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

[2024] SGHC 309

Originating Application No 274 of 2024

Between

(1) DJK
(2) DJL
(3) DJM

… *Claimants*

And

DJN

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice — Whether tribunal exhibited apparent bias in conduct of proceedings and in award]

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DJK and others
v
DJN

[2024] SGHC 309

General Division of the High Court — Originating Application No 274 of 2024
Chua Lee Ming J
11 November 2024

3 December 2024

Chua Lee Ming J:

Introduction

1 This was an application by the Claimants to set aside an arbitral award on the ground of apparent bias. The arbitration (the "Arbitration"), seated in Singapore, was administered by the Singapore International Arbitration Centre (the "SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the "SIAC Rules"), before a sole arbitrator (the "Arbitrator").

2 The Claimants filed a Notice of Challenge to the Court of Arbitration of the SIAC (the "SIAC Court") seeking the removal of the Arbitrator on the ground of apparent bias (the "Notice of Challenge"). The SIAC Court rejected the Notice of Challenge and subsequently the Arbitration proceeded without the Claimants' participation.

3 The Claimants did not challenge the SIAC Court's decision. After the Arbitrator issued the final award (the "Final Award"), the Claimants filed this application to set aside the Final Award.

4 In these grounds of decision, the terms "Claimants" and "Defendant" refer to the claimants and defendant in these proceedings, unless otherwise indicated. The Defendant was the claimant in the Arbitration; the Claimants were the respondents in the Arbitration.

Facts

5 On 10 November 2022, the Defendant submitted a notice of arbitration pursuant to a loan agreement under which the Defendant was the lender, the first Claimant was the borrower and the second and third Claimants were guarantors (the "Loan Agreement"). The Defendant sought repayment of a loan given to the first Claimant with interest. An event of default had occurred under the Loan Agreement and the loan had not been repaid in full. Essentially, the Claimants' defence in the Arbitration was that the Defendant had agreed to accept the shares given as collateral ("Collateral Shares") in lieu of cash payment.

6 On 29 December 2022, the President of the SIAC Court appointed Mr Lomesh Kiran Nidumuri as the Arbitrator.

7 On 5 March 2023, the Defendant applied for early dismissal of the Claimants' defence or (in the event the application for early dismissal was not granted) for security for claim and costs (the "Early Dismissal/Security Application").[1] On 5 April 2023, the Arbitrator held an oral hearing after which he requested the parties to undertake further research on Singapore law

[1] Second Claimant's 1st Affidavit, at pp 176–314.

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regarding the applicable legal tests. The parties agreed to submit their further authorities by 12 April 2023 and the Arbitrator so directed.

8 On 7 April 2023, the Defendant applied for reimbursement of unpaid deposits (the "Reimbursement Application").[2] The basis for this application was that the Claimants had failed to pay their share of the advance towards the costs of the arbitration, as directed by the SIAC, and the Defendant had to pay the same in order to proceed with the Arbitration.

9 On 12 April 2023, the parties submitted their supplemental legal authorities in relation to the Early Dismissal/Security Application. On 29 May 2023, the Arbitrator issued his orders on the Early Dismissal/Security Application (the "Security Orders").[3] The Arbitrator made the following orders (among others):

(a) The request for early dismissal of the defence was rejected.

(b) The Claimants (as respondents in the Arbitration) were ordered to furnish security for the claim and security for costs.

10 On 17 April 2023, the Defendant applied for production of documents by the Claimants (the "Production Application").[4] On 30 May 2023, the Arbitrator issued his orders on the Production Application.[5]

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2 Second Claimant's 1st Affidavit, at pp 428–464.

3 Second Claimant's 1st Affidavit, at pp 1141–1159.

4 Second Claimant's 1st Affidavit, at pp 1161–1170.

5 Final Award, at paras 68 and 70 (Second Claimant's 1st Affidavit, at p 67).

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11 On 31 May 2023, the Arbitrator circulated a list of draft issues (the "Draft Issues") to the parties.[6]

12 On 7 June 2023, the Claimants requested the Arbitrator to set aside the Security Orders on the ground that it was made in breach of natural justice and/or that there had been a violation of due process.[7] On 9 June 2023, the Arbitrator rejected the request.[8]

13 On 13 June 2023, the Claimants requested the Arbitrator to withdraw from the Arbitration on the ground that the Arbitrator's conduct in relation to his rejection of the Claimants' request to set aside the Security Orders gave rise to a real likelihood that the Arbitrator could not and would not be able to fairly determine the relevant issues in the Arbitration (the "Withdrawal Request").[9] The Defendant disagreed with the Withdrawal Request.[10] On 16 June 2023, the Arbitrator declined the Withdrawal Request.[11]

14 On 21 June 2023, the Claimants filed its Notice of Challenge to the SIAC Court pursuant to Rule 14 of the SIAC Rules (the "Notice of Challenge").[12] The Claimants sought the removal of the Arbitrator on the ground that there were justifiable doubts as to the Arbitrator's impartiality or independence.

