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

[2024] SGHCR 10

Originating Application No 1109 of 2023
(Summons No 283 of 2024)

Between

DJA

… *Claimant*

And

DJB

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Stay of court proceedings — Grounds]
[Civil Procedure — Inherent powers — Case management stay]

TABLE OF CONTENTS

DJA
v
DJB

[2024] SGHCR 10

General Division of the High Court — Originating Application No 1109 of 2023 (Summons No 283 of 2024)
AR Wong Hee Jinn
28 February 2024

2 September 2024

AR Wong Hee Jinn:

Introduction

1 The procedural laws of arbitration – or what is termed the *lex arbitri* – provide a general governing framework for arbitral proceedings. In Singapore, the source of this curial law situates in both statute and common law. One of the key levers the supervisory court possesses is the power to stay court proceedings, which have been commenced in breach of an agreement to arbitrate. Indeed, this is the orthodox situation in which an application for a stay of court proceedings might arise. Where, for one reason or another, a party is unable to rely on the statutory stay mechanism of the *lex arbitri*, recourse to the court's inherent powers to grant a case management stay of court proceedings may yet be available. What happens, however, when an applicant seeks a case management stay of its *own* application to set aside an arbitral award in favour

of a pending arbitration? Do the general legal principles for an application for a case management stay continue to apply in such case? What is the legal threshold that an applicant has to cross in order to persuade the court that such a stay is warranted? These questions lay for the court's determination here.

2 The claimant sought in the present application a case management stay of all proceedings in HC/OA 1109/2023 ("OA 1109") pending the final determination of a domestic arbitration (the "Arbitration") seated in Singapore. OA 1109 was in turn the claimant's own application to set aside a third partial award dated 28 July 2023 (the "Third Partial Award") rendered by an arbitral tribunal (the "Tribunal"). The Arbitration is conducted under the aegis of the Singapore International Arbitration Centre Rules (6th Ed, 1 August 2016) ("SIAC Rules").

3 At the conclusion of the hearing, I allowed the claimant's application, delivering brief oral remarks. In short, I agreed that on balance, the case management stay sought by the claimant ought to be granted. I now provide the full grounds of my decision, having anonymised the names and identifying details of the parties pursuant to sealing and redaction orders.

Background facts

4 I begin with a point on terminology. Although I employ as shorthand the term "Arbitration" (see [2] above), the Arbitration between the parties in fact comprises three separate arbitral proceedings, which were then consolidated before the same Tribunal. I shall refer to these proceedings as "Arbitration A", "Arbitration B" and "Arbitration C" individually, and collectively as the "Arbitration", when no such distinction is necessary.

5 In order to appreciate the parties' arguments in the present application, it is necessary to set out a rather lengthy account of the various steps that were taken in the Arbitration as well as the series of concomitant proceedings in the Singapore court that led to the present application being filed.

The Agreement and the Reports

6 The genesis of the dispute may be traced back to a share purchase agreement entered into between the parties in January 2013 (the "Agreement"). The Agreement included an arbitration clause: cl 15.15 provided that disputes arising out of or in connection with the Agreement "shall be resolved by arbitration in Singapore conducted in English by a single arbitrator pursuant to the rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this [cl] 15.15".[1]

7 Under the terms of the Agreement, the defendant contracted to purchase from the claimant shares (the "Shares") in a company (the "Company"), which is a holding company of numerous subsidiaries. The entirety of the claimant's Shares was to be sold in two tranches:

(a) In the first tranche, the defendant was to purchase 62.5% of the claimant's shareholding (the "Sale Shares") for $60m (the "Sale Shares Consideration").

(b) In the second tranche, the defendant was to purchase the remaining 37.5% of the shareholding (the "Remainder Shares") following the exercise of either (i) a put option exercised by the

[1] Claimant's 1st Affidavit dated 27 October 2023, p 162 and p 3785, para 25

claimant; or (ii) a call option exercised by the defendant, as provided for under the Agreement. Both were to be done through the issuance of an "Option Exercise Notice".

The Agreement provided for the purchase consideration to be adjusted depending on the Company's "Final Valuation" as defined in the Agreement. The share transfer process of the Remainder Shares is referred to in the Agreement as the "Second Closing"; I shall use the same term.

8 Given its centrality to the present dispute, I elaborate briefly on the computation of the Final Valuation. The Final Valuation was to be computed based several parameters, including the profits of the Company (and its related group companies and subsidiaries) and adjustments in accordance with the terms of the Agreement. Among these adjustments was that of the profit after tax and minority interests ("PATMI"). Determining the "Actual PATMI" (as defined in the Agreement) entailed a comparison of the compensation costs for "Key Management Roles" ("KMRs") (as defined in the Agreement) against the market benchmarks ("Market Benchmarks") for those roles in certain stipulated financial years ("Relevant Financial Years"). Paragraph 1.2 of Schedule 10 of the Agreement provided that the Market Benchmark for the KMRs for such Relevant Financial Years "shall be determined by an independent human resource consultant to be appointed by mutual agreement between the [claimant] and the [defendant]. Such human resource consultant shall act in such determination as expert and not as arbitrator and its determination shall be final and binding on the [parties]".[2]

---

2 Claimant's 1st Affidavit dated 27 October 2023, p 174; Defendant's 3rd Affidavit dated 19 February 2024, para 17

9 Sometime in 2013, the defendant purchased the Sale Shares, which the claimant duly transferred.

10 Later, in September 2016, the claimant exercised the put option and issued the Option Exercise Notice.[3] This placed into motion the Second Closing. Under the Agreement, the parties were to take certain steps on the Second Closing:[4]

(a) If the Final Valuation was less than the Sale Shares Consideration, the claimant would have to pay the defendant the difference between the two, subject to a maximum sum of $15m.

(b) If the Final Valuation was more than the Sale Shares Consideration, the defendant would have to pay the claimant the difference (subject to certain conditions).

(c) In either case, the claimant would have to provide the defendant a share transfer form and share certificates in respect of the Remainder Shares, alongside his written resignations from a group of companies including the Company itself.

11 In accordance with the terms of the Agreement (see [8] above), the parties appointed a consultancy firm (the "Firm") to determine the Market Benchmarks. The Firm provided a Declaration of No Conflict of Interest ("DNCI") in October 2016 addressed to both parties, stating among other things, that the Firm had no conflict of interest with either of the parties and that as of that date, the Firm had no substantial business dealings with either of the parties

---

3 Defendant's 3rd Affidavit dated 19 February 2024, para 14

4 Defendant's 3rd Affidavit dated 19 February 2024, para 16

(or their related entities). On or around 13 December 2016, the Firm issued its reports (the "Reports") on compensation levels for the relevant KMRs.

12 Notwithstanding the Reports, parties were unable to reach an agreement on the Market Benchmarks that should be used to compute the Final Valuation. Other disputes subsequently arose regarding alleged breaches of the Agreement as well as a separate shareholder's agreement executed ancillary to the Agreement. Such was the impetus for the Arbitration.

Arbitrations A and B, and the First and Second Partial Awards

13 In June 2017, the claimant commenced Arbitration A, which was later consolidated with Arbitration B.[5] The claimant sought payment of a certain sum or such other amount as to be determined by the Tribunal as well as damages for breach of contract, conspiracy and procuring or inducing breach of contract. The defendant denied these claims and itself put forward counterclaim seeking, among other things, an order for the claimant to pay to it a certain sum. While various claims were pursued, it is only the dispute centering around the Final Valuation that is relevant for present purposes.

14 In the course of Arbitration A and Arbitration B, the parties agreed, and the Tribunal concurred, that in so far as the issue of the Final Valuation was concerned, it would be more constructive if the Tribunal determined the parameters that were contested by the parties from which the Final Valuation could be ascertained. If disputes remained even after the parameters were determined, a further hearing would be convened before the Tribunal.[6]

---

5 Defendant's 3rd Affidavit dated 19 February 2024, para 15

6 Defendant's 2nd Affidavit dated 7 December 2023, p 5, para 5

15 The evidentiary hearing of Arbitration A and Arbitration B took place from November to December 2019. According to the claimant, about a month prior, the defendant had disclosed, in a witness statement, an email dated 26 September 2016 that referenced a "significant project" that the Firm had been engaged in with the defendant at the time the Firm was engaged by the parties (the "September Email").[7] While the claimant bore suspicions that the Firm might not have been independent as required under the terms of the Agreement, he did not have evidence beyond the September Email to allege bias on the part of the Firm.[8]

16 On 3 June 2020, the Tribunal issued the first partial award ("First Partial Award"). In the First Partial Award, the Tribunal dismissed several of the claimant's claims as well as the defendant's counterclaims. More importantly, the Tribunal determined certain parameters from which the Final Valuation should be ascertained. The claimant subsequently applied to set aside parts of the First Partial Award. That application was dismissed by the General Division of the High Court on 16 December 2020 (see *CIX v CIY* [2021] SGHC 53). The claimant's appeal against that decision was later dismissed by the Court of Appeal.

17 In late 2020, the claimant sought certain clarifications from the Tribunal regarding the First Partial Award, and in particular, the Final Valuation based on parameters that had been determined in the First Partial Award.

18 On 3 August 2021, the claimant applied to the Tribunal to investigate the defendant's alleged unlawful conduct in relation to the engagement of the

---

7 Claimant's 1st Affidavit dated 27 October 2023, para 24; Statement of Claim in HC/OC 287/2022, para 44

8 Claimant's 3rd Affidavit dated 12 March 2024, para 24

Firm (the "Corruption Application"). In doing so, the claimant made reference to the September Email.[9] According to the claimant, he had "very limited information and no concrete evidence on this issue" at that stage and thus sought the Tribunal to compel production of evidence concerning the corruption.[10]

19 On 18 August 2021, the Tribunal dismissed the Corruption Application, holding that the allegation could have been raised at the evidentiary hearing before the First Partial Award was issued. Further, no exception to the extended doctrine of *res judicata* applied.

