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

[2024] SGHC 236

Originating Application No 102 of 2024

Between

DHZ

… *Applicant*

And

DHY

… *Respondent*

Originating Application No 21 of 2024 (Summons No 288 of 2024)

Between

DHY

… *Applicant*

And

DHZ

… *Respondent*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside]

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DHZ
v
DHY and another matter

[2024] SGHC 236

General Division of the High Court — Originating Application No 102 of 2024, Originating Application No 21 of 2024 (Summons No 288 of 2024)
Chua Lee Ming J
25 July 2024

16 September 2024 Judgment reserved.

Chua Lee Ming J:

Introduction

1 In these proceedings, [DHZ] challenges certain findings made against it in an arbitral award issued on 31 October 2023 (the "Award") pursuant to an arbitration commenced by [DHY] in Singapore (the "Arbitration"). The Arbitration was conducted under the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the "SIAC Rules").

2 In HC/OA 102/2024 ("OA 102"), [DHZ] applied to set aside specific findings in the Award.

3 In HC/OA 21/2024 ("OA 21"), [DHY] obtained leave of court to enforce the Award and to enter judgment in terms of the Award (the "Enforcement

Order"). [DHZ] applied by way of HC/SUM 288/2024 ("SUM 288") to stay the Enforcement Order pending the final determination of OA 102, and to set aside the Enforcement Order (whether in whole or in part) in the event that it succeeds in OA 102.

4 I heard SUM 288 and OA 102 together. In this judgment, I shall use the terms "claimant" and "respondent" to refer to the claimant (*ie*, [DHY]) and respondent (*ie*, [DHZ]), respectively, in the Arbitration.

Background facts

5 The respondent was engaged by [X] (the "Employer") as the main contractor for a project. The respondent engaged the claimant as the supplier of certain goods and services required for the project.

6 The disputes in the Arbitration related to four contracts (the "Contracts")[1] under which the respondent had engaged the claimant for:

(a) the design, supply and delivery of certain goods ("Contract 9" or "C9");

(b) the design, manufacture, factory test, delivery, supervisory services for installation, testing and commissioning and maintenance services during the defect liability period for certain items, referred to in this judgment as "TVFs" and "TBFs" ("Contract 24" or "C24");

(c) the supply and delivery of isolators ("Contract 27" or "C27"); and

[1] The respondent's affidavit in OA 102 filed on 30 January 2024 ("Respondent's 1st Affidavit"), at pp 144–325.

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(d) the design, manufacture, factory test, delivery and supervisory services for installation, testing and commissioning and maintenance services during the defect liability period for certain items, referred to in this judgment as "MVFs" ("Contract 18" or "C18").

7 The payments under Contracts 9, 18 and 24 were divided into four stages or tranches whilst payment under Contract 27 was divided into three stages or tranches. Payment for each stage was to be made upon completion of the corresponding milestones. The amount payable upon completion of the milestones for each of stages 3 and 4 of Contracts 9, 18 and 24 was five percent of the contract price.

8 The Contracts contained identical agreements to refer disputes to be resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force. The arbitration agreements provided that the arbitral tribunal shall consist of a sole arbitrator.

9 On 9 July 2021, the claimant commenced the Arbitration in respect of its claims for outstanding payments under the Contracts. On 21 December 2021, the President of the Court of Arbitration of SIAC appointed Ms Tan Swee Im as the sole arbitrator (the "Arbitrator").

10 The claimant's claims in the Arbitration were essentially for:

(a) outstanding milestone payments under each of the Contracts; and

(b) payment in connection with additional works done under Contracts 18, 24 and 27.

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11 The respondent denied liability and submitted counterclaims, essentially for:

(a) liquidated damages in respect of the claimant's alleged delayed delivery of certain goods under Contracts 18 and 24; and

(b) additional costs (*ie*, internal labour costs) incurred by respondent as a result of the claimant's failure to comply with its obligations under the Contracts with respect to rectification of defects.

12 On 31 October 2023, the Arbitrator issued the Award.[2] The Arbitrator found largely in favour of the claimant and dismissed the respondent's counterclaims.

Respondent's setting aside application in OA 102

13 In these proceedings, the respondent challenges various findings made by the Arbitrator in connection with specific claims by the claimant, and counterclaims by the respondent, under the Contracts.

14 The respondent relies on s 48(1)(*a*)(vii) and/or s 48(1)(*a*)(iv) of the Arbitration Act 2001 (2020 Rev Ed) (the "Act"), which provide as follows:

> **Court may set aside award**
>
> **48.**—(1) An award may be set aside by the Court —
>
> (*a*) if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that —
>
> …
>
> (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions

[2] Respondent's 1st Affidavit, at pp 65–142.

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> on matters beyond the scope of the submission to arbitration, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
>
> …
>
> (vii) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced; or
>
> …

15 A party challenging an arbitration award as being contrary to the rules of natural justice must establish which rule of natural justice was breached, how it was breached, in what way the breach was connected to the making of the award, and how the breach prejudiced its rights: *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29].

16 The threshold for finding a breach is a high one. In so far as the right to be heard is concerned, the failure of an arbitrator to refer every point for decision to the parties for submissions is not invariably a valid ground for challenge; there must be a real basis for alleging that the arbitrator has conducted the arbitral process either irrationally or capriciously: *Soh Beng Tee* at [65(d)].

17 An award should be read generously such that only meaningful breaches of the rules of natural justice that have actually caused prejudice are ultimately remedied: *Soh Beng Tee* at [65(f)]. To attract curial intervention, it must be established that the breach of the rules of natural justice must, at the very least, have actually altered the final outcome of the arbitral proceedings in some meaningful way; the bare fact that the arbitrator might have inadvertently denied

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one or both parties some technical aspect of a fair hearing would almost invariably be insufficient to set aside the award: *Soh Beng Tee* at [91].

Contract 9

18 The respondent seeks to set aside paras 80–81 and 353(a)(i) of the Award relating to the Arbitrator's finding that the respondent is liable to pay the claimant $1,400 in respect of milestone payments under stages 3 and 4 of Contract 9 (the "C9 Milestone Payment Claim").[3]

19 In the Arbitration, the claimant had claimed a total sum of $2,100 comprising milestone payments of $700 for each of stages 2, 3 and 4 of Contract 9. The Arbitrator found that the claimant had pleaded only claims in respect of stages 3 and 4 and therefore she had no jurisdiction to deal with the claim in respect of stage 2 of this contract.[4]

20 With respect to the amount of $1,400 claimed in respect of stages 3 and 4, the respondent's defence was that the amount had been paid. The claimant accepted that it had received a sum of $1,400 but claimed that that payment was made under Contract 18 and not Contract 9.

21 According to the respondent's Commercial Manager, the respondent paid $2,247 (*ie*, $2,100 + 7% GST) to a third party on behalf of the claimant, as payment for Contract 9.[5] The Arbitrator found that it was more appropriate to rely on the evidence of the respondent's Commercial Manager with respect to

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3 OA 102, at prayer 2(1)(a). The paras in the Award are at Respondent's 1st Affidavit, at pp 81 and 140.

4 Award, at paras 71 and 75 (Respondent's 1st Affidavit, at pp 79–80).

5 Award, at para 76 (Respondent's 1st Affidavit, at p 80).

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the amounts allocated to each of the respective contracts.[6] However, she then went on to award the claimant the sum of $1,400 under states 3 and 4 of Contract 9 for the following reasons:[7]

(a) The respondent had admitted that the sum of $1,400 under stages 3 and 4 of Contract 9 was payable.

(b) For the purposes of the Award, it did not matter to which contract the sum of $1,400 had in fact been allocated to, as the sum remained payable. If the sum that had been paid was allocated to Contract 9, there would be a shortfall of the same amount in Contract 18.