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6 Second Claimant's 1st Affidavit, at pp 1178–1779.

7 Second Claimant's 1st Affidavit, at pp 1180–1188.

8 Second Claimant's 1st Affidavit, at pp 1190–1192.

9 Second Claimant's 1st Affidavit, at pp 1207–1208.

10 Second Claimant's 1st Affidavit, at p 1212.

11 Second Claimant's 1st Affidavit, at p 1215.

12 Second Claimant's 1st Affidavit, at pp 1217–1231.

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15 On 30 June 2023, the SIAC Secretariat issued a decision not to suspend the proceedings during the pendency of the Notice of Challenge pursuant to Rule 15.4 of the SIAC Rules.[13]

16 On 4 July 2023, the Defendant applied for sanctions against the first Claimant for breaches of the Security Orders (the "Sanctions Application").[14]

17 On 21 July 2023, the Claimants filed their witness statements.

18 On 24 July 2023, the Claimants requested that the timelines for the merits hearing and arguments be fixed after the Notice of Challenge was resolved.[15] The Arbitrator replied on the same day, stating that the proceedings could not be suspended on account of the Notice of Challenge and that he was bound to follow the directions issued by the SIAC.[16]

19 On 26 July 2023, the Claimants sought the Arbitrator's clarification as to whether he still had the power to continue with the Arbitration despite the pendency of the Notice of Challenge.[17] The Arbitrator replied on 28 July 2023, stating that the SIAC had given a clear mandate to him not to suspend the proceedings and he was bound to continue with the Arbitration.[18]

20 On 16 August 2023, the Claimants were supposed to lead evidence in the Arbitration. However, the Claimants did not attend the hearing. When

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13 Second Claimant's 1st Affidavit, at p 1482.

14 Final Award, at para 91 (Second Claimant's 1st Affidavit, at p 69).

15 Second Claimant's 1st Affidavit, at p 1494.

16 Second Claimant's 1st Affidavit, at p 1493.

17 Second Claimant's 1st Affidavit, at p 1492.

18 Second Claimant's 1st Affidavit, at p 1491.

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contacted, the Claimants stated that they were unable to participate any further in the proceedings pending the resolution of the Notice of Challenge.[19] The Arbitrator then adjourned the hearing to 17 August 2023.[20]

21 On 17 August 2023:

(a) The Claimants stated that their position had not changed and that pending the resolution of the Notice of Challenge, they would not participate in the Arbitration.[21]

(b) The SIAC Court rejected the Notice of Challenge and directed the Arbitrator to continue as the sole arbitrator.[22]

(c) The Claimants stated that they were challenging the Notice of Objection before the General Division of the High Court of Singapore (the "High Court") and accordingly, they would not participate in the Arbitration until the Notice of Challenge was determined by the High Court.[23]

(d) At the Arbitration hearing, the Defendant requested arguments to be heard on 21 August 2023. The Arbitrator disagreed and instead adjourned the hearing to 31 August 2023 for arguments, in order to give the Claimants yet another opportunity to make submissions.

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19 Second Claimant's 1st Affidavit, at p 2098.

20 Second Claimant's 1st Affidavit, at p 2098.

21 Second Claimant's 1st Affidavit, at p 2097.

22 Second Claimant's 1st Affidavit, at pp 2122–2160.

23 Second Claimant's 1st Affidavit, at p 2097.

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22 In the event, the Claimants did not apply to the High Court to decide on the Notice of Challenge.

23 The Claimants again did not attend the hearing on 31 August 2023. The Defendant concluded its arguments, and the Arbitrator directed counsel for the parties to file their written submissions by 15 September 2023. The Arbitrator also gave the Claimants an opportunity to request oral arguments, despite the Defendant's objections.[24]

24 On 16 September 2023, the Defendant filed its Post-Hearing Brief dated 15 September 2023.[25]

25 On 20 September 2023, the Arbitrator requested counsel for the Claimants to confirm that there were no additional filings from them.[26] On 21 September 2023, the Claimants stated that they did not intend to participate in the arbitration proceedings any further.[27]

26 On the same day (21 September 2023), the Arbitrator rejected the Reimbursement Application and the Sanctions Application.[28]

27 On 25 September 2023, the Arbitrator declared the Arbitration closed pursuant to Rule 32 of the SIAC Rules.[29]

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24 Second Claimant's 1st Affidavit, at p 2162.

