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

[2024] SGHC 272

Originating Application No 809 of 2022

Between

Siddiqsons Tin Plate Ltd

… *Applicant*

And

New Metallurgy Hi-Tech Group Co Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice — Section 24(*b*) International Arbitration Act 1994 (2020 Rev Ed)]

TABLE OF CONTENTS

Siddiqsons Tin Plate Ltd
v
New Metallurgy Hi-Tech Group Co Ltd

[2024] SGHC 272

General Division of the High Court — Originating Application No 809 of 2022
Hri Kumar Nair J
28 August 2024

25 October 2024

Hri Kumar Nair J:

Introduction

1 The applicant, Siddiqsons Tin Plate Ltd ("Siddiqsons"), and the respondent, New Metallurgy Hi-Tech Group Co Ltd ("New Metallurgy"), were parties to an arbitration commenced by the latter. Siddiqsons applied to set aside the award made by the arbitral tribunal (the "Tribunal") for breach of natural justice. I dismissed the application and provided brief grounds for my decision. As Siddiqsons has appealed against my decision, I set out my reasons in full.

Facts

The parties

2 Siddiqsons is a publicly listed company established under the laws of the Republic of Pakistan.[1] New Metallurgy is a company registered under the laws of the People's Republic of China.[2]

Background to the dispute

3 The parties entered a contract for New Metallurgy to, *inter alia*, supply goods and services in relation to Siddiqsons' Cold Rolling Mill project situated in Karachi, Pakistan (the "CRM Contract").[3]

4 About a month later, the parties entered a second contract for New Metallurgy to, *inter alia*, supply goods and services in relation to Siddiqsons' Acid Regeneration Plant project situated in Karachi, Pakistan (the "ARP Contract").[4]

5 Both contracts provided for all disputes, controversies or differences arising from the contracts to be settled amicably, if not, by arbitration.[5]

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1 1st Affidavit of Muhammad Naeem Ul Hasnain Mirza dated 3 January 2023 ("1Aff MNM") at para 6.

2 1Aff MNM at para 7.

3 1Aff MNM at para 10; 1st Affidavit of Zhenlin Zhang dated 1 July 2024 ("1Aff ZZ") at para 8(a).

4 1Aff MNM at para 13; 1Aff ZZ at para 8(b).

5 1Aff MNM at paras 11, 14; 1Aff ZZ at para 10.

The Arbitration

6 On or about 27 August 2020, New Metallurgy filed its Notice of Arbitration (the "NOA") in the Singapore International Arbitration Centre ("SIAC").[6] Having filed a single NOA in respect of the arbitration agreements under the CRM Contract and the ARP Contract, New Metallurgy was deemed to have commenced two arbitrations – ARB917/20/DXC and ARB918/20/DXC – in respect of each arbitration agreement invoked and the NOA was deemed to be an application to consolidate both arbitrations.[7] Siddiqsons filed its Reply to the NOA on or about 17 September 2020.[8] On 7 October 2020, the SIAC Court of Arbitration granted the consolidation application and the arbitrations were consolidated into ARB917/20/DXC. I shall refer to the consolidated arbitration as the "Arbitration".[9]

7 By 11 November 2020, the Tribunal was constituted.[10] It issued its procedural directions on 21 December 2020, which annexed a timetable ("the Procedural Timetable"). Pursuant to the Procedural Timetable, New Metallurgy and Siddiqsons were to file their Statement of Claim and Statement of Defence and Counterclaim respectively, and both filings were to include the parties' submissions on the applicable substantive law. The Tribunal would thereafter issue its determination on that issue, prior to the filing of any further pleadings.[11]

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6 1Aff MNM at para 74, pp 95–110, 643; 1Aff ZZ at para 11.

7 1Aff MNM at p 643.

8 1Aff MNM at para 76, pp 111–134; 1Aff ZZ at para 11.

9 1Aff MNM at p 643.

10 1Aff MNM at para 77; 1Aff ZZ at para 15.

11 1Aff MNM at pp 64–69; 1Aff ZZ at para 17, pp 90–98.

8 New Metallurgy filed its Statement of Claim on or about 20 January 2021,[12] and Siddiqsons filed its Reply to the Statement of Claim/Statement of Defence and Counterclaim on or about 17 March 2021.[13]

9 On or about 22 March 2021, New Metallurgy filed, without leave of the Tribunal, a "Reply Opinion on Applicable Law" directed at the issue of the applicable substantive law (the "Further Reply").[14] Siddiqsons did not file a response to the Further Reply.

10 On or about 8 April 2021, the Tribunal issued its decision on the applicable substantive law (the "Substantive Law Decision"),[15] holding that:[16]

> 34. As Article 28 of Model Law and Rule 31 of the SIAC Rules permit the Tribunal to apply "*the rules of law as applicable to the substance of the dispute*" without reference to any specific national jurisdiction, the Tribunal is satisfied with the Parties' agreement that the [United Nations Convention on Contracts for the International Sale of Goods] and [UNIDROIT Principles of International Commercial Contracts] would be appropriate and would be the applicable rules of law of the Contracts.