The Arbitrator did not make any specific finding as to whether the sum of $1,400 that had been paid was paid under Contract 9 (as the respondent contended) or Contract 18 (as the claimant contended).

22 It is well established that one of the two pillars of natural justice is the fair hearing rule, *ie*, that parties must be given adequate notice and opportunity to be heard. A breach of the fair hearing rule can arise from the chain of reasoning that the tribunal adopts in its award; to comply with this rule, the chain of reasoning must be (a) one which the parties had reasonable notice that the tribunal could adopt, and (b) one which has a sufficient nexus to the parties' arguments: *BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(b)].

23 Before me, the respondent submitted that the Arbitrator breached the rules of natural justice because it had no reasonable notice that the Arbitrator

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6 Award, at para 79 (Respondent's 1st Affidavit, at p 81).

7 Award, at paras 80–81 (Respondent's 1st Affidavit, at p 81).

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would adopt the chain of reasoning set out in [21] above.[8] I agree with the respondent's submission. The parties' cases were clear. The claimant's case was that the sum of $1,400 that had been paid was paid under Contract 18 and thus, $1,400 was outstanding under Contract 9. The respondent's case was that the sum of $1,400 had been paid towards stages 3 and 4 of Contract 9. It was open to the Arbitrator to adopt the reasoning that she did but she had to first give the parties an opportunity to be heard on it. In this case, the parties had no reasonable notice that the Arbitrator could adopt that chain of reasoning, which had no sufficient nexus to the parties' arguments.

24 However, an award cannot be set aside on the ground of breach of natural justice under s 48(1)(*a*)(vii) of the Act unless prejudice has been caused. In the present case, the respondent has not shown how it has suffered prejudice. The prejudice must be actual or real: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [51]. As the Arbitrator pointed out, if the sum of $1,400 that had been paid was allocated to Contract 9, the respondent would have to pay another $1,400 under Contract 18. Conversely, the award of $1,400 to the claimant under Contract 9 meant that the $1,400 that had been paid would be accounted for as payment by the respondent under Contract 18.

25 The respondent submitted that any reallocation of a shortfall to Contract 18 could only have been in respect of stages 1 and 2 of Contract 18, over which the Arbitrator had found she had no jurisdiction.[9] The respondent submitted that

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8 Respondent's Written Submissions, at para 35.

9 Award, at para 91 (Respondent's 1st Affidavit at p 82).

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therefore the Arbitrator had exceeded her jurisdiction as she had effectively granted reliefs in respect of milestone payments for stage 1 or 2 of Contract 18.[10]

26 I disagree with the respondent's submissions. The Arbitrator did not exceed her jurisdiction in awarding $1,400 to the claimant under Contract 9. That award was well within the dispute submitted to the Arbitration. She also did not make any finding or award with respect to stages 1 and 2 under Contract 18. The consequence of her decision was simply that the $1,400 that had been paid would be accounted for as a payment by the respondent under Contract 18. Even if this payment would be accounted for under Contract 18 as payment of stage 1 or 2, that does not mean that the Arbitrator had exceeded her jurisdiction by making the award under stages 3 and 4 of Contract 9. Taking it a step further, if disputes between the claimant and the respondent over stages 1 and 2 of Contract 18 are resolved such that the respondent does not have to pay the $1,400 (or part of it), the respondent would be entitled to recover the amount overpaid. It bears reminding that it is irrelevant whether the Arbitrator was right or wrong in taking the approach that she did.

Contract 18

27 The Arbitrator dismissed the respondent's counterclaims under Contract 18 for:

> (a) $193,764.53, being liquidated damages arising out of the claimant's alleged delay in delivery of the MVFs (the "C18 LD Counterclaim");

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[10] Respondent's 1st Affidavit, at para 35(b).

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(b) internal labour costs incurred due to the claimant's alleged failure to perform warranty services (*ie*, rectification of defects during the 18-month Defect Liability Period ("DLP")) ("the "C18 DLP Counterclaim"), and

(c) a declaration that the claimant failed to provide supervisory services and attend to testing and commissioning (the "C18 Declaration Counterclaim").[11]

Respondent's C18 LD Counterclaim

28 The respondent seeks to set aside paras 124–128 and 353(b)(iv) of the Award relating to the Arbitrator's dismissal of the respondent's C18 LD Counterclaim.[12]

29 Under Contract 18, the claimant had to pay liquidated damages for delay in the "supply of material beyond the specified delivery period".[13] The dispute in the Arbitration was over the meaning of the phrase "specified delivery period".

30 The respondent's C18 LD Counterclaim was premised on its pleaded case that the claimant was required to complete delivery according to the delivery dates set out in Appendix IV of Contract 18.[14] In other words, the

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11 The C18 Declaration Counterclaim is referred to in the Respondent's 1st Affidavit and in the Respondent's Written Submissions as the "C18 SS Milestone Counterclaim".

12 OA 102, at prayer 2(1)(b). The paras in the Award are at Respondent's 1st Affidavit, at pp 88–89 and 140.

13 Award, at para 113 (Respondent's 1st Affidavit, at p 86).

14 Respondent's Defence and Counterclaim in the Arbitration, at paras 132–133 (Respondent's 1st Affidavit, at pp 603–604).

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"specified delivery period" was determined based on the delivery dates in Appendix IV.

31 The claimant disputed the respondent's case and pleaded that the "specified delivery period" was not that stated in Appendix IV.[15] In its pleadings, the claimant noted (among other things) that Appendix IV only contained an "Expected Delivery Schedule" as opposed to a specified delivery period and that respondent issued Material/Equipment Requisition Forms ("MERFs") which showed the confirmed delivery dates and stated the "Required Delivery Date and Time", which was when the site was actually ready to receive delivery.[16]

32 In the Arbitration, the claimant submitted that there was no delay because the phrase referred to the actual delivery dates, which were agreed upon between the claimant and the respondent after the claimant informed the respondent that the goods were ready for delivery.[17]

33 The respondent contended that the claimant's submission (that the operative date for delivery was based on discussions between the claimant and the respondent) was a new defence.[18] The Arbitrator disagreed, finding that the claimant's submission did not contradict its pleaded position, but was in furtherance of the same. The Arbitrator also found that the dates set out in the delivery schedule at Appendix IV were not the contractually agreed fixed

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15 Claimant's Reply and Defence to Counterclaim in the Arbitration, at para 49 (Respondent's 1st Affidavit, at pp 637–640).

16 Claimant's Reply and Defence to Counterclaim in the Arbitration, at paras 49(a) and (c) (Respondent's 1st Affidavit, at pp 637–638).

17 Award, at para 118 (Respondent's 1st Affidavit, at p 87).

18 Award, at para 125 (Respondent's 1st Affidavit, at p 88).

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delivery dates and could not be relied upon as representing the "specified delivery period" for the operation of the liquidated damages clause.[19] The Arbitrator dismissed the C18 LD Counterclaim.[20]

34 Before me, the respondent submitted that (a) the Arbitrator failed to explain how the claimant's argument (that the operative date for delivery was based on discussions between the claimant and the respondent) was consistent with or in furtherance of its pleaded position; (b) if she had attempted to do so, it would have been apparent that her assertion (that the claimant's argument did not contradict but was in furtherance of its pleaded position) could not be true; and (c) this gave rise to an inference that the Arbitrator did not have regard to what was put before her.[21] The respondent also submitted that the claimant was bound by its pleaded case that the delivery dates were set out in the MERFs and the respondent did not have a fair opportunity to address the claimant's new position because the claimant's new position was introduced after the respondent's key witness on the issue had given his evidence.[22]

35 I disagree with the respondent's submissions. A tribunal's failure to apply its mind to the essential issues arising from the parties' arguments can give rise to a breach of the fair hearing rule: *BZW* at [60(a)]. However, in the present case, the Arbitrator had expressly considered the respondent's arguments, but she disagreed with the respondent.[23] At best, the respondent's submissions before me amount to nothing more than a submission that the

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19 Award, at para 123 (Respondent's 1st Affidavit, at p 88).