25 Final Award, at para 115 (Second Claimant's 1st Affidavit, at p 72).

26 Final Award, at para 116 (Second Claimant's 1st Affidavit, at p 73).

27 Final Award, at para 117 (Second Claimant's 1st Affidavit, at p 73).

28 Final Award, at para 118 (Second Claimant's 1st Affidavit, at p 73).

29 Final Award, at para 121 (Second Claimant's 1st Affidavit, at p 73).

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28 On 22 December 2023, the Arbitrator issued the Final Award.[30] Among other things, the Arbitrator declared that the Claimants had breached the Loan Agreement and ordered the Claimants to jointly and severally pay the Defendant the principal amount with interest and costs.

29 On 20 March 2024, the Claimants filed the present application to set aside the Final Award.

The Claimants' case

30 As stated in [22] above, the Claimants did not apply to the High Court to decide on the Notice of Challenge despite having indicated that it intended to do so. Under Art 13(3) of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), an application by the Claimants to the High Court was to be made within 30 days after receipt of the SIAC Court's rejection of the Notice of Challenge.

31 Before me, the Defendant confirmed that it was *not* arguing that Art 13(3) had preclusive effect. I therefore proceeded on the basis that the Claimants' decision not to exercise their right under Art 13(3) did not preclude them from applying to set aside the Final Award on the same grounds that they could have relied on had they exercised their rights under Art 13(3).

32 The Claimants' case was that the Final Award should be set aside pursuant to:[31]

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30 Second Claimant's 1st Affidavit, at pp 51–117.

31 Second Claimant's 1st Affidavit, at para 5.

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(a) Article 34(2)(*a*)(ii) of the Model Law and s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed), on the basis that the Final Award was made in breach of the rules of natural justice, and

(b) Article 34(2)(*a*)(iv) of the Model Law, on the basis that the Arbitrator breached Art 18 of the Model Law in failing to treat the parties equally.

33 It is well established that there are two pillars of natural justice, the rule against bias and the fair hearing rule: *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [43]. Bias includes actual bias and apparent bias. An award may also be set aside on the ground of apparent bias pursuant to Art 34(2)(*a*)(iv) of the Model Law: *PT Central Investindo v Franciscus Wongso and others and another matter* [2014] 4 SLR 978 at [133] to [134].

34 At a case conference on 28 October 2024, the Claimants confirmed that they were relying only on the ground of apparent bias.

35 The Claimants' case was that the following circumstances gave rise to a reasonable suspicion of bias on the part of the Arbitrator:[32]

(a) The Arbitrator's conduct in making the Security Orders and rejecting the request to set aside the same.

(b) The Arbitrator's prejudgment.

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[32] Claimants' Written Submissions dated 4 November 2024 ("CWS"), at para 61.

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The law

36 In *BOI v BOJ*, [2018] 2 SLR 1156 ("*BOI*"), the Court of Appeal set out the principles applicable to apparent bias as follows (at [103]):

> (a) The applicable test is whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer.
>
> (b) The test is an objective test.
>
> (c) A reasonable suspicion or apprehension arises when the observer would think, from the relevant circumstances, that bias is possible. It cannot be a fanciful belief, and the reasons for the suspicion must be capable of articulation by reference to the evidence presented.
>
> (d) The court must be mindful not to supplant the observer's perspective by assuming knowledge outside the ken of reasonably and well-informed members of the public. The observer would be appraised of all relevant facts that are capable of being known by members of the public generally. The observer would also be fair-minded; he would be neither complacent nor unduly sensitive and suspicious. He would not jump to hasty conclusions of bias based on isolated episodes of temper or remarks taken out of context.
>
> (e) In line with (d) above, the relevant circumstances which the court may take into account would be limited to what is available to an observer witnessing the proceedings.

37 In *BOI*, the Court of Appeal confirmed that prejudgment is a form of apparent bias (at [108]) and held (at [109]):

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> To establish prejudgment amounting to apparent bias, therefore, it must be established that the fair-minded, informed and reasonable observer would, after considering the facts and circumstances available before him, suspect or apprehend that the decision-maker had reached a final and conclusive decision before being made aware of all relevant evidence and arguments which the parties wish to put before him or her, such that he or she approaches the matter at hand with a closed mind.

The Arbitrator's conduct in making the Security Orders and rejecting the request to set aside the same

38 The Claimants submitted as follows:

(a) In making the Security Orders, the Arbitrator acted in excess of jurisdiction by treating the requirements for establishing security for claim and security for costs as identical even though neither the Defendant nor the Claimants put forward such a position.

