IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 5

Court of Appeal / Civil Appeal No 10 of 2024

Between

Wan Sern Metal Industries Pte Ltd

… *Appellant*

And

Hua Tian Engineering Pte Ltd

… *Respondent*

In the matter of Originating Application No 1079 of 2023

Between

Wan Sern Metal Industries Pte Ltd

… *Applicant*

And

Hua Tian Engineering Pte Ltd

… *Respondent*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside]
[Arbitration — Award — Conduct of arbitration —"Documents-only"]

Wan Sern Metal Industries Pte Ltd
v
Hua Tian Engineering Pte Ltd

[2025] SGCA 5

Court of Appeal — Civil Appeal No 10 of 2024
Sundaresh Menon CJ, Steven Chong JCA and Judith Prakash SJ
10 October 2024

13 February 2025 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 A key facet of due process in arbitral proceedings is the right to be heard. This is an essential element of natural justice, and, in the context of international arbitrations, it finds expression in Art 18 of the UNCITRAL Model Law on International Commercial Arbitration (adopted on 21 June 1985) (the "Model Law"). The requirement to observe due process in an arbitration ensures that a party has a full opportunity to present its case and to respond to the case brought against it. When this *procedural* safeguard is undermined, it may affect the tribunal's ability to deliver a just outcome in respect of the parties' *substantive* legal rights. In such circumstances, curial intervention may be necessary. The court plays an important role in supporting arbitration by refusing enforcement of or setting aside arbitral awards where the right to be heard has been breached in a way that prejudices a party.

2 The precise requirements of natural justice may differ according to the context of the case. In *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*"), we observed at [143] that the fact that the parties agreed to an expedited arbitration would inevitably have a bearing on the expectations that they may reasonably and fairly have as to the extent of the procedural accommodation that may be afforded to them. On this basis, in *China Machine*, we were satisfied at [144]–[145] that it was within the tribunal's rights to have refused a party's request for a second extension of time, in part because the parties had agreed to an expedited arbitration and that would have been undermined if the request had been granted.

3 This appeal presents us with the opportunity to revisit the practical limits of natural justice in the context of a *documents-only* arbitration. In examining this, we also consider how arbitrators should balance the parties' desire for an accelerated process against the tribunal's own duty to ensure procedural fairness so as to produce an award that is enforceable.

4 Before us is an appeal against the decision of a judicial commissioner sitting in the General Division of the High Court (the "Judge") (see *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2024] SGHC 112 (the "GD")). The Judge dismissed the appellant's application in HC/OA 1079/2023 to set aside the arbitral award that had been issued following a documents-only arbitration seated in Singapore, administered by the Singapore International Arbitration Centre (the "SIAC"), conducted under the Arbitration Rules of the SIAC (6th Ed, 1 August 2016) (the "SIAC Rules"), and governed by the Arbitration Act 2001 (2020 Rev Ed) (the "AA") pursuant to s 3 of the AA read with s 5 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA").

5 The manner in which the arbitration unfolded is noteworthy. Within the span of three months, the parties had filed their pleadings, witness statements, reply witness statements, written submissions, and reply written submissions. There was no oral hearing, and two months later, the arbitrator had issued the award. Although it was the parties' choice to conduct the arbitration in this way, the expedited manner in which the arbitration proceeded resulted in a lack of clarity as to the parties' positions, which the arbitrator failed to appreciate and so to resolve. This formed the pillar of the appellant's complaint that the award should be set aside. In our view, the arbitrator could and should have recognised this lack of clarity and acted to resolve it.

Background facts

6 The appellant, Wan Sern Metal Industries Pte Ltd, was a sub-contractor engaged in connection with a construction project known as Defu Industrial City (the "Project"). The main contractor for the Project was Lian Beng Construction (1988) Pte Ltd ("Lian Beng"). The appellant supplied items such as aluminium windows and doors, glazing works, screens, louvres, fins, box-ups, skylights, canopies, and linkways. It hired the respondent, Hua Tian Engineering Pte Ltd, as its sub-contractor in the Project. The respondent was responsible for supplying labour for the installation works.

7 The parties entered into an agreement that was executed by the appellant on 4 May 2018 and by the respondent on 17 July 2018 (the "Sub-Contract").

8 Several years later, disputes arose between the parties, with the appellant alleging, among other things, that the respondent's works were defective. After sending several notifications of the defects to the respondent in June and July

2022, the appellant issued a notice of termination of the Sub-Contract on 15 July 2022.