20 Award, at para 127 (Respondent's 1st Affidavit, at p 88).

21 Respondent's Written Submissions, at para 97.

22 Respondent's Written Submissions, at paras 98–100.

23 Award, at para 125 (Respondent's 1st Affidavit, at p 88).

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Arbitrator conclusion (that the claimant's argument was consistent with or in furtherance of its pleaded position) was wrong. It is well established that even if the Arbitrator was wrong, it is not a ground for setting aside the Arbitrator's finding.

36 Even if it could be said that the claimant's case (that the operative date for delivery was based on discussions between the claimant and the respondent) was a departure from its pleadings, the respondent did not suffer any prejudice. The respondent had every opportunity to deal with the claimant's case. The question as to what the claimant's pleaded case was, arose during the cross-examination of the claimant's Production Manager. The claimant had then stated that it was not its pleaded case that the delivery dates were identified in the MERFs; the MERFs stated the requested delivery dates but the actual delivery dates were established after that.[24] The Arbitrator observed that the claimant had not pleaded that the dates in the MERFs were the delivery dates and that the evidence of the claimant's Production Manager was consistent with the claimant's position: he said that after he received the MERFs, he would call up the respondent's site personnel and arrange the delivery dates, which were later than the dates in the MERFs.[25] The respondent knew what it had to deal with and, in fact, it did address the claimant's case.[26]

37 The respondent complained that by then, its key witness on the issue had already given his evidence. However, in my view, there was nothing to prevent the respondent from applying to recall its key witness. For reasons best known

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24 Transcripts, 25 November 2022, at 80:17–24 and 82:21–83:4.

25 Transcripts, 25 November 2022, at 82:10–14.

26 Respondent's Reply Submissions in the Arbitration, at paras 65–70 (Respondent's 1st Affidavit, at pp 1243–1244).

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to the respondent, it chose not to do so. The respondent has not asserted that it was unable to recall its key witness, nor has it given any explanation as to why it was unable to do so.

38 Finally, the respondent submitted that the Arbitrator had exceeded its jurisdiction in relying on the claimant's submission that the operative date for delivery was based on discussions between the claimant and the respondent. I reject this submission.

39 As discussed above, the claimant did not depart from its pleadings. In any event, the question of what matters were within the scope of the parties' submission to arbitration would be answerable by reference to the parties' pleadings, the list(s) of issues, opening statements, evidence adduced and closing submissions at the arbitration; the court must look at matters in the round to determine whether the issues in question were live issues in the arbitration: *CJA v CIZ* [2022] 2 SLR 557 ("*CJA*") at [38].

40 Here, the claimant's case (that the operative date for delivery was based on discussions between the claimant and the respondent) arose in the course of the oral testimony of the claimant's Production Manager and it remained the claimant's case in the Arbitration. The respondent even made submissions on it. It is unarguable that it was very much a live issue in the Arbitration.

Respondent's C18 DLP Counterclaim

41 The respondent seeks to set aside paras 158–159 of the Award relating to the Arbitrator's dismissal of its C18 DLP Counterclaim.[27]

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[27] OA 102, at prayer 2(1)(c). The paras in the Award are at Respondent's 1st Affidavit, at p 95.

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42 As stated earlier, the respondent's C18 DLP Counterclaim was for internal labour costs incurred due to the claimant's alleged failure to perform warranty services (*ie*, rectification of defects during the DLP).

43 In support of the respondent's C18 DLP Counterclaim, the respondent's Commercial Manager had set out a table in his witness statement in the Arbitration.[28] The table set out the date, the item involved, the defect, the manpower spent, and the labour cost incurred. The claimant challenged the claim, pointing out that there was not one shred of documentary evidence – there were no invoices, attendance sheets, timecards, reports, photographs, emails, or correspondence relating to the internal labour costs.[29]

44 The Arbitrator first disallowed an amount of $7,680 claimed in respect of internal costs prior to October 2020.[30] The respondent is not seeking to set aside this finding.

45 The Arbitrator then dismissed the respondent's C18 DLP Counterclaim for the balance amount of $21,120 on the ground that there was insufficient evidence to support the respondent's counterclaim.[31] The Arbitrator noted that "costs of labour should not be difficult to evidence from payroll records".

46 Before me, the respondent submitted that a breach of the fair hearing rule had occurred, relying on *BZW* at [56]. In that case, the Court of Appeal said that: "[a] manifestly incoherent decision shows that the tribunal has not

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28 Respondent's 1st Affidavit, at pp 838–839.

29 Award, at para 154 (Respondent's 1st Affidavit, at pp 94–95).

30 Award, at para 157 (Respondent's 1st Affidavit, at p 95).

31 Award, at paras 158–159 (Respondent's 1st Affidavit, at p 95).

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understood or dealt with the case at all, and, in our view, that would mean that the parties have not been accorded a fair hearing".

47 The respondent submitted that the Arbitrator's dismissal of its C18 DLP Counterclaim on the basis that there was insufficient evidence was manifestly incoherent with the Arbitrator's approach/finding in respect of the claimant's C24 Variation Claim, which is dealt with later in this judgment. The respondent's complaint is that the Arbitrator had allowed the claimant's C24 Variation Claim despite having noted a similar lack of contemporaneous documentary evidence.[32]

48 I disagree with the respondent for reasons that are more conveniently set out in my discussion of the claimant's C24 Variation Claim later in this judgment (see [100]–[102] below).

Respondent's C18 Declaration Counterclaim

49 The respondent seeks to set aside para 172 of the Award relating to the Arbitrator's dismissal of its C18 Declaration Counterclaim.[33] As stated in [27(c)] above, the counterclaim was for a declaration that the claimant had failed to provide supervisory services and attend to testing and commissioning.

50 The Arbitrator declined to make the declaration sought because there was no monetary relief sought in respect of the declaration.[34] The Arbitrator noted that the respondent had initially claimed a return of the milestone payment

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32 Respondent's Written Submissions, at para 112 read with para 103–105.

33 OA 102, at prayer 2(1)(d). Para 172 of the Award is at the Respondent's 1st Affidavit, at pp 97–98.

34 Award, at para 172; Respondent's 1st affidavit, at p 97.

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for stage 2 under Contract 18 for failure to perform supervisory services. However, the respondent subsequently withdrew the claim as the payment had not in fact been made. In any event, the Arbitrator had found that she had no jurisdiction to deal with claims under stages 1 or 2 of Contract 18 (see [25] above).

51 Before me, the respondent submitted that the Arbitrator failed to exercise jurisdiction over a dispute that had been referred to it, and/or substantially failed to apply her mind to the dispute.[35] As stated in [35] above, a tribunal's failure to apply its mind to the essential issues arising from the parties' arguments can give rise to a breach of the fair hearing rule.

52 However, I agree with the claimant that in the present case, the Arbitrator clearly did exercise jurisdiction over, and did apply her mind to, the respondent's C18 Declaration Counterclaim. The Arbitrator considered the counterclaim and declined to grant the declaration because there was no monetary relief sought in respect of the declaration. It cannot be disputed that there was no monetary relief sought in respect of the declaration.

53 The respondent also submitted that the Arbitrator's failure in this regard contributed to her erroneous award of the claimant's C9 Milestone Payment Claim.[36] In my view, there is no merit to this submission. There is no logical nexus between the dismissal of the respondent's C18 Declaration Counterclaim and the award of the claimant's C9 Milestone Payment Claim.