11 Following the issuance of the Substantive Law Decision, the parties filed further pleadings from 28 April 2021 to 9 June 2021.[17] This included Siddiqsons' Rejoinder to Reply to Statement of Defence and Reply to Defence to Counterclaim dated 26 May 2021 (the "Rejoinder").[18]

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12 1Aff MNM at para 28, pp 135–185; 1Aff ZZ at para 17(a).

13 1Aff MNM at para 28, pp 186–296; 1Aff ZZ at para 17(b).

14 1Aff MNM at para 28, pp 297–301; 1Aff ZZ at para 17(c).

15 1Aff MNM at para 82, pp 70–83; 1Aff ZZ at para 18.

16 1Aff MNM at p 83.

17 1Aff MNM at pp 302–501; 1Aff ZZ at para 19.

18 1Aff MNM at pp 337–483.

12 On or about 16 June 2021, the parties submitted their respective lists of issues for the Tribunal's consideration.[19] On 28 June 2021, the Tribunal circulated a draft Memorandum of Issues ("MOI") and invited the parties to submit comments by 30 June 2021.[20] Both parties provided their respective comments to the draft MOI on 30 June 2021.[21]

13 On 7 July 2021, Siddiqsons informed the Tribunal and New Metallurgy that it had no document production requests.[22] On or about 8 July 2021, New Metallurgy submitted its document production requests.[23]

14 On 14 July 2021, the Tribunal circulated the finalised MOI.[24]

15 The evidential hearing of the Arbitration was held virtually from 3 to 7 January 2022.[25]

16 On or about 6 October 2022, the Tribunal issued the final award in the Arbitration (the "Final Award"),[26] holding that, *inter alia*, Siddiqsons was liable to pay New Metallurgy damages and costs.[27] On or about 25 November 2022, the Tribunal issued a correction to the Final Award (the "Correction").[28] I shall refer to the Final Award and the Correction collectively as the "Award".

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19 1Aff ZZ at pp 103–113.

20 1Aff ZZ at para 23, pp 114–117.

21 1Aff ZZ at para 24, pp 118–130.

22 1Aff ZZ at para 26, pp 138–139.

23 1Aff MNM at pp 600–604; 1Aff ZZ at pp 132–137.

24 1Aff MNM at pp 84–86; 1Aff ZZ at para 25.

25 1Aff MNM at para 90, p 648; 1Aff ZZ at para 34.

26 1Aff MNM at para 104, pp 624–741; 1Aff ZZ at para 46.

27 1Aff MNM at p 740; 1Aff ZZ at para 47.

28 1Aff MNM at para 105, pp 742–760.

The application and its grounds

17 Siddiqsons brought this application under s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") arguing that the Award was made in breach of natural justice.[29]

18 In particular, Siddiqsons argued that the Tribunal failed to consider its arguments and that it was denied its right to present its case and respond to the case against it because:[30]

(a) The Tribunal had allowed New Metallurgy to make further arguments on the substantive law issue by way of the Further Reply and did not direct Siddiqsons to provide a further response (the "Substantive Law Complaint").[31]

(b) The Tribunal directed the proceedings to continue despite the MOI not being finalised at the material time (the "MOI Complaint").[32]

(c) The Tribunal failed to consider material issues proposed by Siddiqsons (the "Omitted Issues Complaint").[33]

(d) The Tribunal failed to invite Siddiqsons to make and/or expand its submissions on an issue in dispute, namely whether Siddiqsons' acts constituted "wilful misconduct". This was despite the applicable law, *ie*, the United Nations Convention on Contracts for the International Sale

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29 Applicant's Written Submissions dated 7 August 2024 ("Siddiqsons' Subs") at para 2.

30 Siddiqsons' Subs at paras 13(a)–13(b).

31 Siddiqsons' Subs at paras 17(a); 59(a).

32 Siddiqsons' Subs at para 17(b).

33 Siddiqsons' Subs at para 44.

of Goods ("CISG") and the UNIDROIT Principles of International Commercial Contracts ("PICC"), providing no guidance on the doctrine of "wilful misconduct". Instead, the Tribunal referred to English case law (the "Case Law Complaint").[34]

(e) The Tribunal had on several occasions, interrupted the hearing of the evidence, such that it "had descended into the arena", and adversely affected Siddiqsons' presentation of its case (the "Tribunal's Interruptions Complaint").[35]

19 Siddiqsons had raised a further complaint in its affidavit that the Tribunal "failed, neglected and/or otherwise refused to consider the evidence tendered by [Siddiqsons]".[36] Siddiqsons did not make any submissions on this complaint and its counsel confirmed that it was not pursuing it.[37]

20 Siddiqsons had, in the alternative to its prayer to set aside the Award in its entirety, prayed for various findings and orders in the Award to be set aside. But its counsel confirmed that it was similarly not proceeding on this alternative prayer.[38]

The law on setting aside of arbitral awards

21 Section 24(*b*) of the IAA states:

> Despite Article 34(1) of the Model Law, the General Division of the High Court may, in addition to the grounds set out in

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34 Siddiqsons' Subs at para 36.

