

EXHIBIT B

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

ICDR Case No. 01-19-0002-3079

SSL Digital, S.A. de C.V.

Claimant

v.

Quetzsat, S. de R.L. de C.V.

Respondent,

v.

**Medcom Sat, S.A. de C.V., and
*Clemente Serna Barrera***

Respondents,

v.

**SES Engineering Luxembuourg Sarl;
SES Engineering US, Inc.**

Respondents,

Final Award

Arbitral Tribunal

Luis O’Naghten, President
David Arias, Co-arbitrator
Lucia R. Ojeda, Co-arbitrator

November 23, 2020

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I. Parties

(a) Claimant

1. Claimant SSL Digital S.A. de C.V. ("**SSL Digital**") filed the Demand for arbitration pursuant to the arbitration clause contained in the TT&C Provisioning Agreement entered on August 30, 2011, between SSL Digital, S.A. de C.V. and Quetzsat, S. de R.L. de C.V. ("**Quetzsat**"). SSL Digital is a company organized and existing under the laws of Mexico and has its principal place of business in Mexico City, Mexico.
2. Claimant is represented in these proceedings by Xavier Cortina Cortina and Pablo González de Cossío of the firm Quijano, Cortina y de la Torre.

(b) Respondents

3. Respondent Quetzsat is a limited partnership organized and existing under the laws of Mexico and has its principal place of business in Mexico City, Mexico. Quetzsat is part of the SES Group of companies ultimately controlled by SES. Quetzsat was created for the purpose of occupying the Mexican orbital position of 77° West and exploiting the frequency bands associated with that position.
4. Respondent Quetzsat is represented in these proceedings by Julio C. Gutierrez Morales of the firm Rios Ferrer, Guillen-Llarena, Treviño y Rivera, S.
5. Respondent Medcom Sat, S.A. de C.V. ("**Medcom**") is a company organized and existing under the laws of Mexico and has its principal place of business in Mexico City, Mexico.
6. Respondent Clemente Serna Barrera ("**Mr. Serna Barrera**") is an individual who resides in Mexico City, Mexico.
7. Both Medcom and Mr. Serna Barrera are represented in this arbitration by Roberto Fernández del Valle Mittenzway and Luis Alberto King Martínez, both of the firm Santamarina y Steta, S.C.
8. Respondent SES Engineering (US), Inc. is part of the SES Group and is headquartered in Princeton, New Jersey. Respondent SES Engineering (Luxembourg) SARL is also part of the SES Group and is headquartered in Betzdorf, Luxembourg (collectively the "**SES Companies**").
9. The SES Companies are represented in this arbitration by Richard Lorenzo and Gabriella Morello, both of the firm Hogan Lovells US LLP.

II. Tribunal

10. The Tribunal was constituted upon the delivery of the letter of the ICDR to the Parties on 9 October 2019. As reflected in Procedural Order No. 1, dated November 29, 2019, the Parties confirmed that the Tribunal was properly constituted and no Party objected to any of the individuals acting as arbitrators.

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11. The Tribunal is constituted as follows, with Mr. O’Naghten serving as President of the Tribunal:

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III. The Arbitration Agreement and Arbitral Proceedings

12. This arbitration was brought pursuant to Section 17.3 of the TT&C Provisioning Agreement (“**TT&C**”) which provides in pertinent part as follows:

17.3 Arbitration – If the negotiations conducted pursuant to Section 17.2 does not resolve the dispute within thirty (3) days of the commencement of negotiations, the dispute shall be submitted to binding arbitration pursuant to the following:

(a) For all matters related to this Agreement, the Parties expressly agree to be subject to arbitration proceedings.

(b) The arbitration shall strictly follow the governing law of this Agreement and the Arbitration Rules set forth below.

(c) The arbitration shall take place in Houston, TX, USA, and be conducted in English in accordance with the provisions of this Article and the American Arbitration Association (“AAA”). Such arbitration shall be conducted by three (3) arbitrators who (i) have the qualifications and experience set forth below, and (ii) are selected as provided below.

(f) All expenses and fees of the Arbitrators and expenses for hearing facilities, stenographers and other expenses of the Arbitrators shall be borne equally by the Parties unless the Arbitrators in the award decide otherwise to assess such expenses. Each Party shall bear its own counsel fees and expenses of its witnesses except to the extent otherwise provided in this Agreement.

(g) The arbitration proceedings conducted pursuant hereto shall be confidential. Neither Party shall disclose any information about the

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evidence adduced by the other in the arbitration proceeding or about documents provided by the other in connection with the proceeding except in the course of a judicial, regulatory or arbitration proceeding or as may be requested by a governmental authority. The Arbitrators, expert witnesses and stenographic reporters shall sign appropriate nondisclosure agreements in order to effectuate this agreement of the Parties as to confidentiality.

(h) Time is of the essence in the initiation and completion of the arbitration. The arbitral hearing shall be commenced and conducted expeditiously. Unless the Arbitrators order otherwise, the dispute should be submitted to the Arbitrators for decision within sixty (60) days after the commencement of the arbitration, and the final award shall be rendered within thirty (30) days thereafter.

