IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 249

Originating Application No 297 of 2022 and Summons No 2715 of 2022

Between

CVG

… *Claimant*

And

CVH

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award]

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CVG
v
CVH

[2022] SGHC 249

General Division of the High Court — Originating Application No 297 of 2022 and Summons No 2715 of 2022
Chua Lee Ming J
18, 22 August 2022

7 October 2022

Chua Lee Ming J:

Introduction

1 This was the defendant's application to set aside an order made by the High Court (the "Enforcement Order") granting the claimant permission to enforce the Emergency Interim Award (the "Award") of the Emergency Arbitrator (the "EA") made in Pennsylvania, US, on an arbitration agreement between the claimant and the defendant.

2 I concluded that the term "foreign award" in s 29 of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") includes foreign interim awards made by an emergency arbitrator and thus, the Award may be enforced in Singapore. I also concluded that the Award did not exceed the scope of the parties' submission to arbitration and thus did not breach s 31(2)(*d*) of the IAA.

However, I found that the Award breached s 31(2)(*c*) of the IAA because the defendant was unable to present its case in the arbitration proceedings.

3 Accordingly, I granted the defendant's application, set aside the Enforcement Order and dismissed the claimant's application for permission to enforce the Award.

Background facts

4 The defendant had been the claimant's franchisee in Singapore since 1997. The Singapore franchise business was governed by four agreements which were periodically renewed (the "Agreements"). The claimant also permitted the defendant to distribute its products over the Internet and operate the claimant's website.

5 The defendant was also the claimant's franchisee in Malaysia, Taiwan and the Philippines, through entities – D(M), D(T) and D(P) respectively – set up by the defendant in these countries.

6 In June 2020, the claimant filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code 11 USC (US) (1978) and was subsequently acquired by another company, which installed new executives in the claimant.

7 Disputes subsequently arose between the claimant and the defendant. These disputes led to arbitration proceedings being commenced by D(M) and D(T) against the claimant. The arbitration proceedings involving D(M) and D(T) were ultimately not directly relevant to the present proceedings.

8 On 6 May 2022, the claimant sent the defendant a notice of default, threatening to default the defendant for alleged breaches of the Agreements.

9 On 20 May 2022, the defendant terminated the Agreements on the grounds of the claimant's material breaches and/or anticipatory repudiation of the same. The defendant then took steps to de-identify the franchise stores since it would no longer be entitled to use the claimant's proprietary marks post-termination.

10 In response, the claimant:

(a) removed the defendant's access to its worldwide ordering system, which removed the defendant's ability to order or procure new products to sell in Singapore;

(b) cancelled various pending orders that had been made by the defendant and sought to impose liability on the defendant for these cancellations; and

(c) sold its products directly in Singapore via its website and other e-commerce platforms.

The defendant's case was that the above steps showed that the claimant had accepted the defendant's termination of the Agreements.

11 On 25 May 2022, the claimant filed its Demand for Arbitration and Application for Emergency Measures of Protection Including Injunctive Relief ("Demand for Arbitration") with the International Centre for Dispute Resolution ("ICDR"),[1] seeking reliefs that included reliefs to enforce *post-termination* provisions in the Agreements. The claimant did not seek to enjoin

termination of the Agreements. The arbitration was governed by Pennsylvanian law, and as stated earlier, seated in Pennsylvania.

12 On 27 May 2022, the ICDR appointed Mr Grant Hanessian as the EA. On the same day, the EA issued Procedural Order No 1 providing a schedule for submissions and hearing.