35 Siddiqsons' Subs at para 59(c).

36 1Aff MNM at paras 140–142.

37 Transcript of 28 August 2024 ("Transcript") at p 60 lines 9–12.

38 Transcript at p 59 line 25 to p 60 line 4.

> Article 34(2) of the Model Law, set aside the award of the arbitral tribunal if —
>
> …
>
> (*b*) 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.

22 The law on setting aside of arbitral awards is well established. An applicant seeking to set aside an award on the ground of breach of natural justice must establish: (a) which rule of natural justice was breached; (b) how it was breached; (c) in what way the breach was connected to the making of the award; and (d) how the breach did or could prejudice its rights: see *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*") at [86], citing *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29] and *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [48].

23 The threshold for a finding of breach of natural justice is a high one that will only be exceptionally crossed: *China Machine* at [87], citing *Soh Beng Tee* at [54]. The courts take a serious view of such challenges and that is why those which have succeeded are few and far between and limited only to egregious cases where the error is "clear on the face of the record": see *Coal & Oil Co LLC v GHCL Ltd* [2015] 3 SLR 154 at [2], citing *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 at [125].

24 The right to be heard – a party's right to present its case and respond to the case against it – is a fundamental rule of natural justice: *China Machine* at [87] and [91], citing *Soh Beng Tee* at [42].

25 The responsive aspect has at least two subsidiary aspects to it: see *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 at [147]; see also *DBL v DBM* [2024] 4 SLR 979 ("*DBL*") at [38]:

(a) a party must have notice of the case to which it is expected to respond; and

(b) a party must be permitted to present the evidence and advance the propositions of law necessary to respond to it.

26 Another essential facet of the right to a fair hearing is the right to be heard on, and have the tribunal consider, all pleaded issues: see *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN*") at [46]; see also *DBL* at [39].

27 However, a breach of natural justice would only attract curial intervention by the Court if it, at the very least, altered the tribunal's decision in some meaningful way: *Soh Beng Tee* at [65(f)] and [91]. In other words, the applicant must show actual or real prejudice: see s 24(*b*) of the IAA and *Soh Beng Tee* at [86].

28 Importantly, a party will not be allowed to hedge its position by complaining only after receiving an adverse award that its hopes for a fair trial had been prejudiced by the acts of the tribunal: *China Machine* at [168]; see also *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 ("*Swire Shipping*") at [89]. As explained by the Court of Appeal in *China Machine* at [168]:

> … An assertion that the tribunal has acted in material breach of natural justice is a very serious charge, not just for the imputation that such an allegation makes as to the *bona fides* and professionalism of the tribunal, but also for the grave consequence it might have for the validity of the award. For this

> reason, *there can be no room for equivocality in such matters*. An aggrieved party cannot complain after the fact that its hopes for a fair trial had been irretrievably dashed by the acts of the tribunal, and yet conduct itself before that tribunal "in real time" on the footing that it remains content to proceed with the arbitration and obtain an award, only to then challenge it after realising that the award has been made against it. In our judgment, such tactics simply cannot be countenanced. [emphasis in original]

29 Applying these principles, I found that Siddiqsons' complaints, individually or collectively, did not come close to meeting the high threshold for establishing a breach of natural justice. I elaborate below.

The Substantive Law Complaint

30 Siddiqsons' argument on this issue was two-fold: first, that the Tribunal allowed New Metallurgy to file the Further Reply and second, that it did not direct Siddiqsons to provide a further response. This complaint was a non-starter.

31 While New Metallurgy may have filed the Further Reply without leave, and the Tribunal may have accepted and considered the same, those in themselves do not amount to a breach of natural justice. Importantly:

(a) Siddiqsons did not object to the Further Reply, nor did it ask the Tribunal for leave to respond to it. The Tribunal only issued its decision on the substantive law issue *17 days* after the Further Reply was filed (see above at [9]–[10]). In other words, Siddiqsons had ample time to object to the Further Reply or ask to file a response – it did neither. Plainly, it was content for the Tribunal to consider the Further Reply in deciding the substantive law issue.

(b) Siddiqsons did not object to the Further Reply even after the Tribunal ruled on the substantive law issue, but only did so in this application. As stated in *China Machine*, the court will not allow an applicant to hedge against an adverse result in this manner.

32 Siddiqsons argued that the Tribunal ought to have issued directions in respect of the Further Reply and that it "would not be unreasonable" for Siddiqsons to wait for such.[39] That argument does not take its case any further. It was for Siddiqsons to object to the Further Reply or apply to the Tribunal for leave to respond to the Further Reply, if it had anything meaningful to say. The Tribunal was reasonably entitled to assume that Siddiqsons was not objecting to the Further Reply and that the parties were content for it to issue its decision based on the submissions filed.

33 Further, it is not disputed that the Tribunal did consider Siddiqsons' submissions on the applicable substantive law. The Tribunal rejected the primary positions on the applicable law of Siddiqsons (Pakistani law) and New Metallurgy (Chinese law), and adopted *both* their alternative cases that the CISG and the PICC applied. Siddiqsons accepted the Tribunal's decision – in its Rejoinder, it expressly accepted the CISG and PICC as the substantive law governing the parties' dispute,[40] and ran its case on that basis. That made its challenge on this ground even more inexplicable.