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35 Respondent's Written Submissions, at para 114 read with paras 107–108.

36 Respondent's Written Submissions, at para 114.

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Contract 24

54 The Arbitrator made the following findings in relation to Contract 24:

(a) The respondent was liable to pay the claimant the sum of $100,700 for stage 3 (the "C24 Milestone Payment Claim").

(b) The respondent was liable to pay the claimant the sums of $33,600 and $101,200 in respect of the claimant's claims for additional works involving the installation of certain items, referred to in this judgment as "TSPs" and "VSPs" respectively" (the "C24 Variation Claim").

(c) The respondent was not entitled to its counterclaim for $513,500 being liquidated damages (the "C24 LD Counterclaim").

(d) The respondent was not entitled to its counterclaim for internal labour costs incurred in connection with the claimant's failure to perform warranty services (*ie*, rectification of defects during the DLP) (the "C24 DLP Counterclaim").

(e) The respondent was not entitled to its counterclaim for a declaration that the claimant had failed to provide supervisory services and attend to testing and commissioning (the "C24 Declaration Counterclaim").[37]

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37 The C24 Declaration Counterclaim is referred to in the Respondent's 1st Affidavit and in the Respondent's Written Submissions as the "C24 SS Milestone Counterclaim".

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Claimant's C24 Milestone Payment Claim

55 The respondent seeks to set aside paras 177, 181–183 and 353(c)(i) of the Award relating to the Arbitrator's award of $100,700 for the claimant's C24 Milestone Payment Claim.[38]

56 The claimant had claimed the amount of $201,400 comprising $100,700 in respect of each of stage 3 and stage 4 of Contract 24. The amount of $201,400 represented 10% of the contract sum (before GST) under Contract 24.

57 The respondent did not deny liability for payment of both stage 3 and stage 4 but:

(a) took the position that it had made an extra-contractual advance payment of stage 3 on or around 18 September 2019, although the claimant denied receiving the advance payment;[39] and

(b) relied on their right of set-off to resist payment.[40]

58 The witness statement of the respondent's Commercial Manager showed an "Unpaid Balance Amount" of $215,498.01 under Contract 24.[41] The claimant relied on this to support its claim, pointing out that the unpaid amount of $215,498.01 corresponded to the amount claimed ($201,400) with 7% GST added.[42] Noting that there was "scant evidence" apart from this, the Arbitrator

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38 OA 102, at prayer 2(1)(e). The paras in the Award are at the Respondent's 1st Affidavit, at pp 99–100 and 140.

39 Award, at para 179 (Respondent's 1st Affidavit, at p 99).

40 Award, at para 180 (Respondent's 1st Affidavit, at p 99).

41 Respondent's 1st Affidavit, at p 855.

42 Award, at para 181 (Respondent's 1st Affidavit, at p 99).

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found on the balance of probabilities that the amounts for stages 3 and 4 were payable and allowed the claimant's claim, subject only to any set off being allowed.[43]

59 In these proceedings, the respondent seeks to set aside only the award of $100,700 in respect of stage 3. The issue that arose with respect to stage 3 was whether the respondent had made an extra-contractual advance payment of stage 3 on or around 18 September 2019 (see [57(a)] above).

60 Before me, the respondent submitted that there was a breach of the fair hearing rule because the Arbitrator failed to decide on the essential issues, *ie*, (a) whether the respondent had made the payment on or around 18 September 2019, and if so, (b) whether it was in relation to stage 3.[44] The respondent also submitted that as a result, the Arbitrator had also exceeded her jurisdiction.

61 The respondent relied on *BZW* in which the Court of Appeal made the following remarks about the tribunal's analysis of the evidence (at [58]):

> … The analysis of evidence also appears thin. While the Tribunal did make factual findings, these findings were often mere assertions rather than the apparent result of examining documentary evidence and considering the credibility of witnesses. Crucially, what makes the Award difficult to understand is also the fact that the Tribunal did very little, if anything, to connect the proverbial dots. …

62 I disagree with the respondent's submissions. The facts in this case are different from those in *BZW*. Here, the Arbitrator's decision was based on her acceptance of the evidence of the respondent's Commercial Manager, which the

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43 Award, at paras 182–183 (Respondent's 1st Affidavit, at pp 99–100).

44 Respondent's Written Submissions, at paras 46–47.

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claimant had relied upon (see [58] above). The Arbitrator's reasoning in this regard had a clear nexus to the claimant's case in the Arbitration.

63 It is not correct that the Arbitrator failed to decide whether the respondent had made the payment for stage 3. The Arbitrator expressly found that there was scant evidence in support of the respondent's claim (that it had paid for stage 3), and that stage 3 remained payable (see [58] above). The arbitrator's finding that there was scant evidence should also be seen in context. There was nothing in the respondent's closing submissions in the Arbitration pointing to any evidence substantiating the respondent's claim that it had paid $100,700 for stage 3. In its closing submissions, the respondent alleged that it had paid a sum of "approximately $52,737.97".[45] However, not only was there no evidence substantiating this allegation, but there was also no explanation as to how the alleged payment of $52,737.97 could have discharged the obligation to pay $100,700 under stage 3.

64 In my view, the respondent's submissions are an appeal in disguise; they are nothing more than a submission that the Arbitrator was wrong.

Claimant's C24 Variation Claim

65 The respondent seeks to set aside:

(a) paras 192–193, 197, 200–202, 205, 216–217, 223 and 353(c)(iii) of the Award relating to the Arbitrator's finding that the respondent was

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45 Respondent's Closing Submissions in the Arbitration, at para 148 (Respondent's 1st Affidavit, at p 1158).

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liable to pay the claimant $33,600 for additional works involving the installation of TSPs,[46] and

(b) paras 228, 232, 238–239, 241–242 and 353(c)(iii) of the Award relating to the Arbitrator's finding that the respondent was liable to pay the claimant $101,200 for additional works involving the installation of VSPs.[47]

66 The claimant's claim was for additional works carried out in installing TSPs and VSPs. Clause 6 of Appendix III of Contract 24 provided that all variations shall be "ordered in writing" and that the claimant "shall not act upon any unconfirmed order for the variation".[48] It was not disputed in the Arbitration that there was no formal written instruction to the claimant for the additional works.[49] The claimant relied on estoppel in response to the non-compliance with cl 6.

67 In the Arbitration, the respondent:

(a) disputed liability and challenged the claimant's reliance on estoppel;

(b) argued that there was no scope for a claim in *quantum meruit*:

(c) challenged the claimant's claim as to the number of units installed with TSPs and VSPs and the unit prices payable; and

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46 OA 102, at prayer 2(1)(f). The paras in the Award are at the Respondent's 1st Affidavit, at pp 104–107,109–111 and 140.

47 OA 102, at prayer 2(1)(g). The paras in the Award are at the Respondent's 1st Affidavit, at pp 112–114 and 140.

48 Award at para 194 (Respondent's 1st Affidavit, at p 105).

49 Award, at para 194 (Respondent's 1st Affidavit, at p 105).

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(d) argued that the claimant's pleadings in respect of the VSPs were deficient.