20 On 19 January 2022, the Tribunal issued the second partial award ("Second Partial Award"). The Tribunal therein determined additional parameters from which the Final Valuation should be ascertained. Neither party applied to set aside the Second Partial Award.

The Suits

21 On 29 October 2021, between the time the Corruption Application was filed and the issuance of the Second Partial Award, the claimant commenced an action in court against the Firm *vide* HC/S 885/2021 ("Suit 885"). Suit 885 involved claims that the Firm had made fraudulent, reckless and/or negligent misrepresentations in its provision of the DNCI (see [11] above). Suit 885 was dismissed by the General Division of the High Court on 24 May 2024 (see *CIX v DGN* [2024] SGHC 133).

22 Between May and August 2022, the Firm disclosed a series of documents as part of its discovery obligations in Suit 885. By the claimant's

---

9 Claimant's 1st Affidavit dated 27 October 2023, para 39

10 Claimant's 1st Affidavit dated 27 October 2023, paras 40 and 174

account, it was during this period that he finally discovered the true nature of an ongoing commercial relationship between the Firm and the defendant at the time the Firm was appointed under the Agreement and tasked to prepare the Reports. The defendant had also corresponded with the Firm on the preparation of the Reports before and after they were finalised, without the claimant's knowledge.[11] This, according to the claimant, was evidence that he was not in possession of at the time of the Corruption Application (see [18] above).

23 On 26 September 2022, the claimant commenced HC/OC 287/2022 ("Suit 287") against the defendant. In Suit 287, the claimant alleged that the defendant had committed fraud by deliberately concealing material information pertaining to its close commercial relationship with the Firm and acted in bad faith in the course of Arbitration A. The claimant had erroneously relied on the Firm's DNCI and likewise, the Tribunal had been misled into relying on the Reports in issuing the First Partial Award and Second Partial Award. As a result, the claimant had been deprived of obtaining reasonable and fair compensation for the Remainder Shares. Apart from damages, the claimant also sought declarations that the First Partial Award and Second Partial Award were null and void and/or unenforceable and that the Firm had not been properly appointed as the "independent human resource expert" under the Agreement (see [8] above).

24 On 11 October 2022, the defendant informed the Tribunal of the commencement of Suit 287 and requested that the Tribunal hold off on issuing the Third Partial Award, as it would be applying for Suit 287 to be stayed in favour of Arbitration A.

---

11 Claimant's 3rd Affidavit dated 12 March 2024, paras 47, 49 and 51

25 On 16 November 2022, the defendant filed HC/SUM 3666/2022 ("SUM 3666"), seeking to stay all proceedings in Suit 287 in favour of Arbitration A.

Arbitration C, the Third Partial Award and OA 1109

26 On 23 December 2022, the claimant filed a notice of arbitration ("Notice of Arbitration") with the Singapore International Arbitration Centre ("SIAC"), thereby commencing Arbitration C against the defendant. The Notice of Arbitration referred to cl 15.15 of the Agreement (see [6] above).[12] In light of this, the claimant discontinued Suit 287 on 6 February 2023. This rendered SUM 3666 moot. The claims in Arbitration C largely mirrored those in Suit 287. I discuss this in greater detail at [66] below.

27 On 25 January 2023, the defendant submitted its response to the Notice of Arbitration ("Response") in Arbitration C.[13] In that Response, the defendant denied the claimant's allegations and included a counterclaim of its own, seeking legal costs and disbursements incurred as a result of defending Suit 287.[14] The defendant also stated that it intended to apply to the Tribunal in Arbitration A and Arbitration B to consolidate those ongoing proceedings with Arbitration C. The reason for this, it stated, was that Arbitration A "is also an arbitration under the SIAC Rules, and between the same two parties" and that the "subject matter of [Arbitration A] is closely connected to the subject matter of [Arbitration C]".[15]

---

12 Claimant's 1st Affidavit dated 27 October 2023, p 3785, para 26

13 Defendant's 3rd Affidavit dated 19 February 2024, para 33(k)

14 Claimant's 1st Affidavit dated 27 October 2023, p 2444, para 45

15 Claimant's 1st Affidavit dated 27 October 2023, p2733

28 On 2 February 2023, the defendant applied to the Tribunal to consolidate Arbitration C with Arbitration A and Arbitration B. The Tribunal granted the defendant's application on 8 May 2023.[16]

29 On 28 July 2023, the Tribunal issued the Third Partial Award, confirming the Final Valuation in the region of $62m.[17] Among other things, the Tribunal made orders pertaining to the Second Closing, including fixing its date and ordering parties to take steps to effect the transfer of the Remainder Shares in accordance with the Agreement (the "Directions"). With that, only the issue of costs remained in Arbitration A.[18]

30 On 6 September 2023, the Tribunal issued a "Memorandum of Corrections of the Third Partial Award dated 28 July 2023", correcting certain typographical and clerical errors in the Third Partial Award.[19] This was done pursuant to Rule 33.1 of the SIAC Rules.

31 On 19 September 2023, the claimant applied to the Tribunal to stay the Directions (a) pending the final determination of Arbitration C; or (b) alternatively, pending the final determination of OA 1109.

32 On 22 September 2023, the Tribunal dismissed the claimant's application to stay the Directions.[20] On the same day, following the Tribunal's dismissal, the claimant filed an application to the court *vide* HC/SUM 2904/2023 ("SUM 2904") on an urgent basis, seeking an interim injunction to

---

16 Claimant's 1st Affidavit dated 27 October 2023, p353

17 Claimant's 3rd Affidavit dated 19 February 2024, para 75(a)

18 Claimant's 3rd Affidavit dated 19 February 2024, para 5

19 Claimant's 2nd Affidavit dated 2 December 2023, para 7

20 Claimant's 1st Affidavit dated 27 October 2023, p3803

restrain the Directions being carried out. SUM 2904 was heard and dismissed by the court on 28 September 2023.

33 On 2 October 2023, the Second Closing was completed. The Remainder Shares were transferred to the defendant.[21]

34 On 27 October 2023, the claimant applied to set aside the Third Partial Award *vide* OA 1109 pursuant to s 48 of the Arbitration Act 2001 (2020 Rev Ed) (the "Act"). I discuss OA 1109 in greater detail at [68] below.

35 On 29 December 2023, the defendant filed an application in Arbitration C seeking to stay those proceedings pending the final determination of Suit 885. As at the date of the hearing before me (*ie*, 28 February 2024), that application remained pending.

The claimant's present application for a stay of OA 1109 on case management grounds

36 On 24 November 2023, at the first case conference ("Case Conference") of OA 1109, parties' views were sought on how OA 1109 would proceed against the backdrop of Arbitration C, which remained pending. The claimant subsequently wrote to the defendant, indicating his intention for OA 1109 to be stayed pending the resolution of Arbitration C. The defendant replied, objecting to the claimant's position.

37 On 1 February 2024, and in light of this impasse, the claimant took out the present application *vide* HC/SUM 283/2024, seeking the following orders:

---

21 Claimant's 1st Affidavit dated 27 October 2023, para 211

(a) that all proceedings in OA 1109 be stayed pending the final determination of the Arbitration, including any award on costs arising therefrom; and

(b) that costs of the application be in the cause.

The parties' arguments

38 The parties' arguments may be simply stated. Both could broadly be characterised as arguments from efficiency, albeit from opposing vantage points.

39 The claimant submitted that a stay would be necessary to ensure an efficient and fair way forward for both parties. Doing so would save judicial time and resources, in contrast to having separate sets of proceedings in different *fora* proceed in tandem. In particular, a stay would avoid the risk of duplicative or inconsistent findings in Arbitration C and OA 1109.[22] Significant prejudice would be occasioned to the claimant in the absence of a stay. In contrast, there would be no prejudice to the defendant should the case management stay be granted.[23]

40 The defendant submitted that the application should be dismissed in order to promote the efficient and fair resolution of the dispute. This is especially since the process of setting aside an arbitral award is meant to operate on prompt and well-defined timelines, to avoid uncertainty and injustice in the enforcement process. No prejudice would be occasioned to the claimant for OA 1109 to be determined concurrently with Arbitration C. Conversely, a stay

---

22 Claimant's Written Submissions dated 22 February 2024, para 5

23 Claimant's Written Submissions dated 22 February 2024, para 6

of OA 1109 would cause immense prejudice to the defendant as it would result in an inordinate delay of potentially more than four years to the resolution of OA 1109. This would mean that the arbitration clause in the Agreement would have utterly failed as a dispute resolution mechanism, with the defendant having to wait more than ten years to receive confirmation of the value of the Shares.[24]

My decision

The applicable legal principles for a case management stay

41 I begin with the legal principles in an application for a case management stay as there appeared to be divergence between the parties as to what the legal threshold applicable to the present application was.