34 Finally, Siddiqsons did not demonstrate what prejudice it had suffered. To the extent that Siddiqsons was suggesting that it could have advanced *new* arguments in response to the Further Reply, it did not say what these were.

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39 Siddiqsons' Subs at para 29.

40 1Aff MNM at p 409.

Siddiqsons did not even demonstrate the effect on the outcome of the dispute *if* the Tribunal had applied its primary choice of applicable law, *ie*, Pakistani law.

The MOI Complaint

35 Siddiqsons' complaint with respect to the MOI was essentially that the Tribunal "rushed through the finalisation of the [MOI]" without allowing a "pause" in the proceedings, which meant that first, the parties could not make "thorough and complete requests for documents",[41] and second, the parties were prevented from being able to "thoroughly ventilate their arguments in respect of the [MOI]".[42] I found this complaint even more misconceived than the earlier one.

36 First, the Tribunal did provide the parties an opportunity to submit their respective lists of issues and a further opportunity to provide comments on the draft MOI prepared by the Tribunal, which Siddiqsons took advantage of (see above at [12]).

37 Second, the Tribunal did not prevent the parties from raising further issues. When the Tribunal sent the parties the finalised MOI on 14 July 2021, it stated that:[43]

> The MOI is not intended to be an exhaustive list of questions on facts or evidence. As such, in the event that any new issue which arises from the pleaded case requires determination, the same could be added with leave of the Tribunal, or, in the event that some of the Issues now identified become irrelevant or redundant, they could be omitted.

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41 Siddiqsons' Subs at para 52.

42 Siddiqsons' Subs at para 53.

43 1Aff ZZ at p 131.

38 Third, Siddiqsons' request for a "pause" until the MOI was settled was made on 13 July 2021, and the MOI was finalised a day later on 14 July 2021.[44] In other words, the "pause", if granted, would only have been for a day. It is absurd to suggest that the failure to pause the proceedings for a single day resulted in any prejudice. Siddiqsons' counsel agreed that this would not amount to a breach of natural justice.[45]

39 In any event, the prejudice identified by Siddiqsons were unfounded:

(a) With respect to the impact on document production, Siddiqsons had confirmed, *after* having sight of the draft MOI, that it had no production requests (see above at [13]).[46] Siddiqsons also did not ask for documents after the MOI was finalised; neither had it identified in these proceedings what documents it could have sought and how those could have affected the Award.

(b) It was not clear how Siddiqsons were denied the chance to raise arguments given that the parties had an opportunity to comment on the draft MOI and to raise further issues (see above at [36] and [37]).

The Omitted Issues Complaint

40 Ultimately, the crux of Siddiqsons' complaint was that it was wrongly prevented by the Tribunal from raising relevant issues. In this regard, it must be shown to be clear and virtually inescapable that the Tribunal had failed to consider an issue which was pleaded: *AKN* ([26] *supra*) at [46].

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44 1Aff ZZ at p 131.

45 Transcript at p 26 lines 27–31.

46 1Aff ZZ at p 138.

41 Siddiqsons initially set out a list of 34 "issues" which it claimed the Tribunal had failed to consider.[47] In Siddiqsons' written submissions, it reduced its complaint to six issues (the "Six Issues"):[48]

> (a) Issue 11: "Whether the Fraudulent representations of [New Metallurgy] preceding the issuance of the vague letter led [Siddiqsons] to believe that [New Metallurgy] did not commercially suffer on account of Force Majeure"
>
> (b) Issue 14: "Whether [New Metallurgy's] admission of being entitled to delay the shipment is contrary to the provisions of the Memo of meeting dated 30th October, 2019"
>
> (c) Issue 16: " Whether [New Metallurgy] had disclosed the extent of breach/non-performance to be permitted under the alleged claimed Force Majeure terms of the ARP/CRM Contracts"
>
> (d) Issue 25: "Whether [Siddiqsons] had delayed substantial civil works and whether delay in civil works, if any, excused or otherwise permitted delay in delivery of goods or whether the delays created impediment in the ability of [New Metallurgy] to cause necessary production and shipment of equipment"
>
> (e) Issue 28: "Whether [New Metallurgy] had attempted to coerce [Siddiqsons] into executing the draft agreement shared on 5th March, 2020 by withholding necessary extension of advance payment Bank Guarantees"

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47 1Aff MNM at pp 4391–4426.

48 Siddiqsons' Subs at para 45; see also 1Aff MNM at pp 4402, 4405, 4407, 4416, 4418, 4425.

(f) Issue 34: "Whether [Siddiqsons], having carried out entire civil and construction works, bespoke to the designs and goods of the [New Metallurgy] is entitled to compensation against [New Metallurgy]"

But its case with respect to this shorter list of issues was misconceived.

