IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 244

Suit No 625 of 2018

Between

Anuva Technologies Pte Ltd

… *Plaintiff*

And

Advanced Sierra Electrotech Pte Ltd

… *Defendant*

Between

(1) Advanced Sierra Electrotech Pte Ltd
(2) Ravichandra Sundaram

… *Plaintiffs in Counterclaim*

And

Anuva Technologies Pte Ltd

… *Defendant in Counterclaim*

Suit No 910 of 2018

Between

(1) ADTEC Electronic Instruments Pte Ltd
(2) Ravichandra Sundaram

… *Plaintiffs*

And

(1) Anuva Technologies Pte Ltd

… *Defendant*

Between

Anuva Technologies Pte Ltd

… *Plaintiff in Counterclaim*

And

(1) ADTEC Electronic Instruments Pte Ltd
(2) Ravichandra Sundaram

… *Defendants in Counterclaim*

JUDGMENT

[Contract] — [Breach]
[Restitution] — [Unjust enrichment]

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v
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28–31 May, 4, 6, 7 June; 5, 26 July; 17 September 2019

14 October 2019 Judgment reserved.

Vincent Hoong JC:

1 This judgment addresses two suits that were heard together: Suit No 625 of 2018 ("S 625/2018") and Suit No 910 of 2018 ("S 910/2018"). Anuva Technologies Pte Ltd ("Anuva") is the plaintiff in S 625/2018 and the defendant in S 910/2018. Mr Kota Karanth Suresh ("Mr Suresh") is its Managing Director.

2 The defendant in S 625/2018 is Advanced Sierra Electrotech Pte Ltd ("Adset"). Adset, which is incorporated in India, is in the business of providing sophisticated avionics systems to governments, defence contractors and airlines.[1] It is part of a group of companies founded and controlled by Mr Ravichandra Sundaram ("Mr Ravi"), a plaintiff in the counterclaim under S 625/2018 and in the claim in S 910/2018. Also part of this group is ADTEC

[1] Defendant's closing submissions at para 6; Mr Ravi's AEIC at para 3.

Electronic Instruments Pte Ltd ("Adtec"), which is a plaintiff in S 910/2018.

3 At the outset, I should state that the key difficulty presented by these suits arose from the fact that the accounts that were produced at trial, and the explanations provided for these, were far from satisfactory. The spreadsheets involved were at points incomplete, and their reasoning difficult to understand. The accounts for each individual company and/or person were also often not kept separate. This was a concern that I expressed at multiple points during the hearing of this trial, and one which made the determination of some of these claims, and the quantum thereof, extremely difficult. These therefore ultimately came down to a consideration as to where the burden of proof lay.

4 Given that these two suits involve distinct issues, I shall deal with them separately in this judgment. I turn now to examine each in turn.

S 625/2018

5 Anuva had been the primary supplier of electronic components to Adset.[2] This suit pertains to 71 invoices which Anuva claims remain unpaid despite the goods therein having been delivered to and accepted by Adset.[3] These invoices were issued between 4 February 2010 and 12 September 2014. While the total sum claimed initially by Anuva was US$345,831.91, Anuva accepted in its reply to Adset's Defence that payment had been made for 10 of these invoices, which amounted to US$57,535.94.[4] The total sum claimed is

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2 Transcript, 28 May 2019, page 39, lines 7 to 25; Mr Ravi's AEIC at para 16.

3 Statement of Claim, para 8 and Annex A.

4 Defence and Counterclaim (Amendment No 1) at para 19; Reply and Defence to Counterclaim (Amendment No 1) at para 10.

therefore US$288,295.97.[5] Adset further admitted in its Defence that US$35,038.23 is payable.[6] The total amount in dispute is therefore US$253,257.74.

6 Adset avers that the invoices referred to by Anuva comprised two categories; namely, invoices pertaining to components ordered for research and development purposes ("R&D invoices"), and invoices for components supplied to Adset for use in avionics systems ultimately sold to Adset's customers ("commercial invoices").[7] According to Adset, there was a verbal agreement entered into between the parties that Anuva would not charge Adset for components supplied for research and development purposes.[8] Adset's position is that 50 of the 71 invoices referred to by Anuva in its claim were R&D invoices.[9] Further, according to Adset, these 50 invoices were *not* the invoices that accompanied the courier shipments. Instead, invoices which under-declared the value of the goods were issued for this purpose.[10] According to Adset, Anuva should not be allowed to claim for these invoices as they were issued pursuant to illegal arrangements to defraud the Indian customs authority.[11]

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5 Mr Suresh's AEIC at para 36.

6 Defence and Counterclaim (Amendment No 1) at para 20.

7 Defence and Counterclaim (Amendment No 1) at para 8.

8 Defence and Counterclaim (Amendment No 1) at paras 10 and 14(a).

9 Defence and Counterclaim (Amendment No 1) at para 10.

10 Defence and Counterclaim (Amendment No 1) at para 12.

11 Defendant's ("D625") closing submissions at para 55.

7 Adset further avers that claims for components delivered before 20 June 2012 are time-barred under s 6(1)(*a*) Limitation Act (Cap 163, 1996 Rev Ed).[12] This encapsulates 46 invoices, some of which were R&D invoices. Adset and Mr Ravi have also commenced a counterclaim in this suit in respect of a project which Adset undertook with Anuva and two other companies. These were Bharat Electronics Limited Ghaziabad India ("BEL Ghaziabad") and Bharat Electronics Limited Panchkula India ("BEL Panchkula"), collectively referred to as the "BEL Companies". Adset and Mr Ravi claim that they were not paid their share of the profits under the revenue sharing agreement they had with Anuva, and accordingly counterclaim $107,502.07 and $225,754.34 respectively.[13]

Issues to be determined

8 Following from the above, the issues to be determined in this suit are:

(a) whether the agreement between the parties was for Adset to pay for the commercial but not the R&D invoices;

(b) whether Anuva's claim relating to invoices issued prior to 20 June 2012 is time-barred;

(c) whether Anuva's claim should be denied because of illegality; and

12 Defence and Counterclaim (Amendment No 1) at para 18.

13 Defence and Counterclaim (Amendment No 1) at paras 28 to 32.

(d) whether Anuva paid Mr Ravi and Adset their share of the profits pursuant to the profit sharing arrangement in relation to the project with the BEL Companies.

Issue 1: whether the agreement was for Adset to pay for the commercial but not the R&D invoices

9 Anuva argues that the parties had never drawn a distinction between commercial invoices and R&D invoices. There was no reference to R&D invoices in any document,[14] and it is not clear how Adset determined which invoices were for R&D or commercial purposes. Indeed, some of the emails relating to what Adset had classified as invoices for R&D components indicate that they were not meant for R&D but instead were intended for a particular customer.[15]

10 In contrast, Adset identified 50 R&D invoices that it claims pertain to R&D components for which there was a verbal agreement that Anuva would not be paid. This agreement was allegedly entered into between Mr Suresh and Mr Ravi around December 2008.[16] The verbal arrangement was for these components to be used to research and develop hardware products, and for the jointly developed products to be sold worldwide by Anuva, and within India by Adset.[17]

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14 Plaintiff's ("P625") closing submissions at para 25.

15 P625 closing submissions at para 20.5.

16 FNBP D625 at para 4; Transcript, 31 May 2019, page 28 line 22 to page 29 line 18.

17 Defence and Counterclaim (Amendment No 1) at para 14(a).

11 Adset contends that Anuva's claim that it is entitled to benefit *both* from selling the products developed through Adset's R&D efforts to Anuva's customers *and* by charging Adset a 15% mark up for the components delivered to Adset is ludicrous.[18] While Anuva asserts that it had a profit sharing arrangement with Adset for the components sold by Anuva to its own clients, Adset contends that no evidence has been produced of any such payments being made to Adset.[19] In contrast, Adset's position is commercially sensible and is borne out by the evidence,[20] including the fact that:

(a) Adset did not record invoices pertaining to the R&D components in its accounting system, a ledger which had been shown to Mr Suresh on numerous occasions in 2011 and 2012.[21]

(b) Mr Suresh chose to deliver the goods by hand and by courier despite the fact that Indian law would only allow payment for goods which have been delivered through the customs authority. He did so because he did not expect Adset to pay for the R&D components.[22]

12 In his affidavit, Mr Ravi further asserted that the alleged non-payment agreement was also supported by Anuva's inclusion of the term "SAMPLE" on the payment terms for some of the R&D invoices, in contrast to the commercial

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18 D625 closing submissions at para 20 and 22.

19 D625 closing submissions at para 21.

20 D625 closing submissions at para 23.

21 Mr Ravi's AEIC para 32(b); P625's closing submissions at para 23; D625 closing submissions at para 23(a); D625 reply submissions at para 8; Transcript, 31 May 2019, page 32, lines 15 to 17.

22 Mr Ravi's AEIC at para 32(c); P625's closing submissions at para 24; D625 closing submissions at para 23(b); Transcript, 31 May 2019, page 37, lines 3 to 21.

components.[23] This argument was not raised in closing submissions,[24] perhaps because it transpired in the course of cross-examination that the labelling of the invoices as samples or otherwise was not entirely consistent or determinative.[25]

My decision

13 I find that the agreement between Adset and Anuva was for Anuva to be paid for the R&D invoices. This is a reasonable inference to make from the invoices and purchase orders in evidence. In contrast, there is no evidence of any agreement that the alleged R&D components would be provided without payment, save for Mr Ravi's testimony.

14 Adset argues that the fact that purchase orders were not raised for most of the R&D invoices means that there is no proof Adset ordered any of the items on the basis that they would be paid for.[26] I am not persuaded by this argument. In the first place, I note that the practice of issuing purchase orders was not entirely consistent: some of the alleged R&D invoices had corresponding purchase orders.[27] Further, Mr Ravi suggested at one point that Mr Suresh would call his staff when he wanted to ship an item via courier and request that the staff issue a purchase order for his records.[28] This cast some doubt on the significance of purchase orders issued by Adset.

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23 Mr Ravi's AEIC at para 32(a); Defence and Counterclaim (Amendment No 1) at para 14(c); Transcript, 31 May 2019, page 32, lines 12 to 14.

24 D625 closing submissions at para 23.

25 Transcript, 31 May 2019, page 35, line 17 to page 36, line 19

26 D625 closing submissions at para 43.

27 D625 closing submissions at para 41.

28 Transcript, 31 May 2019, page 39, lines 2 to 6.

15 Crucially, the evidence instead suggests that there had always been an understanding that the R&D components would be paid for. This is indicated by the spreadsheets in which the "R&D components" were accounted for. An example of this is the email sent by Adset's Mr Pratap Reddy ("Mr Reddy") on 26 April 2012, with the subject title "Reconcile ANUVA-SET/EWAS".[29] A spreadsheet was attached to this email, in which a table of various invoices issued to Adset was included and the "pending amount", presumably, the amount to be paid, totalled up. Notably, this spreadsheet included ATS-11/CI-355, which Adset asserted was a R&D invoice.[30] Under cross-examination, Mr Ravi agreed that this spreadsheet demonstrated Mr Reddy's belief that all of the invoices in that spreadsheet were to be paid.[31] His position was that it was "a completely informal system" between Mr Suresh, Mr Manikanta (who was in charge of Adset's imports and exports), and Mr Reddy:[32]

> A: To tell you the truth it was completely an informal system between [Mr Suresh], [Mr Manikanta] and [Mr Reddy]. It was a completely informal system.
>
> Q: Informal system, okay?
>
> A: Like whatever [Mr Suresh] says they would oblige, that simple.
>
> …
>
> A: If [Mr Suresh] says, "Send me, whatever are the payments due", I mean the guy would not understand, simply -- he would cut and paste and send whatever, you know, it comes to his mind.

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29 2AB 517.

30 Defence and Counterclaim (Amendment No 1) at para 10, s/n 17.

31 Transcript, 31 May 2019, page 89 line 16 to page 90 line 1.

32 Transcript, 31 May 2019, page 90 line 16 to page 91 line 3.

16 Mr Ravi's position was therefore that Mr Reddy only handled the accounts and would not know whether the invoices should be paid. Instead, Mr Reddy, as an accounts executive, was "simply keeping track" of "[w]hatever invoices [Mr Suresh] sent".[33] This is curious in light of the fact that Mr Ravi testified that his staff knew that the alleged R&D components would not be paid for,[34] and that Mr Reddy was also the person in charge of updating the general ledger.[35] The position that an accounts executive would indicate that payment would be made for whatever came to mind when asked by Mr Suresh was far-fetched and simply untenable.

17 It is pertinent that Mr Ravi and Mr Manikanta were copied in the 26 April 2012 email.[36] Mr Ravi described Mr Manikanta as the person who decided which invoices should be paid.[37] The fact that there was *no* evidence that either of them had voiced any objections is therefore significant. If Mr Reddy was as incompetent or unreliable as Mr Ravi suggested, one would expect greater attention to be paid to the accounts being sent out by him which acknowledged payments due from Adset. While Mr Ravi explained that he did not pay attention to the day-to-day affairs of the company, I note that there were multiple emails referencing what Adset claims to have been R&D components and suggesting that they should be paid for. For example, Counsel for Anuva also drew my attention to an email from Mr Suresh on 19 May 2014, sent to "Alwin

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33 Transcript, 31 May 2019, page 93, lines 7 to 9.

34 Transcript, 31 May 2019, page 33, lines 4 to 6.

35 Transcript, 31 May 2019, page 88, lines 15 to 16.

36 Transcript, 31 May 2019, page 77 line 18 to page 78 line 2.

37 Transcript, 31 May 2019, page 92, lines 8 to 13; page 93, lines 3 to 4.

R <pinpointaccess@gmail.com>" and addressed to "Ravi".[38] This was the email address which had been specifically created for correspondence on account statements,[39] and the emails received presumably were given the requisite amount of attention from appropriately designated staff. Notably, the table attached therein included a table of courier invoices only.[40] When asked about this table, Mr Ravi said that he had not thought it necessary for him to address a particular page in the document given that "the entire document [was] not in order" and he did not understand the entire document.[41] This is distinct from a claim that he had not seen or noticed the inclusion of these invoices in the accounts. In fact, Mr Ravi also testified that he had learnt in 2014, after being sent a consolidated statement of accounts that Mr Suresh was claiming the sums due pursuant to the courier invoices.[42] The fact that there is no evidence which shows that Mr Ravi had then told Mr Suresh that these were R&D invoices which should not be paid casts doubt on the existence of the alleged arrangement between the parties that Anuva would not be paid for the R&D invoices.

18 More fundamentally, it is unclear how Adset had determined which invoices were for R&D purposes. In his AEIC, Mr Ravi identified two situations in which components would be ordered for R&D purposes: first, where Adset required components to test out a new product, and second, where Anuva required Adset to assemble products for Anuva to sell to its own clients. Mr Ravi further stated that Adset did *not* use the alleged R&D components for its

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38 Mr Suresh's AEIC at p 489

39 2AB 898.