(b) The Arbitrator acted in excess of jurisdiction when he took into account the first Claimant's financial difficulties when deciding on the application for security for claim.

(c) The Arbitrator relied on an authority submitted by the Defendant (pursuant to the Arbitrator's request to all the parties to undertake further research) without giving the Claimants an opportunity to respond.

(d) In its application for security, the Defendant had only requested a single sum as security for both the claim and costs. The Arbitrator exceeded his jurisdiction by making an order for security for a portion of the claim. The Arbitrator did not request the Claimants to give their response on the quantum for security for the claim or the Arbitrator's intended reliance on an email that had been sent on a "without prejudice" basis.

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(e) The Arbitrator failed to apply his mind to the Claimants' arguments that (i) security for claim was granted in rare circumstances and none had been shown, and (ii) the regime for security for costs was to protect a respondent from a claimant.

(f) The Arbitrator exceeded his jurisdiction in making his Security Orders because he relied on evidence that the Defendant did not rely on.

(g) In rejecting the claimants' request to set aside the Security Orders, the Arbitrator refused to respond to the Claimants' position that he had exceeded his jurisdiction. The Arbitrator echoed the way the Defendant characterised the Claimants.

39 The Claimant's submissions alleged breaches of the fair hearing rule and excess of jurisdiction by the Arbitrator in making the Security Orders. It bears emphasising that the application before me was not a challenge against the Security Orders. Rather, the Claimants' argument was that the Arbitrator's conduct was evidence of apparent bias.

40 A finding that a tribunal has breached the fair hearing rule and/or exceeded its jurisdiction does *not* necessarily lead to a finding of apparent bias. Ultimately, the question remains whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer (see [36] above).

41 As will be seen from the analysis below, the Claimants' allegations of breach of the fair hearing rule and excess of jurisdiction were not made out. In any event, the facts did not support an inference of apparent bias.

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The requirements of security for claim and security for costs

42 Rule 27(j) of the SIAC Rules provided that a tribunal shall have the power to "order any party to provide security for legal or other costs in any manner the Tribunal thinks fit."[33] Rule 27(k) provided that a Tribunal shall have the power to "order any party to provide security for all or part of any amount in dispute in the arbitration."

43 The Claimants submitted that the parties had recognised that the requirements for security for claim and security for costs were different and that the Arbitrator acted in excess of jurisdiction by treating the test/standard for both as the same.[34] The Claimants referred to the parties' respective arguments before the Arbitrator, in which:

(a) the Defendant had argued that the grant of security for claim was analogous to the grant of conditional leave to defend,[35] and

(b) the Claimants had argued that security for claim should be ordered only where the respondent had admitted to the claim.[36]

44 The above arguments before the Arbitrator merely showed the different tests advocated by the parties with respect to *security for claim*. They did not support the Claimants' submission that the parties had recognised that the requirements for *security for claim and security for costs* were different.

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33 Claimants' Bundle of Authorities, at p 24.

34 CWS, at para 63.

35 Second Claimant's 1st Affidavit, at pp 1126 – 1127 (S/N 7–8).

36 Second Claimant's 1st Affidavit, at p 400 (para 15).

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45 In their arguments before the Arbitrator, the parties had addressed security for claim and security for costs separately. However, contrary to the Claimants' submission, the Defendant did not advance the case that the requirements for security for claim were different from those for security for costs. In its Early Dismissal/Security Application, the Defendant had submitted that there was "no rigid test for the [Arbitrator] to follow with regard to ordering security for claim and costs" and that the Arbitrator was "entitled to take into account any circumstances it deems appropriate as follows".[37]

46 Further, it was clear that the Defendant's case was that the test for security for claim did overlap with the test for security for costs, in that the likelihood of the defence succeeding was a factor that was relevant to both.[38]

47 In any event, even if the Arbitrator did exceed his jurisdiction, that was insufficient to show apparent bias.

The first Claimant's financial difficulties

48 The Claimants submitted that:[39]

(a) the Defendant's application for security for claim was based on the ground that the Claimant's case was weak, and

(b) the Arbitrator acted in excess of jurisdiction when he took into account the first Claimant's financial difficulties when deciding on the application for security for claim.

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37 Second Claimant's 1st Affidavit, at p 187 (para 26).