The distinction between a statutory stay and a case management stay

42 Ordinarily, a party will apply to stay pending court proceedings in favour of arbitration pursuant to the court's statutory power, when such court proceedings have been commenced in breach of the parties' agreement to arbitrate. This power is statutorily provided for by s 6 of the Act (in the context of domestic arbitrations) and s 6 of the International Arbitration Act 1994 (2020 Rev Ed) (in the context of international arbitrations). There may however be certain situations in which a case management stay of court proceedings is sought where such statutory power is not available. A few instances of when such case management powers may be invoked to stay court proceedings pending the resolution of arbitral proceedings provide apt illustration:

(a) When there is a significant issue common to the claimant's claims against separate defendants, a stay of court proceedings may be

[24] Defendant's 3rd Affidavit dated 19 February 2024, para 7

warranted even if the claims are governed by divergent dispute resolution mechanisms under different agreements – for example, where one agreement contains an arbitration clause and the other contains a non-exclusive jurisdiction clause in favour of the Singapore courts (*Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431). Similarly, a case management stay may be ordered even if only a portion of a claimant's claims against a defendant (or defendants) in court proceedings fall within the scope of the arbitration agreement, if the resolution of those claims appropriately placed before an arbitral tribunal may have a significant bearing on the remaining claims that are pending before the court (*Star Engineering Pte Ltd v Pollisum Engineering Pte Ltd and another* [2024] SGHC 137 at [51]; *Singapore International Arbitration: Law and Practice* (David Joseph QC and David Foxton QC gen eds) (LexisNexis, 2014) ("*Singapore International Arbitration*") at p 118).

(b) When a claimant commences court proceedings against various defendants, but only a portion of the claimant's allegations against one of the defendants falls within the scope of an arbitration agreement, the entirety of the court proceedings may be stayed in the interests of case management even if the claimant wishes to concurrently pursue the allegations subject to arbitration, possibly on condition that those allegations be arbitrated expeditiously (*Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"); *Parastate Labs Inc v Wang Li and others* [2023] SGHC 48).

(c) When the issue in arbitral proceedings concerns the validity of a settlement agreement, the result of which may compromise the

underlying claims in the court proceedings, a case management stay might be granted to allow the arbitral proceedings to be determined first (*PUBG Corp v Garena International I Pte Ltd and others* [2020] 2 SLR 379).

(d) When a defendant in court proceedings has a concurrent set of arbitral proceedings commenced against it, and the arbitration would be determinative of all but one issue, a case management stay may be granted pending the outcome of the arbitral proceedings where the defendant denies that it is a party to the arbitration agreement (such that s 6 of the Act would not apply) (*Mitsui OSK Lines Ltd v Samudera Shipping Line Ltd* [2007] SGHC 41). Where there are questions raised on the jurisdiction of the arbitral tribunal, a case management stay may be warranted since such questions are rightly dealt with by the arbitral tribunal itself (*Trinity Construction Development Pte Ltd v Sinohydro Corp Ltd (Singapore Branch)* [2021] 3 SLR 1039).

43 The statutory power to order a stay of proceedings in favour of arbitration and the inherent power to order a case management stay of proceedings are distinct. They are distinct as a matter of *source, scope* and *substance.*

44 First, as a matter of source. On the one hand, a statutory stay, as the name suggests, emanates from statute and is either mandatory or discretionary, depending on whether the arbitration is international or domestic in nature, provided the requirements are satisfied (see [42] above). On the other hand, a case management stay emanates from the court's inherent powers of case management. In this regard, a case management stay is "part of the court's exercise of its inherent jurisdiction to manage its own internal processes" and is

"administrative" in nature, such that a court does not become *functus officio* after a stay is granted and possesses an independent power to lift the stay (*Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 ("*Rex International*") at [16]).

45 Second, as a matter of scope. It is clear from the examples highlighted at [42] above that a case management stay of court proceedings, if so granted, can affect parties beyond those privy to an arbitration agreement. Privity is not dispositive. For example, where an action that involves several defendants is stayed in light of an arbitration agreement between the claimant and only one of the defendants, the court may order that the entirety of the action be stayed *vis-à-vis* all the parties to the action. A statutory stay, in contrast, is confined to the parties that have entered into an arbitration agreement, or more accurately, parties that are considered parties to an arbitration agreement (*Jiang Haiying v Tan Lim Hui and another suit* [2009] 3 SLR(R) 13 at [23]).

46 Third, as a matter of substance. The jurisprudential basis of a statutory stay is fundamentally different from that of a case management stay (*BTY v BUA and other matters* [2019] 3 SLR 786 ("*BTY*") at [137]; *Heartronics Corporation v EPI Life Pte Ltd and others* [2017] SGHCR 17 ("*Heartronics*") at [205]). A statutory stay is granted in favour of arbitration because the court, properly considered, has no jurisdiction over the dispute that is the subject of the court proceedings. Such a statutory stay gives effect to the principle of party autonomy: a principle which "lies at the very heart of arbitration and permeates practically all aspects of it" and "allows parties a wide latitude to agree on almost all aspects of how a dispute is to be arbitrated" (*CJD v CJE and another* [2021] 4 SLR 734 at [1]). Put differently, if parties have agreed to arbitrate their disputes, then these disputes should be determined by way of arbitration and not by the courts. By comparison, "a party seeking a case management stay does

not … dispute in any manner the court's jurisdiction over the dispute in respect of which the case management stay is sought" (*Heartronics* at [211]). A case management stay "only affects the plaintiff's choice of the sequence in which he pursues proceedings against different defendants, and involves no more on the part of the court in which the proceedings are brought than declining to hear the proceedings before it until some other time" (*BC Andaman Co Ltd and others v Xie Ning Yun and another* [2017] 4 SLR 1232 at [102]).

47 Here, the claimant sought a case management stay because the statutory stay mechanism, as provided for in s 6 of the Act, could not apply. There was no contravention of any subsisting arbitration agreement, by virtue of the commencement of OA 1109, to speak of. And definitely, not of cl 15.15 of the Agreement (see [6] above). OA 1109, as an application to set aside an arbitral award, arose from the consequential statutory (and unfettered) right under the *lex arbitri* for a party to apply to the supervisory court to set aside an arbitral award under s 48 of the Act. Nor did the commencement of Arbitration C contravene any subsisting arbitration agreement, which was commenced by the defendant pursuant to cl 15.15 of the Agreement and only after the defendant had sought to stay Suit 287 in favour of Arbitration A *vide* SUM 3666 (see [24]–[26] above).

Determining whether a case management stay should be granted involves a balancing exercise of various factors

48 How then should a court go about determining whether a case management stay ought to be granted? As the cases make clear, this entails engaging in a balancing exercise of various factors, which may pull in separate directions. Invariably, this is fact sensitive. As Vinodh Coomaraswamy J put it in *BTY*, "[a] case management stay … is entirely discretionary" and the "considerations are wide" such as "whether there will be a duplication of the

witnesses and the evidence and whether there is a risk of inconsistent findings of fact or holdings of law between the tribunal and the court" (at [139]). Besides this, when considering whether to grant a case management stay, it is "critically important that the court apply its mind to appreciate the nature and extent of the overlaps between the putative arbitration and the court proceedings" (*Rex International* at [11]).

49 A non-exhaustive list of these factors was recently summarised by S Mohan J in *JE Synergy Engineering Pte Ltd v Niu Ji Wei and another (Sinohydro Corp Ltd (Singapore Branch), third party; Vico Construction Pte, fourth party)* [2023] SGHC 281 ("*JE Synergy*") at [16]:

> Based on the case authorities, the court may consider a variety of *non-exhaustive* factors to determine where the balance lies (*Tomolugen* at [140], [179]–[180]; *Danone Asia Pacific Holdings Pte Ltd v Fonterra Co-Operative Group Ltd* [2014] NZHC 1681 ("*Danone*") at [56]; *Rex* at [11]). In addition to these cases, I also found the factors considered by the Court of Appeal in *CSY v CSZ* [2022] 2 SLR 622 ("*CSY*") at [25] to be instructive and relevant to this exercise. This was notwithstanding that *CSY* related, not to a case management stay, but to a stay application made under s 6 of the Arbitration Act 2001 (2020 Rev Ed). Nonetheless, the factors that were referred to in *CSY* are, in my view, also relevant and may be considered in the context of a "case management quandary" faced by the court when it is asked to exercise its powers of a case management stay. These factors may, compendiously, be summarised as follows:
>
> > (a) the degree of overlap in the parties to the arbitration (or putative arbitration) and the parties to the court proceedings;
> >
> > (b) the degree of overlap in the issues, both factual and legal, that will be engaged in the arbitration (or putative arbitration) and those that will be engaged in the court proceedings;
> >
> > (c) the degree of overlap in the remedies that the arbitral tribunal (or putative tribunal) may grant, as compared to those which the court may grant;
> >
> > (d) the degree to which proper ventilation of the issues

> in the court proceedings depends on the resolution of the related arbitration (or putative arbitration);
>
> (e) the scope of the parties' agreement to arbitrate and whether continuation of the court proceedings would result in a circumvention of the arbitration agreement;
>
> (f) the likelihood of issue estoppel arising in either the court proceedings or the arbitration (actual or putative);
>
> (g) the risk of inconsistent findings between the two sets of proceedings;
>
> (h) the likelihood of duplication of witnesses and evidence between the arbitration (actual or putative) and the court proceedings;
>
> (i) the likelihood of injustice in having the same witnesses deal with the same factual issues before two different *fora*;
>
> (j) the risk of delay of resolution of the court proceedings;
>
> (k) the relative prejudice to the parties;
>
> (l) the possibility of an abuse of process; and
>
> (m) the incurring of costs.
>
> [emphasis in original]

50 In the final analysis, the Court of Appeal has emphasised that in determining whether a case management stay is appropriate, "[t]he court must in every case aim to strike a balance between *three higher-order concerns* that may pull in different considerations: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes" [emphasis added] (*Tomolugen* at [188]). Ultimately, the balance that is struck must serve the ends of justice.