13. Although Section 17.3(h) contemplated specific time periods for the completion of the arbitration, after consultation with the Parties the Tribunal issued Procedural Order No. 1 setting forth a specific timetable for the arbitration which altered the time periods set forth in that section.
14. Although the Procedural Calendar contained in Procedural Order No. 1 contemplated an in-person evidentiary hearing in Houston, Texas, the safety protocols in effect because of the COVID 19 pandemic (including travel restrictions) rendered an in-person hearing in Houston, Texas an impossibility within the timeframe contemplated in Procedural Order No. 1. Claimant sought to delay the proceedings until an in-person evidentiary hearing could be held. Respondents all sought to have the final evidentiary hearing held virtually to not delay the arbitration proceeding any further. Because of the uncertainty as to when an in-person evidentiary hearing could take place, in its Procedural Order No. 6 the Tribunal ordered that the final evidentiary hearing would take place via the online platform offered by the ICDR. Pursuant to Procedural Order No. 6 dated June 24, 2020, the final evidentiary hearing was held on July 14-16, 2020.
15. Nonetheless, the seat of the arbitration remains Houston, Texas.
16. The substantive law regarding the interpretation of the TT&C is that of Mexico. The procedural issues related to the arbitration are governed pursuant to the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR Rules") and the Federal Arbitration Act of the United States and Texas law.

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17. All evidence was presented and evaluated by the Tribunal during the Hearing and through the process and the parties had full opportunity to present their cases with no objections.

IV. Factual Background to Dispute

(a) TT&C Agreement

18. On August 31, 2009, SSL Digital and Quetzsat executed the TT&C (the Telemetry, Tracking and Commanding Provisioning Agreement). The SES Companies signed the TT&C as “technical consultants”. Pursuant to the TT&C agreement, SSL Digital provided support services for the *Quetzsat 1* a satellite. The contract was negotiated primarily among Ms. Bronnie Fischer, on behalf of Quetzsat (she worked for the SES Group) and Mr. William Narchi on behalf of SSL Digital, although others were also involved in the negotiations.
19. The TT&C was the result of Quetzsat seeking a local Mexican partner in order to comply with Mexican regulations. Quetzsat issued requests for proposals which ultimately resulted in the TT&C being awarded to SSL Digital.
20. The TT&C provided that SSL Digital would develop and operate for a term of ten (10) years the satellite control and operation center in Mexico which would carry out the telemetry, tracking monitor and control of the *Quetzsat 1* satellite located at the 77° West Longitude. The *Quetzsat 1* satellite operates at that location by virtue of a concession agreement granted by the Mexican government.
21. The TT&C provided for monthly payments to SSL Digital for its services. These monthly payments to SSL Digital continued through June 2018.

(b) The Assignment Agreement

22. On April 25, 2018, an Assignment Agreement (the “**Assignment Agreement**”) was entered into by and among SSL Digital, Medcom and Quetzsat. The Assignment agreement was signed by Mr. Clemente Serna Alvear (“**Mr. Serna Alvear**”, Mr. Serna Barrera’s father) on behalf of SSL Digital as its Chairman of the Board; by Mr. Serna Barrera on behalf of Medcom; and Mr. Ricardo Rios Ferrer on behalf of Quetzsat.
23. Prior to the Assignment Agreement being executed, Mr. Serna Barrera informed Quetzsat that due to an internal restructuring the TT&C was to be assigned to Medcom, a sister company of SSL Digital and one which Mr. Serna Alvear maintained control. Pursuant to Section 19 of the TT&C, Quetzsat was provided a letter requesting consent to the assignment on 6 March 2018 signed by Mr. Serna Alvear. (Quetzsat Ex. 5) Quetzsat found the request for transfer to be part of the ordinary course of business and an internal matter of the Serna Group. Moreover, Mr. Serna

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Alvear had apparent authority to agree and sign the Assignment Agreement. At no time was the SES Companies' consent to the Assignment Agreement ever sought.

24. Pursuant to the Assignment Agreement *"Effective as of April 25, 2018 ... SSL hereby assigns to MECOMSAT, and MEDCOMSAT hereby assumes (and shall indemnify SSL from and against), all of SSL's rights, interests, liabilities and obligations under that certain TT&C Provisioning Agreement between QUETZSAT and SSL"* (Claimant's Ex. 8)
25. The Assignment Agreement also provides Quetzsat's consent to the assignment.
26. The Assignment Agreement does not evidence that any consideration was paid by Medcom to SSL Digital for the Assignment Agreement. Nor is there evidence that the SSL Board of Directors considered and approved the Assignment Agreement.
27. Pursuant to a letter of 11 May 2018 the effective date of the Assignment Agreement was pushed back to 25 June 2018. This letter was signed by Mr. Serna Alvear on behalf of SSL Digital and Mr. Serna Barrera on behalf of Medcom. It also provided the bank account information as where all payments were to be made by Quetzsat. (Quetzsat Ex. 7)
28. Quetzsat continued its regular payments to SSL Digital through June 2018, at which time all payments to SSL Digital stopped.

(c) Dispute arises and SSL Digital attempts to rescind the Assignment Agreement

29. During the first half of 2018 it appears that Mr. Serna Alvear was ill. At some point after the Assignment Agreement SSL Digital attempted to rescind the Assignment Agreement.
30. First, on 26 April 2018, Mr. Serna Alverar, on behalf of SSL Digital, sent Quetzsat (which received the letter on 5 June 2018) a letter stating:

En relación al Assignment Agreement ("Convenio de Cesión") celebrado en esta misma fecha, nos permitimos informarles que para hacer una transición ordenada y segura del Centro de Control Satelital ("TT&C") y no poner en riesgo la correcta operación del mismo, requerimos de un periodo de entrega a la empresa Medcom Sat, SA de CV de 180 días naturales contados a partir de esta fecha, ya que es una actividad delicada que involucra temas técnicos, laborales y de ubicación entre otros.