40 2AB 952.

41 Transcript, 31 May 2019, page 82, line 23 to page 84 line 4.

42 Transcript, 31 May 2019, page 35, lines 17 to 19.

commercial purposes.[43] This was consistent with his oral testimony to the effect that the parts ordered for R&D purposes would be used to develop a product, and did not involve any customers.[44] He also described at some length the numerous versions of a product Adset may have to prototype and test.[45] That being the case, requests for components made pursuant to an order from a customer of Adset for a product would appear to *not* fall within Mr Ravi's definition of R&D components.

19 However, there appeared to be instances in which the alleged R&D components had been ordered following an order received by Adset. An example of this is the email sent on behalf of Adset to Mr Suresh on 4 February 2010, in which Anuva was asked to assemble 4 boards as Adset had received an order for them.[46] Adset's position, according to Mr Ravi's evidence, is that these components were ordered for R&D purposes.[47] Mr Ravi was asked to explain why the fact that there was a customer involved did not mean that the invoice was not for R&D purposes. I am not persuaded by Mr Ravi's explanation, which was essentially that for R&D products, Anuva would send Adset a partially assembled board, Adset would assemble the remaining components, test and certify the product, before shipping it back to Anuva. Anuva would then sell the product to the customer, including customers in India.[48] This appears to be inconsistent with Adset's pleaded arrangement, which was that Anuva would

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43 Mr Ravi's AEIC at para 25.

44 Transcript, 31 May 2019, page 26 line 15 to page 27 line 1.

45 Transcript, 31 May 2019, page 28, lines 2 to 11.

46 1AB 142.

47 Transcript, 31 May 2019, page 72, lines 23 to 25.

48 Transcript, 6 June 2019, page 58, lines 14 to page 59 line 14.

sell the products to worldwide customers, while Adset would sell the products to customers in India.[49] Further, the 4 February 2010 email, and Mr Ravi's explanation, do not suggest that the components were to be used for the development of "Product Intellectual Property rights", which was allegedly what the R&D components were meant to be used for.[50] In its submissions, Adset asserted that there is no evidence these components were actually sold by Adset to its customers in India.[51] To my mind, whether the components were in fact sold to customers or not is inconclusive: the 4 February 2010 email strongly suggests that the components were being ordered by Adset from Anuva to be sold to Adset's customers.

20 I was also referred to an email dated 13 May 2010.[52] This was again an email sent on behalf of Adset to Mr Suresh, telling him that a card was required to replace a defective product sold by Anuva to HAL Hyderabad.[53] Another email sent on 21 April 2010 similarly indicated that the products were to be delivered to one of Adset's customers,[54] but was described as having been for R&D by Mr Ravi. In explaining his basis for concluding that the products supplied were for R&D purposes, Mr Ravi expanded the definition of "R&D" by stating that:[55] "[a]ny item we give for demo purpose, trial purpose,

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49 Defence and Counterclaim (Amendment No 1) at para 14(a).

50 Mr Ravi's AEIC at para 29; Defence and Counterclaim (Amendment No 1) at para 14(a).

51 D625 reply submissions at para 9.

52 1AB 214.

53 Transcript, 6 June 2019, page 62 line 5 to page 64 line 4.

54 1AB 202, 203.

55 Transcript, 6 June 2019, page 61, lines 12 to 14.

replacement purpose, or under warranty replace, these all would come under R&D category".

21 I am not prepared to accept Mr Ravi's explanation. This is a departure from the arrangement as pleaded, and cast doubt on his credibility as a witness. Further, the existence of an agreement that the alleged R&D invoices would not be paid for is premised on there being a working definition of what "R&D" entailed. On the evidence before me, it is not possible to determine what this was or could be, or which invoices (if any) would fall within this arrangement. Seen against the evidence which suggests that Adset understood it was to pay for the alleged R&D invoices, I find that there was *no* agreement that Anuva would be paid only for the commercial invoices but not the R&D invoices.

22 I turn now to briefly explain why I am unable to agree with Adset's submissions. I do not accept the fact that Mr Suresh chose to deliver the goods by hand and by courier meant that he did not expect to be paid.[56] No evidence was adduced as to which provision of Indian law provides that payment can only be made for goods delivered through the Indian customs authority, and indeed, the only evidence that such a requirement exists is from Mr Ravi. Mr Suresh only testified that payment had to be made from an Indian bank, and not that payment could only be made in respect of goods delivered through the customs authority.[57] These are distinct propositions, and the former does not suggest that Mr Suresh had no expectations of being paid at all.

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56 Mr Ravi's AEIC at para 32(c); P625 closing submissions at para 24; D625 closing submissions at para 23(b); Transcript, 31 May 2019, page 37, lines 3 to 21.

57 Transcript, 28 May 2019, page 81 line 16 to page 82 line 6.

23 Adset also relies on the fact that it did not record invoices pertaining to the R&D components in its accounting system, a ledger which had been shown to Mr Suresh on numerous occasions in 2011 and 2012.[58] Anuva submits that the ledger exhibited was extracted from the general ledger kept by Adset, and could be easily manipulated to present specific entries. While I make no comment on any alleged manipulation, as I stated above, I place emphasis on the fact that the spreadsheet prepared by Mr Reddy, an Adset accounts executive, and sent to Mr Ravi and Mr Manikanta, included an R&D invoice. This argument also does not address the more fundamental problem I observed earlier at [21] regarding the scope of the alleged "R&D" agreement.

24 Having found that there was an agreement that Anuva would be paid by Adset for the alleged R&D invoices, I turn now to the question of whether this was for the invoices which reflected the higher or lower value to be paid. As I have indicated above, it is undisputed that duplicitous invoices were issued. This question arises only for 23 invoices, given that only 23 "lower value" or duplicitous invoices were identified by Adset.[59]

25 I find that the agreement was for the "higher value" invoices to be paid. Adset, in its Defence, stated that the value of the R&D components declared in the "lower value" invoices which accompanied the courier shipments were much lower than that those in the "higher value" invoices issued to Adset because "components above a certain value cannot be delivered via courier

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58 Mr Ravi's AEIC para 32(b); P625 closing submissions at para 23; D625 closing submissions at para 23(a); D625 reply submissions at para 8; Transcript, 31 May 2019, page 32, lines 15 to 17.

59 Defence and Counterclaim (Amendment No 1) at para 12.

under Indian law".[60] This seems to suggest that the values in the "lower value" invoices had been altered so that the components could be delivered via courier. The fact that the lower value invoices were only issued for shipping purposes was also implicit in Adset's explanation that only 23 "lower value" invoices had been issued as the components in the other alleged R&D invoices had been delivered by hand. Further, there is evidence that Mr Ravi and Mr Suresh had previously been involved in similar arrangements where invoices which did not bear the actual price were issued for the purposes of delivery.[61] I therefore find that there was an agreement for Adset to pay the 50 "higher value" invoices as set out at paragraph 10 of its Defence.

Issue 2: whether Anuva's claims are time-barred

26 Adset avers that the claims for goods allegedly delivered before 20 June 2012 are time-barred pursuant to s 6(1)(*a*) Limitation Act.[62] In this regard, it has identified 46 invoices that are allegedly time-barred.[63] The sums due under these invoices amount to US$235,642.19.[64] The issue which arises for determination here is whether there has been an acknowledgment pursuant to s 26 of the Limitation Act.

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60 Defence and Counterclaim (Amendment No 1) at para 12.

61 1AB 27; Transcript, 31 May 2019, page 96 line 8 to page 98 line 18.

62 Defence and Counterclaim (Amendment No 1) at para 18.

63 Defence and Counterclaim (Amendment No 1) at para 18(d).

64 P625 closing submissions at para 62.

Parties' submissions

27 Anuva relies on an email sent by Mr Alwin Rodrigues ("Mr Rodrigues") on 1 November 2013, in relation to Invoice Nos ATS-11/CI-354 dated 18 May 2011 and Invoice No ATS-11/CI-357 dated 16 June 2011. The total value of these invoices is US$109,026.45.[65] Anuva emphasises that the subject title of the email was "Payable to Anuva from EWAS & Sierra" and that there is no dispute over the quantum of the invoices referred to in the email or that they were due.[66] It further argues that Mr Rodrigues had been authorised to send this email as (1) it was clear from Mr Rodrigues's evidence that he only acted on the instructions of Mr Ravi; (2) from the totality of the evidence, Mr Rodrigues was authorised to perform tasks in relation to multiple companies within the group; and (3) Mr Ravi was copied in the email, and had never challenged Mr Rodrigues's authority to send the email in question.[67] Finally, Anuva urges the court to draw an adverse inference from Adset's refusal to allow Mr Rodrigues to take the stand in relation to S 625/2018.[68]

28 Anuva further argues that the WhatsApp messages sent by Mr Ravi to Mr Suresh on 7 January 2015, 4 March 2015, 16 May 2015, 17 May 2015 and 26 May 2015 were acknowledgments of debt for the remaining invoices.[69] These showed that Mr Ravi recognised there were outstanding payments due from Adset to Anuva. Anuva also contends that WhatsApp messages should satisfy

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65 P625 closing submissions at para 76.

66 P625 closing submissions at paras 77 and 78.

67 P625 closing submissions at paras 79 to 81.

68 P625 closing submissions at para 82.

69 P625 closing submissions at para 84.

the "in writing and signed" requirement in s 27(1) Limitation Act, with reference to ss 6, 7 and 8 of the Electronic Transactions Act (Cap 88, 2011 Rev Ed).[70]

29 In contrast, Adset's position is that none of these communications constituted acknowledgments of the time-barred claims. It relies on *Good v Parry* [1963] 2 QB 418 at 424, cited in *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 ("*Chuan & Company*") at [21] in arguing that the debt was not quantified in figures or liquidated in the sense that it is capable of ascertainment by calculation or extrinsic evidence without further agreement of the parties.[71] Further, Mr Rodrigues had no authority to acknowledge any debts due to Anuva. He had not been employed by Adset at the time, which would have been clear to Mr Suresh since the email was sent from Mr Rodrigues's EWAS email account.[72] While Mr Ravi was copied in the email, he gave evidence that he had not paid attention to its details or opened the attachments as he was busy with other projects at the time.[73]

30 Adset argues that the WhatsApp conversations did not have anything to do with the time-barred claims:

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70 P625 closing submissions at para 102 to para 109.

71 D625 closing submissions at para 26.

72 D625 closing submissions at paras 27 and 29.

73 D625 closing submissions at para 28.

(a) the 7 January 2015 conversation only pertained to the 2014 invoices for commercial components and Mr Ravi had not acknowledged the sums due, but instead said that he had "no money";[74]

(b) the 4 March 2015 conversation involved Mr Suresh asking Mr Ravi to settle bank dues owed by Anuva to its bank, which he did as they both regarded Anuva as part of the group of companies referred to at [2] above;[75] and

(c) the conversations on 16 May 2015, 17 May 2015, and 26 May 2015 involved Mr Ravi asking for *recent* invoices issued by Anuva to Adset and should not be construed as an acknowledgment of unpaid invoices issued between 2010 and 2012.[76]

31 Mr Ravi further testified that he did not understand the account statements sent by Mr Suresh, which according to him, included hidden "discounts" not reflected in the statements and human errors.[77]

The applicable legal principles

32 The Court of Appeal held in *Fairview Developments Pte Ltd v Ong & Ong Pte Ltd and another appeal* [2014] 2 SLR 318 at [105] that an acknowledgement of the existence of a debt may suffice even if the exact amount owing was not acknowledged, so long as reference could be made to

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74 D625 closing submissions at paras 32 to 36; Transcript, 31 May 2019, page 123, lines 20 to 22; 3AB 1076.

75 D625 closing submissions at paras 37 to 39.

76 D625 closing submissions at para 40.

77 D625 closing submissions at para 30.

extrinsic evidence to ascertain the said amount. The statement which is alleged to be an acknowledgement should be construed in context, and the object is to determine the intention of the maker in light of the words used: see *Chuan & Company* at [28], *Super Group Ltd v Mysore Nagaraja Kartik* [2019] 4 SLR 692 at [160] ("*Super Group*"). Further, an acknowledgment need not be direct or explicit, as long as it is "sufficiently clear": *Super Group* at [161], referring to *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2007] 4 SLR(R) 565 at [36].

33 The provision states clearly that the acknowledgement must be made by "the person liable" for the debt or the person's agent (ss 26(2) and 27(2) Limitation Act): for present purposes, this would have been Adset or its agent. The acknowledgment must further be made in writing and signed by the person making the acknowledgment: s 27(1) Limitation Act. In *Kim Eng Securities Pte Ltd v Tan Suan Khee* [2007] 3 SLR(R) 195 at [52], the High Court accepted that an email could satisfy the signed writing requirement under s 27(1) Limitation Act.

My decision

34 As a preliminary matter, I agree with Anuva that the WhatsApp messages satisfy the signed writing requirement. This is rightly not disputed by Adset, and I need address this no further.

(1) 1 November 2013 email

35 I turn first to the 1 November 2013 email, which I reproduce in full, with the relevant portion of the attachment, in Annex A. To my mind, the main question with regard to this email is whether Mr Rodrigues had the authority to

acknowledge the debt owing. This email is instructive as it was unequivocal and clearly acknowledged a debt owing to Anuva arising from the ATS-11/CI-354 and ATS-11/CI-357 invoices, as indicated by the subject title of the email: "Payable to Anuva from EWAS & Sierra", where Sierra was clearly a reference to Adset. This is also indicated by the attached spreadsheet, which set out the amounts due to Adset, as well as the number of days by which payment was overdue. As I understand it, the construction of this email is not in dispute.

36 I find that Mr Rodrigues had the authority to acknowledge these debts on behalf of Adset. Assessed as a whole, the evidence shows that Mr Rodrigues undertook responsibilities for other companies within Mr Ravi's group even when he was not employed specifically by those companies. Mr Ravi initially testified that Mr Rodrigues was an employee of EWAS at the time,[78] and the fact that the email was sent from Mr Rodrigues's EWAS account would have made it clear to Mr Suresh that Mr Rodrigues was not an employee of Adset when he sent the 1 November 2013 email.[79] However, what is clear is that Mr Rodrigues's email address by itself is not in any way conclusive. Although Mr Rodrigues did not give evidence in this suit for unknown reasons, I note that he filed an affidavit in S 910/2018, which stated that he joined Adtec as its accounts executive in May 2013.[80] At the time the email was sent out, therefore, Mr Rodrigues was in fact an Adtec employee using an EWAS account. Further, Mr Ravi *himself* testified that there were no strict rules on which email accounts should be used where Anuva was concerned.[81] Mr Ravi, when asked about this

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78 Transcript, 31 May 2019, page 105, line 23.