A case management stay of an application to set aside an arbitral award does not necessitate a higher threshold to invoke the court's inherent powers

51 Notwithstanding the above, the defendant appeared to adumbrate a different approach: that a stay of setting-aside proceedings, in particular, on case management grounds should only be *rarely* granted and there should be *compelling reasons* to grant such a stay.[25] That is to say, the threshold that an applicant must cross in order to satisfy the court that a case management stay is warranted is pitched at a higher standard than what is required by balancing the factors set out in *JE Synergy* (see [49] above), which was not specific to the setting-aside context.[26] In support of its argument, the defendant cited the English Court of Appeal decision of *Minister of Finance (Incorporated) and another company v International Petroleum Investment Co and another company* [2019] EWCA Civ 2080 ("*1MDB*").

52 I considered the decision of *1MDB.* That case has a somewhat involved procedural history but provides necessary context.

53 *1MDB* concerned allegations of a multi-billion dollar fraud that had been perpetrated against the claimants, which were a Malaysian state-owned investment fund and its parent company. The respondents were entities owned by the Abu Dhabi government. The parties had entered into a binding term sheet containing an arbitration clause. Disputes arose when the respondents sought to enforce the claimants' obligations under the binding term sheet, which the claimants contended was grossly disadvantageous to them. This led the claimants to commence a London-seated arbitration against the respondents (the "First Arbitration"), alleging that the binding term sheet had been procured as

---

25 Defendant's Written Submissions dated 22 February 2024, para 12

26 Defendant's Written Submissions dated 22 February 2024, para 18

part of a corruption scandal over misappropriated public funds. The First Arbitration was later compromised when the parties entered into a series of settlement deeds (the "Deeds") that culminated in a consent award being issued (the "Consent Award") by the arbitral tribunal in the First Arbitration. The Deeds themselves contained arbitration clauses, which provided that "[a]ny dispute arising from or in connection with the [Deeds] (including a dispute relating to the existence, validity or termination of [the Deeds] or any non-contractual obligation arising out of or in connection with the [Deeds] or the consequences of its nullity …) shall be finally resolved by arbitration under the LCIA Rules which are deemed to be incorporated by reference into this clause". The Consent Award terminated the First Arbitration. Close to some 16 months later, the claimants applied to have the Consent Award set aside on the basis that, among other things, the Consent Award had been procured by fraud and would be contrary to public policy as well as the arbitral tribunal lacking substantive jurisdiction to make the Consent Award, pursuant to ss 67 and 68 of the English Arbitration Act 1996 (c 23) (UK) ("UK AA"). The claimants' application was issued outside the time limits provided under the UK AA. About a month later, in response to the claimants' application, the respondents commenced two fresh arbitrations (the "Second Arbitrations") against the claimants seeking declaratory relief that the Deeds were valid and the payment of over US$1bn, which was alleged to have fallen due under the Deeds because of the claimants' application to set aside the Consent Award. This led to (a) the respondents applying to strike out the claimants' setting aside application, or alternatively, for a stay of the claimants' application under s 9 of the UK AA or on case management grounds; and (b) the claimants applying for an anti-arbitration injunction to restrain the Second Arbitrations under s 37(1) of the Senior Courts Act 1981 (c 54) (UK).

54 Mr Justice Robin Knowles CBE, sitting in the Commercial Division of the High Court, denied the claimants' application for an anti-arbitration injunction. Knowles J instead granted a case management stay of the setting-aside proceedings as sought by the respondents in order to allow the Second Arbitrations to proceed to decide factual issues relating to the circumstances in which the First Arbitration was commenced and the Consent Award was entered into. a rare and compelling case required for a stay was made out on the facts as the alternative would lead to "duplication in the investigation and decision on whether the [Deeds] were void or not binding, which invited delay, cost, disorder and uncertainty" (*1MDB* at [23]). The claimants appealed.

55 The English Court of Appeal allowed the appeal, with Sir Geoffrey Vos delivering the judgment of the court. The court declined to order the case management stay sought by the claimants and instead granted an injunction to restrain the Second Arbitrations. In relation to the case management stay, the court accepted Knowles J's reliance on the decision in *Reichhold Norway ASA v Goldman Sachs International* [2001] 1 WLR 173 ("*Reichhold*") that the legal test to be applied was whether "this was one of the rare cases where a compelling case had been shown for a stay to be granted" and that it applied with "particular force in circumstances such as the present case" (*1MDB* at [47] and [56]). The Court of Appeal however disagreed with Knowles J's application of the test and was satisfied that the lower court's decision had proceeded on a "false premise" in failing to recognise the following (*1MDB* at [54]):

> … [Knowles J] held that the claimants' court applications elevated the supervisory jurisdiction above the concurrent jurisdiction of the second arbitrations, when both derived from party autonomy. But he failed to recognise, as we have sought already to explain, that: (a) the claimants had a right, which the defendants had agreed they should have, and which had effect notwithstanding any agreement to the contrary, to challenge the consent award under sections 67 and 68, (b) the grounds of challenge affected Mr Najib's authority to enter into the deeds

> of settlement at all and would, therefore, undermine the arbitration agreement contained within them, (c) it is the responsibility of the court to determine challenges under sections 67 and 68, and to do so as promptly as possible, (d) the election to arbitrate could not dictate the position in respect of challenges under sections 67 and 68, which were no longer consensual, (e) courts exercising their supervisory role under the 1996 Act do so as a branch of the state, not as a mere extension of the consensual arbitration process, and (f) the court exercising its supervisory jurisdiction under sections 67 and 68 must do so quickly to avoid uncertainty and injustice in the enforcement process.

56 The court found no compelling reasons to grant the case management stay because (a) the court was performing an important public function as a branch of the state in resolving disputes under ss 67 and 68 of the UK AA; (b) it would be illogical to give precedence to the Second Arbitrations given that these were, in substance, commenced as a reaction to the claimants' court applications; (c) a stay would not necessarily avoid duplication as this would depend on issue estoppels arising from the Second Arbitrations; (d) the principle of party autonomy points against the grant of a stay as the arbitrators in the Second Arbitrations would at best arrive at a provisional decision on their own jurisdiction under the doctrine of *kompetenz-kompetenz*; and (e) should the stay be granted and the respondents succeed in the Second Arbitrations, the respondents would likely seek to enforce those awards ahead of the determination of the court proceedings, which would be inappropriately burdensome for the claimants (*1MDB* at [60]–[64]).

57 The court went further. In its view, the case before it was so exceptional as to warrant an anti-arbitration injunction to restrain the Second Arbitrations. As the Deeds provided that the parties waived any right to challenge it "on grounds of jurisdiction or for any other reason", the court considered that the claims therein infringed and threatened the claimants' "undoubted legal right to pursue the court applications under sections 67 and 68 [of the UK AA], and are

vexatious and oppressive" (*1MDB* at [73]). In the court's view, this represented "a clear attempt to fetter the claimants' exercise of their statutory right to challenge the [Consent Award] in the [First Arbitration] under sections 67 and 68 [of the UK AA]", such that the pursuit of the Second Arbitrations "seeks *in terrorem* to impose a large financial penalty on the claimants for having sought to exercise their agreed legal rights" (*1MDB* at [74]). In the words of the court, the injunction would "bring the [respondents'] vexatious conduct to an end" (*1MDB* at [75]). Permission to appeal to the UK Supreme Court was later refused, on the ground that the case did not raise an arguable point of law and was a case management decision which an appellate court rarely interferes with.

58 The defendant's submission appeared to be that *1MDB* purports to stand for the proposition that where a stay of setting-aside proceedings is sought on case management grounds, such a stay ought only to be rarely granted and there must be compelling reasons to do so.[27] This accurately represented the position in England. However, I was of the view that the defendant's reliance on *1MDB* was inapposite for two main reasons.

59 First, the local case law did not support the defendant's proposed approach. An authority to the opposite effect is *Tomolugen*. There, the Singapore Court of Appeal expressly declined to follow the "rare and compelling" threshold in determining whether a case management stay should be granted. Following a comprehensive review of the authorities in other common law jurisdictions, including Australia, England, Canada and New Zealand, the Court of Appeal held as follows (at [187]):

> **We would not set the bar for the grant of a case management stay at the 'rare and compelling' threshold that the English and the New Zealand courts have adopted.**

---

27 Defendant's Written Submissions dated 22 February 2024, para 12

> We recognise that a plaintiff's right to sue whoever he wants and where he wants is a fundamental one. But, that right is not absolute. It is restrained only to a modest extent when the plaintiff's claim is stayed temporarily pending the resolution of a related arbitration, as opposed to when the plaintiff's claim is shut out in its entirety: *Reichhold Norway (HC)* ([165] *supra*) at 491 *per* Moore-Bick J. In appropriate cases, that right may be curtailed or may even be regarded as subsidiary to holding the plaintiff to his obligation to arbitrate where he has agreed to do so. The strength of the plaintiff's right of timely access to the court will therefore vary depending on the facts of each case. In a situation where there are multiple plaintiffs, some of whom are not bound to arbitrate (as in *Danone v Fonterra* ([175] *supra*)), staying the court proceedings may result in a greater derogation from this right for those plaintiffs who are not bound by the arbitration clause. … [emphasis added in bold]

60 The passage above is unequivocal. And I considered myself bound by *Tomolugen*. It bears emphasising too that the Court of Appeal, in declining to follow the "rare and compelling" threshold, had expressly considered the decision in *Reichhold* , which was the very case that the court in *1MDB* relied on (*Tomolugen* at [164]–[170]; *1MDB* at [47] and [56]; see also [55] above). There has been no local authority suggesting that a different approach should be taken when the subject of the stay is an application challenging an arbitral award. For example, in the recent decision of *Deutsche Telekom AG v The Republic of India* [2024] 3 SLR 1 ("*Deutsche Telekom*"), the respondent sought a case management stay of its own application to set aside an order granting the applicant leave to enforce an arbitral award. The respondent in that case had sought a stay of the setting aside proceedings pending the determination of a revision application that it had commenced in the seat court. While the stay was denied, there was no suggestion by the Singapore International Commercial Court ("SICC") that the threshold was one set at a "rare and compelling" one; the court was of the view that the revision application had minimal prospect of success before the Swiss Federal Supreme Court (*Deutsche Telekom* at [174]–

[181]). I was therefore of the view that the "rare and compelling" test was of no applicability under Singapore law.