(Claimant Ex. 15)

31. On 7 June 2018, a similar letter was sent by Mr. William Narchi on behalf of SSL Digital to Medcom asking for a 180 day stay of the Assignment Agreement for the orderly transition (*"a fin de garantizar una cesión segura y ordenada de los mismos ..."*)

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- (Claimant Ex. 16) However, on that same date Quetzsat received an email from Mr. Serna Barrera that attached another letter from his father, Mr. Serna Alvear, requesting that Quetzsat disregard the letter from Mr. Narchi. (Quetzsat Ex. 9)
32. The very next day, 8 June 2018, Mr. Serna Alvear, in his capacity as Chairman of the Board of Medcom, purported to agree to the 180 day extension requested the day before by SSL Digital. (Claimant Ex. 17) On 8 June 2018, Mr. Narchi sent a letter to Quetzsat informing it that Mr. Serna Alvear's powers of attorney on behalf of SSL Digital had been terminated. (Claimant Ex. 18)
33. On 12 June 2018 Mr. Narchi, on behalf of SSL Digital, sent a letter to Peter Gustafson, Vice President of SES Corporate Development North America, that SSL Digital and Medcom had (purportedly) terminated the Assignment Agreement. (Claimant Ex. 19)
34. On 21 June 2018, Mr. Peter Gustafson of the SES Group sent an email to Mr. Narchi stating that Quetzsat recognized the Assignment Agreement and that it would not be making any further payments to SSL Digital. (Quetzsat Ex. 15)
35. On 3 July 2018, Mr. Serna Barrera sent a letter to Quetzsat stating that his father, Mr. Serna Alvear, had resigned from his powers of attorney granted by Medcom and had donated his shares in Medcom to Mr. Serna Barrera. (Quetzsat Ex. 16)
36. On 20 July 2018, SSL Digital's counsel, José Antonio Vázquez Cobo of the Jones Day firm in Mexico City in furtherance of SSL Digital's attempt to rescind the Assignment Agreement. In his letter, Mr. Vázquez Cobo alleges that "*Mr. Clemente Serna Alvear's signature on behalf of SSL was obtained through error and deceit ...*" (Claimant Ex. 20)
37. On 24 July 2018, Quetzsat sent notice to both SSL Digital and Medcom informing them that (i) it was Quetzsat's understanding that the assignment was a simple corporate procedure, (ii) that it had no prior knowledge or understanding of an internal dispute within the Serna family, (iii) it did not intend to get involved in the internal dispute, and (iv) it was concerned about the continuity of the TT&C and that it would look for other option if the TT&C was compromised. (Quetzsat Ex. 18)
38. Quetzsat made the determination that the Assignment Agreement was valid and would continue to make payments to Medcom as required by the Assignment Agreement. Nonetheless, it conditioned its payments pursuant to the TT&C on Medcom paying SSL Digital for any services it made related to the TT&C. (Quetzsat Ex. 19)
39. Due to its concerns regarding the operation of the TT&C, Quetzsat requested the Mexican authorities to authorize the transfer the operations of the TT&C to SES' control center in Luxembourg, in the event it needed to do so. (Quetzsat 23) On 6

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December 2018, Quetzsat suspended the TT&C operations in Mexico and transferred those activities to SES's control center in Luxembourg.

40. Finally, after negotiations among the parties failed, on 26 June 2019, Quetzsat notified both SSL Digital and Medcom that it was terminating the TT&C pursuant to Section 15.2 and 21.2 of the contract. (Claimant Ex. 25) On 4 July 2019 SSL confirmed receipt of the Termination Notice and that it would comply with its obligations resulting from the termination (Quetzsat Ex. 28). On 12 July 2019, Mr. Serna Barrera sent a letter indicating that SSL Digital should not be notified on matters related to the TT&C but did not object to the termination. (Quetzsat Ex. 29)

V. Jurisdiction

41. Respondents SES Companies, Medcom and Mr. Serna Barrera object to the Tribunal's jurisdiction.

(a) SES Companies Objections to Jurisdiction

42. The SES Companies assert three (3) objections to jurisdiction: (i) the Assignment Agreement does not contain an arbitration clause, (ii) the SES Companies are not party to any agreement with SSL Digital, neither the TT&C nor the Assignment Agreement, and (iii) the extraordinary circumstances to bind third-party non-signatories are not present.
43. The SES Companies recognize that SSL Digital claims that the Assignment Agreement is invalid and that the Notice of Termination was improper because of the Assignment Agreement and that all payments made to Medcom were improper. But SES Companies argue that the Assignment Agreement does not contain an arbitration clause. Instead, it notes that Section 4 of the Assignment Agreement states: "**Order of Precedence.** *In the event of any conflict between the provisions hereof and the provisions of the Agreement, the provisions of this Assignment Agreement shall govern.*"
44. The SES Companies argue that because the arbitration is seated in Houston, Texas, the Federal Arbitration Act applies to the procedural elements and that pursuant to well established jurisprudence a tribunal "*cannot exercise its jurisdiction unless the parties have expressly agreed to arbitrate the claims at issue.*" (SES Companies Jurisdictional Objections and Response Memorial, ¶63) It notes that SSL Digital only alleges the arbitration clause in the TT&C agreement as a basis for jurisdiction and not anything in the Assignment Agreement. SES Companies assert that pursuant to Section 4 of the Assignment Agreement the arbitration clause from the TT&C cannot simply be imported to the Assignment Agreement, consequently rendering this Tribunal without jurisdiction to resolve the instant dispute.