68 The Arbitrator's findings were as follows:

(a) The claimant had carried out additional works at the behest of the respondent and the respondent was liable to pay for the additional works.[50]

(b) The claimant had pleaded the elements of estoppel. The factual events showed that there was a clear and unequivocal representation by respondent, detrimental reliance by the claimant and that it was inequitable for the respondent to resile from its promise.[51]

(c) The claimant's claim in respect of the TSPs was allowed based on the number of units installed and unit price as claimed by the claimant.[52]

(d) The respondent's complaint about deficient pleadings in respect of the VSPs was rejected.[53]

(e) The claimant's claim in respect of the VSPs was allowed based on the number of units installed and unit price as claimed by the claimant.[54]

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50 Award, at paras 192–193 (Respondent's 1st Affidavit, at p104)

51 Award, at paras 197 and 201 (Respondent's 1st Affidavit, at pp 105–106).

52 Award, at paras 216–217 and 223 (Respondent's 1st Affidavit, at pp 109–111).

53 Award, at para 228 (Respondent's 1st Affidavit, at p 112).

54 Award, at paras 232–233 and 242 (Respondent's 1st Affidavit, at p 113–114).

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69 Before me, the respondent submitted that breaches of natural justice had occurred in relation to the Arbitrator's findings on (a) liability in relation to the TSPs and VSPs, more specifically on the issues of estoppel and *quantum meruit*, and (b) the issue of the elements/sub-components that made up the TSPs and VSPs and the quantification thereof.[55] The respondent argued that the Arbitrator failed to apply her mind to the essential issues and its submissions.

The estoppel issue

70 The respondent referred to *BZW*. In that case, the alleged representation that was relevant to the defence of estoppel was a representation that the representor would accept IP23 generators in lieu of IP44 generators. However, the *only* relevant factual finding by the tribunal was that the *representee's* representative had provided documents showing that IP23 generators were fit for purpose. As it was the representee's own assessment that the IP23 generator were fit for purpose, the element of representation on the part of the representor could not be established. In other words, there was no finding that the *representor* had made the representation in question. On these facts, the court found that the tribunal failed to apply its mind to the essential issue arising from the parties' arguments, that of the existence of representation (at [61(b)]).

71 In the present case, the Arbitrator noted that one of the elements of the plea of estoppel in this case was a "clear and unequivocal representation by the representor, whether by words or conduct, that it will not enforce its strict legal rights".[56] The Arbitrator agreed with the claimant that the representation that the

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55 Respondent's Written Submissions, at para 52.

56 Award, at para 196(1) (Respondent's 1st Affidavit, at p 105).

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claimant relied on had been pleaded in the statement of claim.[57] The Arbitrator then made the following finding:[58]

> 201. The factual events considered as a whole support that there was:
>
> (1) A clear and unequivocal representation by the representor, whether by words or conduct, that it will not enforce its strict legal rights – the Respondent had repeatedly over a period of over a year engaged with, encouraged and hurried the Claimant to have the [TSPs and VSPs] added;
>
> …

72 It can be seen at once that the facts in the present case are different from those in *BZW*. In the present case, the Arbitrator clearly found that the respondent's conduct gave rise to the requisite representation. There was no failure to make a finding on the existence of the representation for purposes of the claimant's plea of estoppel.

73 The respondent attacked the Arbitrator's finding on estoppel on a number of fronts. First, the respondent submitted that there was a breach of natural justice because "the Award does not identify when a '*clear and unequivocal representation by [the respondent] … that it will not enforce its strict legal rights*' was made" (emphasis in the original).[59]

74 In my view, the mere fact that the finding (set out in [71] above) does not expressly state when the representation was made does not mean that the Arbitrator had failed to apply her mind to the essential issue, *ie*, whether there

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57 Award, at para 197 (Respondent's 1st Affidavit, at p 105).

58 Award, at para 201(1) (Respondent's 1st Affidavit, at p 106).

59 Respondent's Written Submissions, at para 55.

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was a representation. It is clear that the Arbitrator did apply her mind to the issue.

75 In any event, it is incorrect that the Award does not identify when the representation was made. In para 191 of the Award, the Arbitrator set out a chronology of events that she had found to be "noteworthy".[60] These showed communications between the claimant and the respondent with respect to the provision of TSPs and VSPs. At para 192, the Arbitrator found that the claimant "did carry out additional works in respect of the [TSPs and VSPs]".[61] At para 193, the Arbitrator found that the additional work was at the behest of the respondent.[62] At para 200, the Arbitrator referred to paras 192–193 and her finding that the claimant did carry out additional work in respect of the TSPs and VSPs at the behest of the respondent.[63]

76 At para 201, the Arbitrator found that the "factual events" supported a clear representation as the respondent had repeatedly over a period of over a year engaged with, encouraged and hurried the claimant to have the TSPs and VSPs added. In my view, a fair reading of the Award leads to the conclusion that the Arbitrator had in mind the factual events set out in para 191 of the Award when she referred to the respondent's conduct. Those events set out a time frame.

77 Second, the respondent attacks the Award on the ground that the Arbitrator's finding in para 201(1) of the Award cannot be the requisite

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60 Respondent's 1st Affidavit, at pp 101–104.

61 Respondent's 1st Affidavit, at p 104.

62 Respondent's 1st Affidavit, at p 104.

63 Respondent's 1st Affidavit, at p 106.

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representation because the sentence says nothing about the respondent agreeing not to enforce its strict legal rights.[64] In my view, this submission is wholly unmeritorious. It is clear that in para 201(1) of the Award (see [71] above), read as a whole, the Arbitrator made a finding that the respondent's conduct amounted to a representation that it will not enforce its strict legal rights.

78 Third, the respondent accused the Arbitrator of failing to consider its extensive submissions on there being no detrimental reliance.[65] I disagree. The Arbitrator found detrimental reliance in the fact that the claimant reacted to the respondent's "engagement, encouragement and hurry to have the [TSPs and VSPs] added by their suppliers".[66] The fact that the Arbitrator did not expressly deal with every point raised by the respondent does not mean that she failed to consider them.

79 Fourth, the respondent submitted that the Arbitrator failed to address cl 7(c) of Contract 24, which it had specifically brought to the Arbitrator's attention.[67] Clause 7(c) provided that the respondent's failure to insist on strict performance shall not be deemed a waiver of any rights it may have.[68]

80 In its Defence and Counterclaim in the Arbitration, the respondent relied on cl 7(c) and referred to the *High Court's* decision in *Vim Engineering Pte Ltd v Deluge Fire Protection (SEA) Pte Ltd* [2021] SGHC 63 ("*Vim (HC)*") in

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64 Respondent's Written Submissions, at para 56.

65 Respondent's Written Submissions, at para 57.

66 Award, at para 201(2) (Respondent's 1st Affidavit, at p 106).

67 Respondent's Written Submissions, at para 58.

68 Respondent's 1st Affidavit, at p 178.

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support of its case.[69] In that case, the sub-contractor (Vim) sought to recover for variation works performed pursuant to oral instructions despite the fact that cl 16 of the contract specified that variations shall be carried out only with written instructions from the employer. The High Court found (at [31]) that the fact that Vim acted on verbal instructions in itself could not amount to estoppel in relation to a contractual clause requiring written instructions.

81 In its closing submissions in the Arbitration, the respondent again referred to *Vim (HC)* in support of its case on cl 7(c).[70]

82 The Arbitrator did not expressly deal with cl 7(c) in the Award. However, the fact that an award fails to address one of the parties' arguments expressly does not, without more, mean that the tribunal failed to apply its mind to that argument: *BZW* at [60(a)]. Further, an award will not be set aside on the ground that the tribunal failed to apply its mind to an essential issue arising from the parties' arguments unless such failure is a "clear and virtually inescapable inference from the award: *BZW* at [60(a)]. This is a high bar: *ASG v ASH* [2016] 5 SLR 54 at [62].

83 In the present case, as the claimant submitted in its closing submissions in the Arbitration, the respondent's reliance on the High Court's decision in *Vim (HC)* was misleading because the Appellate Division had disagreed with the High Court's finding.[71] In *Vim Engineering Pte Ltd v Deluge Fire*

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69 Respondent's Defence and Counterclaim in the Arbitration, at paras 98–100 (Respondent's 1st Affidavit, at pp 595–596).