13 On 1 June 2022, the defendant filed its Response to Application for Emergency Measures of Protection.[2] On 3 June 2022, the claimant filed its Reply in Support of Application for Emergency Measures.[3]

14 On 6 June 2022, the parties made oral arguments before the EA (the "Emergency Hearing"). At the Emergency Hearing:

(a) The claimant's counsel confirmed that all that the claimant was asking for was for the arbitrator to apply the agreed upon post-termination provisions, and that it was not going to ask that the termination be enjoined.[4]

(b) Subsequently, the EA again raised the issue and asked the claimant's counsel whether the claimant wanted the distribution channel to continue pending a determination by the full tribunal, if the claimant did not get the emergency reliefs that it was seeking.[5] The claimant's counsel then said that he would talk to the claimant.[6]

15 On 7 June 2022, the EA sent an e-mail to the parties with a list of issues.[7] One of the issues was a question directed to the claimant asking whether the claimant considered that the Agreements were terminated. The EA directed both parties to submit their post-hearing submissions by 8 June 2022.

16 The claimant and defendant submitted their respective post-hearing submissions as directed.[8] The defendant's post-hearing submissions responded to the claimant's case, which sought to enforce post-termination provisions in the Agreements; this was the claimant's case as it stood after the Emergency Hearing. However, in its post-hearing submissions, the claimant took the position that it "[did] not consider the agreements to have been terminated at this time".[9]

17 On 15 June 2022, the EA issued the Award.[10] The Award granted reliefs which restored the status quo of the parties to the position *before* the defendant had terminated the Agreements. In other words, the Award was made on the basis that the claimant did *not* treat the Agreements as terminated.

18 On 21 June 2022, the claimant requested the EA to:[11]

(a) sanction the defendant for failure to comply with the Award;

(b) grant new reliefs that it did not previously ask for; and

(c) order the defendant to place orders for the claimant's products as required under the Agreements.

19 On 30 June 2022, the EA issued Procedural Order No 2, in which he denied the claimant's requests to sanction the defendant and for new reliefs, and ordered the defendant to place product orders with the claimant in monthly amounts of not less than US$1,177,083 (with effect from May 2022), such orders to be paid for prior to or upon delivery.[12]

20 On 29 June 2022, the claimant filed its application for permission to enforce the Award in Singapore.[13] On 7 July 2022, the Assistant Registrar made

the Enforcement Order.[14] On 22 July 2022, the defendant filed the present application to set aside the Enforcement Order.

Issues in this case

21 The defendant's contentions gave rise to the following issues before me:

(a) whether s 29 of the IAA applies to awards made by emergency arbitrators;

(b) whether the Award was binding within the meaning of s 29(2) of the IAA;

(c) whether the Award exceeded the EA's jurisdiction;

(d) whether the Award breached the rules of natural justice; and

(e) whether the Award was *infra petita.*

Whether s 29 of the IAA applies to awards made by emergency arbitrators

22 Section 29(1) of the IAA provides as follows:

> **29.**—(1) Subject to this Part, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 19.

23 Section 29(1) applies to a "foreign award", which is defined in s 27(1) of the IAA as follows:

> 'foreign award' means an arbitral award made pursuant to an arbitration agreement in the territory of a Convention country other than Singapore.

24 The term "arbitral award" is also defined in s 27(1):

> 'arbitral award' has the meaning given by the Convention, but also includes an order or a direction made or given by an arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(*c*) to (*j*).

25 "Convention" refers to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration, the English text of which is set out in the Second Schedule to the IAA: s 27(1) of the IAA. The Convention is silent on whether the term "arbitral award" includes awards made by emergency arbitrators. Article 1(2) of the Convention only states that "[t]he term 'arbitral awards' shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted".

26 The definition of "arbitral award" in s 27(1) of the IAA also includes an order or direction made by an "arbitral tribunal in the course of an arbitration in respect of any of the matters set out in section 12(1)(*c*) to (*j*)". The term "arbitral tribunal" is defined in s 2(1) to include "an emergency arbitrator". However, s 2(1) does not apply to Part 3 of the IAA, which is where ss 27 and 29 are found. There is no definition of "arbitral tribunal" in s 27(1) or anywhere else in Part 3 of the IAA.