61 The position, even as a matter of English law, appears to be shifting. I would only note in passing the Judicial Committee of the Privy Council's recent observations in *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Coprn* [2024] Bus LR 190, on appeal from the Court of Appeal of the Cayman Islands, that "[w]hile it is not necessary for the Board to decide this matter, it questions the proposition that a discretionary case management stay of winding up proceedings on the just and equitable ground where a substantial part of the dispute between the parties or some of the parties to the petition falls within the scope of a binding arbitration agreement should be granted only in rare and compelling circumstances. Such a conclusion appears to be *inconsistent with the support which the courts give to arbitration and the trend of case law internationally*" [emphasis added] (at [102] *per* Lord Hodge DPSC, who also cited *Tomolugen* at [39]–[44] of his judgment).

62 Second, *1MDB* was distinguishable from the case before me, as I explain:

(a) For starters, in *1MDB*, the Second Arbitrations were commenced by the respondents following the claimants' application to set aside the Consent Award. The stay there was sought by the respondents. In contrast, Arbitration C was commenced by the claimant himself, before had filed OA 1109. Here, it was the party seeking a stay of his own court proceedings and not the counterparty.

(b) More importantly, in arriving at its decision to deny the stay sought by the respondents, the court in *1MDB* placed emphasis on the fact that the respondents' decision to commence the Second Arbitrations

"was a reaction to the claimants' court applications" since the "events of default in the [Deeds], on which the [respondents] rely, are mostly founded on the claimants' own court proceedings" (*1MDB* at [61]). The same could not be said here of Arbitration C. Arbitration C was commenced *prior* to OA 1109. Hence, Arbitration C could not be described as reactionary since OA 1109 had not even been commenced yet. Quite the contrary. According to the claimant, Arbitration C had been commenced, quite independently of OA 1109, because of new evidence beyond the September Email that had allegedly been shored up in the discovery process of Suit 885 suggesting that the Firm was not independent. This was evidence that was not available at the time of the Corruption Application (see [22] above).

(c) Additionally, implicit in the court's reasoning in *1MDB* was the view that the respondents' conduct in taking out the Second Arbitrations was *vexatious* and somewhat *tactical*, such that "it would be illogical to give precedence to the [Second Arbitrations] unless there were other strong reasons to do so" (*1MDB* at [61]). The Second Arbitrations, to some extent, appeared to be an orchestrated attempt by the respondents to stifle or least encumber the claimants' application in court to set aside the Consent Award under ss 67 and 68 of the UK AA. Hence, the court's observation that the respondents' requests for arbitration in the Second Arbitrations were "clearly prepared earlier" and "[t]he events of default in the [Deeds], on which the [respondents] rely, are mostly founded on the claimants' own court proceedings" (*1MDB* at [61]). It was not surprising, in those circumstances, for the court in *1MDB* to decline the case management stay sought by the respondents. Coupled with the anti-arbitration injunction, that would mulct such conduct. I did not think the same could be said for the present case nor was it intimated by the

defendant that it was so. There did not appear to be such visage of vexatiousness here. At least on the materials before me, the defendant did not venture so far as to suggest that the commencement of Arbitration C, *in and of itself*, constituted abusive conduct on the part of the claimant. In fact, in a letter addressed to the claimant dated 29 December 2023, the defendant stated that the proper forum to determine any issues of fraud is appropriately "before the sitting Tribunal in [Arbitration C] – proceedings which [the claimant] commenced more than 12 months ago" and that it has "always taken the position that the proper forum to recover such losses is in [Arbitration C]".[28] This would perhaps explain why no anti-arbitration injunction was sought by the defendant to restrain the claimant from prosecuting Arbitration C. As the defendant itself put it, there was no dispute that the claimant was "entitled" to pursue Arbitration C.[29]

(d) Finally, it did not appear that Arbitration C required the Tribunal to determine any prior jurisdictional questions, as was the case in *1MDB*. Part of what animated the court's reluctance there in ordering the stay was emphasis on the fact that the arbitral tribunals in the Second Arbitrations could not finally determine their own jurisdiction and there would at least be the possibility of further court proceedings challenging the jurisdiction of the tribunals (*1MDB* at [63] and [64]). This is because the validity of the Deeds was placed at the fore of the Second Arbitrations, which would have ramifications for the validity of the arbitration clauses contained therein and by extension, the jurisdiction of the arbitral tribunals constituted pursuant to those clauses (see also

---

28 Claimant's 3rd Affidavit dated 12 March 2024, p 60 and 61, paras 4 and 7

29 Defendant's Written Submissions dated 22 February 2024, para 47

> [55] above). That was not analogous to the present case. There was no dispute that the arbitration clause in the Agreement *viz* cl 15.15 was valid and binding (see [6] above). The defendant took the position as early as 27 July 2022 in a pre-action letter that the dispute in Suit 287 fell "within the ambit of the arbitration agreement at [cl 15.15 of the Agreement]". The SIAC's commencement letter to the parties dated 30 December 2022 recording that the claimant had "invoked the arbitration agreement contained in [cl 15.15] of the Agreement" for the purposes of Arbitration C was not met with any objection.[30] This was later reified in its Response to Arbitration C dated 25 January 2023, in which the defendant agreed that the seat of the arbitration be Singapore and the governing law be Singapore law.[31] In fact, it was the defendant's application for Suit 287 to be stayed in favour of arbitration *vide* SUM 3666 that preceded the claimant's decision to commence Arbitration C (see [25] above). As such, the operative concern with further court proceedings challenging the Tribunal's jurisdiction, which could conceivably lead to further delays in Arbitration C, was unlikely to arise in this case.

63 Hence, I declined to adopt the approach espoused by the defendant. In my view, there was no principled basis on which to adopt a "rare and compelling" threshold for an applicant to meet simply because the court proceeding that was the subject of the stay was an application to set aside an arbitral award (as opposed to what is ordinarily a general originating claim or originating application, as the case may be). Rather, a holistic balancing exercise based on the factors laid out in *JE Synergy* would apply in determining the exercise of the court's discretion. I agreed with the claimant that this was

---

30 Claimant's 1st Affidavit dated 27 October 2023, p 3786, para 27

31 Claimant's 1st Affidavit dated 27 October 2023, p 2435, para 17

the correct approach. This accorded with not just pedigree, but principle too. Perhaps the peculiarity in the present application, if it may be so stated, was that the stay was sought by the claimant who himself commenced the court proceedings. However, that fact *per se* did not warrant a different threshold to be applied or for any carve-out to the approach in *JE Synergy*, which was of general applicability. As I explain below at [84], factors such as potential delay to the setting aside proceedings *can* be accommodated within and *should* be considered in the holistic balancing exercise that a court is mandated to undertake in determining the suitability of a case management stay.

64 Bearing the above in mind, I turn to the application of the factors set out in *JE Synergy* (see [49] above).

On balance, the case management stay should be granted

65 Having considered the parties' submissions, I was of the view that on balance, the factors marshalled in favour of granting the case management stay as sought by the claimant and I so ordered. I was satisfied that to do so would be in the interests of justice and would best promote an efficient, fair and orderly resolution of the overall dispute between the parties. I explain.

There was identity in the parties and a clear overlap in the issues to be decided in Arbitration C and OA 1109 such that a stay could ameliorate the risk of inconsistent findings

66 I considered first whether there was any overlap of issues between the proceedings in OA 1109 and Arbitration C. This was because in order for a case management stay to be relevant at all, "there must first be the existence or at least the imminence of separate legal proceedings giving rise to a real risk of overlapping issues" (*Rex International* at [11]). That said, there need only be some degree of overlap; a complete overlap is unnecessary (*JE Synergy* at [27]).

I answered this in the affirmative. Here, there were concurrent proceedings, *ie,* Arbitration C and OA 1109 in which the parties involved were identical. Further, there was a clear overlap in the issues to be decided in Arbitration C and OA 1109, which was not seriously disputed by the defendant. In my view, this was a particularly strong factor that marshalled in favour of granting the case management stay.

67 To demonstrate this, it is apposite to compare the allegations made in both Arbitration C and OA 1109 here, beginning first with Arbitration C. I reproduce parts of the Notice of Arbitration filed in Arbitration C, which encapsulates the claimant's position there quite neatly:[32]

> 17. In particular, the [claimant] avers that the [defendant] deliberately and wrongfully concealed (1) from the [claimant] prior to and in the course of [Arbitration A] and (2) from the Tribunal in the course of [Arbitration A] that:
>
> (a) [The Firm] was in fact not independent;
>
> (b) The [DNCI] executed on or around 20 October 2016 by [the Firm] was inaccurate and contained false and misleading statements;
>
> (c) The [defendant] had an ongoing relationship with [the Firm] with substantial business / commercial dealings; and
>
> (d) The [defendant] had, without the [claimant's] knowledge or agreement, communicated extensively with [the Firm] regarding the [Reports], even seeking clarifications directly from [the Firm] in late 2016 / early 2017 after [the Reports] were issued.
>
> 18. Further, even after [Arbitration A] had commenced, the [defendant] took certain steps to avoid and/or prevent the issue of [the Firm's] independence being raised and considered by the Tribunal appointed for that arbitration. …
>
> 19. As a result of the [defendant's] wrongful conduct, any attempts made by the [claimant] in [Arbitration A] to undercover the true relationship between the [defendant] and [the Firm]

---

32 Defendant's 3rd Affidavit dated 19 February 2024, p852

> and the extent of their private communication in respect of the [Reports] were unsuccessful.
>
> …
>
> 23. As a result of the [defendant's] wrongful conduct, the [claimant] was deceived into agreeing to the appointment of [the Firm] and continuing with [Arbitration A] under the misimpression regarding [the Firm's] independence.