70 Respondent's Closing Submissions in the Arbitration, at paras 66 – 67 (Respondent's 1st Affidavit, at p 1136).

71 Claimant's Reply Submissions in the Arbitration, at paras 34–37 (Respondent's 1st Affidavit, at pp 1208–1209).

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Protection (S.E.A.) Pte Ltd [2023] 2 SLR 468, the Appellate Division was of the view (at [37] and [38]) that:

> (a) the contractual stipulation of written notice may be departed from to permit a claim for variation work where there is sufficient proof of waiver or estoppel; and
>
> (b) the law permits the application of principles of waiver or estoppel in meritorious cases despite non-compliance with requirements of written notice.

84 In these circumstances, in my view, there is no reason to infer that the Arbitrator failed to apply her mind to the respondent's submissions on cl 7(c). Instead, the reasonable inference is that the Arbitrator had implicitly rejected the respondent's submissions on cl 7(c). After all, the respondent's reliance on *Vim (HC)* had been shown to be plainly wrong, if not misleading. In any event, even if there was a breach of natural justice, it cannot be said that the failure to consider the respondent's submission has caused prejudice to the respondent since that submission was plainly wrong in the first place.

The quantum meruit *issue*

85 In its closing submissions in the Arbitration, the respondent submitted that even if it were estopped from relying on the strict terms of Contract 24, there could not be a claim in restitution in parallel with an inconsistent promise.[72] The respondent relied on the following statements in *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 ("*Rabiah*") at [123]:

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[72] Respondent's Closing Submissions in the Arbitration, at para 102 (Respondent's 1st Affidavit, at p 1147).

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> … there cannot be a claim in restitution parallel to an inconsistent contractual promise between the parties. As Scrutton LJ said in *Steven v Bromley & Son* [1919] 2 KB 722 at 727:
>
> > It is a commonplace of the law that there can be no implied contract as to matters covered by an express contract until the express contract is displaced. A well-known example of this is where an agent works on the terms that he shall receive a commission if successful. That excludes a claim on a quantum meruit for work which does not result in success. …

In its closing submissions, the respondent described *Rabiah* as a Court of Appeal decision although *Rabiah* was a High Court decision.

86 The Arbitrator noted the respondent's submission,[73] but did not otherwise deal with it in the Award.

87 Before me, the respondent submitted that there was a breach of natural justice because the Arbitrator did not address its submission that there was no scope for the application of *quantum meruit* where was an inconsistent contractual promise.[74]

88 In my view, it is not a clear and virtually inescapable inference that the Arbitrator failed to apply her mind to the respondent's submission on *quantum meruit*. Instead, the appropriate inference is that the Arbitrator implicitly rejected the respondent's submission.

89 First, the arbitrator had found that the respondent was estopped from insisting on its strict legal rights under cl 6 of Appendix III of Contract 24. The

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73 Award, at para 186(2) (Respondent's 1st Affidavit, at p 100).

74 Respondent's Written Submissions, at para 59.

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respondent therefore could no longer rely on cl 6 as the "inconsistent contractual promise".

90 Second, the respondent's quote from *Rabiah* was incomplete. The passage from *Steven v Bromley & Son* [1919] 2 KB 722 that was quoted in *Rabiah* went on to state as follows:

> … But where work is done outside the contract, and the benefit of the work is taken, a contract may be implied to pay for the work so done at the current rate of remuneration, and the terms of the express contract may remain binding in so far as they are not inconsistent with the implied contract.

In the Arbitration, the claimant had relied on the above statement.[75]

91 The Arbitrator found that the claimant had carried out the additional works at the behest of the respondent, and that the respondent was estopped from relying on cl 6. It would have been clear to the Arbitrator that the claimant was entitled to be paid reasonable compensation.

92 In any event, even if there was a breach of natural justice, the respondent has not been prejudiced since its submission was wrong on the law.

The quantity and quantum issues with respect to the TSPs

93 In the Arbitration, the respondent disputed the claimant's claim that 12 motors were installed with TSPs. It was not in dispute that it was difficult to establish by way of a visual inspection whether the TSPs had been installed.[76] The Arbitrator noted that as visual inspection was impractical, the parties had

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75 Claimant's Reply and Defence to Counterclaim, at para 41(a) (Respondent's 1st Affidavit, at p 634).

76 Award, at para 209 (Respondent's 1st Affidavit, at p 108).

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to "rely on the available imperfect evidence" and that "[n]either party was able to show with certainty what additional work was or was not performed".[77]

94 The Arbitrator referred to email exchanges in March 2017 (relied upon by the claimant), but also noted the respondent's submission that there were no contemporaneous documents.[78] The Arbitrator expressed the view that "as imperfect as the available evidence may be, a decision has to be arrived at" and found that on the balance of probabilities the claimant did carry out the additional work as claimed.[79] The Arbitrator also expressed the view that the evidence relied on by the respondent was not sufficiently compelling to dispel the presumption raised by the communications between the parties, in particular, the respondent's contemporaneous acknowledgment in March 2017 of TSPs having been provided.[80]

95 As for the quantum, the Arbitrator noted the following:

(a) the claimant's claim was derived from the unit price of $2,800 quoted in its quotation dated 6 June 2017 (the "6 June 2017 Quotation");[81]

(b) the evidence led by the respondent as to alternative pricing was in respect of *VSPs* not TSPs;[82]

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77 Award, at para 212 (Respondent's 1st Affidavit, at p 108).

78 Award, at paras 213–215 (Respondent's 1st Affidavit, at pp 108–109).

79 Award, at para 216 (Respondent's 1st Affidavit, at p 109).

80 Award, at para 216 (Respondent's 1st Affidavit, at p 109–110).

81 Award, at para 218 (Respondent's 1st Affidavit, at p 110).

82 Award, at para 220 (Respondent's 1st Affidavit, at p 110).

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(c) therefore, there was not much evidence with regard to the quantum for the TSPs,[83] and

(d) the respondent's submission that the claimant had failed to produce any evidence setting out the costs it actually incurred and/or reasonable market rate.[84]

The Arbitrator then awarded claimant's claim based on the amount of $2,800 per unit as claimed.[85]

96 Before me, the respondent first submitted that the Arbitrator failed to apply her mind to the merits of the dispute because she did not make findings as to (a) what were the components that made up the TSPs, (b) whether all 12 motors had been installed with TSPs, and (c) assess the quantification of the claimant's claim based on the above.[86]

97 I disagree with the respondent. In the present case, clearly, the Arbitrator did apply her mind to the merits of the dispute over the claim relating to the TSPs.

98 As stated in [94] above, the Arbitrator found that the evidence relied on by the respondent was not sufficiently compelling to dispel the presumption raised by the communications between the parties, in particular, the respondent's contemporaneous acknowledgment in March 2017 of TSPs having

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83 Award, at para 221 (Respondent's 1st Affidavit, at p 110).

84 Award, at para 222 (Respondent's 1st Affidavit, at p 110).

85 Award, at paras 222–223 (Respondent's 1st Affidavit, at pp 110–111).

86 Respondent's Written Submissions, at paras 66–67.

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been provided.[87] It is clear that the Arbitrator was of the view (rightly or wrongly) that the respondent had acknowledged that the claimant had carried out the additional work as claimed.

99 As can be seen in [95] above, the Arbitrator accepted the claimant's claim based on the unit price stated in the 6 June 2017 Quotation. As the Arbitrator had noted, the respondent had forwarded the 6 June 2017 Quotation to the Employer and added 15% for its own overhead charges.[88] This was evidence that the respondent had accepted the unit prices quoted in the 6 June 2017 Quotation. Although the Arbitrator had referred to this in her discussion of the quantum relating to the VSPs (see [110] below), there is no reason to think that the Arbitrator did not have this in mind when dealing with the quantum relating to the TSPs.