38 Second Claimant's 1st Affidavit, at p 1127 (S/N 8) and p 1131 (S/N 14).

39 CWS, at para 64.

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49 In my view, the Arbitrator was entitled to consider the first Claimant's financial difficulties. In their response to the application for security for claim, the Claimants had argued that security for claim was an exceptional relief and, in this context, the Claimants had themselves argued that it had not been suggested that the Claimants were "insolvent or close to insolvency."[40]

50 In any event, even if the Arbitrator did exceed his jurisdiction as alleged by the Claimants, that did not show apparent bias.

Reliance on the Defendant's supplemental authority

51 After hearing oral arguments on the Early Dismissal/Security Application, the Arbitrator requested the parties to undertake further research on Singapore law with respect to the test/standard to be applied; the parties agreed to file their supplemental authorities simultaneously.[41] The parties subsequently filed their supplemental authorities on 12 April 2023. One of the cases submitted by the Defendant was *Oversea-Chinese Banking Corp Ltd v Ang Thian Soo* [2006] 4 SLR(R) 156 ("*OCBC*").

52 In the Security Orders, the Arbitrator referred to *OCBC* for the proposition that "[i]f the overall circumstances in law and available evidence indicate that the likelihood of defence succeeding is very small, the court would require the defendant to provide security".[42]

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40 Second Claimant's 1st Affidavit, at p 330–331 (paras 49–50).

41 Second Claimant's 1st Affidavit, at p 401.

42 Second Claimant's 1st Affidavit, at p 1152 (para 43). Para 43 referred to footnote 20. In footnote 20, the Arbitrator erroneously referred to *Overseas-Chinese Banking Corp Ltd v The Timekeeper Singapore Pte Ltd and others* [1997] 1 SLR(R) 392 instead of *OCBC*. The except quoted in footnote 20 is from *OCBC* at [8].

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53 Before me, the Claimants submitted that they were not given the opportunity to respond to the case referred to by the Arbitrator. The Claimants submitted that a reasonable and fair-minded tribunal would have requested the Claimants to respond.[43]

54 I disagreed with the Claimants. As the Defendant pointed out, the supplemental authorities were filed on 12 April 2023. The Arbitrator made the Security Orders more than a month later, on 29 May 2023. The Claimants had the opportunity to respond to the Defendant's supplemental authorities but chose not to do so, even though in their email setting out their supplemental authorities, they had expressly reserved the right to respond to the Defendant's supplemental authorities.[44]

55 In any event, the Arbitrator's omission to ask for the Claimants' response could not be said to be evidence of apparent bias.

Ordering security for a portion of the claim

56 In its application to the Arbitrator, the Defendant sought security for claim in the sum of US$1,025,890.48, *ie*, the entire amount of its claim.[45] The Arbitrator decided instead that the Defendant was entitled to security for part of its claim and ordered security for claim in the sum of US$250,000.[46] In deciding on the amount of security for claim, the Arbitrator considered an email dated 7 December 2022 (the "7 December 2022 Email") in which the Claimants had

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43 CWS, at para 65.

44 Second Claimant's 1st Affidavit, at p 399 (para 3).

45 Second Claimant's 1st Affidavit, at p 189 (para 33).

46 Second Claimant's 1st Affidavit, at p 1157 (para 61).

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made assurances of making cash payment of US$200,000 by end of January 2023 and a further payment of US$800,000 upon completion of fund raising.[47]

57 Before me, the Claimants submitted that as the Defendant had only requested security for the entire claim amount without asking for a lower amount in the alternative, the Arbitrator had exceeded his jurisdiction by ordering security for part of the claim.[48] The Claimants also referred to the Arbitrator's reliance on the 7 December 2022 Email which had been sent on a without prejudice basis. The Claimants submitted in the alternative that a reasonable and fair-minded tribunal would have requested the Claimants to respond on the amount of security for claim and the Arbitrator's intended reliance on the 7 December 2022 Email.

58 I rejected the Claimants' submissions. Clearly, the Arbitrator was entitled to grant security for claim in an amount lower than what the Defendant asked for. Further, it was always reasonably foreseeable that the Arbitrator may decide on an amount lower than what the Defendant had asked for. The Claimants could have made submissions (in the alternative) for a lower amount. In my view, the Claimants could not complain that they had not been invited to do so. As for 7 December 2022 Email, the fact that it may have been a without prejudice communication was not relevant. The Claimants had themselves relied on the email in their Statement of Defence.[49] As the Arbitrator had also noted, the parties had placed heavy reliance on that email (among other documents).[50]

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47 Second Claimant's 1st Affidavit, at p 1157 (para 61).