I should add that at the time the Notice of Arbitration was filed on 23 December 2022, only the First Partial Award and Second Partial Award had been issued. As such, no reference was made to the Third Partial Award, as is clear from the above. In this regard, the claimant indicated his intention to argue in his Statement of Case for Arbitration C that the defendant's conduct had tainted the Third Partial Award.[33]

68 I turn then to OA 1109. That application to set aside the Third Partial Award was made on the following grounds under s 48 of the Act:[34]

> (a) that the Third Partial Award was induced or affected by fraud or corruption;
>
> (b) that enforcement of the Third Partial Award would be contrary to public policy;
>
> (c) that the Third Partial Award purported to determine and deal with a dispute not contemplated by or not falling within the terms of the submission to the Arbitration or contained decisions on matters beyond the scope of submission to the Arbitration; or

---

33 Defendant's 3rd Affidavit dated 19 February 2024, p63

34 Claimant's 1st Affidavit dated 27 October 2023, paras 8 and 14

(d) the Tribunal committed a breach of natural justice in rendering the Third Partial Award.

Putting to one side grounds (c) and (d) above, which were ancillary to the broader application in OA 1109 and not material for the present application, the main thrust of the claimant's case in OA 1109 really centered on (a) and (b). This was the pith and marrow of OA 1109. The claimant's allegation was that despite concerns raised by him in respect of the Firm's independence, neither the defendant nor the Firm declared to the claimant their prior working relationship or ongoing commercial dealings.[35] Despite the defendant's insistence in the Arbitration that the Firm's engagement was a non-speaking one, the defendant had *ex parte* conversations with the Firm without the claimant's involvement before and after the issuance of the Reports in December 2016 (see [11] above). According to the claimant, the defendant took active steps to conceal the Firm's lack of independence during the course of the Arbitration, which led to the Third Partial Award being issued.[36] This deliberate concealment orchestrated by the defendant therefore tainted the Third Partial Award. It was procured by fraud. Further, allowing its enforcement would be contrary to the public policy of Singapore. It should therefore be set aside.

69 From the above, it was apparent that there is significant overlap in the issues that lie to be determined in Arbitration C and OA 1109. These issues include, but are not limited to, the following:

(a) Whether the defendant had committed fraud in the course of the Arbitration.

---

35 Claimant's 1st Affidavit dated 27 October 2023, para 10

36 Claimant's 1st Affidavit dated 27 October 2023, para 11

(b) Whether the Firm was not an "independent human resource consultant" within the meaning of the Agreement.

(c) Whether the defendant had deliberately concealed from the claimant and the Tribunal the nature of its commercial relationship with the Firm and the fact that the defendant had *ex parte* communications with the Firm regarding the preparation of the Reports, both prior and after its issuance.

(d) Whether the claimant, as a result of the defendant's alleged misconduct, had been deceived in agreeing to the appointment of the Firm.

(e) Whether there is a nexus between the defendant's alleged misconduct and the making of the Third Partial Award. That is to say, whether the Tribunal had relied on the Reports in arriving at the Final Valuation.

70 In light of the significant overlap in issues to be determined, it was clear that should the stay be denied and Arbitration C and OA 1109 be determined concurrently, there would come with this the attendant and real risk of duplicative and inconsistent findings across the two different *fora*. It would also require the parties to engage in both sets of proceedings on both fronts simultaneously. This will lead to the undesirable outcome of parties incurring further costs. As noted in *JE Synergy*, a greater overlap in the issues almost inexorably increases the risk of inconsistent findings between the two sets of proceedings (at [17]). This was most certainly the case here.

71 It is true, as the defendant submitted, that the remedies being sought in Arbitration C and OA 1109 are different. In Arbitration C, he seeks damages

caused by the fraud perpetrated by the defendant to be assessed.[37] While in OA 1109, he seeks for the Third Partial Award to be set aside. In each *fora,* the respective adjudicators are not empowered to grant the reliefs sought in the other proceedings. This is because an arbitral tribunal cannot set aside its own award as this is a power that lies within the exclusive preserve of a supervisory court. And a supervisory court, in the context of an application to set aside an arbitral award, is not empowered to grant damages as relief. This was not disputed. But this submission elided the point that the factual substrata underlying both Arbitration C and OA 1109 were substantially similar, if not identical. Even if the relief sought in the different *fora* were different, whether fraud had been perpetrated on the Tribunal in order to procure the Third Partial Award remained a common issue. To use the language in *Tomolugen*, to have the proceedings proceed in tandem may thereby "create a potential case management quandary" (at [140]).

72 Hence, I agreed with the claimant's submission that a case management stay of OA 1109 pending the resolution of Arbitration C would mitigate considerably the risk of inconsistent findings as between the two *fora*.

The Tribunal's findings and determination in Arbitration C could be of benefit to the court determining OA 1109

73 I also bore in mind the nature of the claims being pursued in Arbitration C, to the extent that these overlapped considerably with the issues raised in OA 1109 as explained above at [69]. To my mind, it would be useful for the claims in Arbitration C to be determined ahead of OA 1109 – consequentially rather than concurrently – especially having regard to the wide-ranging procedural and substantive powers available to an arbitral tribunal undertaking

---

37 Claimant's 3rd Affidavit dated 19 February 2024, para 62

a fact-finding exercise (*Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279 ("*Bloomberry*") at [108]–[115]).

74 The claimant's allegations of fraud, whether it be framed as procedural fraud or not, were serious – and contentious – ones. As between the parties, these were clearly disputes of fact. The claimant's allegations were firmly denied, but they appeared to raise issues that would need careful consideration in light of what would no doubt be controversial factual evidence. Allowing Arbitration C to proceed ahead of OA 1109 would allow these serious allegations of fraud to be fully ventilated through an arbitration hearing, with the available suite of procedural and forensic tools, such as discovery and cross-examination of witnesses, to assist the Tribunal in its fact-finding exercise. In fact, it has been observed that for an arbitral tribunal to deem that cross-examination is unnecessary is a *rare* occurrence, which is normally only done in a case, if at all, where parties have agreed to proceed on the basis of a "documents-only" arbitration, which cannot usually be forced on parties that disagree (*Singapore International Arbitration* at pp 292 to 293). In this respect, Rule 24.1 of the SIAC Rules expressly provides that "[u]nless the parties have agreed on a documents-only arbitration … the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction".

75 The position in OA 1109 is different. In an originating application, such as OA 1109, the default position is that it must be decided based on evidence adduced by affidavits and on oral or written submissions without oral evidence or cross-examination, pursuant to O 15 r 7(5) of the Rules of Court 2021 (see also *Syed Ibrahim Shaik Mohideen v Wavoo Abdusalam Shahul Hameed and*

others [2023] 4 SLR 903 at [16]).[38] This is bearing in mind the *raison d'etre* of the originating application process (previously referred to as an originating summons), which is to provide a convenient and speedy avenue for litigants to obtain a declaration of their respective rights from the court (*Punton and another v Ministry of Pensions and National Insurance* [1963] 1 WLR 186 at 192). Even in the context of allegations of fraud, there is no guarantee that an originating application will be converted to an originating claim so as to entitle parties to trial procedures. As the Court of Appeal in *Rainforest Trading Ltd and another v State Bank of India Singapore* [2012] 2 SLR 713 noted in relation to the conversion of an originating summons to a writ action (at [42]):

> … *While it was stated by this court in* Woon Brothers *([23]* supra*) at [30] that a writ action is usually more appropriate when allegations of fraud are made, it cannot be the case that a conversion must be ordered the moment allegations of fraud are made by a defendant, for this would allow defendants to unnecessarily prolong and complicate otherwise straightforward and legitimate claims made against them, which is precisely the case here.* Mr Chacko is wrong to cite *Woon Brothers* for the overly broad proposition that an originating summons must be converted the moment there are allegations of substantial disputes of fact, allegations of fraud or both. The alleged disputes of fact as well as allegations of fraud must be accompanied by the existence of at least a credible matrix of facts and must be relevant to the dispute at hand, which was not the case here. [emphasis added]

76 I was bolstered in my decision, having regard to the relevant authorities. In *Jiangsu Overseas Group Co Ltd v Concord Energy Pte Ltd and another matter* [2016] 4 SLR 1336 ("*Jiangsu*"), the High Court had occasion to consider whether cross-examination of the parties' witnesses ought to be permitted in the context of a set of applications to set aside arbitral awards. There, the applicant applied to cross-examine the parties' witnesses, contending that this was necessary to resolve fundamental disputes of fact, namely, whether an oral

[38] Claimant's Written Submissions dated 22 February 2024, para 62

agreement between the parties had been concluded. This in turn implicated its argument that there had been no valid arbitration agreement between the parties and thus the arbitral tribunal lacked jurisdiction, so as to furnish basis to set aside the arbitral awards. Steven Chong J (as he then was) dismissed the applicant's application, deeming it unnecessary given that the applicant had had the opportunity to cross-examine the witnesses before the arbitral tribunal but failed to do so and further observed that cross-examination was generally not resorted to in applications to set aside arbitral awards (*Jiangsu* at [43]):

> Nor is it a sufficient reason that, in this case, Jiangsu was not represented before the tribunal. Allowing the arbitration to proceed in its absence was entirely Jiangsu's own choice and doing. *Jiangsu would have had the chance to cross-examine Herlene and other material witnesses had it participated in the arbitration hearings*. Ample notices and reminders were sent to Jiangsu. Having deliberately chosen not to do so, they should stand or fall by that strategy. *I was also mindful that findings of fact by the tribunal are generally indisputable and, consequently, cross-examination is generally not resorted to in applications under O 69A of the ROC* (see *Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd* [2014] 1 SLR 814 at [52]). Besides, there is a substantial body of objective evidence including the exchange of correspondence between the parties to assist the court to determine this factual inquiry. The objective evidence speaks for itself. I did not think that cross-examination would be helpful in the limited context of the setting aside applications. [emphasis added]

The rationale for this is to uphold the procedural interest in imposing a degree of finality in the parties' opportunity to obtain and produce evidence in dispute-resolution proceedings and more so in the context of an originating application.