42 First, save for making the bare assertion in its submissions, Siddiqsons did not explain why it was entitled to raise the Six Issues or why it was wrong for the Tribunal to have excluded or not considered the same. Indeed, at the hearing, its counsel conceded that two of the Six Issues, namely Issue 11 and Issue 14, involve matters not pleaded, and the Tribunal was correct to have excluded or not considered those issues.[49]

43 Second, prior to the finalisation of the MOI, Siddiqsons did not raise at least three of the Six Issues, namely Issue 11, Issue 14 and Issue 34, in its submission to the Tribunal,[50] as confirmed by its counsel at the hearing.[51] Further, Siddiqsons had not, prior to the Final Award, sought leave from the Tribunal to raise any of the Six Issues although the Tribunal had expressly allowed the parties to raise new issues (see above at [37]).

44 Third, on the substance of the Six Issues, there was generally an abject lack of context provided by Siddiqsons for each issue, and it was challenging to make out what its case was and how this related to the contractual dispute between the parties. To this end, Siddiqsons did not even attempt to demonstrate how the Six Issues were important or material to the findings of the Tribunal and consequently, the Award. Significantly, its counsel conceded at the hearing

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49 Transcript at p 28 line 22 to p 29 line 5, p 29 lines 14–17.

50 1Aff ZZ at pp 125–130.

51 Transcript at p 37 lines 22–26.

that even though Siddiqsons had to demonstrate the materiality of the Six Issues to the Award, this was not set out in its affidavit or submissions.[52] In other words, Siddiqsons had failed to demonstrate prejudice.

45 Further, I agreed with New Metallurgy's submission that some of the Six Issues were simply a rehash of matters which had been considered and decided by the Tribunal:[53]

(a) Issue 16 (as identified above at [41(c)]) had been addressed by the Tribunal at [167]–[176] of the Final Award, wherein it held that New Metallurgy had given sufficiently particularised and timeous notice to Siddiqsons about the COVID-19 pandemic constituting a force majeure event.[54]

(b) Issue 25 (as identified above at [41(d)]) was analysed and considered by the Tribunal. At [101]–[112] of the Final Award, the Tribunal considered whether the delay in the civil construction could justify the postponement of equipment delivery by New Metallurgy and answered this question affirmatively.[55] Granted that the Tribunal had framed the issue slightly differently, it did appear to have addressed Issue 25 in substance.

(c) Issue 28 (as identified above at [41(e)]) had been considered and addressed by the Tribunal in the Final Award at [184]–[195], finding that New Metallurgy's offer to extend the relevant bank guarantees was

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52 Transcript at p 38 lines 15–30, p 39 lines 3–31, p 40 lines 13–18.

53 Respondent's Written Submissions dated 23 August 2024 ("New Metallurgy's Subs") at para 89.

54 1Aff MNM at pp 689–692.

55 1Aff MNM at pp 668–671.

reasonable and the request to document the extension by a signed agreement was not unreasonable.[56]

(d) Issue 34 (as identified above at [41(f)]) was moot because the Tribunal had found at [242]–[243] and [317] of the Final Award that Siddiqsons was the party in wrongful breach and it had failed to make out a case for New Metallurgy's breach. Accordingly, there was no basis for Siddiqsons to claim compensation.[57]

The Case Law Complaint

46 One of the issues included in the finalised MOI was "[w]hether [Siddiqsons] acts in calling on the Advance Payment Guarantees … were fraudulent or were acts of *wilful misconduct*" [emphasis added]. I shall refer to this as "Issue 12(b)", consistent with its notation in the MOI.[58]

47 In reaching the finding that Siddiqsons' acts did constitute wilful misconduct, the Tribunal made the following remarks in the Final Award:[59]

> 256 The question posed is however whether the Respondent acted fraudulently or whether its act was one of wilful misconduct. The Tribunal has not seen any evidence of fraud as asserted. As for 'wilful misconduct', the CISG and the PICC both provide no guidance in this regard. The Claimant has instead referred the Tribunal to the English decision of *De Beers UK Ltd v Atos Origin IT Services UK Ltd* 2010 EWHC 3276 (TCC) for support. The judge in that case succinctly speaks of 'wilful misconduct' in the following terms – …

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56 1Aff MNM at pp 694–697.

57 1Aff MNM at pp 708–709, 732.

58 1Aff MNM at p 86.

59 1Aff MNM at pp 712–713.

48 Siddiqsons submitted that in deciding Issue 12(b), the Tribunal relied on and applied the test of "wilful misconduct" in the English case of *De Beers UK Ltd v Atos Origin IT Services UK Ltd* [2010] EWHC 3276 (TCC) ("*De Beers*").[60] This, it claimed, was an "about-turn on the Tribunal's earlier decision to only apply CISG / PICC".[61]

49 As a preliminary observation, it is not even clear from the Final Award how the Tribunal had relied on *De Beers*. The Tribunal neither expressly affirmed the test in that case, nor referred to the same in its analysis of Issue 12(b). Beyond the bare assertion that "the Tribunal applied the test set out in *De Beers*",[62] Siddiqsons had not demonstrated how or where the Tribunal had done so in the Award.