79 Transcript, 31 May 2019, page 106 line 17 to page 107 line 6.

80 Mr Rodrigues's AEIC at para 4.

81 Transcript, 31 May 2019, page 108, lines 12 to 20.

in cross-examination, appeared to have *accepted* that Mr Rodrigues had in fact been transferred to Adtec by 1 November 2013, and given responsibilities *both* in relation to Adtec and EWAS.[82] Mr Ravi also appears to have accepted that there was a practice among the employees in his group of companies in which they commented on Anuva's business dealings with Adset and Adtec regardless of the company which employed them.[83] While Mr Ravi claims that he did not pay much attention to the email, and had not opened the attachment, a cursory glance at the subject title of the email would have revealed that it also pertained to Anuva's accounts with Adset.

37 In any event, as I have alluded to above, I did not find Mr Ravi to be a credible witness. Weighing the various factors which I have highlighted above, I find that Mr Rodrigues was authorised to deal with the accounts of Anuva and to finalise them. No credible explanation was given as to why Mr Rodrigues would otherwise voluntarily undertake on his own the task of collating the sums payable to Anuva. Mr Ravi also described him as the "senior-most accountant" he had.[84] The email sent by Mr Rodrigues thus constituted an acknowledgment of a debt in the sum of US$109,026.45.

(2) WhatsApp messages

38 I reproduce some of the messages relied on at Annex B to this judgment. Mr Ravi's authority to act on behalf of Adset in relation to its accounts is not in

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82 Transcript, 31 May 2019, page 113, lines 15 and 16

83 Transcript, 31 May 2019 page 116 line 20 to page 117 line 2.

84 Transcript, 31 May 2019, page 112, line 6.

dispute. The main question is whether these messages amount to an acknowledgement of the debts that would otherwise have been time-barred.

39 In the present case, I took into account the context of the messages sent by Mr Ravi in determining their intended meaning. This is permissible and necessary given that the messages would otherwise have been ambiguous on their face: *Chuan & Company* at [28]. As Adset rightly points out, the plain language of Mr Ravi's reply on 7 January 2015 only indicated that he had no money. Further, the messages sent on 23 February 2015 and 4 March 2015 only referred to the outstanding transactions between the two companies, did not explicitly state whether there was any indebtedness.[85]

40 However, seen in context, I accept that Mr Ravi's reply on 7 January 2015 stating that there was "no money" and that he would have to wait for funds from CTRM meant that he agreed there were sums owing to Anuva. This is particularly since he went on to suggest that he would "reconcile settlement of [A]nuva" from other funds which were due. This was clearly an acceptance of the fact that there were debts owing to Anuva. While not direct or explicit, I find that his reply was sufficiently clear: see [32] above. More troubling is the question of whether these messages were sufficient to acknowledge debts owing from invoices issued prior to 20 June 2012. This is since it is *undisputed* between the parties that there are nine outstanding invoices that are payable dating from between 20 October 2012 and 12 September 2014.[86]

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85 D625 reply submissions at para 19.

86 Defence and Counterclaim (Amendment No 1) at para 20.

41 Mr Ravi's evidence is that Mr Suresh had only been asking him for a plan to settle dues from Adset in respect of the 2014 invoices for commercial components. According to him, this was evident from Mr Suresh's comment that "December [2014] is over", and his comment on 23 February 2015 that he needed to "close all anuva adtec adset ewas transactions by [the end of March 2015]".[87] This 23 February 2015 message, which Adset referred me to, referred to *all* transactions.[88] Despite this, according to Mr Ravi, this message referred solely to the 2014 invoices because 31 March was the end of the financial year in India, and a balance sheet would have to be filed with the relevant authorities for the calendar years 2013 and 2014.[89] However, he also accepted at trial that any trade receivables or dues incurred before the financial year would be reflected in the documents to be filed for that financial year.[90] Given that this was the case, the distinction he attempted to draw between the invoices incurred in the financial year 2013 to 2014 and invoices prior to that is not logical or believable. Taken together with the plain language of the messages, I am persuaded that Mr Ravi, at the point when he sent the messages, intended to acknowledge the debts owing from Adset to Anuva.

42 I should deal with one further point for completeness. In his oral testimony, Mr Ravi added that he had been referring to the 2014 invoices because they had yet to agree on the earlier invoices and the issues arising therefrom. From his evidence, this appears to have been because the

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87 Mr Ravi's AEIC at para 41; Transcript, 31 May 2019, page 123 line 13 to page 124 line 20.

88 3AB 1126.

89 Transcript, 6 June 2019, page 66, line 12 to page 67 line 3.

90 Transcript, 6 June 2019, page 67 line 24 to page 68 line 15.

consolidated statement sent by Mr Suresh in 2014 was not "proper" or "understandable".[91] This is difficult to accept. Any disagreement between Mr Ravi and Mr Suresh appears to have been over the manner in which the accounts had been presented, specifically, because Mr Suresh had "confused all the companies".[92] The consistent position of Adset and Mr Ravi appears to have been that the commercial invoices had to be paid. In any event, I note that Mr Ravi's evidence to the effect that they had not agreed on the earlier invoices appears to be an afterthought which he only raised at trial. The same may be said of Mr Ravi's suggestion that he had been told by his auditor that Anuva's invoices were stale and could be removed from Adset's system as at 7 January 2015.[93]

43 Since I find that the WhatsApp messages sent on 7 January 2015 constitute an acknowledgment of all debts owing from Adset to Anuva as of that date, it is not necessary for me to go on to consider the other messages highlighted by the parties. To be clear, I should state that while these other messages were less clear on their own, they tend to corroborate my finding above as they suggest that Mr Ravi intended to reassure Mr Suresh that the debts owing to Anuva would be paid by Adset. In particular, Mr Ravi's messages on 17 May 2015 asked Mr Suresh not to worry about the "old [accounts]", and assured him that all debts would be paid even if this had to be done from Mr Ravi's personal account. He said this after having referred in an earlier message to pending invoices issued by Anuva to Adset.

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91 Transcript, 31 May 2019, page 125 line 16 to page 126 line 3.

92 Transcript, 31 May 2019, page 125 lines 19 to 20.

93 D625 reply submissions para 20; Transcript, 31 May 2019, page 126 line 25 to page 127 line 2; page 128, lines 1 to 18.

44 I also considered the 4 March 2015 WhatsApp message. Adset submits that the conversation pertained to Mr Suresh's request that Mr Ravi settle the bank dues owed by Anuva to the bank. Mr Ravi agreed that the loans had been taken out by Anuva to procure components for Adset. According to Mr Ravi, while Anuva was responsible for its own bank dues, Mr Suresh would occasionally ask Mr Ravi to settle the bank dues as they both regarded Anuva as part of Mr Ravi's group of companies.[94] This explains Mr Suresh's statement that he would have to write to the bank requesting that they not deduct the bank dues from the proceeds from other projects (*eg*, the CTRM project referred to at [71] below). Mr Ravi's explanation was not entirely inconsistent with that provided by Mr Suresh. Mr Suresh's evidence was that Anuva had taken out a loan on Adset's behalf for the purposes of helping Adset to purchase equipment, *on the basis that Adset would be responsible for repaying it*.[95] This appears to cohere with the language used by Mr Suresh, which referred specifically to bank dues for Adset. Had the loan been unconnected to Adset, there would have been no reason to refer to bank dues for Adset in Mr Suresh's message, or for Mr Ravi to state that he planned on settling the Adset dues. Finally, I agree with Anuva that the message sent by Mr Ravi on 4 March 2015, in particular, the reference to "old [accounts]", appeared to be a reiteration of his 23 February 2015 message, which was essentially that he would settle the debts owed by Adset to Anuva.

45 These debts were capable of being ascertained with reference to extrinsic material, in particular, the invoices and accounts exchanged between

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94 Mr Ravi's AEIC at paras 43 to 45.

95 Mr Suresh's AEIC at para 51.

the parties. For the above reasons, I find that the invoices issued prior to 20 June 2012 are not time-barred.

Issue 3: Illegality

46 While I was not referred to any provision of Indian law, both Mr Suresh and Mr Ravi, neither of whom is legally-trained, made assertions as to what Indian law provides while on the witness stand. The undisputed evidence indicates that Anuva had under-declared the value of the components in invoices accompanying the courier shipments. Adset argues that Anuva should not be allowed to claim sums owing under those invoices, which were issued pursuant to arrangements intended to reduce the amount of customs duties payable by Adset. In this connection, Adset referred to two arrangements pleaded by Anuva where Anuva under-declared the value of the items on invoices accompanying courier shipments and later, either (1) issued an invoice to Adset reflecting the true value of the goods or (2) billed the difference in the value of the components in a separate invoice. According to Adset, by claiming the sums indicated in the higher value invoices, Anuva is essentially seeking to enforce illegal arrangements.[96]

47 Anuva placed emphasis on the fact that the contracts it seeks to enforce through its claim were for the sale and purchase of goods. These contracts were not entered into with the object of committing an illegal or unlawful act, or for any unlawful purpose, with reference to *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*") at [43] to [46].[97] Further, non-

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96 D625 closing submissions at paras 54 to 60.

97 P625 closing submissions at paras 41 to 44.

payment of customs duties would usually lead to the imposition of a monetary penalty and there is no evidence that the non-payment of customs duties in India would lead to the contract being unenforceable.[98] Finally, Adset did not plead any issues of illegality in their defence.

My decision

48 I accept that the court is entitled to take cognisance of illegality which emerges from the evidence even if this has not been specifically pleaded as a defence: see *Ting Siew May* at [31]. This is necessitated by the underlying public policy requirement emphasised by the court in *ANC Holdings Pte Ltd v Bina Puri Holdings Bhd* [2013] 3 SLR 666 at [84]. I note, further, that on the facts, the evidence that gives rise to the allegations of illegality in the present case was clearly pleaded by Anuva, and to some extent, by Adset.[99] This being the case, there is no real issue of prejudice arising from lack of notice.

49 A preliminary question is whether the principles on local illegality, as set out in the cases of *Ting Siew May* and *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 ("*Ochroid Trading*"), should apply. Anuva argues that the cases of *Alexander v Rayson* [1936] 1 KB 169, cited by Adset, and *Ting Siew May* are of limited application given that different principles are applicable where the illegality concerned has a foreign element.[100] As noted by Anuva, there is a separate line of cases following the decision in *Euro-Diam Ltd v Bathurst* [1990] 1 QB 1

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98 P625 closing submissions at para 41.

99 *eg*, para 6.6 of the Reply and Defence to Counterclaim (Amendment No 1) at para 6.6; Defence and Counterclaim (Amendment No 1) at para 12.

100 P625 reply submissions at paras 31 and 32.

("*Euro-Diam*"). These principles were applied by the High Court in *Overseas Union Bank Ltd v Chua Kok Kay and another* [1992] 2 SLR(R) 811 and *EFG Bank AG, Singapore Branch v Teng Wen-Chung* [2017] SGHC 318.

50 It is apposite to begin by outlining the Court of Appeal's decision in *Teng-Wen Chung v EFG Bank AG, Singapore Branch* [2018] 2 SLR 1145 ("*Teng-Wen Chung*") where the principles in *Euro-Diam* were considered, since the latter is the focus of Anuva's submissions. Following *Euro-Diam*, a contract is tainted by illegality where it is not itself illegal, but has a connection with some other illegal transaction which renders it obnoxious (at 15). The two-step test in *Euro-Diam* was summarised in *Teng-Wen Chung* at [19] as follows:

> … where the taint is alleged to have arisen from a foreign illegal transaction, the first step is to ascertain whether that transaction would be enforceable locally. If the answer is in the negative, the next step is to ascertain whether the foreign transaction is sufficiently proximate to the claim such that the latter is unenforceable. To do this, the court has to apply the principles in [*Bowmakers Ltd v Barnet Instruments Ltd* [1945] KB 65 ("*Bowmakers*")] and [*Beresford v Royal Insurance Co Ltd* [1938] AC 586 ("*Beresford*")] (*Euro-Diam* at 23–24). In brief, the *Bowmakers* principle provides that a claim is unenforceable for illegality if the claimant has to plead or prove the illegality to make out his claim (*Euro-Diam* at 18). The *Beresford* principle, which has been described as a "conscience test", states that a claimant will not be allowed to claim a benefit from his crime (*Euro-Diam* at 19).

51 Without going into too much detail, I observe that the Court of Appeal held at [25] that an "unqualified acceptance of *Euro-Diam cannot* … represent the law in Singapore". As I alluded to above, notwithstanding Anuva's attempt to rely on the principles in *Euro-Diam*, the parties did not make submissions on how these principles should be adapted for present purposes, if at all. Counsel for Anuva should be aware of the Court of Appeal's remarks as I note from the judgment that he represented the appellant in those proceedings.

52 In my view, the principles in *Euro-Diam* do not apply to the facts before me. *Euro-Diam* pertained to a situation where there was illegality in an *ancillary transaction*. The first step of the test, as summarised by the Court of Appeal, requires the court to ask whether the *foreign illegal transaction* would be enforceable locally. This does not arise in the present case, which, if at all, is one in which the contract has been tainted by an illegal *act*. While I am mindful of the fact that Staughton J had also considered whether the contract to be enforced "has that degree of connection with illegal acts in Germany which would render it tainted and therefore unenforceable here" (at 15), this appears to have been a loose reference to the illegal ancillary contract involved. It follows from this that the test in *Euro-Diam* cannot be applied in this case.

53 I pause here to consider whether the principles set out in *Foster v Driscoll and others* [1929] 1 KB 470 ("*Foster v Driscoll*") or *Ralli Brothers v Compañia Naviera Sota y Aznar* [1920] 2 KB 287 ("*Ralli Brothers*") apply to the present case. The parties made no submissions on these points. It is clear to me that *Ralli Brothers* does not. As I understand it, the parties' positions are *not* that the shipping mode was a term of the contract, such that its performance would be illegal. Adset does not take this position, instead referring to two illegal *arrangements* which it does not argue were contractual in nature. Further, this is not clear to me even from Anuva's pleadings, which merely stated that Adset directed how the goods had to be shipped, and that Anuva complied with its directions.[101] This does not indicate one way or another whether Adset had a contractual entitlement to determine the shipping mode.

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101 Reply and Defence to Counterclaim (Amendment No 1) at para 6.