27 The defendant thus submitted that Parliament intended the term "arbitral award" in s 27(1) of the IAA to exclude awards made by emergency arbitrators; otherwise, Parliament would have amended s 27(1) to expressly refer to awards by emergency arbitrators. The defendant argued that consequently, the Award (being an award by an emergency arbitrator) could not be enforced in Singapore because it was not an "arbitral award" under s 27(1) of the IAA, and therefore could not be a "foreign award" within the meaning of s 29 of the IAA.

28 I rejected the defendant's submission. In my view, on a purposive interpretation, the term "arbitral award" in s 27(1) of the IAA includes awards by emergency arbitrators. Consequently, s 29 of the IAA applies to foreign awards by emergency arbitrators.

29 The purposive interpretation of a legislative provision involves three stages, *per Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]:

(a) First, ascertain the possible interpretations of the provision, having regard not only to the text of the provision but also the context of that provision within the written law as a whole.

(b) Second, ascertain the legislative purpose or object of the statute.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

30 With respect to stage one, as stated earlier, the definition of "arbitral award" in s 27(1) includes an order or direction made or given by an "arbitral tribunal". However, the term "arbitral tribunal" is not defined in s 27(1) or elsewhere in Part 3 of the IAA. In my view, the text is capable of being interpreted to include emergency arbitrators. Such an interpretation is also consistent with the context of the IAA as a whole given that the definition of "arbitral tribunal" in s 2(1) includes emergency arbitrators.

31 Stage two deals with the legislative purpose of the IAA. In 2012, the definition of "arbitral tribunal" in s 2(1) was amended to include emergency arbitrators and the definition of "arbitral award" in s 27(1) was amended to include orders or directions made or given in respect of any of the matters set

out in s 12(1)(*c*) to (*i*). Section 12(1)(*i*) includes "an interim injunction or any other interim measure".

32 The amendments in 2012 speak to an intention to make the IAA applicable to all awards, including foreign interim awards by emergency arbitrators. This intention was confirmed by the following statement in Ministry of Law, "Proposed amendments to the International Arbitration Act and the new Foreign Limitation Periods Act", press release (8 March 2012) <https://www.mlaw.gov.sg/news/press-releases/proposed-amendments-to-the-international-arbitration-act-and-the-new-foreign-limitation-periods-act>:

> 16. Clauses 2(a) and 10 of the IA(A) Bill amend the definitions of an 'arbitral tribunal' and an 'arbitral award' to clarify the status of orders made by such 'emergency arbitrators'. The amendments accord emergency arbitrators with the same legal status and powers as that of any other arbitral tribunal and ensure that orders made by such emergency arbitrators (*whether appointed under the SIAC rules or the rules of any other arbitral institution, in both foreign and local arbitrations*) are enforceable under our IAA regime.
>
> [emphasis added]

33 The defendant argued that the phrase "both foreign and local arbitrations" in the passage above could be read as a reference to the *venue* of the arbitration, rather than the *seat* of the arbitration. I rejected the defendant's argument. In my view, it was clear that the phrase "both foreign and local arbitrations" referred to local and foreign-*seated* arbitrations.

34 With respect to stage three, the interpretation that the term "arbitral award" in s 27(1) of the IAA includes awards by emergency arbitrators was clearly consistent with the legislative purpose of the statute.

35 A purposive interpretation therefore led to the conclusion that the term "arbitral award" in s 27(1) and by extension, the term "foreign award" in s 29(1),

included awards by emergency arbitrators. This conclusion also found support in Timothy Cooke, *International Arbitration in Singapore: Legislation and Materials* (Sweet & Maxwell, 2018) at para 1.232:

> The phrase 'arbitral award' was originally defined to have the same meaning as in the New York Convention. This was amended in 2012 to include orders or directions of a tribunal in respect of any of the matters set out in section 12(1)(c)–(i) of the IAA. Section 12 refers to powers granted to tribunals seated in Singapore such as making orders or giving directions for the preservation or interim custody of property forming the subject matter of a dispute, for securing the amount in dispute, for interim measures and so on. *The effect of this change in definition is that such orders or directions made in foreign arbitrations will be considered 'foreign awards' and enforceable like any other New York Convention award in accordance with Part III of the IAA.* Additionally, enforcement of such orders or directions can be refused like any other New York Convention award. *The broader definition of 'arbitral award' and, by extension 'foreign award' will encompass emergency arbitration awards whether they are in substance awards or orders or directions (if they relate to matters set out in section 12(1)(c)–(i) of the IAA).* Although this was not a stated aim of the amendment in 2012, it would be consistent with the express legislative support for emergency arbitrators in Part II of the IAA, reflected in the amendment, also in 2012, to the definition of 'arbitral tribunal' in section 2.
>
> [emphasis added]

Whether the Award was binding

36 Section 29(2) of the IAA provides as follows:

> (2) Any foreign award which is enforceable under subsection (1) must be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore.

37 I agreed with the claimant that the Award was a binding award within the meaning of s 29(2) of the IAA. This is unarguably clear from Art 7(4) of the ICDR's International Arbitration Rules ("ICDR Rules"), which states:[15]

> The emergency arbitrator shall have the power to order or award any interim or conservatory measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order. *Any interim award or order shall have the same effect as an interim measure made pursuant to Article 27 and shall be binding on the parties when rendered.* The parties shall undertake to comply with such an interim award or order without delay.
>
> [emphasis added]

Article 27 of the ICDR Rules provides that at the request of any party, the arbitral tribunal may order or award any interim measures it deems necessary.

38 The defendant referred me to two US cases – *Al Raha Group for Technical Services v PKL Services Inc* No 1:18-cv-04194-AT, 6 September 2019, [2019] WL 4267765 ("*Al Raha*") and *Chinmax Medical Systems Inc v Alere San Diego Inc* No 10CV2467 WQH (NLS), 27 May 2011, [2011] WL 2135350 ("*Chinmax*"). In *Al Raha*, the US District Court refused to confirm an emergency interim award on the ground that the award was an interim placeholder pending constitution of the full arbitral tribunal. In *Chinmax*, the US District Court denied a motion to vacate an emergency interim award which was stated to remain in effect pending review of the full arbitration tribunal. The defendant argued that the Award in the present case was not binding since under Art 7(5) of the ICDR Rules, the full arbitral tribunal may affirm, reconsider, modify or vacate the Award.

39 The defendant's reliance on *Al Raha* and *Chinmax* was misplaced. The defendant's submissions omitted the important fact that in those cases the court's jurisdiction to deal with the emergency interim awards depended on whether the awards were *final* awards. The US District Courts found that the

awards were not final awards because they were subject to the review of the full arbitral tribunal.

40 In the present case, the test under s 29(2) of the IAA was whether the Award was "binding", not whether the Award was "final". Neither *Al Raha* nor *Chinmax* assisted the defendant. As stated earlier, it was clear from Art 7(4) of the ICDR Rules that the Award was "binding".

Whether the Award exceeded the EA's jurisdiction

41 Section 31(2)(*d*) of the IAA provides as follows:

> (2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —
>
> …
>
> (*d*) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;
>
> …

42 It was clear that the claimant's case in its Demand for Arbitration was that the Agreements were terminated (albeit allegedly without cause) and that it was entitled to enforce post-termination provisions in the Agreements ("claimant's Original Case"):

> (a) First, the Demand for Arbitration included statements that showed that the claimant no longer regarded the defendant as a franchisee.[16]

(b) Second, the claimant relied on the defendant's contractual obligations that arose on termination or expiration of the relevant Agreements.[17]

(c) Third, the claimant expressly took the position that it was entitled to enforce the post-termination provisions in the Agreements.[18] The reliefs sought by the claimant were also based partly on the post-termination provisions in the Agreements.[19]

(d) Fourth, during the Emergency Hearing:

(i) The claimant's counsel confirmed that "all [the claimant] is asking for is for the arbitrator to apply the agreed upon post-termination provisions".[20]

(ii) The EA asked whether "when this goes to the full tribunal, [the claimant was] going to ask that the termination be enjoined and that the relationship continue", and the claimant's counsel said "No, we're not".[21]

(iii) The claimant's counsel confirmed again that the claimant "is seeking to enforce then its rights under the terminated agreements" and that it "is seeking an injunction enforcing the post-termination provisions".[22]

43 However, in the Award, the EA granted interim reliefs on the basis that the claimant did not agree that the Agreements had been terminated ("claimant's New Case").[23] This was clearly different from the claimant's Original Case. The defendant submitted that the EA had therefore exceeded his jurisdiction.

The legal principles on excess of jurisdiction

44 In assessing whether an arbitral award should be set aside for an excess of jurisdiction, (a) first, the court must identify what matters were within the scope of submission to the arbitral tribunal; and (b) second, whether the arbitral award involved such matters, or whether it involved a "new difference … outside the scope of the submission to arbitration and accordingly … irrelevant to the issues requiring determination": *CDM and another v CDP* [2021] 2 SLR 235 ("*CDM*") at [17]. The question of what matters were within the scope of the parties' submission to arbitration would be answerable by reference to five sources: (a) the parties' pleadings; (b) the list(s) of issues; (c) the opening statements; (d) evidence adduced; and (e) closing submissions at the arbitration: *CDM* at [18].

45 The principles in *CDM* were not in dispute. However, the defendant relied on *CAJ and another v CAI and another appeal* [2022] 1 SLR 505 ("*CAJ*"). In that case, the appellants were contractors responsible for the construction of a polycrystalline silicon plant. In arbitration proceedings against the appellants, the respondent sought liquidated damages in connection with a delay in the mechanical completion of the plant. The appellants' pleaded defence was that mechanical completion had been achieved on time, and alternatively that the respondent had waived its right to claim liquidated damages or was estopped from doing so. In their written closing submissions in the arbitration, the appellants raised for the first time a defence claiming an extension of time so as to reduce the amount of liquidated damages payable ("the EOT Defence"). In its written closing submissions, the respondent objected to the appellants' raising of the EOT Defence. In its award, the arbitral tribunal found that there was 99 days of delay in mechanical completion of the plant but accepted the EOT Defence and extended the time for mechanical

completion by 25 days, such that the respondent was only entitled to liquidated damages for 74 days instead of 99 days.

46 The High Court set aside the tribunal's decision to grant the extension of 25 days on the ground that it exceeded the scope of the parties' submission to arbitration and that it breached natural justice. The Court of Appeal affirmed the High Court's decision. With respect to the issue of the tribunal's jurisdiction, the Court of Appeal explained *CDM* as follows:

> 50 … it would plainly be wrong to construe our decision [in *CDM*] to mean that so long as the point was covered in the closing submissions, that would be sufficient for it to come within the scope of the submission to arbitration *even if it was not pleaded*. This court's remark in *CDM* was made in the context of closing submissions which were filed to address issues that were *already pleaded*. In other words, the five sources referred to at [18] of *CDM* are not *discrete or independent* sources. It would not suffice for the purposes of determining the tribunal's jurisdiction that the issue in question had been raised in *any one* of the five sources. Instead, the overriding consideration is to determine whether the relevant issues had been properly pleaded before the tribunal.
>
> …
>
> 52 Here, it was common ground that the EOT Defence did not feature anywhere except in the appellants' written closing submissions in the Arbitration. Thus, it would have been plain and obvious that, until then, the respondent simply had no prior notice that it had to deal with the EOT Defence. The EOT Defence would *only* fall within the scope of the parties' submission to arbitration *upon* the introduction of the EOT Defence (by way of an amendment to the pleadings, if so permitted by the Tribunal) and *not any earlier*. This is subject, of course, to compliance with any directions made by the Tribunal in relation to the consequential orders arising from a decision to allow the introduction of the EOT Defence … Absent this process, our view was that the EOT Defence could not possibly fall within the scope of the parties' submission to arbitration. …
>
> [emphasis in original]

47 At first blush, the decision in *CAJ* appeared to support the defendant's case. After all, the claimant's New Case was raised only in the claimant's post-hearing submissions in response to the EA's list of issues (see [15]–[16] above).