100 The respondent next submitted that in allowing the claimant's claim despite the absence of objective contemporaneous evidence, the Arbitrator's approach was "manifestly incoherent" because she had dismissed the respondent's C18 DLP Counterclaim and C24 DLP Counterclaim on the ground of a similar lack of contemporaneous evidence.[89] The respondent's submissions with respect to its C18/C24 DLP Counterclaims were similar.

101 In my view, the Arbitrator's approach cannot be said to be manifestly incoherent. There is a significant difference between the claimant's claim in respect of the TSPs and the respondent's C18/C24 DLP Counterclaims. In the respondent's C18/C24 DLP Counterclaims, the respondent relied on nothing

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87 Award, at para 216 (Respondent's 1st Affidavit, at p 109–110).

88 Award, at para 239 (Respondent's 1st Affidavit, at p 114).

89 Respondent's Written Submissions, at para 73.

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more than bare assertions (see [58] above). In contrast, the Arbitrator allowed the claimant's claim in respect of the TSPs based on evidence, such as the emails exchanged in March 2017 and the fact that the respondent (as the main contractor) had forwarded the 6 June 2017 Quotation to the Employer after adding 15% for its own overhead charges.

102 I agree with the claimant that the respondent's complaints about the Award in respect of the TSPs simply reflect its view that the Arbitrator was wrong. However, whether the Arbitrator was right or wrong in her findings is not relevant. This is not an appeal.

The quantity and quantum issues with respect to the VSPs

103 Before me, the respondent's complaints relate to the Arbitrator's findings in respect of the sufficiency of the claimant's pleadings, the disputed installation of VSPs on 12 TVFs, and the quantum for VSPs installed on all 90 motors (TVFs and TBFs) as claimed by the claimant.

(1) Sufficiency of pleadings

104 In the Arbitration, the respondent had submitted that the claimant failed to provide adequate particulars as to the additional work performed and that this prejudiced its ability to prepare and lead evidence in its defence.[90]

105 The Arbitrator noted (a) the claimant's response that the relevant particulars had been pleaded and that the additional work emanated from the requirements provided by the respondent, and (b) that the respondent did not

[90] Respondent's Written Submissions, at para 75.

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make any application for further and better particulars.[91] The Arbitrator declined to reject the claimant's claims with respect to the VSPs on the basis of the respondent's complaints about the sufficiency of the claimant's pleadings.

106 Before me, the respondent submitted as follows:[92]

(a) the Arbitrator did not explain why and how all the relevant particulars had been pleaded;

(b) the respondent had stated that as far as it was aware, the only additional work supplied were those set out in its defence and counterclaim, and it ought to have been clear to a reasonable and diligent tribunal that the respondent was labouring under a severe information disadvantage;

(c) the claimant's obligation was to properly plead its case and failure to seek further and better particulars did not preclude the respondent from complaining about the claimant's pleadings, and

(d) the process of seeking further and better particulars remains uncommon in arbitration proceedings.

107 In my view, the respondent's submissions merely amount to saying that the Arbitrator was wrong. I agree with the claimant that the respondent's disagreement with the Arbitrator's finding cannot amount to a breach of natural justice.

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91 Award, at para 228 (Respondent's 1st Affidavit, at p 112).

92 Respondent's Written Submissions, at paras 75–83.

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(2) Installation of VSPs on 12 TVFs and quantum for all VSPs installed

108 The claimant's claim in the Arbitration was for the installation of VSPs on 92 motors (comprising a combination of TBTs and TVFs). The respondent disputed the installation of VSPs on 12 TVFs.[93] The Arbitrator noted the following:

(a) The claimant's Production Engineer testified that:

(i) he had prepared an Inspection Summary of the VSPs in the TVFs in different locations in August 2022, and

(ii) during an inspection of TVFs at one location in June 2019 with the respondent's Commercial Manager, the latter had told him that there was no need to visit the other locations, that he accepted that all the works for the TVFs were done, and that the claimant's Production Manager was to forward the quotation to him to process.[94]

(b) The respondent's Commercial Manager confirmed that he did say at the inspection in June 2019 that there was no need to inspect the other locations, and that the VSPs for the 3 TVFs at the location where the inspection took place were there.[95]

(c) The inability to open up and physically inspect the TVFs for VSPs had resulted in the lack of precise evidence.[96]

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93 Award, at paras 224–226 (Respondent's 1st Affidavit, at pp 111–112).

94 Award, at para 230(4) (Respondent's 1st Affidavit, at pp 112–113).

95 Award, at para 231 (Respondent's 1st Affidavit, at p 113).

96 Award, at para 232 (Respondent's 1st Affidavit, at p 113).

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109 The Arbitrator then said that "as imperfect as the available evidence may be, a decision must be arrived at", and found that on a balance of probabilities, the claimant did carry out additional work in respect of the VSPs as claimed.[97] The Arbitrator found that, in particular, the testimonies of the claimant's Production Engineer and the respondent's Commercial Manager supported the evidence in the Inspection Summary prepared by the former.

110 As for the quantum for all the VSPs installed by the claimant, the claimant's claim was based on the price of $1,100 per unit stated in its 6 June 2017 Quotation. The respondent submitted in the Arbitration that the claimant had failed to produce evidence supporting its unit price. However, as stated earlier, the Arbitrator noted that the respondent (as the main contractor) had forwarded the 6 June 2017 Quotation to the Employer after adding 15% for its own overhead charges.[98]

111 Before me, the respondent submitted that the Arbitrator had a duty, but failed, to determine the precise components of each VSP on each TVF and that this had a material bearing on the costs incurred by the claimant in providing the same.[99] The respondent argued that this gives rise to an inference that the Arbitrator did not pay attention to what was put before her.

112 I disagree with the respondent. The Arbitrator had expressly noted the respondent's case as to the elements that made up the additional work for the VSPs.[100] However, in finding that the claimant had installed the VSPs as

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97 Award, at para 232 (Respondent's 1st Affidavit, at p 113).

98 Award, at para 239 (Respondent's 1st Affidavit, at p 114).

99 Respondent's Written Submissions, at para 86.

100 Award, at para 227 (Respondent's 1st Affidavit, at p 111).

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claimed, the Arbitrator accepted and relied on of the testimonies of the claimant's Production Engineer and the respondent's Commercial Manager, which (in her view) supported the evidence in the Inspection Summary (see [108] above). In my view, there is no room for the inference that the Arbitrator had failed to consider the respondent's case. Again, the fact that the Arbitrator's finding may be wrong on the evidence is not a ground for setting aside the Award.

113 The respondent next submitted that the Arbitrator's finding was at odds with its decision to dismiss the respondent's C18/C24 DLP Counterclaims on the basis that there was no documentary evidence.[101] The respondent submitted that the Arbitrator's approach was manifestly incoherent with her approach in dismissing the counterclaims.[102]

114 I disagree with the respondent. As stated earlier, the respondent's C18/C24 DLP Counterclaims relied solely on bare assertions. In contrast, the Arbitrator found that the Inspection Summary and the testimony of the respondent's Commercial Manager supported the claimant's claim in respect of the disputed installation of VSPs.

115 Finally, the respondent submitted that the Arbitrator failed to consider its extensive submissions that the claimant had deliberately inflated its claim to stymie the respondent's enforcement of a separate arbitral award.[103] In the Arbitration, the respondent had based its submission on the fact that the claimant's invoice was issued just 6 days after the respondent commenced the

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101 Respondent's Written Submissions, at para 88.

102 Respondent's Written Submissions, at para 90.

103 Respondent's Written Submissions, at para 89.

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other arbitration and that the Arbitration was commenced by the claimant just over a month after the claimant failed in its application to set aside the other arbitral award.[104] As the respondent submitted in the Arbitration, the respondent's submission was pure conjecture.[105] In my view, it is a reasonable inference that the Arbitrator implicitly rejected the respondent's submission.