54 In *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2016] 4 SLR 1, the rule based on *Foster v Driscoll* was described as a principle of domestic public policy that a Singapore court will not enforce a contract or award damages for its breach, if its object or purpose would involve doing an act in a foreign and friendly state which would violate the law of that state (at [175]). *Foster v Driscoll* was cited with approval in *Patriot Pte Ltd v Lam Hong Commercial Co* [1979–1980] SLR(R) 218 ("*Patriot*") and *Peh Teck Quee v Bayerische Landesbank Girozentrale* [1999] 3 SLR(R) 842 by the Court of Appeal. The facts of *Patriot* bore some similarity to the present case: the declared invoice value of the goods in the invoice presented to and endorsed by the Indonesian authorities was much less than the agreed purchase price to be paid by the Indonesian importer to the Taiwanese seller. From this, the court inferred that the appellants were actively involved in an operation to evade Indonesian custom duties. Evidence was also given at the trial to the effect that the appellants knew that the purpose of undervaluing the goods was to evade payment of the proper custom duties. The Court of Appeal held (at [10]) that it is "settled law" that if a party to a contract actively engages in an illegal adventure to get goods into a country in breach of the revenue laws of that country, the court will not assist the parties to the adventure by entertaining or settling any dispute between the parties arising out of the contract. As I understand it, the illegal arrangement was part of the contract in *Patriot*.

55 In contrast, I am satisfied that the present case does not fall foul of the rule in *Foster v Driscoll*. In the first place, the alleged provision of Indian law that was contravened was not specifically referred to or adduced in the proceedings before me. Further, the mode of shipping in the present case was not a term of the various contracts, but instead were separate arrangements. The evidence before me also did not clearly suggest that the parties, in entering into

these contracts, intended that they be performed in an illegal manner. In any case, I do not think it can be said that it was an *object* of the contracts that the parties had entered into to defraud the Indian revenue authorities. The object and purpose of the contracts was more specifically for Anuva to sell and for Adset to purchase the components. The shipping arrangements were ancillary at best.

56 Even on Adset's case, which is that the principles in *Ting Siew May* should apply, I do not think this would have rendered the contracts unenforceable. *Even if* the contracts were construed as having been intended to be performed in an illegal manner, the question as to whether they ought to be enforceable is a fact-centric, balancing exercise based on proportionality: see *Ting Siew May* at [66], [70] and [71]; *Ochroid Trading* at [39]. To my mind, any illegality involved in the present case is not of such a nature or gravity that the contract evidenced by the higher value invoices should not be enforceable. There was no evidence adduced as to whether or what penalties would ordinarily follow. Again, the contracts were primarily for the sale and purchase of goods, and the manner in which the goods were shipped and declared were ancillary to the agreements. This is a key factor which distinguishes them from cases in which there was an overt and integral step taken in carrying out unlawful intentions within the contract itself (*Ting Siew May* at [67]).

57 I therefore hold that the purported arrangement to evade or reduce payment of customs duties in this case did not render the contracts for the sale and purchase of components unenforceable. I accordingly allow Anuva's claim for US$288,295.97 against Adset.

Issue 4: Adset's and Mr Ravi's Counterclaim in S 625/2018

58 It is undisputed that Adset and Anuva also worked on a project with the BEL Companies. Anuva would ship assembled printed circuit boards to Adset for programming, testing and qualification of the boards. Adset would then send the circuit boards back to Anuva, who would supply them to the BEL Companies.[102] Anuva would be paid by the BEL Companies when the goods were delivered. It is also undisputed that there was a profit sharing arrangement in place.[103] Mr Suresh agreed that Adset's share of the profits from the BEL project was $107,502.07 while Mr Ravi's share was $225,754.34.[104] Adset and Mr Ravi therefore claims these sums as owing to them by Anuva.

Adset's and Mr Ravi's submissions

59 Adset asserts that Anuva supplied electronic products to the BEL companies and received payment of US$1,226,400.00 between 2012 and 2014.[105] In breach of the profit sharing arrangement, Anuva allegedly did not distribute the profits to Adset and Mr Ravi. Adset relies on an email dated 23 February 2016, in which Anuva sent Adset a ledger reconciliation sheet which (the "Reconciliation Spreadsheet") indicated that US$107,502.07 was due to Adset and US$225,754.34 was due to Mr Ravi.[106] According to Adset, this

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102 Reply and Defence to Counterclaim (Amendment No 1) at para 15.2; Defence and Counterclaim (Amendment No 1) at para 27.

103 Mr Ravi's AEIC at para 58; Reply and Defence to Counterclaim (Amendment No 1) at para 14.2.

104 Transcript, 30 May 2019, page 83, lines 4 to 13.

105 Mr Ravi's AEIC at para 60.

106 3AB 1334.

amounted to an acknowledgment of debt pursuant to s 26(2) Limitation Act, and Anuva is liable to pay these sums to Adset and Mr Ravi respectively.[107] Adset and Anuva further sought pre-judgment interest at the rate of 8.5% per annum, and post-judgment interest at 5.33% per annum.

Anuva's submissions

60 It is not disputed that no payments were made by Anuva to Adset or Mr Ravi *specifically* for the BEL project.[108] Instead, Mr Suresh stated that Anuva had never attributed the various payments made to Mr Ravi and his group of companies to specific projects. This was apparently consistent with Mr Ravi's practice of treating the monies he and his different companies were entitled to as belonging to the same pool.[109] Further, Anuva submits that the Reconciliation Spreadsheet indicates that Anuva had made payments to Adset and Mr Ravi in excess of the sums claimed in the counterclaim. It asserts that Mr Ravi and Adset had never objected to, or adduced any evidence to refute, any of the figures in the Reconciliation Spreadsheet.[110] Adset and Mr Ravi had never claimed that they were owed money from this project until Anuva commenced S 625/2018.[111]

61 While Anuva asserted in its Defence to the counterclaim that Adset cannot rely on s 26(2) Limitation Act, this argument was not developed in its

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107 Mr Ravi's AEIC at paras 61 to 64; Defence and Counterclaim (Amendment No 1) at paras 33 and 34.

108 Mr Suresh's supplementary AEIC at para 32.

109 Mr Suresh's supplementary AEIC at paras 32 and 33.

110 P625 closing submissions at paras 127 to 129.

111 P625 reply submissions at para 84.

closing submissions. Finally, Anuva submits that there is no basis upon which to award pre-judgment interest at the rate of 8.50% per annum.[112]

My decision

62 The main questions before me are: (1) whether Adset's claim is time-barred and (2) whether the sums claimed by Mr Ravi and Adset were owed to them by Anuva.

63 I will address first the issue of the time-bar. The BEL companies paid Anuva a total of US$1,226,400.00 between 2012 and 2014.[113] The counterclaim was commenced on the same date as S 625/2018, *ie*, on 20 June 2018: s 31 Limitation Act. The time-bar issue therefore applies only to any cause of action accruing six years before this date. This is problematic in the present case since the parties did not specify when Anuva's obligation to share the profits from the BEL project with Adset and Mr Ravi accrued. The evidence before me is unclear on this point. The counterclaim referred to Anuva's supply of products to the BEL Companies "between 2012 to 2014".[114] No date was pleaded by either party as to when the BEL Companies paid Anuva, or how soon after Anuva had received payment from the BEL Companies it had to distribute the profits to Adset and Mr Ravi pursuant to the profit sharing arrangement. The latter would provide the relevant date for determining whether the claim is time-barred since the agreement giving rise to the counterclaim was the profit sharing arrangement between the parties. In the circumstances, there is insufficient evidence before

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112 Reply and Defence to Counterclaim (Amendment No 1) at paras 16 to 19.

113 Defence and Counterclaim (Amendment No 1) at para 30; Reply and Defence to Counterclaim (Amendment No 1) at para 17.

114 Defence and Counterclaim (Amendment No 1) at para 30.

me to find that the cause of action accrued before June 2012, or that the counterclaim is time-barred.

64 I turn now to consider Anuva's claim that it had paid Adset and Mr Ravi amounts in excess of the sum in the counterclaim. As I understand it, Anuva's position is that while the payments had not been specifically attributed to the BEL project, payments which encapsulated the sums owing from the project had been made. As a preliminary matter, the documentary evidence before me tended to corroborate Anuva's assertion that, as between the parties, they did not consistently attribute payments to specific projects, and that payment due to one company would sometimes be paid to another within the group, or to Mr Ravi personally. For example, under cross-examination, Mr Ravi admitted that he had asked for a payment that was owed to EWAS to be paid to Adset.[115]

65 However, a number of payments were identified by Anuva in its response to a request for further and better particulars ("FNBP"). Anuva referred to a number of payments to Adset and Mr Ravi which totalled US$728,800 and US$956,071.21 respectively and stated that "[t]hese payments included any sums that [Adset] and [Mr Ravi] were entitled to in relation to [the BEL project]".[116] Adset and Mr Ravi produced a table describing what each of these payments had been for, none of which related to the BEL project.[117] Mr Suresh largely agreed with Mr Ravi's characterisation of these payments, save

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115 Transcript, 4 June 2019, page 38 line 11 to page 39 line 6.

116 Particulars served pursuant to request (Amendment No 1) dated 21 January 2019, at para 23.

117 Mr Ravi's AEIC at para 67.

for two immaterial points.[118] I therefore reject Anuva's pleaded position, as set out in its FNBP response that these payments included those owing from the BEL project. In his supplementary AEIC, Mr Suresh stated that when Adset and Mr Ravi brought their counterclaim, he had "extracted the details of the first few initial payments that Anuva had advanced" to Mr Ravi and his companies.[119] This position is difficult to accept since it is simply not what was suggested by Anuva's FNBP response, which made reference to specific payments and specifically claimed that these included any sums Adset and Mr Ravi were entitled to for the BEL project.

66 Anuva then argues that it had advanced sums and made payments in excess of what Adset and Mr Ravi were entitled to. In this regard, it relies on the Reconciliation Spreadsheet. Simply put, this is unhelpful and confusing at best. As I pointed out to counsel several times during the trial, the manner in which the accounts were kept was such that it was not possible for me to determine what payments were made, and for what purpose. For example, one of the figures cited by Anuva was found in a table that was sent as part of a spreadsheet on 19 May 2014. This table allegedly tabulated all payments made to Mr Ravi's companies to date. Only one of these payments was made to Adset. The total sum paid was allegedly $1,578,387.86.[120] It is not possible for me to determine the accuracy of this figure. While Mr Suresh claimed that Mr Ravi and his group of companies was only entitled to US$914,386.54 from "other projects",[121] I am unable to ascertain how this had been calculated. Anuva

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118 Transcript, 29 May 2018, page 21, lines 2 to 9.

119 Mr Suresh's supplementary AEIC at para 32.

120 Transcript, 29 May 2018, page 19, lines 3 to 5; Mr Suresh's AEIC at p 495.

121 P625 closing submissions at para 133.

attempted to provide an explanation in its closing submissions, but this was done by way of reference to other figures in spreadsheets that were similarly conclusory and opaque. This is pertinent since Anuva's claim was that the total amount paid to Adset and Mr Ravi was "far in excess of what was owed to them from *all* the projects that Anuva had worked on with [Mr Ravi's] group of companies" [emphasis added].[122]More fundamentally, given that Adset disputes the figures presented in the Reconciliation Spreadsheet, as well as the opacity in the manner in which these had been derived, they could not be taken at face value. In this regard, it is pertinent that Anuva adduced little documentary evidence in support of its calculations.

67 This should be seen in the light of the fact that Anuva had previously sought to rely on specific payments. It later did not dispute that these payments did not have anything to do with the BEL project.[123] Mr Suresh's claim that he had extracted the first few payments made to Mr Ravi and his companies is puzzling and difficult to accept. Since it was also admitted that no *specific* payments had been made for the amounts owing pursuant to the BEL project, and the reconciliation spreadsheet Anuva relied upon is unhelpful at best, I prefer Adset's and Mr Ravi's evidence on this claim.

68 However, as Anuva pointed out, the plaintiffs in S 910/2018 *amended* their Statement of Claim on 26 April 2019 to include a claim for US$18,148.00 under another contract, which is discussed in more detail below at [98].[124] According to Mr Ravi's AEIC, this claim arose at a later stage as the plaintiffs

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122 P625 reply submissions at para 83.

123 Transcript, 29 May 2019, page 19, lines 10 to 23.

124 See Statement of Claim (Amendment No 1) in S 910/2018 at para 16.

in S 910/2018 had wrongly attributed payment of the sum of US$18,148.00 to that contract, when the payment should have been for the BEL project. He further stated that the "payment had been acknowledged [in his AEIC] filed in [S 625/2018]".[125] The meaning of the latter sentence is unclear to me. This was a point made by Anuva at several junctures, but which was not responded to by Mr Ravi or Adtec. I note that the counterclaim in S 625/2018 was pleaded on 7 September 2018, before the Statement of Claim was amended in S 910/2018 to include the claim for US$18,148.00. It thus appears that Anuva was correct to suggest the counterclaim in S 625/2018, at least, to the extent of US$18,148.00, was mounted on a false premise.[126] In coming to this decision, I am conscious of the fact that it is Adset and Mr Ravi who bear the burden of proving their claims. As such, I order that the US$18,148.00 that should allegedly have been ascribed to the BEL project be deducted from the amount claimed, in the proportion prescribed in the profit sharing arrangement pleaded (*ie*, where Adset is entitled to 20% of the profits and Mr Ravi is entitled to 42% of the profits). I therefore order Anuva to pay Adset and Mr Ravi US$103,872.47 and US$218,132.18 respectively.

Pre-judgment interest

69 Adset also seeks pre-judgment interest at the rate of 8.5% per annum. In *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 ("*Grain Trading*"), the Court of Appeal held that while the recoverability of interest under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed) is discretionary, as a general rule, damages should commence from the date

125 Mr Ravi's AEIC in at para 31.

126 D910 submissions dated 17 September 2019 at para 21.

of accrual of loss: at [138], citing *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623. The discretionary nature enables the court to achieve justice across the infinite range of factual permutations that may confront the court by tailoring the award to fit the unique circumstances of the case. One factor identified was inordinate delay on the part of the claimant in bringing the action: see *Grain Trading* at [138] and [139].

70 In the present case, I note that Adset and Mr Ravi commenced their counterclaim some four to six years after the accrual of the claim, and that this was only after Anuva had commenced a claim to recover debts due to it from them. Further, as I have found elsewhere in this judgment, Adset and Mr Ravi also owed money to Anuva. I therefore order interest on the damages awarded from the date of service of the counterclaim, instead of the date of accrual of the claim. In this regard, I determine the appropriate rate of interest to be the default rate of 5.33% as set out in the para 77 of the Supreme Court Practice Directions given that no evidence was adduced in support of the interest rate sought by Adset and Mr Ravi.