48 CWS, at para 66.

49 Second Claimant's 1st Affidavit, at p 159 (para 26a).

50 Second Claimant's 1st Affidavit, at p 1153 (paras 49 and 49.2).

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59 Again, in any event, regardless of whether the Arbitrator should have asked for the Claimants' response, the facts did not support the Claimants' allegation of apparent bias.

Failing to apply his mind to the Claimants' arguments on the purpose of orders for security for costs

60 The Claimants submitted that the Arbitrator failed to apply his mind to the Claimants' arguments that (a) security for claim was granted in rare circumstances and none had been raised, and (b) the regime for security for costs was to protect respondents from claimants.[51]

61 I was not persuaded that the Arbitrator had failed to apply his mind to their arguments. All that could be said was that the Arbitrator did not agree with the Claimants' arguments. In any event, the facts in this case did not support the allegation of apparent bias. For completeness, the Claimants' argument, that the regime for security for costs was to protect respondents from claimants, is dealt with in [72]–[77] below.

Relying on evidence not relied on by the Defendant

62 In its application for security for costs, the Defendant had asked for (a) S$54,488.33 being the Claimants' share of the advance on the costs of the Arbitration, and (b) EUR 171,750 for the Defendant's anticipated legal costs in the Arbitration.[52]

63 The Arbitrator rejected the Defendant's application for security for costs in the sum of EUR 171,750 being anticipated legal costs in the Arbitration, on

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51 CWS, at para 67.

52 Second Claimant's 1st Affidavit, at pp 180 (para 7) and 189 (para 33).

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the ground that the amount had not been substantiated.[53] However, he deemed it appropriate to require the Claimants to provide security for the sum of S$54,488.33;[54] this amount represented the Claimants' share of the advance on the costs of the Arbitration, which the Claimants had not paid. The Defendant had to pay the same in order to proceed with the Arbitration (see [8] above).

64 Before me, the Claimants submitted that in ordering security for costs in the sum of S$54,488.33, the Arbitrator had referred to evidence in a separate application made by the Defendant for reimbursement of the Claimants' share of the advance on the costs of the Arbitration. The Claimants argued that the Arbitrator had relied on a ground which the Defendant had not relied on in its application for security for costs and had thereby exceeded his jurisdiction.

65 In my view, the Arbitrator could not be said to have exceeded his jurisdiction. As stated in [62] above, the Defendant had asked for security for costs in the amount of S$54,488.33 being the Claimants' share of the advance on the costs of the Arbitration. The Arbitrator granted the Defendant's application for security for these costs.

The Arbitrator's rejection of the Claimants' request to set aside the Security Orders

66 As stated at [12] above, the Arbitrator rejected the Claimants' request to set aside the Security Orders. In his order rejecting the Claimants' request, the Arbitrator said the following:[55]

> 4. A party is expected to be diligent and provide relevant case laws and latest position on law to the Tribunal at the time

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53 Second Claimant's 1st Affidavit, at p 1158 (para 67).

54 Second Claimant's 1st Affidavit, at p 1158 (para 66).

55 Second Claimant's 1st Affidavit, at pp 1190–1191.

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> of making an application, or, at least before the oral hearing. In the Reply [to the Defendant's Early Dismissal/Security Application], [the Claimants] relied on case law, which was not relevant to the facts of the case. Despite this, to provide ample opportunity to the Parties to present their case, the Tribunal permitted them to supplement their legal submissions.
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> …
>
> 9. The [Claimants' request to set aside the Security Order] has been issued broadly on the premise that (a) the Tribunal has relied on the Claimants Supplementary Authorities and the Respondents have not been given an opportunity to respond to them, (b) Tribunal has exceeded its jurisdiction in considering matters not placed before it, and (c) Tribunal has failed to apply its mind to the issues raised by the Respondents.
>
> 10. The [Claimants' request] lacks legal basis. There is no provision in the SIAC Rules enabling a party to request the Tribunal to withdraw an order that has already been passed. *Arguendo*, even assuming such a request can be maintained, the facts and circumstances of this case does not merit any such reconsideration.
>
> …
>
> 12. The Respondents contention that the order has been passed in breach of natural justice/due process or that they have not been provided an opportunity to respond to the Claimants Supplementary Authorities, is fallacious and lacks *bonafides.*
>
> a. In the oral hearing of April 5, 2023, it was agreed that Parties would file the case laws simultaneously.
>
> b. Claimants Supplementary Authorities were filed on April 12, 2023. The Order was passed on May 29, 2023. If the Respondents felt there was a need to respond to the Claimants Supplementary Authorities, they ought to have made a request to the Tribunal.
>
> c. Even though the Respondents mentioned in their email of April 12, 2023 that they "… *reserve the right to respond to the same should the Claimant bring up further case authorities…*" they never exercised it. There is no explanation as to why they did not exercise it.
>
> d. No prejudice has been caused to the Respondents. On the contrary, the Respondents have had sufficient opportunity to put forth their case before the Tribunal.