77 That is not to say that cross-examination in the context of an application to set aside an arbitral award has never been permitted by the court. For example, in *Reliance Infrastructure Ltd v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3, which involved an application to set aside an arbitral award, the SICC allowed five witnesses to be cross-examined by the consent of the

parties regarding the alleged forgery of a guarantee letter that contained an arbitration agreement (at [34]). However, it remains that such orders are generally exceptional and are certainly, not granted as a matter of right.

78 Relatedly, having the claims determined in Arbitration C ahead of OA 1109 would likely obviate the need for any further cross-examination in OA 1109, if such an application were to be made. Granting the case management stay would avoid the possible duplication of witnesses, especially since such witnesses would likely be giving evidence on the same factual issues that are before the adjudicators in two different *fora*. To hold otherwise would mean that the same set of witnesses would be put to the expense and inconvenience of testifying before two different *fora* on what was, at its core, the same set of issues. This was yet another factor that marshalled in favour of granting the case management stay.

79 This segues into the next point. I agreed with the claimant's submission that there would be benefit in having the claims ventilated before the Tribunal in Arbitration C, as issues common to those raised in OA 1109.[39] This was not to cede in any manner the court's ability to properly adjudicate and determine OA 1109. This was simply a practical acknowledgement that allowing the issues to be fully ventilated and determined before the Tribunal, buttressed by the discovery process and cross-examination, could be beneficial to the court determining OA 1109. In particular, the full record of proceedings in Arbitration C would be placed before the court. This could very well be of some probative or persuasive value to the court determining OA 1109 and such possibility ought not to be precluded at this stage. I considered also the fact that the Tribunal determining Arbitration C was well-apprised and familiar with the background

[39] Claimant's Written Submissions dated 22 February 2024, para 7

of the case. The claims in Arbitration C were after all, predicated on the alleged misconduct of the defendant perpetrated in the course of Arbitration A and were thus closely intertwined with the claims in Arbitration A. They also bore a degree of resemblance with the allegations made in the Corruption Application (see [18] above), which was dealt with by the Tribunal as well. Having overseen Arbitration A from its inception through to the issuance of the Third Partial Award, it was fair to say that the Tribunal was well-placed to determine the claims put forth by the claimant in Arbitration C.

There was real possibility of issue estoppel arising from having the claims in Arbitration C determined ahead of OA 1109

80 Next, I was of the view that having the claimants' claims determined by the Tribunal in Arbitration C could possibly lead to issue estoppel arising in respect of its challenges mounted in OA 1109. The defendant's response to this was that the court determining OA 1109 could not be bound by the Tribunal's determination in Arbitration C.[40] That was undoubtedly true. As a system that operates outside the doctrine of *stare decisis,* "there are no courts which [an arbitral tribunal's] decisions bind as a matter of law" (*Republic of India v Vedanta Resources plc* [2020] SGHC 208 at [139]). A court also adopts a *de novo* standard of review on jurisdictional challenges (*PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 at [163]). This is subject to the caveat that an arbitral tribunal, as part of its substantive powers, acts as "the only fact-finder and decision-maker on the merits of any dispute submitted to arbitration" in line with the principle of minimal curial intervention (*Bloomberry* at [122]). After all, it is clear "[t]here is no wide-ranging right of appeal such as exists in the national laws" (*DJO v DJP and*

[40] Defendant's Written Submissions dated 22 February 2024, para 51

others [2024] SGHC(I) 24 at [3]). But the proposition that the court determining OA 1109 could not be bound by the Tribunal's determination in Arbitration C did not respond to the claimant's submission that issue estoppel could arise in OA 1109. Whether a court is bound by an arbitral tribunal's findings and whether a party is barred by the doctrine of issue estoppel are separate enquiries. The former concerns the competence of the court as a matter of *stare decisis* and the standard of review that it adopts as a matter of public policy. In contrast, the latter concerns a constraint on the part of a party owing to an abuse of process to raise arguments that have previously been raised, considered and rejected. The latter is logically anterior to the former; if a party is precluded from raising arguments as an abuse of process, no issue of whether a court is bound by another adjudicative tribunal's findings will arise.

81 In his written submissions, the claimant candidly conceded that given the broad overlap of the issues in OA 1109 and Arbitration C, there was a likelihood of issue estoppel arising should one be decided ahead of the other.[41] In oral submissions, counsel for the claimant went so far as to state that if the Tribunal finds in Arbitration C that there was no fraud perpetrated by the defendant in procuring the Third Partial Award, then the claimant would "not be in a position to pursue that position in OA 1109".[42] I accepted that this could be a real eventuality which would preclude the claimant from raising the same allegations on fraud to try to set aside the Third Partial Award. In which case he would be left only with the remaining grounds enumerated at [68] above that sought to impugn limited aspects of the Third Partial Award. This would essentially winnow the scope of challenge in OA 1109. The claimant's submission was, in my view, a reasonable concession to make, especially in

41 Claimant's Written Submissions dated 22 February 2024, para 53(e)

42 Certified Transcript of the Hearing of HC/SUM 283/2024 dated 28 February 2024, p7

light of the court's observations in *CJY v CJZ and others* [2021] 5 SLR 569 ("*CJY*"). There, Andre Maniam JC (as he then was) observed that if a plaintiff has failed in its claim in an arbitration, it cannot then seek to procure an opposite outcome from the court, as that would be tantamount to an "impermissible collateral attack on the arbitration award against the plaintiff (which might also become a court judgment in the same terms), and an abuse of process" (*CJY* at [42]). This is consistent with the policy that underlies the umbrella doctrine of *res judicata*, that is, that litigants should not be twice vexed in the same matter and that the public interest requires finality in litigation (*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties and another appeal*) [2015] 5 SLR 1104 at [98]).

82 On this point therefore, I accepted the claimant's submission. The likelihood of issue estoppel arising in OA 1109 so as to preclude the claimant from raising the same arguments made in Arbitration C was a real one. This supported the grant of the case management stay.

The potential delay of OA 1109 did not tip the balance against granting the case management stay

83 The defendant's main submission centered around the effect of granting a case management stay of OA 1109 pending the resolution of Arbitration C. The defendant argued that to do so would yield no practical result apart from delaying the extant dispute between the parties.[43] This would undesirably delay the resolution of court proceedings, especially applications to set aside an arbitration award, which ought to be determined quickly so as to engender certainty.

---

[43] Defendant's 3rd Affidavit dated 19 February 2024, para 10

84 I was cognisant that the underlying policy of the Act was to promote the finality of the arbitration process and arbitral awards (*Holland Leedon Pte Ltd (in liquidation) v Metalform Asia Pte Ltd* [2011] 2 SLR 1086 at [3]). Consequently, there would be public and institutional interest for challenges to arbitral awards to be determined expeditiously, bearing in mind that "the court is performing an important public function in resolving such disputes" (*1MDB* at [60]). This was not controversial and I accepted that this was an important consideration that ought to be taken into account in determining whether granting a case management stay would be appropriate. A court ought to be alive to this risk. To this extent, I agreed that there was some force to the defendant's submission that granting a stay would lead to some delay in OA 1109. I, however, did not consider this to be determinative. After all, it must be borne in mind that in every case in which a case management stay of court proceedings is granted, it is *inescapably* the case that there will be a certain degree of delay occasioned to the court proceedings. This is the teleological end of a stay: the entire function of which is to put court proceedings on hold pending an anterior determination being made. Whether the delay occasioned to the setting aside proceedings is indeed as inordinate as a party may claim lies to be determined on the facts of each case.

85 Here, I was not persuaded by the defendant's submission that granting a stay of OA 1109 pending the final determination of Arbitration C would lead to such an inordinate delay of OA 1109. In particular, the defendant argued that granting the case management stay would create the risk of a substantial delay of potentially more than four years to the resolution of OA 1109.[44] I found this concern to be overstated. There was no concrete basis upon which to allege that such a long time would elapse before Arbitration C could be finally determined

---

[44] Defendant's Written Submissions dated 22 February 2024, para 55

and for OA 1109 to be heard. This was to my mind, speculative. And as I have mentioned at [79] above, the familiarity of the Tribunal with the background of the Arbitration could assist with the expeditious determination of Arbitration C. Indeed, in its application to consolidate Arbitration C with Arbitration A, the defendant submitted, and quite rightly in my view, that the Tribunal's familiarity would mean "significant time and cost savings" in resolving the dispute in Arbitration C.[45] After all, the claims in Arbitration C were founded on the defendant's conduct in Arbitration A. This close connection was clear and the defendant itself recognised this fact (see [27] above). The potential efficiencies of proof and evidence owing to this familiarity ought not to be understated.