50 This complaint was also not specifically raised in Siddiqsons' affidavit; instead, it took issue *generally* with the Tribunal purportedly "reneging on its [decision on the applicable substantive law] wherein it expressly rejected the applicability of English laws / case laws".[63] This appeared to be a complaint that the Tribunal had committed an error of law. Perhaps recognising this, the complaint morphed, in Siddiqsons' submissions, into one where "the Tribunal had erred in failing to invite [Siddiqsons] to make and/or expand its submissions on "*wilful misconduct*" on the basis that both the "*CISG and PICC both provide no guidance*"" [emphasis in original].[64] Its counsel accepted at the hearing that this new complaint was not in its affidavit.[65]

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60 Siddiqsons' Subs at paras 33–34.

61 Siddiqsons' Subs at para 35.

62 Siddiqsons' Subs at para 34.

63 1Aff MNM at para 121.

64 Siddiqsons' Subs at para 36.

65 Transcript at p 19 lines 19–31.

51 However, as New Metallurgy pointed out, (a) the issue of wilful misconduct was included in the finalised MOI (as Issue 12(b));[66] (b) New Metallurgy had referred to and submitted on the *De Beers* case in its opening submissions;[67] and (c) the case was further referred to in its closing submissions.[68] Siddiqsons failed to address the same, despite having the opportunity to do so in its closing submissions. In fact, Siddiqsons' counsel admitted that the parties were expressly invited by the Tribunal to make submissions on the issue of wilful misconduct in their closing submissions.[69] This appears to contradict its written submission that the Tribunal "[failed] to invite [Siddiqsons] to make and/or expand its submissions".[70] Having squandered its opportunity to submit on the relevant legal principles on this issue, or at the very least to object to New Metallurgy's reliance on *De Beers*, it is not open to Siddiqsons to now take the position that the Tribunal ought to have asked it to respond to that case or on the law generally. This is precisely the conduct of hedging that cannot be accepted: Siddiqsons choice to avoid engaging with this matter, even after the Tribunal's invitation, was "at its own peril": *China Machine* ([22] *supra*) at [170].

52 It was also not for the Tribunal to direct the parties on what submissions to make. That was the prerogative of Siddiqsons. The due process guarantee in Art 18 of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") is not intended to give a party insurance against its own failures or strategic choices that backfire: *Swire Shipping* ([28] *supra*) at [91].

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66 1Aff MNM at p 86.

67 1Aff MNM at p 548.

68 Transcript at p 46 line 4 to p 47 line 2.

69 Transcript at p 17 lines 7–25.

70 Siddiqsons' Subs at para 36.

The courts will not allow setting aside applications to be abused by a party who, with the benefit of hindsight, wishes that it had presented its case in a different way or had taken certain strategic decisions differently: *Swire Shipping* at [91], citing *BLC and others v BLB and another* [2014] 4 SLR 79 at [53].

53 Finally, and fatally, Siddiqsons had once again failed to demonstrate any prejudice. It was silent as to (a) the submissions or case authorities that it would have brought to the Tribunal's attention; (b) the purported effect of this on the determination of Issue 12(b), assuming this could be demonstrated beyond speculation; and (c) how the outcome of the arbitration would have changed. At the hearing, its counsel conceded that he had no alternative test of "wilful blindness" to put forward and that there was nothing in its affidavit about what Siddiqsons would have said if it was given the opportunity to respond.[71]

The Tribunal's Interruptions Complaint

54 In its affidavit, Siddiqsons identified 45 instances of "interruptions" by the Tribunal.[72] This was reduced in its written submissions to eight instances where the Tribunal allegedly interfered in the conduct of cross-examination by directing certain questions posed to witnesses be reserved for submissions, and 13 instances where the Tribunal allegedly interfered in the witnesses' answers (with one overlapping instance).[73] It was *not* Siddiqsons' case that the interruptions reflect bias or impartiality on the part of the Tribunal.

55 An arbitral tribunal is the master of the proceedings before it and is given wide discretion in how it controls the same. The High Court recently

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71 Transcript at p 20 line 11 to p 23 line 6.

72 1Aff MNM at pp 4428–4443.

73 Siddiqsons' Subs at para 61.

summarised in *Haide Building Materials Co Ltd v Ship Recycling Investments Inc* [2024] SGHC 222 at [121]:

> … In the first place, it is well-settled that the courts pay significant deference to the tribunal's exercise of procedural discretion and its case management powers (see the Court of Appeal decision of *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*") at [103]). This is encapsulated in the maxim that "the tribunal is the master of its own procedure" (see the High Court decision of *Anwar Siraj and another v Ting Kang Chung and another* [2003] 2 SLR(R) 287 at [41]–[42]):
>
> > 41 The arbitrator is, subject to any procedure otherwise agreed between the parties as applying to the arbitration in question, master of his own procedure and has a wide discretionary power to conduct the arbitration proceedings in the way he sees fit, so long as what he is doing is not manifestly unfair or contrary to natural justice …
> >
> > 42 It is therefore plain that the Court's supervisory role is to be exercised with a light hand and that arbitrators' discretionary powers should be circumscribed only by the law and the parties' agreement.