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> The request … is accordingly **Rejected**.
>
> The Parties are called upon to comply with the directions and procedural timelines already fixed by the Tribunal to ensure expeditious completion of these proceedings. Any attempts to delay the proceedings may necessitate imposition of costs. The Tribunal solicits the kind cooperation of the Parties.
>
> [emphasis in original]

67 Before me, the Claimants complained that:[56]

(a) the Arbitrator refused to respond to their position that he exceeded his jurisdiction and that he failed to apply his mind to the issues raised by the Claimants;

(b) in his rejection of the Claimants' request, the Arbitrator implied that the Claimants were not diligent and relied on irrelevant case law, stated that the Claimants' contention was fallacious and lacked *bonafides*, and threatened the Claimants with the imposition of costs;

(c) the Arbitrator echoed the Defendant's characterisation of the Claimants; and

(d) the Arbitrator's comments about complying with directions and timelines and about attempts to delay the proceedings were directed at the Claimants; this was hostile language.

68 I disagreed with the Claimants. I could not see anything in the Arbitrator's comments (when he rejected the Claimants' request to side aside the Security Orders) that showed apparent bias.

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[56] CWS, at para 71.

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Conclusion

69 The Claimants' allegations of breach of the fair hearing rule and excess of jurisdiction were not made out. Even if they were made out, in my view, they were not such as to have given rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer.

70 As stated in [68] above, the Arbitrator's comments in rejecting the Claimants' request to set aside the Security Orders did not show any apparent bias.

Whether the Arbitrator had prejudged the merits

71 As the Court of Appeal stated in *BOI*, the reasons for the suspicion that bias is possible must be capable of articulation by reference to the evidence presented (see [36(c)] above).

72 The Claimants submitted that the Arbitrator had prejudged the merits of the Defendant's claim, for the following reasons:[57]

(a) The Arbitrator's order requiring the Claimants (as respondents in the Arbitration) to provide security for costs fell outside the boundaries of what a reasonable and fair-minded tribunal might have done.

(b) The Arbitrator readily and easily dismissed the Claimants' legal defences as weak, during his *prima facie* assessment of the merits of the case.

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[57] CWS, at paras 77–84.

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(c) The Arbitrator ordered the production of bank statements of the second and third Claimants even though these documents were irrelevant to the issues in the Arbitration.

The order for security for costs

73 Rule 27(j) of the SIAC Rules gave the Arbitrator power to "order any party to provide security for legal or other costs …" The Arbitrator noted that the discretion provided to him was "wide",[58] and ordered the Claimants (who were the respondents in the Arbitration) to provide security for costs.

74 The Claimants submitted that:[59]

(a) the purpose of security for costs was to protect a respondent defending an unmeritorious claim by an impecunious claimant;

(b) the words "any party" in Rule 27(j) should be interpreted with the purpose of security for costs in mind to mean a claimant or a respondent as counterclaimant, and

(c) the Arbitrator's order requiring the Claimants (as respondents in the Arbitration) to give security for costs "did not fall within the boundaries of what a reasonable and fair-minded tribunal might have done",[60] and therefore showed that he had formed an opinion that the Defendant would be the winning party in the Arbitration and that the Claimants would ultimately be liable for the Defendant's claim and costs.

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58 Second Claimant's 1st Affidavit, at p 1151 (para 38).

59 CWS, at paras 74–77.

60 CWS, at para 77.

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75 The substance of the Claimants' submission was that the Arbitrator's interpretation of Rule 27(j) was so unreasonable that the inference to be drawn was that he adopted the unreasonable interpretation so that he could make the order for security for costs, and that he wanted to make the order for security for costs because he had decided that the Defendant would succeed in the Arbitration and be entitled to costs.

76 Implicit in the Claimants' submission was the accusation that the Arbitrator had abused his powers by deciding the application for security for costs on the basis of a collateral purpose. Obviously, this was a serious accusation to make against any tribunal and clear evidence was required to make good the accusation.

77 In the present case, the Claimants came nowhere close to making good their accusation. Clearly, the Arbitrator's interpretation of Rule 27(j) could not be said to be one that no reasonable tribunal could have arrived at. The Arbitrator's view (that the discretion provided by Rule 27(j) was wide) was consistent with the plain meaning of the words used. On the other hand, the Claimants' interpretation required the Arbitrator to interpret the words "any party" to mean "a claimant or counterclaimant" and therefore involved re-writing Rule 27(j). It was by no means clear that a reasonable tribunal would have been persuaded by the Claimants' interpretation.