9 Although the Sub-Contract does not contain an arbitration agreement, the respondent did not pursue a timely objection to the tribunal's jurisdiction below. The appellant relied on the arbitration agreement in the main contract between Lian Beng and the appellant dated 28 November 2017, and it suggested before the tribunal that that arbitration clause had been incorporated into the Sub-Contract between the parties.

10 Prior to the commencement of the arbitral proceedings, the respondent lodged an adjudication application (the "Adjudication") against the appellant on 18 May 2022 under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the "SOPA"). This arose out of the respondent's payment claim dated 15 April 2022 for the sum of $846,159.87 and the appellant's payment response dated 10 May 2022 for the negative sum of ($200,497.51). On 14 June 2022, the adjudicator allowed the majority of the respondent's claims and rejected all of the appellant's cross-claims (the "Adjudication Determination"). As a result, the appellant was found liable to pay the respondent the sum of $616,670.80 and bear the costs of the Adjudication.

The arbitral proceedings

11 Following the conclusion of the Adjudication, on 21 June 2022, the appellant filed a Notice of Arbitration with the SIAC to commence SIAC Arbitration No 166 of 2022 (the "Arbitration"). Pursuant to r 5 of the SIAC Rules, the Arbitration proceeded on an expedited basis as a documents-only

arbitration. A sole arbitrator (the "Arbitrator") was appointed on 27 December 2022.

Summary of the parties' cases before the Arbitrator

12 Before the Arbitrator, the respondent contended that it was due payment for works it had carried out before the appellant's allegedly wrongful termination (the "pre-termination works"). The appellant, on the other hand, contended that, because of the respondent's allegedly defective works, the appellant had incurred charges which it maintained were to be borne by the respondent (the "back charges"), as a result of which the appellant was not liable to the respondent. At no time before the Arbitrator was it the appellant's case that the respondent *had not* carried out the pre-termination works; instead, its only defence to the demand for payment in respect of these works was that any amount due for this was exceeded by the back charges. When asked about this at the hearing, counsel for the appellant, Mr Ashok Kumar Rai ("Mr Rai"), confirmed this.

13 The main claims pleaded in the appellant's Statement of Claim dated 10 February 2023 were as follows:

(a) It claimed back charges in respect of third-party subcontractors it allegedly engaged to complete the respondent's scope of works, comprising the sums of $486,354.68 and $159,641.71 that it paid to Pan Sing Pte Ltd ("Pan Sing") and Toto Group Pte Ltd ("Toto") respectively (collectively, the "Pan Sing and Toto Claims").

(b) It claimed back charges for labour it had provided, amounting to $161,000.00, due to the respondent's alleged failure to deploy a

competent and qualified safety supervisor for the Project (the "Safety Supervisor Fees Claim").

(c) It claimed back charges for labour it had provided, amounting to $505,080.00, due to the respondent's alleged failure to carry out various works on site (the "Labour Supply Claim").

(d) In the circumstances, the appellant sought a declaration under s 21(1)(*b*) of the SOPA that no money was payable to the respondent pursuant to the Adjudication Determination (the "SOPA Declaration").

14 On the other hand, the relevant aspects of the respondent's counterclaim pleaded in its Defence and Counterclaim dated 24 February 2023 were as follows:

(a) Damages "for the full value of works done-to date", meaning the value of completed work under the Sub-Contract, which it contended amounted to $1,696,823.85 (excl. GST), of which the appellant had paid only $962,260.37 (incl. GST) (the "Balance Work Counterclaim").

(b) Retention moneys amounting to $90,780.07 (incl. GST), which it contended had become payable because the appellant had unlawfully terminated the Sub-Contract (the "Retention Sum Counterclaim").

(c) Legal costs of $15,941.56 (incl. GST) that had been awarded in the Adjudication (the "Adjudication Costs Counterclaim").

The Arbitrator's decision

15 The Arbitrator issued the arbitral award (the "Award") on 31 July 2023. The Arbitrator found that the appellant was not entitled to terminate the Sub-

Contract, because the evidence did not establish that the respondent had been in repudiatory breach of the Sub-Contract. Even if the respondent had breached the Sub-Contract, the appellant had not shown how any such breaches were repudiatory so as to entitle the appellant to terminate the Sub-Contract. The Arbitrator also dismissed the appellant's claims and allowed most of the respondent's counterclaims. We focus on the aspects of the Arbitrator's decision that dealt with the claims and counterclaims relevant to this appeal, which are those set out at [13]–[14] above.