48 However, as the Court of Appeal explained in *CJA v CIZ* [2022] SGCA 41 ("*CJA*") at [38]:

> … in considering whether the jurisdiction has been exceeded, the court must look at matters in the round to determine whether the issues in question were live issues in the arbitration. In doing so, it does not apply an unduly narrow view of what the issues were: rather, it is to have regard to the totality of what was presented to the tribunal whether by way of evidence, submissions, pleadings or otherwise and consider whether, in the light of all that, those points were live.

49 In *CJA*, the fundamental point on which the tribunal found for the appellant had not been part of the appellant's pleaded case. However, it had been raised for the parties' consideration by the tribunal during the hearing, and it was part of the appellant's submissions in the arbitration. The respondent had, in its closing submissions, also argued against the fundamental point raised by the appellant. The Court of Appeal concluded that the tribunal had not acted in excess of its jurisdiction. The Court of Appeal (at [61]) distinguished *CAJ* on the ground that in *CAJ*, the EOT Defence had been accepted by the tribunal although it was raised for the first time in the appellants' closing submissions.

Applying the legal principles to the facts

50 The claimant's New Case came about as a result of questions raised by the EA during the Emergency Hearing. Specifically, the EA asked the claimant whether it would want the distribution channel to continue pending a determination by the full tribunal if it did not get the reliefs sought in the Demand for Arbitration.[24] The claimant's counsel said he would talk to the

claimant,[25] thus leaving the option open. Subsequently, in his list of issues for post-hearing submissions, the EA specifically asked the claimant whether it considered that the Agreements had been terminated.[26] In its post-hearing submissions, the claimant confirmed that it did *not* consider the Agreements to have been terminated, and submitted (albeit in the alternative) that there should be a complete restoration to the status quo as it existed on 19 May 2022 or the date that the defendant first undertook the de-identification of the Singapore stores, whichever was earlier.[27] Effectively, this meant restoring the status quo on the basis that the Agreements were not terminated.

51 Although the claimant's New Case came about late in the day, it had been raised by the EA for the claimant's consideration during the Emergency Hearing and in the EA's post-hearing list of issues, and the claimant made it its alternative case in its post-hearing submissions. The claimant's New Case was therefore a live issue that had been submitted for the EA's decision. In my view, the facts of the present case were more similar to those in *CJA* than *CAJ*. Accordingly, the Award was not beyond the scope of the submission to the arbitration and I rejected the defendant's challenge based on s 31(2)(*d*) of the IAA.

Whether the Award breached the rules of natural justice

52 Pursuant to s 31(2)(*c*) of the IAA, a court may refuse enforcement of a foreign award if the party against whom enforcement is sought proves that it "was otherwise unable to present [its] case in the arbitration proceedings".

53 The grounds for curial intervention in arbitration proceedings are narrowly circumscribed; parties to an arbitration do not have the right to a "correct" decision from an arbitral tribunal but only the right to a decision that is within the ambit of their agreement to arbitrate, and that is arrived at following

a fair process: *CJA* at [1]. However, where either ground for curial intervention can be shown, the court must not hesitate to intervene. In such cases, the arbitral tribunal's decision cannot be said to be what the parties to the arbitration had agreed to submit to.