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45. The SES Companies further argue that because they are not parties to the TT&C, the arbitration clause contained in Section 17 do not bind it. Moreover, the SES Companies never agreed to any arbitration with SSL Digital in any agreement. The SES Companies cite to well established jurisprudence that when a contract identifies the parties, an entity cannot be governed by the arbitration clause simply because it signed the contract in some other capacity. *See Roe v. Ladymon*, 318 S.W.3d 502 (Tex. App.—Dallas 2010, no pet.) (finding that the defendant did not consent to arbitrate claims against him even though he acted as a representative of a signatory because “the contract identifies the parties to the contract as . . . the owner, and . . . the contractor; [the defendant] individually [was] not identified as a party.”).
46. Finally, it argues that SSL Digital does not meet the high bar to incorporate a third party non-signatory to an arbitration. It cites to the New York Convention requirement of a writing between the parties. (New York Convention, Article II)
47. The SES Companies note that simply being part of the same group of companies is insufficient to assert jurisdiction. The “group of companies” theory for binding non-signatories is not recognized under Texas law. *See Steer Wealth Mgmt., LLC v. Denson*, 537 S.W.3d 558, 569 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (citing *in re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 188 (Tex. 2007) (A corporate relationship between entities, however, is generally not enough to bind a non-signatory to an arbitration agreement. Corporate affiliates are ‘generally created to separate the businesses, liabilities, and contracts of each,’ and thus, ‘a contract with one corporation—including a contract to arbitrate disputes—is generally not a contract with any other corporate affiliates).
48. Non-signatories can only be bound to an arbitration agreement under very limited circumstances. Specifically, the party alleging invoking the arbitration clause against a non-signatory must show one of the following: “(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing/alter ego; (e) estoppel; and (f) third-party beneficiary.” *Bridas SAPIC v. Turkmenistan*, 345 F.3d 347, 356 (5th Cir. 2003). SES Companies argue that SSL Digital has not put forward any evidence to support these narrow exceptions. It cites evidence in the record that the SES Companies did not exercise independent decision-making authority or control over Quetzsat, that their role was limited to being “technical consultants” and nothing more, no payments were ever made by the SES Companies pursuant to the TT&C, and that it was Quetzsat that made the decision to terminate the TT&C.
- (b) *Medcom and Mr. Serna Barrera’s objections to jurisdiction*
49. Respondents Medcom’s and Mr. Serna Barrera’s objections in large part mirror the objections made by the SES Companies as it relates to arbitral jurisdiction over non-signatories. Respondents note that pursuant to Texas law, any award issued by the

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Tribunal is subject to be vacated if the Tribunal exceeds its powers. §171.088(3)(A) of the Texas Civil Practice and Remedies Code.

50. Medcom and Mr. Serna Barrera argue that SSL Digital's mere allegation that these Respondents received economic benefits from the TT&C is insufficient to bind them to this arbitration pursuant to the doctrine of equitable estoppel.
51. Although acknowledging that Mr. Serna Barrera had an active involvement in the negotiation of the TT&C, Respondent notes that it was never done in his own name, but always in the name SSL Digital or, later, Medcom. Mr. Serna Barrera notes that that he had no rights or obligations in his personal capacity. (CSB and Medcom Memorial in Response and Jurisdictional Objection, ¶¶ 41 and 42) Similarly, there is no basis to assert jurisdiction over Medcom simply because it received payments pursuant to the Assignment Agreement.
52. Respondents Medcom and Mr. Serna Barrera also note that the arbitration agreement in the TT&C binds the parties to that agreement and no other parties. Because neither Medcom nor Mr. Serna Barrera are parties to the TT&C, its arbitration clause does not bind them.
53. Instead, these Respondents note that the only agreement between SSL Digital and Medcom is the Assignment Agreement. There is no agreement between SSL Digital and Mr. Serna Barrera other than the corporate documents relating to his shareholder interest in the various family entities. Respondents note that the Assignment Agreement does not contain an arbitration clause.
54. Respondents argue that if the Assignment Agreement is determined to be valid, then SSL Digital would no longer be a party to the TT&C and it would not have the benefit of the arbitration agreement. On the other hand, if the Assignment Agreement is not valid, then there is no change to the parties to the TT&C and, because neither Medcom nor Mr. Serna Barrera are parties to the TT&C the arbitration clause cannot reach them.
55. Finally, Respondents Medcom and Mr. Serna Barrera argue that the instant dispute falls outside the scope of the arbitration clause in the TT&C, which is "*for all matters related to this Agreement or its Amendments.*" Thus, any claim that the Assignment Agreement is invalid does not come within the scope of the arbitration clause.

(c) *SSL Digital's Response to Jurisdictional Objections*

56. Response to SES Companies jurisdiction objection. In response to the objection, SSL Digital asserts that the SES Companies are indeed parties to the TT&C for three reasons: (i) there is an express admission to this fact, (ii) the SES Companies acquired rights and obligations under the TT&C, and (iii) the SES Companies actively

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participated in the execution of the TT&C. The basic premise of SSL Digital's argument that this Tribunal has jurisdiction over the SES Companies is that they are parties to the TT&C by virtue of their having signed the contract as "technical consultants" and they took an active participation in the operation of the *Quetzsat 1* satellite.