S 910/2018

71 Adtec and Mr Ravi commenced S 910/2018 against Anuva. Adtec and Mr Ravi are collectively referred to as "the plaintiffs" in this part of the judgment. These claims arose out of a contract between Adtec and CTRM Systems Integration Sdn Bhd (the "CTRM Contract" and "CTRM"). Under this contract, Adtec was to design, build, supply, install and commission avionic computers and test facilities, for which CTRM was to pay Adtec US$40m. This contract consisted of 10 "work packages", which were discrete categories of

deliverables. Each work package ("WP") consisted of multiple milestones, the completion of which would trigger CTRM's payment obligations.[127]

72 According to Mr Suresh, Anuva was responsible for coordinating the different facets of the CTRM project, procuring and paying for the required materials and liaising with CTRM on its requirements. On the other hand, Adtec was responsible for executing the work under the CTRM contract and coordinating with the Indian subcontractors and consultants that had been engaged to complete the work.[128]

73 The issues to be determined in respect of this suit are:

(a) Issue 1: in relation to WP02, whether Anuva is liable in unjust enrichment for US$83,250.00;

(b) Issue 2: in relation to WP03 and WP05, whether Anuva omitted to pay US$18,148.00 to Adtec; and

(c) Issue 3: in relation to WP07, whether Anuva acted in breach of the Revenue Sharing Arrangement ("revenue sharing arrangement") and is therefore liable to pay Adtec and Mr Ravi US$849,600 and US$180,000 respectively, or, alternatively, whether Anuva acted in breach of its duties as agent by failing to make payment in accordance with the WP07 revenue sharing arrangement and by performing the

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127 Statement of Claim (Amendment No 1) at paras 12 and 13.

128 Mr Suresh's AEIC at para 112.

services under the CTRM contract without the consent or knowledge of Adtec, such that US$1,029,600 is held on constructive trust for Adtec.[129]

74 The plaintiffs also seek pre-judgment interest at the rate of 8.50% per annum, which is allegedly "based on the interest rates offered by the Indian banks", and post-judgment interest at the rate of 5.33% per annum.

75 Anuva in turn counterclaims against Adtec and asserts that Adtec owes it various sums of money. These are:

(a) a US$125,000 loan extended by Anuva to Adtec;[130] and

(b) US$16,666.67 for components which Anuva had purchased on Adtec's behalf.[131]

76 Anuva admitted that it withheld an "excess" of US$28,642.28, and the total amount it sought to claim from Adtec was therefore US$113,024.39.[132] It further counterclaims the following sums from Mr Ravi:

(a) US$70,160.64 for Mr Ravi's personal expenses, which Anuva had paid for on behalf of Mr Ravi at his request;[133] and

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129 Statement of Claim (Amendment No 1) at paras 24 and 25.

130 Defence and Counterclaim (Amendment No 1) at paras 22 to 24.

131 Defence and Counterclaim (Amendment No 1) at paras 25 to 27.

132 Defence and Counterclaim (Amendment No 1) at para 33.

133 Defence and Counterclaim (Amendment No 1) at paras 34 and 35

(b) US$8,280 for replacement parts that Anuva had purchased on his behalf.[134]

Issue 1: whether Anuva is liable in unjust enrichment for US$83,250

77 I begin with Adset's claim for US$83,250.00 against Anuva in respect of WP02. On 23 March 2015, Adtec invoiced CTRM for the sum of US$83,250.[135] Instead of paying Adtec, CTRM paid this amount into Anuva's bank account in Singapore.[136] Anuva admits having received this sum of money from CTRM, and that the payment had been *mistakenly* made by CTRM to Anuva instead of Adtec. Mr Suresh in fact postulated that this had happened because Adtec had authorised Anuva to receive payment from CTRM for *Part B* of WP02, and the CTRM's finance department had mistakenly paid Anuva in respect of *Part A* of WP02 as well.[137] It has not been argued that Anuva had authority, expressly conferred or otherwise, to accept payments on behalf of Adtec, and it is not disputed that it was Adtec who was contractually entitled to be paid by CTRM. However, Anuva's position is that Adtec is not entitled to the full sum of US$83,250 but only 55% of this sum, or US$45,787.50 pursuant to the revenue sharing arrangement and that it had taken this payment into account when it demanded repayment of a reduced sum from Adtec.[138] Under

134 Defence and Counterclaim (Amendment No 1) at paras 41 and 42.

135 Mr Ravi's AEIC at p 315; 3AB 1164.

136 Mr Ravi's AEIC at p 319.

137 Mr Suresh's AEIC at para 177 and pages 974, 975.

138 Defendant's ("D910") closing submissions at para 135 to 138.

the revenue sharing arrangement, Adtec and Mr Ravi were to receive 55% and 10% of the value of each WP respectively.[139]

78 As above, Adtec submits that Anuva was unjustly enriched by the sum of US$83,250, which was erroneously paid by CTRM to Anuva instead of Adtec. However, Adtec did not explain why this would be the correct figure, as opposed to 55% and 10% of this sum to Adtec and Mr Ravi respectively.

79 Referring me to the case of *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Wee Chiaw Sek Anna*"), Adtec contends that the enrichment is "unjust" because CTRM's payment to Anuva had been made without Adtec's consent, and cited *AAHG, LLC v Hong Hin Kay Albert* [2017] 3 SLR 636 in support.[140] According to Adset, it is undisputed that a benefit had been received by Anuva at its expense.[141] The plaintiffs refer to Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 8th Ed, 2011) ("*Goff & Jones* (8th Ed)") at 8-47, in which the authors explained the usurpation of office cases as follows: while the money paid to the defendant ("D") came from a third party ("X"), D was enriched at the claimant's ("C's") expense since the payment by X to D discharged X's liability to pay C.[142]

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139 D910 at para 83.1; Statement of Claim (Amendment No 1) at para 15.

140 Plaintiff's ("P910") closing submissions at para 104.

141 P910 closing submissions at para 102.

142 P910 closing submissions at para 104.

80 The plaintiffs further submit that Anuva could not avail itself of the defence of change of position for three reasons. First, Adtec denies owing US$770,383.10 as this includes claims for expenses by Anuva which have not been verified or approved by Adtec. Second, any "offsetting" exercise was carried out on paper, and therefore reversible by Anuva. Third, any alleged change of position would not apply to the portion of the US$83,250 that was not apportioned to Adtec by Anuva.[143]

81 In the alternative, Adset submits that Anuva was in breach of the revenue sharing arrangement by withholding sums that Adtec was entitled to.[144]

82 Anuva's position is that Adtec is not the proper party to bring the claim in unjust enrichment. It relies on the case of *Sun Fook Kong Construction Ltd (formerly known as Sung Foo Kee, Ltd) v Housing and Development Board* [2004] SGHC 69, in which it was stated that "the principle of restitution is only available to the paying party" (at [40]).[145] It further cites *MacDonald Dickens & Macklin (a firm) v Costello and others* [2012] QB 244, in which the English Court of Appeal held (at [21]) that allowing the unjust enrichment claim would undermine the parties' chosen contractual configuration. Analogising from this case, Anuva contends that recovery should be denied, and that Adtec's claim for non-payment should have been brought against CTRM instead.[146]

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143 P910 closing submissions at para 107.

144 P910 closing submissions at para 108.

145 D910 closing submissions at para 126.

146 D910 closing submissions at paras 129 to 134.

83 Anuva submits that even if Adtec is the appropriate party to commence the suit, Adtec and Mr Ravi owed it US$770,383.10 at the time it received the payment from CTRM.[147] This is evidenced by an email sent by Mr Rodrigues on 20 March 2015, which Mr Rodrigues claimed had been showed to Mr Ravi.[148] In contrast, under the revenue sharing arrangement, Adtec and Mr Ravi were only entitled to US$54,112.50.[149] Mr Ravi and Adtec had also told Anuva that it should deduct the loans and advance payments extended to them from future payments made by CTRM.[150]

84 In any event, Anuva relies on the defence of change of position. This appears to have been Anuva's "accept[ance] that a lower amount was … due from [Adset] and [Mr Ravi]". Anuva then asserts that it would be inequitable to require Anuva to make restitution.[151]

My decision

85 The parties rely on *Wee Chiaw Sek Anna*, where the Court of Appeal observed that the following four elements must be shown to establish a cause of action in unjust enrichment (at [98] and [99]):

> (a) that a benefit has been received or an enrichment has accrued to the defendant;

147 D910 closing submissions at para 138.2.

148 3AB 1162.

149 Mr Suresh's AEIC at para 180.

150 Mr Suresh's AEIC at para 178.

151 D910 closing submissions at paras 148 to 150.

(b) that the benefit or enrichment was at the claimant's expense;

(c) that the defendant's enrichment was "unjust"; and

(d) that there are no applicable defences.

86 As summarised at [82] above, Anuva argues that Adtec is not entitled to bring a claim against it in unjust enrichment, and should have sued CTRM instead for breach of contract. In this regard, Anuva's statement in its submissions that it accepted that it had benefitted at Adtec's expense,[152] to my mind, is not consistent with its arguments on the "correct party" to bring the claim. Instead, in my view, the latter is best characterised as a question of whether Anuva had been unjustly enriched at Adtec's expense. This was also a point obliquely discussed in the extract from *Goff & Jones* (8th Ed) ([79] *supra*) to which Adtec has referred me.

87 It has been said that unjust enrichment can only take place in the context of a "direct transfer" from the claimant to the defendant (see *Wee Chiaw Sek Anna* at [113]). However, in *Wee Chiaw Sek Anna*, the Court of Appeal observed that recovery has been allowed in certain "indirect transfer" situations, such as where the claimant transferor can trace his money into the pocket of the eventual defendant transferee despite the money having passed through intermediate recipients (at [113] and [115(b)]). The Court of Appeal also considered the concept of "interceptive subtraction": see Peter Birks, *Unjust Enrichment* (Oxford University Press, 2nd Ed, 2005) ("Birks") at p 75; Andrew Burrows, *The Law of Restitution* (Oxford University Press, 3rd Ed, 2011)

152 D910 closing submissions at para 135.

("Burrows") at p 70; *Wee Chiaw Sek Anna* at [117]. In the words of Birks, as quoted in *Wee Chiaw Sek Anna* at [117], an "interceptive subtraction arises where assets are 'on their way, in fact or law, to the claimant when the defendant intercepted them' but 'are never reduced to the ownership or possession of the claimant'." Burrows characterised this as the question of whether a claimant is entitled to restitution from a defendant in a situation where a third party mistakenly pays the defendant when he intended to pay the claimant, to whom he owed money (at p 70).

88 However, the Court of Appeal also identified a number of difficulties with, and criticisms that have been made of, this concept. First, that the requirement of "certainty" is arguably circular and insufficient. This nexus also cannot be explained by simply showing a 'but for' causal link as this would extend the ambit of unjust enrichment too far. The requirement that the benefit be given to the recipient "at the expense of" the claimant therefore requires the claimant to prove that she lost a benefit to which she is legally entitled or which forms part of her assets, and which is reflected in the recipient's gain: see *Wee Chiaw Sek Anna* at [120]–[128]. Second, Prof Lionel D Smith ("Prof Smith") argued in "Three-Party Restitution: A Critique of Birks's Theory of Interceptive Subtraction" (1991) 11 OJLS 481 (at 488) that where there is a personal claim to money which has been intercepted, the plaintiff's original claim to the intercepted money still persists. The plaintiff has therefore suffered no expense, and there has been no subtraction from him: see *Wee Chiaw Sek Anna* at [118].

89 The Court of Appeal then expressed a tentative view that the claimant must have some form of legal entitlement to the property received by the recipient (at [123]):

> The words "on the way" imply that the passing of hands was the last step in the chain of legal entitlement which the claimant would be entitled to demand. It is at this last step that interception is made on Prof Birks's theory of interceptive subtraction. We thus note that even on Prof Birks's theory of interceptive subtraction, certainty is still required. In our tentative view, the preferable position is that the claimant must show ***some form*** of *legal (and not merely factual) entitlement* to the property which is received by the recipient. However, until such issue arises squarely for determination by this court and we have had the benefit of hearing full arguments from parties, we do not take a definitive position. [emphasis in original in italics; emphasis added in bold italics]

90 The Court of Appeal's stated view on the requirement of a "legal entitlement" was not a definitive but a tentative one. It also left open the question as to what *form* of legal entitlement would suffice. To my mind, in the present case, Prof Smith's critique applies with particular force. Adtec retains a contractual entitlement to sue CTRM for payment on the contract, and has therefore suffered no loss. This follows from the fact that the contract had been entered into by CTRM and Adtec, and that Adtec had *not* authorised CTRM to pay Anuva in its place, or for Anuva to receive payment for the relevant portion of WP02. As I stated earlier, it is not disputed that the payment was mistakenly made. I therefore find it difficult to conclude that Anuva has been enriched at Adtec's expense.

91 I find support for this view in a number of the leading academic texts on this topic. Prof Smith argues that where the third party's liability to the claimant is discharged by the former's payment to the defendant, an accrued subtraction justifies the claim in unjust enrichment. This preference for examining the effect of the third party's payment on the pre-existing legal liability owed by the third party to the claimant was described as an "appealing" position to take in Burrows at p 81. This view is further echoed in Tang Hang Wu, *Principles of The Law of Restitution in Singapore* (Academy Publishing, 2019) at p 63, where

Prof Smith's analysis is described as persuasive. Finally, in Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 9th Ed, 2016) ("*Goff & Jones* (9th Ed)"), the authors expressed the view that claims in unjust enrichment should be confined to situations in which the gain to the defendant involves "a diminution to or subtraction from [the claimant's] accrued wealth", which may include the claimant's legal rights against the third party (at paras 6–98 and 6-99).

92 I therefore find Adtec's reliance on the discussion in Goff & Jones (8th Ed) on the line of cases involving usurpation of office to be confusing at best. Even on the analysis provided therein, emphasis was placed on the fact that the payment discharged the third party's liability to pay the claimant. This is not the case on the facts, and the parties are not seeking to persuade me that this is the case. In summary, it appears to me that the legal entitlement the claimant had to the moneys before they were transferred must be discharged by the transfer in order to give rise to a claim in unjust enrichment, and that is not the case on the present facts.

93 I note that Burrows at p 81 has suggested that one alternative might be to allow the claimant to choose whether to treat the debt as discharged or not, and that this finds some support in *Official Custodian for Charities and others v Mackey and others (No 2)* [1985] 1 WLR 1308 at 1315. According to Burrows, this choice is exercised by the claimant electing to *either* sue the third party in contract for the original debt, or the defendant in unjust enrichment. While there is some appeal in this suggestion in so far as it obviates the need for two separate suits to be brought, I decline to affirm this position. As suggested by Anuva, albeit in a slightly different context, this would undermine the parties' chosen contractual arrangement. Further, no submissions were made on this point by

the parties. Given that this would constitute a significant and substantive departure from the orthodox position on unjust enrichment, it is best that such a development be reserved for a case in which the court has the benefit of full submissions on the issue.