Respondent's C24 LD Counterclaim

116 The respondent seeks to set aside paras 258–262, 266–268 and 353(c)(iv) of the Award relating to the Arbitrator's dismissal of the respondent's counterclaim for liquidated damages under Contract 24.[106]

117 As in the case of Contract 18, Contract 24 provided that the claimant had to pay liquidated damages for delay in "supply of material beyond the specified delivery period".[107] The same issue arose in the Arbitration in respect of Contract 24, *ie*, what was the meaning of the phrase "specified delivery period". The arguments before the Arbitrator were largely the same as those advanced in relation to Contract 18 (see [30]–[31] above).[108]

118 The Arbitrator found that the dates set out in the delivery schedule at Appendix IV were not the contractually agreed delivery dates and could not be

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104 Respondent's Closing Submissions in the Arbitration, at para 15 (Respondent's 1st Affidavit, at p 1114).

105 Claimant's Reply Submissions in the Arbitration, at para 7 (Respondent's 1st Affidavit, at pp 1199–1200).

106 OA 102, at prayer 2(1)(h). The paras in the Award are at the Respondent's 1st Affidavit, at pp 117–119 and 140.

107 Award, at para 252 (Respondent's 1st Affidavit, at p 116).

108 Award, at para 254 (Respondent's 1st Affidavit, at p 117).

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relied on for the operation of the liquidated damages clause.[109] Accordingly, she dismissed the respondent's C24 LD Counterclaim.

119 Before me, the submissions were similar to those made in respect of the respondent's C18 LD Counterclaim. For the reasons set out in [34]–[40] above, I find that the respondent has not shown any basis to set aside the Arbitrator's dismissal of the C24 LD Counterclaim.

Respondent's C24 DLP Counterclaim

120 The respondent seeks to set aside para 278 of the Award relating to the Arbitrator's dismissal of the respondent's C24 DLP Counterclaim.[110]

121 The respondent's C24 DLP Counterclaim was for a sum of $7,920 being internal labour costs incurred by the respondent as a result of the claimant's alleged failure to comply with its obligations under Contract 24. The evidence supporting the claim comprised "short particulars"[111] stating the date, item, defect, manpower and labour cost.[112]

122 The Arbitrator dismissed the respondent's C24 DLP Counterclaim for the same reasons that she dismissed the respondent's C18 DLP Counterclaim, *ie*, that there was insufficient evidence to support the respondent's counterclaim (see [45] above).

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109 Award, at paras 260 and 266 (Respondent's 1st Affidavit, at pp 118 and 119).

110 OA 102, at prayer 2(1)(i). Para 278 of the Award is at the Respondent's 1st Affidavit, at pp 121.

111 1st witness statement of respondent's Commercial Manager, at para 120 (Respondent's 1st Affidavit, at p 838).

112 Award, at para 272 (Respondent's 1st Affidavit, at p 121).

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123 Before me, the respondent's submissions were similar to those made in respect of its C18 DLP Counterclaim (see [46]–[47] above). I reject the respondent's submissions for the same reasons that I rejected its C18 DLP Counterclaim (see [100]–[102] above).

Respondent's C24 Declaration Counterclaim

124 The respondent seeks to set aside para 281 of the Award relating to the Arbitrator's dismissal of the respondent's C24 Declaration Counterclaim.[113] As stated in [54(e)] above, the counterclaim was for a declaration that the claimant had failed to provide supervisory services and attend to testing and commissioning.

125 The Arbitrator declined to make the declaration sought because there was no monetary relief sought in respect of the declaration. The respondent's submissions are similar to those set out in the discussion above in respect of the C18 LD Counterclaim. For the reasons set out in [51]–[53] above, I find that the respondent has not shown any basis to set aside the Arbitrator's dismissal of the C24 Declaration Counterclaim.

Contract 27

126 The respondent seeks to set aside paras 292 and 353(d)(ii) of the Award relating to the Arbitrator's finding that the respondent was liable to pay the claimant the sum of $105, being the GST payable on air freight charges for one additional replacement item that the respondent had issued a purchase order for (the "C27 Variation Claim").[114]

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113 OA 102, at prayer 2(1)(j). Para 281 of the Award is at the Respondent's 1st Affidavit, at pp 121 – 122.

114 OA 102, at prayer 2(1)(k) (Respondent's 1st Affidavit, at pp 123 and 141).

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127 The respondent's position in the Arbitration was that the claimant had already been paid whereas the claimant's position was that the payment was attributable to Contract 18.[115]

128 The Arbitrator allowed the claimant's claim for the sum of $105. Her reasoning was similar to her reasoning in respect of her award on the C9 Milestone Payment Claim (see [21] above). In the Arbitrator's view, it did not matter which contract the sum of $105 had in fact been allocated to as the sum remained payable; if the sum was allocated to Contract 27, it would have resulted in a shortfall of the same amount in Contract 18.[116]

129 The submissions before me were similar to those made in respect of the award on the C9 Milestone Payment Claim. For reasons similar to those I have given in respect of the award on the C9 Milestone Payment Claim, I find that:

(a) There was a breach of the fair hearing rule as the Arbitrator's reasoning has no nexus to the parties' cases before her. However, the award on the C27 Variation Claim cannot be set aside for breach of natural justice because the respondent has not shown any prejudice.

(b) The Arbitrator did not exceed her jurisdiction.

Other paragraphs in the Award

130 The respondent also seeks to set aside several other paragraphs in the Award, depending (in part or in whole) on whether the respondent succeeds in its challenges against the parts of the Award that have been dealt with above.[117]

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115 Respondent's Written Submissions, at para 115.

116 Award, at para 292 (Respondent's 1st Affidavit, at p 123).

117 OA 102, at prayers 2(1)(l)–(n).

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As the respondent has failed in its challenges in respect of the above matters, its application to set aside these other related paragraphs in the Award must also fail.

OA 102 – conclusion

131 For the reasons set out above, I dismiss OA 102 in its entirety.

SUM 288 in OA 21

132 SUM 288 is the respondent's application to stay the Enforcement Order granted in OA 21 pending the final determination of OA 102, and to set aside the Enforcement Order (whether in whole or in part) in the event that it succeeds in OA 102. As I have dismissed OA 102, it follows that SUM 288 is also dismissed.

Conclusion

133 OA 102 and SUM 288 are dismissed. I will hear parties on costs separately.

134 The C9 Milestone Payment Claim involved a dispute over $1,400. The C27 Variation Claim involved a dispute over $105. The amount of work done and time spent in respect of these two claims were clearly disproportionate and run contrary to the Ideals set out in O 3 rr 1(2)(*c*) and (*d*) of the Rules of Court 2021. The claimant submitted that notwithstanding the small amounts involved, these were examples of a "systemic failure" on the part of the Arbitrator.[118] In my view, this submission was a gross exaggeration.

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[118] Respondent's Written Submissions, at paras 39 and 118.

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135 The Award could have been more explicit with respect to some of the findings. However, at the end of the day, it is clear that the respondent's complaints are just complaints that the Arbitrator was wrong. It is well established that parties to an arbitration agree to be bound by the tribunal's findings, even if they are shown to be wrong. There is no right of appeal against an arbitral award. By agreeing to arbitration as the dispute resolution mechanism, parties give up the right of appeal as a trade-off for the advantages that arbitration offers. Parties would do well to remember this when entering into arbitration agreements.

Chua Lee Ming
Judge of the High Court

Nakul Dewan (instructed), Lee Wei Han Shaun and Mark Ng (Bird & Bird ATMD LLP) (instructing) for the claimant;
Balasubramaniam Ernest Yogarajah (UniLegal LLC) for the defendant.

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