56 The tribunal's power to conduct and manage proceedings includes supervising the conduct of examination and cross-examination of witnesses and ensuring that proceedings are conducted without unreasonable delay.

57 Applying these principles, I found no merit in Siddiqsons' argument. All the alleged "interruptions" were reasonably within the Tribunal's general power to control the proceedings. Much of the alleged "interruptions" were directed towards ensuring that relevant questions were asked of witnesses and preventing counsel from making lengthy submissions or observations in their examination of the witnesses.

58 In relation to its complaint that the Tribunal interfered in the conduct of its cross-examination, Siddiqsons cited the following exchange (during the cross-examination of New Metallurgy's witness) as one example:[74]

> Q: Mr Liu Tao, your worry is okay, but your worry did not realise because the goods were not damaged and as the party receiving the goods we did not claim any discount on account of damaged goods. We accepted the goods as we received them, even after they lied at the port between two to three months. So this issue actually never occurred. Your worries are appropriate, but your worry does not mean that it resulted in any actual financial costs. So that was the point.
>
> The second thing that you have stated is that the shipping company, when the goods have reached Pakistan, the shipping company will have to pay. There is no law in Pakistan which requires the shipping company to pay for the value of the goods whilst they are stored at the warehouse at the Karachi Port. If there is, can you please make reference to any such provision?
>
> *Chair: That's a long submission. Any question specifically?*
>
> [Q]: I will specifically ask this question. I will make it shorter.
>
> Once the goods reach Pakistan, is there any way for you to prove that the shipping company in China has to pay any dues for warehousing that equipment?
>
> [emphasis added]

59 At its highest, the Tribunal simply directed Siddiqsons' counsel to rephrase his question without the lengthy argumentative preamble. And its counsel did so. It was absurd to suggest that this constituted an interference that amounted to "descending into the arena".

60 In relation to its other complaint that the Tribunal "interfered in the witnesses' provision of their answers", Siddiqsons' cited the following

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74 Siddiqsons' Subs at para 61(a); 1Aff MNM at pp 2540–2541.

exchange (during the cross-examination of New Metallurgy's witness) as one example:[75]

> Chair: You have asked a broad question. If the witness wishes to amplify, please give him the opportunity. Otherwise, ask a short, specific question. Thank you.
>
> Mr Iftikhar: My Lord, I will bear that in mind, but I have to at the same time request my witness to answer the question I have asked in a concise manner, since we have a time constraint on the amount of time we can cross.
>
> *Chair: Absolutely. So keep your questions short and very precise and specific, rather than reading the section to him and ask him whether he has signed any documents. Its too broad a question. Thank you.*
>
> Mr Iftikhar: All right. Thank you. …
>
> [emphasis added]

61 It is apparent that this alleged "interruption" was appropriately made to ensure that the questions posed were concise and specific. Such a direction did not prevent Siddiqsons from advancing its case through the cross-examination, and it remained open for its counsel to extract whatever oral evidence it thought relevant from New Metallurgy's witnesses. In any event, it appears from the exchange that Siddiqsons' counsel accepted the suggestion of the Tribunal without expressing any objection or disagreement.

62 I cite the two "interruptions" above as examples and do not think it necessary to deal with all of them in detail – none of them raise any doubt as to whether the Tribunal had properly conducted itself. I also highlight that at the case conference convened on 1 August 2024 before the substantive hearing of this application, Siddiqsons' counsel, at my invitation, had identified three "interruptions" as the most egregious instances. However, none of the three

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[75] Siddiqsons' Subs at para 61(b); 1Aff MNM at pp 2434–2435.

featured in its list of interruptions it relied on in its written submissions. This was another example of Siddiqsons' shifting and amorphous case.

63 It was also clear that none of the "interruptions" were prejudicial to Siddiqsons. Indeed, neither Siddiqsons' affidavit nor submissions disclosed what evidence it was precluded from adducing on account of the "interruptions" or how such evidence was material. Its counsel conceded that while it had endeavoured to show when the interruptions were made, it had not included the questions Siddiqsons' arbitration counsel wanted to ask or the evidence that may have come forward but for the interruptions.[76]

64 Finally, there was no evidence that Siddiqsons had even objected to these "interruptions" or expressed any concern to the Tribunal that it was unable to present its case because of those "interruptions" by the Tribunal. This was yet another instance of Siddiqsons engaging in "hedging".

65 As an aside, Siddiqsons' presentation of this complaint left much to be desired. While its affidavit annexed a table of the "interruptions" consisting statements of the counsel and the Tribunal,[77] this was plainly insufficient to provide the relevant context to the exchanges. Further, nine "interruptions" in the original list of 46 "interruptions" and four in its reduced list related to a day of the evidential hearing of the Arbitration, *ie*, 3 January 2022, of which no transcript was provided. As for the rest, no explanation specific to each "interruption" was provided. This fell severely short of the substantiation to be expected when bringing such a complaint.

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[76] Transcript at p 43 lines 2–15.