94 For the above reasons, I decline to order restitution of the sum of US$83,250 sought by Adtec.

95 I also do not agree with the plaintiffs' claim that Anuva's retention of the US$83,250 was in breach of the revenue sharing arrangement. I note that this was the plaintiffs' claim and that they bore the burden of proving that no payment had been made pursuant to the revenue sharing arrangement for this portion of WP02. Two arguments made by the plaintiffs are relevant here: (1) that Adtec does not admit it owed US$770,383.10, which Anuva claims it applied part of the sum of US$83,250 towards, and (2) that this would not account for the balance 35% of the US$83,500 which Anuva did not apportion to it.[153]

96 First, there was no basis for the plaintiffs to claim the entire sum of US$83,250, instead of 65% of this sum pursuant to their revenue sharing arrangement.[154] As pleaded, Mr Ravi was to receive 10% of the value of each WP, and Adtec to receive 55%. This addresses the plaintiffs' contention that any off-setting exercise by Anuva did not account for the full sum claimed. Second, I note that Mr Ravi has made two points in relation to the alleged US$770,383.10 debt. The first of these was that the entry "loan payable to ATS

153 P910 closing submissions at para 107.

154 Statement of Claim (Amendment No 1) at para 15.

(394 + 198) 2 bills" in the 20 March 2015 spreadsheet sent by Mr Rodrigues to Mr Suresh should not be taken as payable to Anuva as this was an intra-group loan between Adtec and another company in the group.[155] As Anuva notes, *even if* the sum pertaining to this alleged loan is removed from its calculations, the outstanding amount owed to Anuva by the plaintiffs was still more than the US$54,112.50 they were entitled to.[156] Further, despite Mr Ravi's current position that he had not been able to verify the expenses Anuva claims to have incurred,[157] the evidence before me does not suggest that these had ever been in dispute. Notably, the plaintiffs have not pointed to any specific issue arising from these expenses or the spreadsheets (including the 20 March 2015 spreadsheet). It was also unclear to me that any dispute would have rendered it such that the amount owed would be less than the share of the revenue the plaintiffs were entitled to for this part of WP02.

97 In the premises, I find that the plaintiffs have not discharged their burden of proof under this claim for US$83,250 and I therefore dismiss it accordingly.

Issue 2: whether Anuva omitted to pay US$18,148.00 to Adtec for WP03 and WP05

My decision

98 Adtec filed an amended Statement of Claim on 26 April 2019 stating that it had discovered belatedly that Anuva had omitted to pay US$18,148.00 to

155 Mr Ravi's AEIC at para 75, p 420; 3AB 1162.

156 D910 closing submissions at para 145.

157 Mr Ravi's AEIC at para 76.

Adtec for WP03 and WP05 (as also indicated above at [68]).[158] This was allegedly because Adtec had previously wrongly attributed the payment of this sum to the CTRM contract when it should have been for the BEL project.[159] However, I note that Adtec, in its closing submissions, *reiterates* its statement of claim, and merely asserts that this sum is owing to it from Anuva.[160] Its bare assertion that it had wrongly attributed payment to the BEL project was not in itself any proof that sums were owing in respect of WP03 and WP05. This is in line with Anuva's observation in its closing submissions that "it is not clear, on the evidence adduced by [Adtec] in support of this claim, how or where this sum is derived from".[161] Despite this, Adtec has not attempted to explain or support its assertion in its reply submissions despite this being its claim.

99 For completeness, as I also indicate below at [135], Anuva has admitted that the sum of US$28,642.28 (the "excess sum") is to be returned to Adtec, and that this excess sum was withheld to account for the plaintiffs' expenses for executing WP02, *WP03, WP05,* and WP07.[162] One concern I had was that this appears to be at odds with Anuva's claim that it had paid the plaintiffs in full for WP05, and, in the alternative, that even if it is liable to pay Adtec for WP03, this had already been paid in excess. I therefore invited further submissions from the parties on the specific issue as to whether the excess sum of US$28,642.28 withheld by Anuva has any implications on Adtec's claim for US$18,148.00 for WP03 and WP05. In its further submissions, Adtec's position was simply that

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158 Statement of Claim (Amendment No 1) at para 16.

159 Mr Ravi's AEIC at para 31.

160 P910 closing submissions at para 109.

161 D910 closing submissions at para 96.

162 Defence and Counterclaim (Amendment No 1) at paras 32 and 33.

the excess sum had *no implication* on its claim.[163] Further, I note that Anuva's position was that the excess sum is to be ascribed to *all four* WPs, specifically, WP02, WP03, WP05, and WP07. There was therefore no evidence before me on which I could determine how much of the excess sum, if at all, should be ascribed to WP03 and WP05, and whether this was relevant to Adtec's claim here. Given that it was *not* Adtec's position that the excess sum was relevant to this claim, I consider this point no further.

100 The absence of *any* supporting evidence for Adtec's claim makes it clear that its claim must be dismissed. I order accordingly.

Issue 3: Whether Anuva acted in breach of the Revenue Sharing Agreement and/or the duties it owed in relation to WP07

101 The parties dispute how the revenue from WP07 was to be shared among them. According to Adset, for WP07, Anuva is liable to pay US$849,600 and US$180,000 to Adset and Mr Ravi respectively, being their entitlement based on the revenue sharing arrangement which provided that:[164]

(a) Mr Suresh would be paid 10% of the value of WP07;

(b) Mr Ravi would be paid 10% of the value of WP07;

(c) third party agents would receive 17% of the value of WP07;

(d) Anuva would be paid 4% of the value of WP07; and

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163 P910 submissions dated 17 September 2019 at para 4.

164 Statement of Claim (Amendment No 1) at para 20; Mr Ravi's AEIC at para 43.

(e) Adtec (and/or its nominees) would be paid 59% of the value of WP07.

102 In contrast, Anuva's pleaded position is that the revenue sharing arrangement for WP07 was the same as that for the other WPs under the contract, namely that:[165]

(a) Mr Suresh would be paid 10% of the value of the WP;

(b) Mr Ravi would be paid 10% of the value of the WP;

(c) third party agents would receive 21% of the value of the WP;

(d) Anuva would be paid 4% of the value of the WP;

(e) Adtec (and/or its nominees) would be paid 55% of the value of the WP.

The plaintiffs' submissions

103 I turn now to specifically examine the parties' submissions in respect of milestones 3 to 15 of WP07.

104 The plaintiffs' case is essentially that Anuva had acted in breach of its duties as Adtec's agent by, *inter alia*, failing to make payments to the plaintiffs in accordance with the revenue sharing arrangement.[166] They therefore seek a declaration that Anuva holds US$1,029,600 on constructive trust for them, and

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165 D910 closing submissions at para 83.1; Defence and Counterclaim (Amendment No 1) at para 16.1.

166 Statement of Claim (Amendment No 1) at para 24.

an order that this sum be delivered to Adtec. This claim appears to have been computed on the basis that: Anuva was obliged to pay Adtec a further US$849,600 (59% of the total revenue from WP07, deducting the US$212,400 already paid for milestones 1 and 2), and Mr Ravi US$180,000 (10% of the total revenue from WP07). In the alternative, the plaintiffs contend that Anuva breached the revenue sharing arrangement by failing to pay these sums to them.[167]

105 On the claim based on constructive trust, Adtec's case is that Anuva was its agent in respect of WP07, and that the contractual obligations under the CTRM contract remained with Adtec. The parties had an agreement that Anuva would receive and hold all payments received in respect of this WP.[168] Flowing from this, Anuva owed Adtec a duty to perform its obligations in accordance with the express and implied terms of the agency agreement, and not to make unauthorised profits.[169] According to Adtec, Anuva "hijacked" the CTRM contract by providing secret drawings of Indian fighter jets to CTRM without Adtec's knowledge or authorisation. This was something Adtec was not willing to do. CTRM had requested that Adtec assist in sourcing for cockpit drawings as it was unable to develop its own or obtain them from the original equipment manufacturer in Russia. While Adtec had in its possession drawings of the cockpits in Indian fighter jets, it was not permitted to share them with CTRM under Indian law.[170]

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167 Statement of Claim (Amendment No 1) at paras 22 to 24.

168 P910 closing submissions at paras 110 to 112.

169 P910 closing submissions at para 120.

170 P910 closing submissions at paras 116 to 118.

106 Mr Suresh agreed that CTRM had told Adtec that it was unable to provide the drawings. He testified that the drawings had been purchased from a "Sergey Goshkov" for US$10,000. He had allegedly been given his email address by Mr Ramalingam Panchayappan Ramenahalli ("Mr Ramalingam"),[171] but was unable to produce the email correspondence between him and Mr Goshkov.

107 The plaintiffs, in their closing submissions, argue that the drawings had not been obtained from the original equipment manager or available on the Internet as Mr Suresh had maintained.[172] Pertinently, they go on to argue that Anuva had no authority to provide the cockpit designs for the Indian fighter jets to CTRM, given that Adtec had stated it would not do so.[173] In providing the drawings, Anuva had breached its mandate.[174] Further, Anuva did not issue a purchase order to Adtec and unilaterally completed milestones 3 to 15 of WP07 without Adtec's consent to do so, despite Adtec remaining willing and able to perform its obligations. Anuva also did not inform Mr Ravi that Mr Suresh had engaged other Indian companies to fulfil the obligations under milestones 3 to 15.[175] Adtec therefore argues that Anuva had taken advantage of its position to make a profit without its informed consent: see Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2010) at para 07.037.[176]

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171 Transcript, 29 May 2019, page 77, line 12 to page 80 line 22; page 87, lines 4 to 11.

172 P910 closing submissions at para 118(c).

173 Mr Ravi's affidavit dated 29 May 2019 (HC/SUM 2722/2019) at para 9(c); P910 closing submissions at para 118.

174 P910 closing submissions at para 121.

175 P910 closing submissions at para 123.

176 P910 closing submissions at paras 120 to 124.

The defendant's submissions

108 Anuva submits that the plaintiffs had been fully aware that Anuva had stepped in to finish WP07 when Adtec refused to do so. The fact that Adtec asked Anuva to confirm whether it was going to complete WP07 signalled its abandonment of the project. Adtec did not want to proceed with the project as Mr Ravi had been of the view that WP07 was no longer profitable for them. Anuva had in fact invited Adtec's team to participate in the project meetings if it wished to do so.[177] CTRM had specifically asked Mr Suresh to update it on the progress of WP07, and sought its assistance to complete the project.[178]

109 The purchase order issued by CTRM in respect of WP07 had been issued to Anuva pursuant to Adtec's directions.[179] According to Anuva, the fact that it had completed the project without Adtec's assistance (1) avoided a claim by CTRM against Adtec and (2) caused it to incur costs to complete the works. Anuva therefore submits that there is no basis for the plaintiffs to assert that they are entitled to their respective share of the revenue.[180]

110 On the alleged breach of contract, it was a term of the revenue sharing arrangement that the various parties would only be entitled to their share if each of them fulfilled their obligations in relation to the project.[181] Therefore, Anuva's position is that Adtec was not entitled to any payments under WP07 for milestones 3 to 15. That said, Mr Suresh accepted at trial that Mr Ravi was

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177 D910 closing submissions at paras 38 to 45 and 108.

178 D910 closing submissions at para 111.

179 3AB 1300.

180 D910 closing submissions at paras 112 to 113.

181 Defence and Counterclaim (Amendment No 1) at paras 9.3 and 17.

entitled to 10% of the revenue from WP07, and that this was not contingent on whether Adtec had discharged its obligations.[182]

My decision

(1) Whether Anuva was Adtec's agent

111 The plaintiffs argue that Anuva was its agent in respect of WP07 and had breached its duties as an agent by failing to make payment to them. While Anuva argues that the "claim in agency" was not pleaded,[183] this is not correct. In particular, paragraph 24 of the plaintiffs' Statement of Claim clearly stated that "Anuva [had] acted in breach of its duties as an agent of [Adtec] by failing to make payment to [Adtec] and Mr Ravi …". Anuva also specifically averred that it had never agreed to be Adtec's agent.[184]

112 In *Grain Trading*, the court described an agency relationship as one between two persons where the agent is considered in law to represent the principal, in such a way as to be able to affect the principal's legal relations as against third parties (at [70]). Peter Watts and F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 21st Ed, 2018) at paras 1-001 and 1-012 place emphasis on the requirement of manifestation of assent (or consent) to this arrangement.

113 I am not persuaded that Anuva had been acting as Adtec's agent in respect of the obligations under WP07. Adtec appears to rely on a number of

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182 Transcript, 29 May 2018, page 92, lines 15 to 18.

183 D910 reply submissions at para 5.

184 Defence and Counterclaim (Amendment No 1) at para 15.

points in arguing that Anuva was its agent. First, a purchase order was issued by CTRM to Anuva on Adset's instructions. This is evidenced by a letter sent by Mr Ravi to CTRM dated 8 April 2014, in which he asked CTRM to issue a purchase order for US$1.8m relating to WP07 to Anuva. This letter stated that Adtec authorised Anuva to "invoice and receive payment for this part of the [purchase order]".[185] While I accept that Adtec continued to be liable under the CTRM contract, I do not think that this letter is indicative of an agency relationship, much less one that encapsulated the performance of the obligations under WP07 generally. This letter merely describes to CTRM Mr Ravi's understanding of the arrangement that was purportedly reached between Adtec and Anuva in relation to WP07. Its language provides little indication as to what precise legal relationship governed any such arrangement, and is in fact reconcilable with a variety of different relationships at law.

114 In cross-examination, Adtec's counsel also referred to the fact that Mr Suresh had attended meetings as a representative of Adtec,[186] where issues such as timelines and steps to be taken by Adtec and CTRM were discussed. This again is not determinative. Mr Ramalingam, whom Mr Suresh described as a "consultant" for Adtec, had also attended on behalf of Adtec.[187] Notably, Mr Suresh approved the minutes taken on Adtec's behalf.[188] As counsel for Adtec noted, one of these meetings occurred even after the purchase order for WP07 had been issued to Anuva.[189] Again, I do not think that this suggests Anuva was

185 2AB 876.

186 Transcript, 29 May 2019, page 33, lines 10 to 12.

187 Transcript, 29 May 2019, page 93, lines 17 to 19.

188 Transcript, 29 May 2019, page 33, lines 4 to 16; Mr Suresh's AEIC at 843.

189 Transcript, 29 May 2019, page 34 line 18 to page 35 line 22.

Adtec's agent. If at all, it suggests that *Mr Suresh* might have been authorised to act as Adtec's agent: in this regard, I note that Mr Suresh was also involved in the project in his personal capacity, and was himself entitled to a share of the profits. In context, Mr Ravi had testified that Mr Suresh was "number 2" in his group of companies,[190] and had been given personal authority to direct staff in Adset, for example.[191] In any event, while Mr Suresh was the one to sign off on the minutes, other staff from Adtec were also present at these meetings. For example, Mr Paritosh Dandriyal was also present at the 19 January 2016 meeting.[192]

115 I also considered the manner in which the parties divided the responsibilities for the project. Anuva's position is that it was responsible for coordinating the different facets of the CTRM project, while Adtec was responsible for executing the works under the contract. Although there was some reference to Anuva liaising with CTRM on its various requirements,[193] it was not clear on the evidence before me that this went beyond an administrative role, or that *Anuva* (as distinguishable from Mr Suresh in his personal capacity) had the authority to act on Adtec's behalf and alter the legal relations of the latter. Lastly, I note that neither Anuva nor CTRM appeared to view Anuva as Adtec's agent. From the correspondence between Adtec and Anuva on WP07, it appeared instead that *Anuva* had assumed responsibility for the project, and that Adtec had been invited to participate if it wished.[194] Anuva's understanding

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190 Transcript, 31 May 2019, page 39, lines 17 and 18.