78 In my view, the Arbitrator's interpretation of Rule 27(j) clearly did not show that the Arbitrator had decided that the defendant would win in the Arbitration. This was a simply a case of the Arbitrator disagreeing with and rejecting the Claimant's interpretation of Rule 27(j) of the SIAC Rules.

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The Arbitrator's prima facie assessment of the merits of the case

79 One of the factors that the Arbitrator considered was the prospects of success of the claims(s) and defence(s).[61] The Arbitrator noted that great care should be taken not to prejudge or predetermine the merits of the case and that the standard to be applied was based on a *prima facie* assessment of the merits of the case.[62]

80 In his Security Orders, the Arbitrator stated that a *prima facie* examination of the pleadings and the emails exchange between the parties showed that the defendant did not abandon its cash repayment rights in favour of only the transfer of Collateral Shares (see [5] above); instead, the communications would show that the Defendant had consistently demanded cash repayment.[63]

81 Before me, the Claimants pointed out that the Arbitrator's analysis of the merits in paragraphs 173 to 185 of the Final Award mirrored his *prima facie* assessment in his Security Orders.[64] The Claimants argued that this suggested that the Arbitrator appeared to have prejudged the issues at a premature stage of the proceedings.

82 In my view, the Claimants' submission was unmeritorious. The Claimants did not participate in the hearing on the merits and therefore offered no evidence or submissions. It was not surprising that the assessment of the evidence in the Final Award was consistent with the Arbitrator's *prima facie*

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61 Second Claimant's 1st Affidavit, at p 1151 (para 40).

62 Second Claimant's 1st Affidavit, at p 1151–1152 (para 41).

63 Second Claimant's 1st Affidavit, at p 1155 (para 50).

64 CWS, at para 78.

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assessment in his Security Orders. I also noted that the Arbitrator had properly directed himself that "great care should be taken not to prejudge or predetermine the merits of the case" and that he should "limit [his] preliminary examination to determine whether there [was] a *prima facie* claim made in good faith and *prima facie* defence made in good faith".[65]

The order for production of bank statements

83 In its Production Application, the Defendant sought, among other things, disclosure of:

(a) the second and third Claimants' bank account statements and all financial institutions where they held accounts, for the period from August 2022 to March 2023, and

(b) the second and third Claimants' current assets worth over US$10,000.

84 In support of its application, the Defendant argued that the disclosures were relevant because the Claimants alleged that the second and third Claimants had no resources to pay the costs of the Arbitration, whereas the Defendant's position was that the second and third Claimants had the resources to pay the loan and therefore should not be allowed a free ride at the Defendant's expense with respect to the costs of the Arbitration.

85 The Arbitrator ordered the disclosures set out in [83] above, essentially agreeing with the Defendant's arguments.[66]

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65 Second Claimant's 1st Affidavit, at p 1151–1152 (para 41).

66 Second Claimant's 1st Affidavit, at pp 1168–1169 (S/N 3 and 4).

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86 The Claimants submitted that the disclosures set out in [83] above would typically only be carried out in enforcement applications and would take place after liability had been determined. The Claimants submitted that the disclosure orders and the security for costs order showed that the Arbitrator had already determined liability against the Claimants.

87 I disagreed with the Claimants. The second and third Claimants' financial resources were clearly relevant to the Defendant's application for security for claim and costs. In his Security Orders, the Arbitrator noted (at para 40) that one of the factors to be taken into account was the "ability to satisfy an adverse costs order and the availability of the party's assets for the enforcement of an adverse costs order".[67] The Arbitrator also noted (at para 57) that as the Defendant had made an assertion that the Claimants would not be able to satisfy any adverse order, the Claimants ought to have produced documents to the contrary.[68]

Conclusion

88 In my view, the Claimants' arguments, whether independently or taken together, were not sufficient to show that the Arbitrator had prejudged the merits of the dispute in the Arbitration.

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67 Second Claimant's 1st Affidavit, at p 1151.

68 Second Claimant's 1st Affidavit, at p 1156.

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Conclusion

89 For the reasons stated above, I dismissed the application and ordered the Claimants to pay costs fixed at $33,000 all in.

Chua Lee Ming
Judge of the High Court

Sheryl Koh and Siddartha Bodi (Chua & Partners LLP) for the claimants;
Colin Seow and Violet Huang (Colin Seow Chambers LLC) (instructed), Nichol Yeo (instructing) (Nine Yards Chambers LLC) for the defendant.

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