[77] 1Aff MNM at pp 4428–4443.

Conclusion

66 In sum, Siddiqsons had not established (a) a breach of natural justice; or (b) that it had suffered some prejudice that affected the decision of the Tribunal in the Award. It is also clear that even if Siddiqsons had genuine concerns over the conduct of the proceedings (which is doubtful), it had failed to raise these in a timely manner. Instead, it had, on its best case, hedged its position and reserved its complaints for this application. Such conduct will not be countenanced.

67 For these reasons, I dismissed the application to set aside the Award and awarded costs of $35,000 in favour of New Metallurgy. In arriving at this amount, I considered that Siddiqsons had not explained or particularised its complaints properly in its affidavit, which had caused New Metallurgy to undertake extensive work to anticipate Siddiqsons' arguments and to explain what had transpired in the Arbitration. Much of this work was wasted when Siddiqsons abandoned and/or altered several of its complaints in its submissions.

68 Separately, I am disturbed by the time taken for this application to be heard. It was filed on 5 December 2022 but heard more than *20 months* later. A substantial cause of the delay appears to have been the time taken for Siddiqsons to serve the application and other necessary documents on New Metallurgy in China. Siddiqsons had opted to serve the relevant cause papers via the Treaty on Judicial Assistance in Civil and Commercial Matters between the Republic of Singapore and the People's Republic of China. This required Siddiqsons to first obtain the Court's permission to serve the cause papers out of jurisdiction and thereafter file a request for service out of Singapore. The request had to be accompanied by a translation of the papers to be served. Because of the time

taken to complete these steps, the Originating Application ("OA") had to be renewed twice, and Siddiqsons had to thereafter apply for permission to serve the renewed OA (and the accompanying papers for the renewal applications) out of jurisdiction and additionally translate the same.

69 In fact, the application was able to proceed only because New Metallurgy's solicitors filed their appointment notice in these proceedings on 23 May 2024. This was before the application and supporting documents were served on New Metallurgy in China on 15 July 2024, some 18 months after the OA was filed.

70 It transpired that New Metallurgy learned of this application in August 2023 when it applied – in the High Court of Sindh, Karachi – for the recognition and enforcement of the Award (the "Pakistani Proceedings").[78] Siddiqsons resisted the Pakistani Proceedings and sought an adjournment on the basis that this application had been filed, thereby bringing it to New Metallurgy's notice. Siddiqsons did not offer any reasons for not informing New Metallurgy sooner – its counsel stated that they had no instructions to do so and that it was not a legal requirement.[79] For completeness, I note that New Metallurgy only appointed local solicitors some months after August 2023 as, according to its counsel, its primary focus was to seek the recognition and enforcement of the Award in Pakistan, which may be delayed if it took a step in these proceedings.[80]

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78 1Aff ZZ at para 81.

79 Transcript at p 2 lines 19–23, p 3 lines 5–10.

80 New Metallurgy's Subs at para 42(c).

71 At the conclusion of the hearing before me, I directed Siddiqsons' counsel to tender a detailed chronology of events to determine the cause of the delay. From the chronology tendered, I could not conclude that Siddiqsons had failed to act with reasonable speed in effecting service of this application. The delay did however benefit Siddiqsons given that the Pakistani Proceedings were stayed pending the outcome of this application.

72 Nonetheless, all this delay, and its attendant costs, could have been avoided if Siddiqsons had simply informed New Metallurgy or its arbitration counsel of this application and invited it to appoint local solicitors to accept service. I accept that there is no express *legal* requirement for Siddiqsons to do so; however, such a position appears antithetical to the language and spirit of the Rules of Court 2021, as embodied in the Ideals in O 3 r 2, which seek to achieve expeditious proceedings, cost-effective work, efficient use of court resources and fair and practical results: see O 3 rr 2(*b*), 2(*c*), 2(*d*) and 2(*e*) of the Rules of Court 2021. Parties should certainly not use our rules and processes as an instrument of delay. In this specific context, there may be scope to reform the current rules to require claimants or applicants, before applying to serve out an originating process of jurisdiction, to give notice of the same to the foreign respondent so that the latter may elect to appoint local solicitors to accept service. This appears sensible particularly in the context of applications to set aside an award of an arbitration seated in Singapore, where there is no question of jurisdiction or *forum non conveniens*, and the respondent is likely to have been legally represented in the arbitration and would want to deal with the application expeditiously so that the enforcement of the award will not be delayed. Indeed, Art 34(3) of the Model Law mandates that a setting aside application may not be made after three months from the date on which the party making that application had received the award – this highlights and advances the policy of dealing with and disposing of such challenges expeditiously. That

policy will be undermined if such applications, after they are filed, are delayed on account of procedural or administrative issues.

Hri Kumar Nair
Judge of the High Court

Zhulkarnain bin Abdul Rahim, Lum Rui Loong Manfred and Cheong Wei Wen John (Dentons Rodyk & Davidson LLP) for the applicant; Tan KY Won Terence, Sandra Lye Hui Wen and Tan Lena (Chen Lina) (Genesis Law Corporation) for the defendant.