

1 operation, the Christie's auction. They did a fabulous  
2 job of promoting it, and they sold every piece except  
3 the armorial plates, which had been given a reserve  
4 price by the government, against Christie's advice,  
5 which did not sell. They were later sold by private  
6 treaty. Apart from that, everything sold at the  
7 auction, and Christie's considered it a success. Thank  
8 you.

9 (4.42 pm)

10 THE ARBITRATOR: Thank you, Mr Ball.

11 MR EREN: Buttressing our arguments that there was  
12 investment. There is additional information for the  
13 tribunal to consider and for the respondents also to  
14 consider in this regard.

15 I would just like to sum up. MHS has locus standi.  
16 The argument was made that Mr Ball had to be a majority  
17 owner of MHS prior to or at the time of the execution of  
18 the contract. That is clearly not the standard. The  
19 standard is before the dispute arose. There is no  
20 dispute that he was the majority owner of MHS before  
21 this dispute arose. He continues to be the majority  
22 owner of MHS.

23 There is no doubt that MHS's claim is to money under  
24 the contract which constitutes an investment. It is  
25 clearly defined as such in the BIT. We do not

1 necessarily need to go out of the four corners of the  
2 BIT, but in case the tribunal seeks further support in  
3 this regard, the cases of Salini v Morocco and SGS v  
4 Philippines support this contention. Where in Salini  
5 the construction of a road for the Moroccan Government  
6 was seen to be an investment; and in SGS v Philippines  
7 the rendition of certificate services was also seen to  
8 be an investment by the tribunal. We have --

9 THE ARBITRATOR: Sorry, before you move on from there,  
10 because I might forget if I do not ask, one of the  
11 features or characteristics that has been identified as  
12 being a requisite of an investment is that it must  
13 contribute some substantial economic benefit to the host  
14 country. I do not have immediately in my head the kind  
15 of value of the whole project. Is it anywhere in --

16 MR EREN: It is several millions of dollars --

17 THE ARBITRATOR: Yes, I have some idea because of the amount  
18 that is claimed. But is there somewhere where the total  
19 value of the wreck appears and --

20 MR EREN: Yes --

21 THE ARBITRATOR: Or the amount that was invested by  
22 Mr Ball's company?

23 MR EREN: Not the total amount of the recovered items. But  
24 we do have information, but it is not part of our  
25 memorials. We can supplement the memorials to that

1 effect, if you wish.

2 THE ARBITRATOR: Yes, because just thinking out aloud, it  
3 might be useful to compare it with the amounts in the  
4 Salini case and the Philippines case. Of course, in  
5 those two cases, while they were contracts for services,  
6 in a way they contributed to the infrastructural  
7 development of the countries concerned, so you might  
8 want to address that point, in what way you meet that  
9 criteria.

10 MR EREN: Sure, absolutely we can address that. I think,  
11 suffice it to say that the projects in question were of  
12 sufficient importance to Malaysia for them to have  
13 authorised MHS to conduct the salvage operation, and  
14 their museums as well as their own treasury benefited  
15 from the auction proceeds, to the maximum extent that  
16 you can benefit from a salvage operation.

17 THE ARBITRATOR: Except that, unlike I think the Salini  
18 case, and perhaps the Philippines case -- I have not  
19 gone into facts -- on the face of things it would appear  
20 that the Malaysian Government had nothing to lose. This  
21 is the point that Mr Ball is advancing in his own cause,  
22 because they are not out of pocket, all the risk is on  
23 him, if he does not recover it he does not recover it,  
24 and there it lies, and they do not lose anything, except  
25 maybe opportunity cost.