191 Transcript, 31 May 2019, page 31 line 22 to page 32 line 6.

192 Mr Suresh's AEIC at page 839.

193 Defence and Counterclaim (Amendment No 1) at paras 7.2 and 7.3.

194 3AB 1340, 1342.

of the relationship is relevant to an objective assessment of whether it had consented to the alleged agency relationship.

116 I therefore find that the Adtec has not established that its relationship with Anuva was one of agency. As such, it is not necessary for me to consider Adtec's arguments on constructive trust. I turn instead to what I understand to be its alternative claim for breach of contract.

(2) The terms of the revenue sharing arrangement

117 The parties disagree on the terms of the revenue sharing arrangement in two ways: first, on the proportion of profits that would be given to the various parties, and, second, whether it was a term of the arrangement that each party would only be paid if it fulfilled its obligations under the contract.

118 Addressing the first issue, the parties referred me to a number of documents. First, Anuva referred to a statement attached to an email sent by Mr Rodrigues to Mr Suresh on 20 March 2015. The email indicated that Mr Ravi had been shown the statement before it was sent to Mr Suresh.[195] The attachment in turn suggested that 65% of the revenue would be allocated to Mr Ravi and Adtec collectively. This supports Anuva's version of the revenue sharing arrangement (at [102], above).

119 While the statement sent by Mr Suresh to Mr Rodrigues dated 26 October 2015 again suggested that 65% of the revenue would be allocated to "SNR & Group", or Mr Ravi and Adtec, it appears that only US$106,200 was

195 3AB 1162.

allocated to them for each milestone (1 and 2).[196] Anuva referred to this document in its closing submissions as indicating that US$117,000 was apportioned to Mr Ravi and Adtec from milestone 2.[197] A closer examination of this document shows that the 20th bill was ascribed to WP07, with a bill amount of $180,000. This appears to be for milestone 2 since the "13th bill", which was the only other bill that amounted to US$180,000, was purportedly for milestone 1.[198] US$106,200 was apportioned to Mr Ravi and Adtec for each of the 20th and 13th bills. This amounted to 59% of the total invoiced sum.

120 The next question is then what this 59% was supposed to represent. According to Adtec, the 59% was its entitlement, and Mr Ravi was entitled to an additional 10%.[199] However, Mr Suresh stated that there was a new arrangement entered into in or around 29 June 2015 that Anuva ought to be entitled to a higher share under the revenue sharing arrangement. This was purportedly that Mr Ravi would be entitled to 10% and Adtec entitled to 49%, with Anuva's share increasing from 4% to 10%. This is also reflected in Anuva's closing submissions.[200] This appears to be at odds with Anuva's claim that "[t]here was no change in how the revenue earned from WP07 was to be divided between the various parties" from the other WPs.[201] I note that there is some documentary proof of this alleged change: Mr Suresh had told Mr

196 3AB 1249, 1250.

197 D910 closing submissions at para 85.3.

198 D910 closing submissions at para 85.1, fn 72.

199 P910 closing submissions at para 113; Statement of Claim (Amendment No 1) at para 22.

200 D910 closing submissions at paras 89 to 91.

201 Defence and Counterclaim (Amendment No 1) at para 16.1.

Rodrigues in an email dated 5 May 2015 that only 59% was due, and not 65%.[202] It appears that Mr Rodrigues then replied saying that he had continued to use the "old calculation" as per the instructions given by Mr Ravi. Mr Rodrigues also stated in his AEIC that this reduction from 65% to 59% in the statement was unilateral.[203] This was corroborated to an extent by the email sent by Mr Suresh on 18 February 2016, in which he stated that he had increased Anuva's share of the profits for WP07 to 10%.[204] In the circumstances, the fact that 59% was allocated by Mr Suresh to "SNR & Group" does not corroborate Adtec's account of the revenue sharing arrangement for WP07 (at [101] above).

121 Given that the various statements referred to the proportion to be allocated to Mr Ravi and Adtec as 65%, I find that the revenue sharing arrangement for WP07 was the same as those for the other WPs. To be clear, I do not accept Mr Suresh's late suggestion that there was a "new" arrangement that gave Anuva a larger proportion of the profits: this was not pleaded in its defence. I therefore find that the agreement was that as set out at [102] above, *ie*, Anuva's account of the agreement. Following from this, 65%, or US$117,000 for each of milestones 1 and 2 should have been paid to Mr Ravi and Adtec. As I indicated above at [119], while Anuva submitted that US$117,000 was apportioned to Mr Ravi and Adtec for each milestone (1 and 2), this does not appear to be the case judging by the statement sent by Mr Suresh on 26 October 2015, where only US$106,200 was apportioned to "SNR & Group" each for milestones 1 and 2. I note that Anuva, in its written submissions, suggested that it made a total payment of US$146,100 to the

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202 3AB 1148.

203 Mr Rodrigues's AEIC at para 17.

204 3AB 1347.

plaintiffs in total and held back the sum of US$87,900 to cover the excess monies that had been advanced to them.[205] Simply put, I am not able to reconcile this with the spreadsheet dated 26 October 2015. It seemed to me that, *at best*, this spreadsheet indicated that US$50,200 was retained by Anuva, but this was not in fact the position of either party. As such, I find that only US$106,200 per milestone was apportioned to and paid to the plaintiffs. Anuva's submission to the effect that Mr Ravi must have been paid because Adtec had been[206] was therefore at odds with the documentary evidence. Since the plaintiffs' position, as I understand it, is that it was Mr Ravi who has not been paid for milestones 1 and 2 of WP07,[207] I agree that a further US$21,600 should be paid to Mr Ravi. I therefore order Anuva to pay Mr Ravi US$21,600.

122 I further find that there was *no* term in the revenue sharing arrangement to the effect that each party would only be paid if it completed its obligations under the contract. Having perused the evidence before me, I am not aware of any document in which this term is referred to. Instead, even after Mr Suresh confirmed on 11 March 2016 that Anuva would complete WP07,[208] there was no suggestion that Adtec would not receive its share under the revenue sharing arrangement. In the same email, Mr Suresh indicated that he would enter the expenses for WP07 into an excel spreadsheet and share that with Adtec. On 17 March 2016, Mr Paritosh sent an email to Mr Suresh asking for clarification on

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205 D910 closing submissions at para 85.5.

206 D910 closing submissions at para 105.3.

207 Statement of claim (Amendment No 1) at paras 21 and 23; P910 reply submissions at para 44.

208 3AB 1353.

the payment Adtec would be receiving in respect of WP07.[209] Mr Paritosh also sent an email on 10 March 2016 asking for confirmation that Anuva would be completing the whole of WP07 and asking for the "budget". The latter email was referred to by Anuva as the culmination of Mr Ravi's dissatisfaction with the profits he thought Adtec would make from WP07.[210] It then argues that it is clear from the emails sent by Adtec and Mr Ravi that they did not want to participate in WP07 any longer.[211] Given the interpretation taken by Anuva, it is significant that Mr Suresh did *not* state that Adtec would only be paid if it participated in the project. Instead, Mr Suresh stated that "[a]ny payment to Adtec can only happen after Anuva recovers the excess amount paid to Adtec/[Mr Ravi] for the [CTRM] project till now".[212] He further said that Adtec was welcome (as opposed to *required*) to participate in any discussions on WP07, and reiterated that he would enter the expenses and payments made into the spreadsheet.[213] There was no indication that Adtec would only be paid if it participated in the project.

123 In any event, I note that Mr Suresh's position on what the revenue sharing arrangement entailed is inconsistent with Anuva's position as pleaded in its Defence:

> 17.1 Neither [Adtec] nor [Mr Ravi] are entitled to any payments under WP07 for milestones 3 to 15.
>
> 17.2 After milestone 2, the [p]laintiffs refused to undertake any works and fulfil their remaining obligations under

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209 3AB 1352.

210 D910 closing submissions at para 44.

211 D910 closing submissions at para 45.

212 3AB 1353.

213 3AB 1353.

> WP07. It was a term of the Revenue Sharing Arrangement that the various parties would only be entitled to a share under the Revenue Sharing Arrangement if each of them fulfilled their obligations under the works, to the satisfaction of CTRM.

124 Mr Suresh's acceptance at trial that Mr Ravi was entitled to 10% of the revenue *despite* the fact that Adtec had not discharged its obligations in respect of WP07 was therefore a marked departure from Anuva's pleaded position.[214] This cast doubt on whether there was in fact a term that stated each party would only be entitled to a share if they fulfilled their obligations under the revenue sharing arrangement. In all likelihood, it appears that the parties had never discussed the possibility that any one of them would fail to complete its part of the project because Mr Ravi and Mr Suresh had once been on friendly terms.

(3) Whether Anuva breached the revenue sharing arrangement in respect of milestones 3 to 15 of WP07

125 As I alluded to at [122], I accept the plaintiffs' submission that they are entitled to be paid under the revenue sharing arrangement.

126 The plaintiffs claim that US$1,029,600 is owed to them by Anuva (US$849,600 due to Adset and US$180,000 to Mr Ravi) under the revenue sharing arrangement. As I understand it, the US$180,000 claimed by Mr Ravi arises from *all* the milestones of WP07. I have addressed his claim relating to milestones 1 and 2 of WP07 at [121] above. What remains is therefore his claim relating to milestones 3 to 15 of WP07, which amounts to US$144,000. The question then is whether Adtec had been paid in excess of its entitlement, and what expenses had been incurred in the completion of WP07. Considering both

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214 Transcript, 29 May 2019, page 63, lines 20 to 22.

these factors would allow me to determine what sums, if any, are owing to the plaintiffs. The latter is relevant as the agreement between the parties appeared to be that the cost of any materials, and any incidental expenses for the execution of the project, would be deducted from the plaintiffs' share of the revenue.[215] While Mr Ravi's position was that this was subject to the expenses being authorised and supported by documentation, there is no evidence which corroborates this particular requirement, which was not a term of the agreement as pleaded by Anuva. Further, the evidence before me does not suggest that any requests had been made for such documentation in respect of any of the WPs.

127 The difficulty that arises is that the parties did not adduce any evidence as to the total expenditure for WP07, and did not make submissions as to what this was. I note that there is some evidence that the expenditure incurred for the first two milestones of WP07 was $11,850.00.[216] From the email correspondence between Anuva and Adtec, the parties seem to have estimated that the work carried out by Mr Ramalingam and his team would cost US$355,000, and US$250,000 for the cockpit fabrication and work to be completed by Anuva. These figures were not exhaustive. Other costs which would be incurred included the cost of warranty and maintenance for 12 months, as well as other work that did not fall into the above two categories.[217] The parties appear to have assessed the project to be unprofitable: in an email dated 17 February 2016, Mr Suresh stated that he would be "happy if [they could] make [a] profit out of this WP".[218] Mr Ravi, in an email dated 26 February 2016, suggested that any profits

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215 Defence and Counterclaim (Amendment No 1) at para 9; Mr Ravi's AEIC at para 43.

216 3AB 1250.

217 3AB 1341

218 3AB 1344.

derived from WP07 would be slight: "My suggestion to [Mr Suresh] and request to [Mr Ramalingam] is that all three stake holders [*sic*] ([Mr Ravi, Mr Suresh, Mr Ramalingam]) give some percentage back to [Adtec] so that [Adtec] can complete the project without losing money."[219]

128 As mentioned at [126], the parties have not pointed me to any evidence as to the expenditure of WP07. It may well have been that one of tables tendered in evidence pertained to WP07, but the deplorable state of the accounts that were kept, and the manner in which they were presented at trial is such that I am not able to determine with any degree of certainty what this amount was or should have been. Given that this was the plaintiffs' claim, and seen in the light of their predictions that this project would in any case incur high expenditure and limited profits, I find that the plaintiffs did not discharge their burden of proof to show that any sums were owing to them under this claim. Accordingly, I dismiss their claim for US$993,600 (which is the portion of their claim relating to milestones 3 to 15 of WP07).

Issue 4: Anuva's counterclaims

Anuva's counterclaim for US$125,000 against Adtec

129 Anuva's position was that it agreed in or around February 2015 to lend Adtec a sum of US$125,000, on the condition that this sum be repayable on demand. While it demanded repayment, most recently on 13 July 2016, the sum remains unpaid.[220]

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219 3AB 1340.

220 Defence and Counterclaim (Amendment No 1) at paras 22 to 24.

130 There is some documentary evidence to support Anuva's counterclaim against Adtec for US$125,000. A spreadsheet sent by Mr Rodrigues on 20 March 2015 indicated that this loan had been made by reflecting "125000" next to "Loan amount of KSK".[221] Mr Rodrigues testified that he had included this entry as he was told by Mr Suresh that the loan was made.[222] Further, he testified that, according to his records, Adtec had received a sum of US$125,000 from Mr Suresh in August or September 2014, but that he did not know what this payment was for. While he agreed that producing the relevant ledger would have clarified the purpose of the payment, this was not in fact adduced.[223] The fact that Mr Rodrigues had shown the statement (with the loan sum indicated) to Mr Ravi indicated to me that there was in fact a loan extended at some point in time (most likely, in August or September 2014, as I explain below).[224] Presumably, Mr Ravi would have raised concerns if this loan had not in fact been agreed upon.

131 However, while I accept that a loan may have been extended to Adtec, the difficulty I have with this claim is that the evidence suggests that this was a loan made by Mr Suresh and his wife and not by Anuva.[225] This was implicitly raised by Adtec's argument that it was not given the opportunity to cross-examine Anuva's witnesses on the purpose of sums transferred by Mr Suresh

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221 3AB 1163.

222 Mr Rodrigues's AEIC at para 12; Transcript, 7 June 2019, page 25 line 22 to page 26 line 4.

223 Transcript, 7 June 2019, page 26, lines 5 to 11; page 27, lines 13 to 19.

224 3AB 1152.