57. SSL Digital notes that Ms. Bronnie Fisher of the SES Group sent several emails regarding the TT&C, including celebrating its signing and referring to the parties' understanding of the contract. Further, it noted that several sections of the TT&C specifically noted the SES Companies' involvement in the operation of the TT&C. For example, pursuant to Section 2.1 of the TT&C, SSL Digital had to perform its duties "*in accordance with the instructions and oversight of QUETZSAT and the Technical Consultant at all times ...*." Pursuant to Section 2.2 SSL had to keep the SES Companies informed by virtue of their being Technical Consultants. A similar provision is contained in Section 2.4.
58. SSL Digital argues that pursuant to Mexican law, which governs the interpretation of the TT&C, the parties to a contract are not determined merely by the name or title given to a party, but by the obligations and rights conferred by the contract. (SSL Reply Memorial, ¶11) Because the SES Companies acquired "*essential rights and obligations*" under the TT&C, SSL Digital argues they are parties to the contract.
59. Further, SSL Digital notes that the SES Companies admit to providing Quetzsat guidance and support regarding the administration of the *Quetzsat 1* satellite. Moreover, SES Companies transferred control of the satellite to its Luxembourg Satellite Operations Center. The SES Companies overt actions regarding the operation of the satellite show that it is a party to contract.
60. Beyond these facts, SSL Digital notes that SES Companies were indeed involved in the operation of the satellite: Ms. Bronnie Fisher authorized the monthly payments to SSL, Mr. Peter Gustafson approved the repair of turbine bearings of the cooling system, Ms. Anne Lellinger discussed the removal of the remote monitoring requirements, and other similar examples.
61. The fact that the Assignment Agreement does not contain an arbitration clause is of no moment, as SSL Digital argues that the SES Companies are a party to the TT&C and they violated that agreement by not making payments to SSL Digital.
62. Response to Medcom and Mr. Serna Barrera's jurisdictional objections. SSL Digital argues that both Medcom and Mr. Serna Barrera received economic benefits from the TT&C and, consequently, they are estopped from arguing that they are not bound by the arbitration agreement contained in that contract.
63. SSL Digital notes that from June 2018 through July 2019, Quetzsat paid Medcom \$1,311,535.94 pursuant to the TT&C.

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64. SSL Digital also notes that Mr. Serna Barrera is in actual control of Medcom and notes his allegation that he owns 996 shares out of the total 1000 outstanding shares of Medcom.
- (d) *Tribunal's ruling on jurisdiction*
65. Pursuant to Article 19(1) of the ICDR Rules, the Tribunal has *"the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement(s)"*. Similarly, §172.082 of the Texas Civil Practice and Remedies Code similarly empowers the Tribunal to rule on its own jurisdiction. The parties have submitted the question of jurisdiction to this Tribunal and none of the parties have objected to having this issue delegated to the Tribunal for determination.
66. SES Companies. As mentioned above, SSL Digital argues that the SES Companies are indeed parties to the TT&C agreement, principally based on the fact that they signed the contract as *"technical consultants"* pursuant to which they had certain rights and obligations, as well as the fact that officials of the SES Companies were involved in the negotiation of the TT&C as well as the actual operations of the satellite.
67. At the final evidentiary hearing, Claimant's counsel was asked whether the basic premise of SSL Digital's claim of jurisdiction over the SES Companies was one of piercing the corporate veil of Quetzsat and that the SES Companies were actually the real parties in interest, to which Claimant's counsel answered in the affirmative. As a result, in Procedural Order No. 9 the Tribunal asked the parties to address in their respective post-hearing briefs *"what evidence supports piercing the corporate veil of the SES Companies in the instant case?"*
68. SSL Digital's attempt to assert jurisdiction over the SES Companies fails. Simply because the SES Companies signed the TT&C as *"technical consultants"* does not make them *"parties"* to the TT&C. Under SSL Digital's theory, anyone or any entity that signs a contract automatically becomes a party to the contract. The actions by the SES Companies cited by SSL Digital all fall in the category of actions to be taken by a *"technical consultant"*, not a party to the contract.
69. SSL Digital references the numerous times officials of the SES Companies either participated in the negotiation of the TT&C, or approved payments, or made other decisions. All of these actions are consistent with that of a parent company's supervision of its subsidiaries, particularly special purpose vehicles such as Quetzsat. But simply being a special purpose vehicle (Quetzsat) does not render null the corporate identity of that company. Indeed, that is the very reason for the creation of separate corporate entities. If SSL Digital seeks to assert jurisdiction over the SES Companies, more is needed.

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70. It is for this reason that the Tribunal asked for evidence in support of piercing the corporate veil. But in its post-hearing brief, SSL Digital did not point to any evidence that would support piercing the corporate veil. To pierce the corporate veil SSL Digital would have to prove that Quetzsat did not act independently in any regard. SSL Digital failed in its burden to prove the elements to pierce the corporate veil. All it provided was evidence of a parent company supervising its subsidiary and such is not enough to pierce the corporate veil and make the SES Companies parties to the TT&C.
71. For these same reasons SSL Digital's arguments regard equitable estoppel cannot change the result. If SSL Digital's arguments regarding direct benefits were to be accepted, every parent organization would be made a party to contracts entered by its subsidiaries. Such is not the case. More must be alleged than the SES Companies having received benefits from the TT&C in order to make them subject to this arbitration. As such, this Tribunal has no jurisdiction over the SES Companies.
72. Medcom and Mr. Serna Barrera. Likewise, the Tribunal has no jurisdiction over either Medcom or Mr. Serna Barrera. SSL Digital argues that by receiving economic benefit pursuant to the TT&C, Medcom and, by extension, Mr. Serna Barrera are estopped from denying that the arbitration agreement in the TT&C applies to them. But SSL Digital misapprehends the equitable estoppel doctrine based on economic benefits.
73. The Assignment Agreement, the only agreement between Medcom and SSL Digital, does not contain an arbitration clause. Consequently, Medcom cannot be said to have consented to arbitration with SSL Digital on these matters. Mr. Serna Barrera is even further removed as there is no agreement between Mr. Serna Barrera and SSL Digital. As such, this Tribunal has no jurisdiction over either Medcom or Mr. Serna Barrera.
74. If Medcom had received economic benefits from the TT&C by itself without more, then there might be a basis to argue the equitable estoppel doctrine precludes Medcom from denying the arbitration clause's effect. But that is not the case. Medcom only obtained a benefit (and by extension, Mr. Serna Barrera) by virtue of the Assignment Agreement. Thus, the equitable estoppel claim does not lie as Medcom's economic benefit derives from the Assignment Agreement and not the TT&C.
75. SSL Digital has significant and serious claims that that Assignment Agreement is null and void. This Tribunal does not express an opinion on the validity of such arguments as it is beyond its competence and such claims must be resolved in a different venue. Medcom and Mr. Serna Barrera are correct when they argue that the scope of the arbitration clause in the TT&C does not reach the Assignment Agreement. The Tribunal would exceed its powers if it rendered any decision on the validity of the Assignment Agreement.