54 I agreed with the defendant that the circumstances in which the Award was made did not give it an opportunity to present its case with respect to the claimant's New Case. The claimant's New Case was raised only in its post-hearing submissions, and even then, it was raised in the alternative. The defendant had no reason to treat the claimant's New Case as being part of the submission to arbitration until then. However, the EA made the Award after the parties made their post-hearing submissions without hearing any further submissions. The EA simply did not give the defendant any opportunity to resist the claimant's alternative application for injunctive relief based on the claimant's New Case. In particular, the defendant contended that it was denied the opportunity to:[28]

(a) make legal submissions that the claimant was not entitled to take the position that the Agreements were not terminated when it had by its conduct accepted that the Agreements were terminated;

(b) adduce factual evidence in support of (a) above; and

(c) address the EA on what orders (if any) were appropriate based on the claimant's New Case, in particular whether specific performance of the Agreements was permissible under Pennsylvanian law.

55 I agreed with the defendant that it had been prejudiced as a result of the above. For the purposes of the present application, the defendant adduced an

expert's opinion stating that as a matter of Pennsylvanian contract law, the claimant would not be able to seek relief on the basis that the Agreements had not been terminated, if the claimant had taken actions unequivocally indicating that it considered the Agreements to be terminated.[29] The claimant did not adduce any expert opinion to the contrary. I concluded that the defendant's arguments, had it had the opportunity to present them, could have reasonably made a difference to the EA's decision.

56 I therefore set aside the Enforcement Order on the basis that it breached s 31(2)(*c*) of the IAA.

Whether the Award was *infra petita*

57 An arbitral award may be set aside or denied enforcement on the ground that the arbitral tribunal failed to exercise the authority that the parties granted to it: *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 at [31].

58 The defendant submitted that the EA failed to deal with essential issues that had been submitted to arbitration, namely (a) whether the claimant had committed material breaches of the Agreements; and (b) whether the defendant was entitled to terminate the Agreements for these material breaches.

59 I did not think that the defendant had established its case based on this ground but I say no more as it was not necessary for me to deal with it in view of my decision to set aside the Enforcement Order on the basis that it breached s 31(2)(*c*) of the IAA.

Conclusion

60 For the reasons set out above, I set aside the Enforcement Order and dismissed the claimant's application for permission to enforce the Award. I also ordered the claimant to pay costs to the defendant fixed at $16,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Melvin See Hsien Huei, Lavan Vickneson and Alexander Kamsany Lee (Dentons Rodyk & Davidson LLP) for the claimant;
Lok Vi Ming SC, Joseph Lee, Qabir Singh Sandhu, Law May Ning and Joshua Ho Jun Ling (LVM Law Chambers LLC) for the defendant.

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1 Joint Bundle of Documents, vol 1 ("1 JBD") 330–362.
2 1 JBD 364–405.
3 Joint Bundle of Documents, vol 2 ("2 JBD") 1194–1228.
4 1 JBD 472 (lines 8–11 and 21–25).
5 1 JBD 477 (lines 1–7).
6 1 JBD 477 (lines 11–13).
7 1 JBD 515.
8 2 JBD 1165–1178 (claimant) and 1181–1191 (defendant).
9 2 JBD 1175 (para 40).
10 1 JBD 54–85.
11 1 JBD 604–605.
12 1 JBD 616–617 (paras 11, 15 and 19).
13 1 JBD 4–5.
14 1 JBD 155–156.
15 1 JBD 105.

16 1 JBD 333 (paras 7 and 9) and 355 (para 116).
17 1 JBD 347 (paras 71 and 73).
18 1 JBD 353 (para 107)
19 1 JBD 360–361.
20 1 JBD 472 (lines 8–11).
21 1 JBD 472 (lines 21–25).
22 1 JBD 473 (lines 10–11 and 20–22).
23 1 JBD 229 (para 124).
24 1 JBD 477 (lines 1–7).
25 1 JBD 477 (lines 11–13).
26 1 JBD 515.
27 2 JBD 1175–1176 (paras 40 and 48).
28 Defendant's written submissions paras 133–135.
29 2 JBD 1105.