225 P910 reply submissions at para 63(a).

and his wife since the loan agreement as pleaded was made in February 2015.[226] Anuva also refers to a WhatsApp message sent by Mr Rodrigues on 4 March 2015, which it submits confirms that Adtec had received US$125,000.[227] This message stated: "100 + 25 from you and your wife's account paid on 13.08.2014 and 26.09.2014".[228] While Anuva's pleaded case is that this loan was extended in or around February 2015,[229] it relies on this message, and the alleged payments in August and September 2014, as the basis for its claim. This is problematic in so far as the WhatsApp message clearly suggests that the payments were made by Mr Suresh and his wife, and not by Anuva. No explanation has been given as to why the payment had been made from their personal accounts, and no submissions were made as to why Anuva is the proper plaintiff. This being the case, it appears that any loan that was repayable should be repaid to Mr Suresh and his wife, and not Anuva, as suggested by Adtec.[230] In the premises, I find that Anuva has not proved that it had made a loan to Adtec. I accordingly dismiss Anuva's counterclaim against Adtec for the sum of US$125,000.

Anuva's counterclaim for US$16,666.67 against Adtec

132 Anuva's pleaded case is that it had an agreement with the plaintiffs that it would be responsible for procuring all the materials required by the latter to execute the CTRM Project. According to Anuva, the agreement was that the

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226 P910 reply submissions at para 63(a).

227 D910 closing submissions at para 154.2.

228 3AB 1133.

229 Defence and Counterclaim (Amendment No 1) at para 22.

230 P910 reply submissions at para 63(a).

cost of these materials would subsequently be deducted from the plaintiffs' entitlement under the revenue sharing agreement.[231] Certain components installed by Adtec for WP02 and WP05 had to be replaced, and Anuva accordingly did so on Adtec's behalf at the expense of US$16,666.67. Anuva therefore claims that this sum is due from Adtec. In contrast, Adtec's position is that there is no proof that Anuva had purchased components worth US$16,666.67 on its behalf.[232] Further, Mr Suresh's evidence that Anuva had purchased Interface Control Documents ("ICDs") is inconsistent with its pleaded case, which refers to hardware components.[233]

133 I do not think that the difference in terminology used between Mr Suresh's AEIC and Anuva's counterclaim is material, or that these documents are substantively inconsistent. This appeared to be a semantic difference, and Mr Suresh's AEIC appeared to refer to the purchase of ICDs and of components interchangeably. Pertinently, Mr Suresh's AEIC made clear that the materials Anuva was referring to were the ICDs, and there could therefore have been no confusion on the part of Adtec or Mr Ravi. I therefore place no weight on the distinction Adtec has attempted to draw in relation to this claim.[234]

134 I also do not accept Adtec's contention that there are no records or correspondence from Anuva showing that it had purchased components worth US$16,666.67 on its behalf. There is documentary proof that this sum was

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231 Defence and Counterclaim (Amendment No 1) at para 25.

232 P910 closing submissions at para 133; Mr Ravi's AEIC at para 86;

233 Transcript, 6 June 2019, page 84 line 5 to page 85 line 15; Mr Suresh's AEIC at para 152.

234 Mr Suresh's AEIC at paras 152 and 153.

payable, and had been accepted as such by Mr Ravi. This payment was included in the statements prepared by Mr Suresh. For example, in the statements sent by Mr Suresh on 26 and 29 October 2015, entries indicating "[p]ayments for ICDs 10L [*ie*, 10 lakhs]" were included, with the attached value of US$16,666.67.[235] The statement sent by Mr Suresh on 13 March 2015 similarly included an entry for "TO RRP - ICDs 10L".[236] Crucially, Mr Rodrigues stated in an email dated 15 May 2014 that Mr Ravi had said the 10 lakhs for ICDs could not be paid at that point in time as the ICDs had not yet been received.[237] Mr Ravi agreed in cross-examination that this meant it would be paid at a later date.[238] There is also a WhatsApp message from Mr Ravi dated 6 May 2015 in which he said that Mr Suresh had told him "long ago" that 10 lakhs was payable for the ICDs, and that he had agreed to this.[239]

135 For the foregoing reasons, I would have allowed Anuva's counterclaim for US$16,666.67 against Mr Ravi, save for Anuva's averment that it had withheld an excess of US$28,642.28 from WP02, WP03, WP05 and WP07. Anuva fairly conceded that this should be deducted from the sums it sought to recover under its various counterclaims.[240] Given that I have dismissed Anuva's counterclaim for US$125,000, the sum of US$28,642.28 would have to be deducted instead from the claim for US$16,666.67. The plaintiffs did not pray

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235 3AB 1250, 1259.

236 3AB 1144.

237 Mr Suresh's AEIC at p 1091.

238 Transcript, 6 June 2019, page 34, lines 1 to 7.

239 3AB 1203.

240 Defence and Counterclaim (Amendment No 1) at para 33.

for the balance to be deducted from any other claim (see, *eg*, [99] above). I therefore dismiss this claim as well.

Anuva's counterclaim for US$70,160.64 against Mr Ravi

136 Anuva claims it paid a total of US$70,160.64 on behalf of Mr Ravi.[241] The main dispute in relation to this claim is whether the loan was owed to Mr Suresh personally, or to Anuva.[242] The plaintiffs aver that the transactions identified by Anuva were personal transactions between Mr Ravi and Mr Suresh.[243] This assertion was repeated in the plaintiffs' closing submissions, where they also argued that any loan repayable should be repaid to Mr Suresh, and that Anuva had not produced any evidence to show that it had a loan agreement with Mr Ravi.[244]

137 It is significant that Mr Ravi had specifically asked for his personal expenditure to be included in the CTRM account statements "so as to maintain one single account".[245] Particularly when seen in light of his other requests to offset advances from future payments made to Anuva, I agree with Anuva that this suggests that Mr Ravi had regarded the loan as repayable to it.[246] While the plaintiffs argue that Mr Ravi was not cross-examined on his request to maintain a single account for his personal expenses and the CTRM expenses and therefore that Anuva should not be allowed to rely on this request by virtue of

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241 Defence and Counterclaim (Amendment No 1) at para 34.

242 P910 closing submissions at para 134.

243 Reply and defence to Counterclaim at para 33.

244 P910 closing submissions at para 134.

245 3AB 1196.

246 D910 closing submissions at para 174.

the rule in *Browne v Dunn* (1893) 6 R 67,[247] this is not an inflexible rule, but rather one premised on fairness: see *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48]. It was apparent from the face of Mr Suresh's AEIC[248] and the pleadings that Anuva's position was that this sum was to be repaid to Anuva and not Mr Suresh. I therefore do not see how any prejudice arose from the fact that this *particular email*, which was contained in the agreed bundle, was not specifically referred to in Mr Ravi's cross-examination. It had in fact been put to Mr Ravi that the sum of US$70,160.64 was paid on his behalf and at his request by *Anuva.* The fact that Mr Ravi's personal expenses had been included in the statement of expenses was also indicated in Mr Suresh's AEIC.[249] In the circumstances, I do not think any unfairness arises from Anuva's reliance on Mr Ravi's request that it "maintain one single account". I note also that Mr Ravi has not disputed the quantum of these sums.[250] As such, I allow Anuva's counterclaim for US$70,160.64 against Mr Ravi.

Anuva's counterclaim for US$8,280 against Mr Ravi

138 This claim relates to a project between Mr Ravi, Autotec Systems Pvt Ltd ("Autotec"), Anuva and HAL Hyderabad. The customer had rejected some of the items and replacements had to be provided. According to Mr Suresh, there was an agreement that the cost of these parts would be split between himself, the four directors of Autotec and Mr Ravi. On the other hand, Mr Ravi's position

247 P910 reply submissions at para 67.

248 Mr Suresh's AEIC at paras 164 to 167.

249 Mr Suresh's AEIC at para 163 and p 1091.

250 P910 closing submissions at para 134.

is that the project was carried out between Autotec, Anuva and HAL Hyderabad and that neither of the plaintiffs could be held liable for the amount claimed.[251]

139 Anuva's position is corroborated by an email sent by Mr Shashi Kumar, one of the directors of Autotec, on 10 October 2015. This email set out the amount to be paid by each of the six people involved, and told Mr Suresh that he could recover Mr Ravi's share of US$8,280 from his account.[252] This email was copied to Mr Ravi as well. I am persuaded that this was an arrangement that Mr Ravi had agreed to: Mr Suresh had specifically pointed out to Mr Ravi on 7 May 2015 that he had discussed the payments for the components with Mr Kumar, and concluded that the six of them would share the cost of these parts. Mr Ravi agreed.[253] I accept that there was an agreement that US$8,280 was to be paid by Mr Ravi to Anuva, and I accordingly order that this be done.

Conclusion

140 Having weighed the evidence as above, I make the following orders:

(a) In S 625/2018:

(i) Adset to pay Anuva US$288,295.97;

(ii) Anuva to pay Adset US$103,872.47 in the counterclaim; and

(iii) Anuva to pay Mr Ravi US$218,132.18 in the counterclaim.

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251 P910 closing submissions at para 135; Mr Ravi's AEIC at para 88.

252 Mr Suresh's AEIC at p 1096.

253 Mr Suresh's AEIC at p 1095.

(b) In S 910/2018:

(i) Anuva to pay to Mr Ravi US$21,600, with the remainder of Adtec's and Mr Ravi's claims against Anuva in relation to WP07 dismissed;

(ii) Mr Ravi to pay Anuva US$78,440.64[254] in the counterclaim; and

(iii) Anuva's counterclaim against Adtec for US$125,000 and $16,666.67 respectively are dismissed.

141 The above orders are subject to pre-judgment interest at the rate of 5.33% per annum from the time the relevant claim was served, as well as post-judgment interest at the rate of 5.33% per annum from the date of this judgment until the date of payment.

142 I will hear parties on the issue of costs at a later date, if such costs are not agreed.

Vincent Hoong
Judicial Commissioner

Pereira Kenneth Jerald and Lai Yan Ting Francine (Aldgate Chambers LLC) for the plaintiff in S 625/2018 and the defendant in S 910/2018;
Mohamed Nawaz Kamil and Wong Joon Wee (Providence Law Asia LLC) for the defendant in S 625/2018 and the plaintiffs in S 910/2018.

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254 US$70,160.64 at [137] and US$8,280 at [139].

Annex A[255]

From: Alwin-Ewas [mailto:alwin@ewastech.com]
Sent: Friday, November 1, 2013 3:11 pm
To: karanth@anuvatechnologies.com
Cc: ravichandra@adsetech.com
Subject: Payable to Anuva from EWAS & Sierra
Importance: High

Dear Sir,
Please find attached file.

	IN USD
EWAS	66764.18
Sierra	138385.84
Total	**205150.02**

regards,
alwin

255 2AB 826.

Advanced Sierra Electrotech Pvt Ltd
No.563/1, "Prerana Towers"
Ranka Colony Road,
Bannerghatta Road,
Bangalore -560 076

Anuva Technologies Pte Ltd (Sr. Cr)
Bill-wise Details
6, Eu Tong Sen Street,
#07-16, the Central,
Singapore 059817

1-Apr-2007 to 15-Nov-2013

Date	Ref. No.	USD			Pending Amount	Due on	Overdue by days
18/05/2011	ATS-11/CI-354				**3825000.00 Cr**	18/05/2011	*912*
	18/05/2011 Purchase	*85000*	*ATS-11/CI-354*	*3825000.00 Cr*			
21/06/2011	ATS-11/CI-357				**1096807.00 Cr**	21/06/2011	*878*
	21/06/2011 Purchase	*24026.45*	*ATS-11/CI-357*	*1096807.00 Cr*			
24/10/2012	ATS-12/CI-360				**640682.00 Cr**	24/10/2012	*387*
	24/10/2012 Purchase	*12042.89*	*ATS-12/CI-360*	*640682.00 Cr*			
17/01/2013	ATS-13/CI-303				**584059.00 Cr**	17/01/2013	*302*
	17/01/2013 Purchase	*10571.2*	*ATS-13/CI-303*	*584059.00 Cr*			
06/05/2013	ATS-13/CI-325				**157206.00 Cr**	06/05/2013	*193*
	06/05/2013 Purchase	*3536.7*	*ATS-13/CI-325*	*157206.00 Cr*			
17/06/2013	ATS-13/CI-330				**138195.00 Cr**	17/06/2013	*151*
	17/06/2013 Purchase	*3028.6*	*ATS-13/CI-330*	*138195.00 Cr*			
13/08/2013	ATS-13/CI-343				**11142.00 Cr**	13/08/2013	*94*
	13/08/2013 Purchase	*180*	*ATS-13/CI-343*	*11142.00 Cr*			
	Sub Total				*6453091.00 Cr*		

Total in USD **138385.84**

Annex B

A.1 On 7 January 2015, the pertinent messages read:[256]

Mr Suresh:	Ravi what is the plan to clear the dues from adset and ewas? December is over. Also need to know how and when you plan to clear my dues official and personal
Mr Ravi:	No money…I hv to wait for [CTRM] funds…
	Will reconcile settlement of anuva from [CTRM] bal funds due and send a statement today.we hv to push [CTRM]. I am wilking to come to kl to
	Put pressure on isno..

A.2 On 23 February 2015, the pertinent messages read:[257]

Mr Ravi:	Also as discussed give me updated [CTRM] expns statement with what you hv recovered as on date. Also update your and mine personal statement and send…
Mr Suresh:	[CTRM] statement sent
Mr Ravi:	I need to close all anuva adtec adset ewas transactions by this march end…as I told you compy laws here hv become strict
Mr Suresh:	Please do as I am unable to answer my auditors and bank. We will be paying penal interest rates from 1st March for the two outstanding accounts with the bank
Mr Ravi:	can you pls send all bel inflow available with you now to [Adtec] today itself… you can take yiur in the coming pyts..i dont know how long bank strike goes on and we will be in trouble here..

143 On 4 March 2015, the pertinent messages read:[258]

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256 3AB 1076.

257 3AB 1126 to 1127.

258 3AB 1132 and 1135.

> Mr Suresh: Ravi Pl let me know your plan for clearing the bank dues for ewas and [Adset]. I have to give a letter today requesting not to adjust payment from [CTRM].
>
> …
>
> Mr Ravi: 3. I will plan on settling ewas/[Adset] dues as I need to know the funds availability and collection from all compys till this march end.
>
> Mr Suresh: Revised statement has been sent to alwin on Monday
>
> Mr Ravi: You may deduct and close all [CTRM] accts 3 pckges; anuva old accts by receiving final pyt by 15 april from [CTRM].

144 On 17 May 2015, the pertinent messages read:[259]

> Mr Ravi: … 4).pls email uptodate new (after reconciled 200k dues of Ewas and Adset)pending invoices of Anuva on Ewas and Adset. …
>
> …
>
> Mr Ravi: You thought I run away by not settling your dues… I promised you long back every penny I will settle you from my personal acct even if I close business. Do not worry abt your old accts. if you screwup Adtec, we all may get screwed incl AutoTEC.. Why are you in a hurry to pay AutoTEC…now I am getting a serious doubt….

[259] 3AB 1187 and 1192.