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VI. Allegations of the parties

(a) SSL Digital's claims against Quetzsat

76. As the Tribunal has determined that it has no jurisdiction over either the SES Companies nor Medcom or Mr. Serna Barrera, the Tribunal will only discuss the claims made by SSL Digital against Quetzsat.
77. SSL Digital principal claim is that Quetzsat acted in concert with Mr. Serna Barrera and Medcom to defraud SSL Digital of the benefits of the TT&C.
78. SSL Digital submitted to the Tribunal its Initial Memorial, its Reply Memorial, and its Post Hearing Brief. In addition, it provided the written declarations of: (i) Clemente Serna Alvear, (ii) William Narchi, and (iii) Maria Luisa Barrera de la Garza along with numerous exhibits, several of which are referenced in this Award.
79. The basis of the fraud alleged by SSL Digital is the creation of the Assignment Agreement which was allegedly done in concert by Mr. Serna Barrera, Medcom and Quetzsat. SSL Digital highlights several facts regarding the Assignment Agreement: (i) the Assignment Agreement was never approved by SSL Digital's board of directors, (ii) SSL Digital never received consideration for the Assignment Agreement, (iii) during a period of illness, Mr. Serna Alvear was misled by his son, Mr. Serna Barrera, into signing the Assignment Agreement and several other related documents, (iv) the Assignment Agreement did not have the consent of the SES Companies, and (v) SSL Digital rescinded the Assignment Agreement.
80. Quetzsat's complicity was revealed when Mr. Serna Alvear sent notice of the termination of the Assignment Agreement and Quetzsat inquired of Mr. Serna Barrera as to this situation, but did not reach out to Mr. Serna Alvear, Mr. Narchi or SSL Digital's other legal representatives. Moreover, SSL Digital references Mr. Serna Barrera's statement that he negotiated the Assignment Agreement with "*Quetzsat and [SES Companies]*"
81. SSL Digital asserts that there was no internal restructuring of the Serna Group and that the entire scheme was meant to take a valuable asset away from the Serna Group during a period when Mr. Serna Alvear was ill. SSL Digital never consented to the Assignment Agreement and it is a nullity. Further, pursuant to Mexican law, an illegal act cannot be ratified at a later date. It mentions that upon discovering the fraud perpetrated by Mr. Serna Barrera, SSL Digital first sought an extension of the effect of the Assignment Agreement so as to give it time to discover what actually had occurred and later expressly terminated the Assignment Agreement.
82. The fraud caused SSL Digital damages in the amount of \$1,311,535.94 which represents the payments made by Quetzsat to Medcom and which should have been

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paid to SSL Digital. Moreover, Claimant argues that the termination of the TT&C was wrongful and an “abuse of a right”.

83. SSL Digital argues that Quetzsat is jointly and severally liable for the damage caused by this fraudulent scheme citing to Article 1917 of the Mexican Federal Civil Code.

(b) Quetzsat Allegations

84. Quetzsat has submitted to the Tribunal (i) its Response to Initial Memorial, (ii) its Rejoinder Memorial, and (iii) its Post-Hearing Brief. It also presented the written declarations of (i) Sergy Mummert, (ii) Peter Gustafson, and (iii) Pascal Wauthier. It also presented the expert opinion of Mr. Emilio Gonzalez de Castilla del Valle on Mexican law.
85. Quetzsat denies being part of any conspiracy for defraud SSL Digital. To the contrary, it argues that it is the victim of a family dispute that put in jeopardy the proper functioning of the *Quetzsat 1* satellite.
86. Contrary to the allegations of SSL Digital, as an outsider to the Serna family, it viewed the Assignment Agreement as an action taken in the ordinary course of business and a simple transfer within the Serna Group. It received multiple communications signed by Mr. Serna Alvear, the Chairman of the SSL Digital Board of Directors. These communications reflected the request for consent to the assignment, the assignment itself and later requests to extend the effective dates of the Assignment Agreement.
87. These communications were considered as part of the ordinary course of business because Quetzsat dealt principally with Mr. Serna Barrera when dealing with issues involving the TT&C. Consequently, transferring the TT&C to a company operated by Mr. Serna Barrera was not seen as an important event. For this reason, it assisted Medcom and Mr. Serna Barrera in the drafting of the Assignment Agreement. Further, Quetzsat obtained no benefit resulting from the transfer of the TT&C.
88. Moreover, prior to the notice of termination by SSL Digital, Quetzsat had no reason to question the validity of Mr. Serna Alvear’s consent or signatures. Indeed, several actions after the Assignment Agreement seemed to confirm SSL Digital’s consent to the Assignment Agreement. Only later did evidence of a family dispute come to its attention.
89. Upon learning of the family dispute, Quetzsat encouraged negotiations within the Serna family and attempted to make sure that any costs incurred by SSL Digital after the Assignment Agreement were paid by Medcom, all for the purpose of securing the operational continuity of the TT&C.
90. Quetzsat terminated the TT&C when the Serna family could not resolve its dispute in over a year.