86 In any case, it remained open to the defendant, or indeed the claimant, to seek to expedite Arbitration C if they so wished. There was nothing to prevent them from doing so. How quickly Arbitration C could progress would ultimately lie on the parties and the extent of their cooperation with the Tribunal. It is true that the Arbitration has been pending since June 2017. Ultimately, it would only be in both parties' interests for Arbitration C to be pursued with swiftness and to be determined with expedition. After all, the Second Closing has concluded and the Remainder Shares have been transferred (see [33] above). The bulk of the parties' obligations under the Agreement have been completed. Surely, this would be the most sensible way forward for all parties.

87 Overall, the potential delay to OA 1109 did not tip the balance against the grant of the case management stay.

---

[45] Claimant's 1st Affidavit dated 27 October 2023, p 3787, para 30

The parties' mutual attribution of delay to the conduct of Arbitration C was neither here nor there and the claimant's application was not an abuse of process

88 Furthermore, the defendant implored this court to take cognisance of the procedural history of the matter and what it claimed was evidence of the claimant's dilatory conduct. There appeared to be two tenets to this submission: (a) first, the claimant was responsible for the delay in the progress of Arbitration C; and (b) second, and relatedly, owing to its own delay, the claimant's present application was an abuse of process. Neither passed muster in my view.

89 First, in so far as either party sought to attribute fault on the other for delays occasioned to the conduct of Arbitration C, in my judgment, this was neither here nor there and was not material to the merits of the present application. The defendant sought to disabuse the claimant's suggestion that he had only recently discovered evidence of the defendant's fraudulent conduct, arguing that he had been alleging the existence of evidence pertaining to this fraudulent conduct for at least 30 months, since August 2021, *ie,* during the pendency of Arbitration A.[46] However, I observed that the claimant's position was that he had only uncovered cogent evidence of the defendant's fraudulent conduct through the disclosure of documents in Suit 885 between May and August 2022 (see [22] above). I did not think it particularly fair for the defendant to allege that the claimant had completely sat on his hands after discovery of the supposedly material documents.[47] While there were a few months between the discovery of such documents and the commencement of Arbitration C on 23 December 2022, it appeared to me that the claimant did take some steps by

46 Defendant's Written Submissions dated 22 February 2024, para 27

47 Defendant's Written Submissions dated 22 February 2024, para 28

commencing Suit 287 on 26 September 2022 (although it was ultimately discontinued in favour of Arbitration C).

90 I also observed that *after* the Tribunal ordered that Arbitration C be consolidated with Arbitration A on 8 May 2023 (see [28] above) and issued the Third Partial Award, there did seem to be a lull in the proceedings. The claimant's solicitors had written to the defendant's solicitors in November 2023 proposing timelines to move Arbitration C ahead.[48] This was met with the defendant's objection on the basis that the proposed timelines were unreasonable. Later, on 12 December 2023, the defendant further informed the Tribunal that it would be applying for a stay of Arbitration C pending the final determination of Suit 885, which is the dispute between the claimant and the Firm (see [21] above). That application was then taken out on 29 December 2023 (see [35] above). Doubtless, these actions would have contributed to some degree of delay to the conduct of Arbitration C. As the defendant candidly noted, this would mean that "it is likely that [Arbitration C] will only kick off in several months" in light of the pending application.[49] If anything, both parties' actions had collectively contributed to some delay in Arbitration C. Hence, I did not consider this to be material to the present application.

91 Second, in so far as the defendant argued that the claimant's present application constituted a blatant abuse of process, I disagreed.[50] The defendant's submission was that the claimant's application was a blatant abuse of process because the claimant should have elected to discontinue OA 1109 and proceed

---

48 Claimant's 3rd Affidavit dated 19 February 2024, para 65

49 Claimant's 3rd Affidavit dated 19 February 2024, p 61, para 9(b)

50 Defendant's Written Submissions dated 22 February 2024, para 63

only with Arbitration C.[51] The defendant described the present application as "highly unusual" and a "dramatic about-turn in requesting to stay his own setting-aside application".[52]

92 I rejected the defendant's submission. There was no cogent basis on which to suggest that the claimant ought to have elected between Arbitration C and OA 1109. Nor was it abusive for OA 1109 itself to have been filed after Arbitration C had been commenced. It was the claimant, mindful no doubt of the three-month time limit as contained in s 48(2) of the Act, that applied to the court to set aside the Third Partial Award *vide* OA 1109 on 27 October 2023. The claimant ought not to be faulted for doing so. This is, after all, a strictly construed statutory deadline; an application to set aside an award may not be made more than three months after an arbitral award is issued and such period is not extendable, even in cases of fraud (*Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 1 SLR 1045 at [95]). By commencing OA 1109, he was merely preserving his statutory right to challenge the Third Partial Award. This, in and of itself, was unobjectionable. This was especially so when one considered that the reliefs sought in OA 1109 and Arbitration C are distinct and may not be granted in the opposing *fora* (see [71] above). It was therefore not contradictory for the claimant to commence OA 1109 only to then take out the present application to stay it. There was nothing inherently abusive in the claimant's decision to seek a case management stay, having regard to the procedural history of the matter and the clear overlap in issues between OA 1109 and Arbitration C, as has been discussed above.

---

51 Defendant's Written Submissions dated 22 February 2024, para 8

52 Defendant's Written Submissions dated 22 February 2024, paras 8 and 63

93 For completeness, while the defendant also argued that OA 1109 was an academic exercise since the Second Closing had since been completed (see [33] above) and undertaken possibly for "optical consistency" with his allegations in Arbitration C, I did not consider this relevant to the merits of the present application.[53] This was, properly characterised, an objection that should be appropriately raised at the substantive hearing of OA 1109.

The claimant's Pre-Case Conference Questionnaire

94 I address a final point. The defendant highlighted the Pre-Case Conference Questionnaire ("PCCQ") filed by the claimant on 23 November 2023 in OA 1109, in which the claimant stated that there were no proceedings (pending or concluded) related to OA 1109.[54] This fact is itself undisputed. However, this, according to the defendant, belied the claimant's lack of a genuine interest to avoid prejudice to the parties or to uphold the administration of justice.[55] The argument seemed to be that if it was so, the defendant would have disclosed the related proceeding in Arbitration C and presumably have taken out an application to stay the proceedings in Arbitration C at a much earlier juncture. In other words, if the possibility of a stay had not been raised at the Case Conference, the claimant would have been contented to proceed with OA 1109 and Arbitration C in tandem.[56]

95 With respect, I declined to place any weight on this submission. I instead accepted the claimant's explanation of inadvertence. In my view, I did not think there was any element of deception or subterfuge on the part of the claimant in

---

53 Defendant's 3rd Affidavit dated 19 February 2024, para 10

54 Pre-Case Questionnaire dated 23 November 2023, p3

55 Defendant's 3rd Affidavit dated 19 February 2024, para 9

56 Defendant's Written Submissions dated 22 February 2024, para 58

failing to disclose Arbitration C in his PCCQ. Nor did this belie his amenability for OA 1109 and Arbitration C to proceed in tandem. It was clear that the claimant *did* indicate in his supporting affidavit that he had commenced Arbitration C against the defendant, which was subsequently consolidated with Arbitration A and Arbitration C before the same Tribunal.[57] Arbitration C was clearly a pending proceeding at the time OA 1109 was filed. Indeed, the claimant had exhibited in that same affidavit, the Notice of Arbitration filed for Arbitration C as well as Tribunal's decision to consolidate Arbitration C with Arbitration A and Arbitration B on 8 May 2023.[58] As such, from a perusal of the affidavit, it would have been clear that there was a pending proceeding related to OA 1109, *ie,* Arbitration C.

96 While it may be argued that prior to and at the first Case Conference for OA 1109 on 24 November 2023 (see [36] above) it was perhaps still within the contemplation of the claimant for OA 1109 and Arbitration C to proceed concurrently, by the time the present application was taken out, his position was clear (and crystallised). It matters not whether this was a point that was considered seriously only after the Case Conference. Ultimately, the applicant had taken out the present application for a stay on case management grounds and I had decided the present application on its merits.

Conclusion

97 I therefore allowed the claimant's application, having been satisfied that the circumstances of the case warranted the exercise of the court's case management powers. In my view, this would best serve the ends of justice. I ordered that costs of the application were to be in the cause.

---

57 Claimant's 1st Affidavit dated 27 October 2023, para 195

58 Claimant's 1st Affidavit dated 27 October 2023, p353 to 369 and 2417 to 2427

98 To conclude, I wish to express my gratitude to counsel, who presented their cases with great vigour but also with considered measure. I have been greatly assisted by their submissions in the preparation of these grounds.

Post-script

99 As a post-script, I note that some time after the conclusion of the hearing of the present application, the claimant filed a Notice of Discontinuance in OA 1109. The claimant opted, with the defendant's consent, to no longer pursue his application to set aside the Third Partial Award, as part of a broader settlement that the parties have reached. This is of course, a welcome development. Nevertheless, the reasons I have given in arriving at my decision on the present application remain.

Wong Hee Jinn
Assistant Registrar

Deborah Evaline Barker *SC,* Yvonne Mak Hui-Lin and U Sudharshanraj Naidu (Withers Khattarwong LLP) for the claimant; Sandosham Paul Rabindranath, Elan Krishna (Cavenagh Law LLP) (instructed), Kabir Singh and Deborah Loh (Clifford Chance LLP) for the defendant.