**WHEREFORE**, IEC respectfully requests this Court to: enter an Order under CPLR 7511 and 9 U.S.C. § 10 vacating the Award of October 30, 2020, remanding to a new panel, awarding IEC its costs in this proceeding, and issuing such other and further relief as the Court deems just and proper.

Date: January 27, 2021  
New York, New York

Respectfully submitted,

White & Case LLP

By: /s/ David G. Hille

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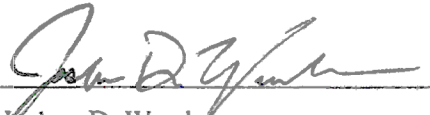
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Control Systems Nigeria Ltd., Baker Hughes  
Co., and Baker Hughes Holdings LLC*

**VERIFICATION**

Joshua D. Weedman, being duly sworn, deposes and says:

- I am an attorney at White & Case LLP for the petitioner, International Engineering & Construction S.A.
- I have read the foregoing petition, as has the petitioner, and its factual contents are true to the knowledge of the petitioner, except as to those matters alleged therein to be upon information and belief, and as to those matters, it believes them to be true.
- This verification is not made by the petitioner because the petitioner is a foreign corporation. The verification is thus made by the attorney for petitioner pursuant to CPLR 3020(d)(3).

  
 Joshua D. Weedman  
 White & Case LLP  
 Attorney for Petitioner

Sworn to before me this

27th day of January 2021



Notary Public

**PATRICIA A. ASHMAN**  
 Notary Public, State of New York  
 No. 01AS6155444  
 Qualified in Bronx County  
 Certificate Filed in New York County  
 Commission Expires December 11, 2022

<u>Exhibit No.</u>	<u>Description</u>
1	Award rendered on October 30, 2020, in ICDR/AAA Case No. 01-18-0002-9174 (“Award”)
2	Dissenting opening of Arbitrator Paul F. Saba rendered on October 30, 2020, in ICDR/AAA Case No. 01-18-0002-9174 (“Dissent”)
3	Contract for the sale of two small scale LNG plants between GE Oil & Gas, Inc., Seller to International Engineering & Construction S.A., Buyer, executed on September 13, 2014 (“Equipment Contract”)
4	Services Agreement between GE International Operations (Nigeria) Ltd., as Services Provider and International Engineering & Construction S.A., as Buyer, executed on September 13, 2014 (“Services Agreement”)
5	Claimants’ Statement of Claim and Statement of Defense to Counterclaim, dated March 15, 2019 (“Statement of Claim”)
6	Respondents’ Statement of Defense to Claim and Reply on Counterclaims, dated September 2, 2019 (“Statement of Defense”)
7	Transcript of the Closing Hearing held in Milan on January 21, 2020
8	Claimants’ Post-Hearing Submission, dated March 3, 2020 (“Post-Hearing Submission”)
9	Claimants’ Reply Post-Hearing Submission, dated May 8, 2020 (“Reply Post-Hearing Submission”)
10	Arbitrator Stefano Azzali’s Disclosure Statement of August 23, 2018