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91. Quetzsat argues that, from its perspective, the Assignment Agreement was valid as Section 19.1 of the TT&C provided that *“either Party may assign this Agreement to its affiliates without the prior consent of the other Party.”* Thus, Quetzsat’s consent was not even necessary for the assignment to be valid. Moreover, Quetzsat could not object to the assignment, as that was a right granted by the TT&C to SSL Digital.
92. As to the lack of Board approval to the Assignment Agreement, that issue does not affect Quetzsat who simply has to make sure that (i) the legal representative it is dealing with holds a power of attorney, (ii) this power of attorney was legally granted by the Board of Directors, and (iii) the scope of the power granted encompassed the proposed agreement. In short, Quetzsat had to be dealing with someone who had the apparent authority to enter into the Assignment Agreement.
93. From Quetzsat’s perspective, there was no doubt that Mr. Serna Alvear had apparent authority to enter the Assignment Agreement on behalf of SSL Digital as he was the Chairman of the Board and the principal behind SSL Digital. Not until Quetzsat received the revocation of the Power of Attorney to Mr. Serna Alvear was Quetzsat put on notice that they could not enter into agreements with SSL Digital based solely on Mr. Serna Alvear’s signature.
94. Consequently, because Quetzsat understood the Assignment Agreement to be valid, it was in no position to deal with SSL Digital on issues pertaining to the TT&C, even after it received the termination notice from SSL Digital. SSL Digital was no longer a party to the TT&C. Quetzsat’s counterparty was not Medcom. Quetzsat could not accept the termination of the Assignment Agreement. For this very reason, Quetzsat was obligated to continue making payments to Medcom under the TT&C.
95. Finally, Quetzsat is entitled to terminate the TT&C pursuant to the terms of the agreement.

VII. Tribunal’s Decision on the Merits

96. There exists a family dispute between Mr. Serna Alvear and his son, Mr. Serna Barrera. SSL Digital raises significant issues related to whether Mr. Serna Barrera took advantage of his father during a period of illness. Those issues clearly implicate the validity of the Assignment Agreement. However, as previously mentioned, the dispute between SSL Digital and Medcom and Mr. Serna Barrera are beyond the competence of this Tribunal. (See ¶¶ 72-75 above.) They must be resolved in another *fora*. What is before the Tribunal is whether there is evidence that Quetzsat participated in a fraud or whether it improperly accepted the Assignment Agreement or improperly disregarded the termination of the Assignment Agreement. Based on the evidence put forth, the answer is no to both those questions.

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97. SSL Digital provided evidence of Quetzsat (or the SES Companies) involvement in the drafting of the Assignment Agreement. That alone does not support a conclusion that Quetzsat was knowingly participating in a scheme to defraud SSL Digital. ~~Absolutely~~ No evidence has been presented that would explain why Quetzsat would seek to defraud its longtime partner, SSL Digital. The Assignment Agreement did not result in a “better deal” for Quetzsat. It was obligated to make the identical payments under the TT&C, simply to a sister company, Medcom.
98. Further, Quetzsat had no reason to doubt the authority of Mr. Serna Alvear to agree to the Assignment Agreement. He was the longtime Chairman of SSL Digital and the patriarch of the Serna family group of companies. No evidence has been submitted that Quetzsat was aware of Mr. Serna Alvear’s illness nor that his powers of attorney had been revoked. Indeed, at the time of the Assignment Agreement the power of attorney had not been revoked. Consequently, Mr. Serna Alvear had the *authority* to enter into the Assignment Agreement.
99. It was more than one document, however, that Mr. Serna Alvear signed. He signed a request for consent of Quetzsat to the proposed assignment. After the Assignment Agreement, he and SSL Digital sent requests to extend the date of commencement of the Assignment Agreement. In this regard, SSL Digital confirmed the validity of the Assignment Agreement after it had knowledge of what had transpired. Instead of immediately notifying Quetzsat of the purported fraud, it sought only to delay the effect of the Assignment Agreement. Under these circumstances Quetzsat was within its rights to consider the Assignment Agreement to be valid.
100. Indeed, Quetzsat would have been on tenuous ground to deny the validity of the Assignment Agreement as the TT&C gave SSL Digital the unfettered right to assign the contract to a related company, which Medcom undoubtedly was.
101. The question then arises as to whether Quetzsat could properly disregard the notice of termination of the Assignment Agreement on 12 June 2018.
102. Upon receiving the notice of termination, Quetzsat was faced with the issue as to whether to recognize the termination. Several difficult issues impeded acceptance of the termination. First, Quetzsat did not give its consent to the termination, which would have been appropriate, as it was a party to the Assignment Agreement. Second, the Assignment Agreement does not give any of the parties the right to unilaterally terminate the assignment. (This is in contrast to the TT&C which provides for the free assignment of the contract to affiliates.) Indeed, to the contrary, Section 5 of the Assignment Agreement provides:

*This Assignment Agreement may be amended, modified, superseded, **cancelled**, renewed or extended, and the terms and conditions hereof may be waived, **only by a written instrument signed by the parties hereto ...”**.*

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103. There exists no such written agreement “*signed by the parties hereto*”; the termination notice is signed only by SSL Digital.
104. To the contrary, there were no less than three letters sent to Quetzsat seeking the extension of time for the commencement of the effects of the Assignment Agreement. Indeed, Mr. Serna Alvear sent such a letter on 25 June 2018, *after* the purported termination of the Assignment Agreement.
105. Moreover, once Quetzsat accepted the validity of the Assignment Agreement, Quetzsat was no longer in a position to entertain SSL Digital’s termination as SSL Digital was no longer a party to the TT&C. Simply put, Quetzsat was required to abide by the terms of the Assignment Agreement until it was validly set aside.
106. Because SSL Digital was no longer part of the TT&C, it has no standing to argue that Quetzsat improperly terminated the TT&C. The only party that could make such an allegation is Medcom, Quetzsat’s counterparty to the TT&C. Nonetheless, the Tribunal notes that pursuant to Section 15.2 and 21.2 Quetzsat had the ability to terminate the TT&C.

VIII. Costs

107. Section 17.3(f) is explicit:
- (f) All expenses and fees of the Arbitrators and expenses for hearing facilities, stenographers and other expenses of the Arbitrators shall be borne equally by the Parties unless the Arbitrators in the award decide otherwise to assess such expenses. Each Party shall bear its own counsel fees and expenses of its witnesses except to the extent otherwise provided in this Agreement.*
108. SSL Digital brought this arbitration pursuant to this section. Accordingly, as between itself and Quetzsat, each of the parties are to bear its own counsel fees and are to bear the costs of the Arbitration equally.
109. Likewise, the ICDR administrative fees and costs of US\$ 15,450.00 and the compensation and expenses of the arbitrators totaling US\$182,113.10 are to be divided equally between SSL Digital and Quetzsat.
110. The situation is different as to the SES Companies, Medcom and Mr. Serna Barrera. None of these parties have an arbitration agreement with SSL Digital. Although Medcom may be a party to the TT&C, it was never part of the contract at the same time as SSL Digital. Moreover, the Assignment Agreement does not contain an arbitration clause. Mr. Serna Barrera is even further removed, as he is not personally part of any agreement. Finally, as set forth in the jurisdiction portion of this Award, the SES Companies have never been a party to the TT&C and never consented to this arbitration.

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111. Accordingly, the Tribunal awards SES Companies the fees and costs set forth in its Costs Submission, specifically: \$297,384 for attorney's fees and costs and \$70,118.74 in arbitration costs. The Tribunal specifically finds that these attorney's fees are reasonable in light of the work performed.
112. Likewise, the Tribunal awards Medcom and Mr. Serna Barrera its fees in costs as follows:
- (i) Attorney's fees (Santamaria y Steta): \$49,000 for Mr. Serna Barrera and \$96,000 for Medcom. (US Dollars)
 - (ii) Attorney's fees (Von Wobeser y Sierra): \$565,500 (Mexican pesos)
 - (iii) Translation services: \$37,546.88 (Mexican pesos)
113. The Tribunal specifically does not award the fees sought for the work done by Coello Trejo y Asociados as these fees were not justified as being part of this arbitration proceedings.

IX. Award

114. For the reasons stated above, the Tribunal rules as follows:
- a. The Tribunal is vested with jurisdiction regarding the dispute between SSL Digital and Quetzsat.
 - b. The Tribunal does not have jurisdiction over Respondent SES Engineering (US), Inc.
 - c. The Tribunal does not have jurisdiction over Respondent SES Engineering (Luxembourg) SARL.
 - d. The Tribunal does not have jurisdiction over Medcom.
 - e. The Tribunal does not have jurisdiction over Mr. Clemente Serna Barrera.
 - f. SSL Digital does not prevail on its claim against Quetzsat as the Tribunal finds that Mr. Serna Alvear had authority to sign the Assignment Agreement. Moreover, *vis-à-vis* Quetzsat, the termination of the Assignment Agreement is of no effect.
 - g. SSL Digital claim of damages against Quetzsat is denied.
 - h. The SES Companies are awarded and SSL Digital must pay \$297,384 for attorney's fees and \$70,118.74 for costs.
 - i. Medcom and Mr. Serna Barrera are awarded fees and costs as set forth in paragraph 112 above and SSL Digital must pay the following amounts

SSL Digital SA de CV v. Quetzsat, S de RL de CV
(ICDR Case No. 01-19-0002-3079)

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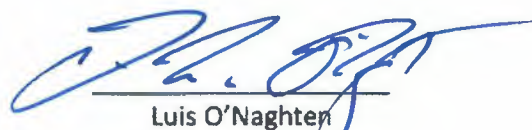
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- (ii) Attorney's fees (Von Wobeser y Sierra): \$565,500 (Mexican pesos)
- (iii) Translation services: \$37,546.88 (Mexican pesos)
- j. Quetzsat is to bear its own attorneys' fees.
- k. SSL Digital is to bear its own attorneys' fees.
- j. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US\$ 15,450.00 shall be borne by SSL Digital, S.A. de C.V. and by Quetzsat, S. de R.L. de C.V.
- k. The compensation and expenses of the arbitrators totaling US\$182,113.10 shall be borne by SSL Digital, S.A. de C.V. and by Quetzsat, S. de R.L. de C.V. Therefore, Quetzsat, S. de R.L. de C.V. shall reimburse SSL Digital, S.A. de C.V. the sum of US\$ 16,608.75, and shall reimburse SES Engineering Luxembourg SARL the sum of \$41,086.39 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by them.
- l. This award is in full settlement of all claims submitted to this Arbitration.
- m. This Final Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

We hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in Houston, Texas, United States of America.

Date: 23 of November of 2019


Lucia R. Ojeda


David Arias


Luis O'Naghten
President