16 First, with respect to the Balance Work Counterclaim, the Arbitrator allowed the respondent's counterclaim in the sum of $776,694.51, which was the aggregate value of both the completed *and uncompleted work* under the Sub-Contract, after deducting: (a) sums the appellant had previously paid to the respondent; and (b) sums the parties had agreed to add or subtract. We highlight two noteworthy points. First, the sum of $776,694.51 was reduced from the sum of $916,105.87 (which the respondent relied on in its written submissions dated 22 May 2023 at paragraph 111), because the appellant had made further payments to the respondent between May 2023 and July 2023. Second, the basis on which the Arbitrator awarded damages in this regard is different from that on which the respondent's counterclaim was mounted (see [14(a)] above). In its pleaded case, the respondent sought payment of the value of work it had *completed* under the Sub-Contract. However, the Arbitrator awarded damages by computing the value of the *completed* as well as the *uncompleted* work under the Sub-Contract and deducting from this the amounts that had been paid to the respondent. The counterclaim for the value of the uncompleted works was unpleaded and it was first raised by the respondent in its written submissions dated 22 May 2023. The key question is whether the Arbitrator was able to

compute the amount due to the respondent on a basis that was not pleaded, and we will elaborate on this subsequently (see [27]–[48] below).

17 As for the other claims and counterclaims, the Arbitrator decided as follows:

(a) The Pan Sing and Toto Claims, for the sums of $486,354.68 and $159,641.71 respectively, were dismissed, because those claims were dependent upon the appellant showing that it was entitled to terminate the Sub-Contract. Given that the appellant had wrongfully terminated the Sub-Contract, these claims necessarily failed.

(b) The Safety Supervisor Fees Claim for the sum of $161,000.00 was dismissed. The respondent had adduced evidence demonstrating that it had deployed a safety supervisor; and it was not open to the appellant to contend that the supervisor in question was not competent or qualified because the Sub-Contract did not specify any requisite qualifications or competencies. In any case, even if the respondent had breached the Sub-Contract, the appellant had not proved the requisite causative link between the respondent's asserted breach and the damages claimed by the appellant.

(c) The Labour Supply Claim for the sum of $505,080.00 was dismissed. The appellant had failed to adduce satisfactory evidence proving that the respondent had not supplied sufficient labour to carry out the works required, and in any event, had failed to justify the sum of $505,080.00.

(d) The Retention Sum Counterclaim for the sum of $90,780.07 was allowed, given the Arbitrator's finding that the appellant had wrongfully terminated the Sub-Contract, and the Arbitrator's dismissal of all the appellant's claims.

(e) The appellant's prayer for the SOPA Declaration was dismissed and the Adjudication Costs Counterclaim for the respondent's legal costs of $15,941.56 incurred in the Adjudication was allowed.

Decision below

18 The appellant applied to set aside the Award in respect of the Arbitrator's findings on the six heads outlined at [16]–[17] above. In respect of each of those grounds, it contended before the Judge that the Arbitrator had: (a) exceeded the scope of the submission to arbitration under s 48(1)(*a*)(iv) of the AA; (b) acted in breach of the agreed arbitral procedure under s 48(1)(*a*)(v) of the AA; and (c) acted in breach of natural justice under s 48(1)(*a*)(vii) of the AA (see the GD at [10]). The Judge declined to set aside the Award whether in whole or in part.

19 For brevity, we only set out the parties' arguments before the Judge relating to the Balance Work Counterclaim and the Judge's decision on this issue, which in our judgment is the key issue in this appeal. The appellant's complaint was directed at the Arbitrator's decision that the respondent's entitlement to payment would be arrived at by including the value of the *uncompleted* work under the Sub-Contract. The appellant's grievance stemmed from the fact that such a claim was not even pleaded (see the GD at [21]). We term this the "Expectation Damages Issue" because that is how the Arbitrator framed this part of the respondent's counterclaim in the Award, in which she

discussed the "measure of [the respondent's] expectation interest" in the performance of the Sub-Contract. We digress to observe that the Arbitrator was mistaken in this respect because, as a matter of law, the expectation damages arising from the premature termination of a contract, as a result of which some work under that contract was not completed, would not typically be based on the value of the work that is not done, but only on the lost profits that would have been earned had the work in question been done. In any case, this is to be contrasted against the pleaded claim which was for the value of the *completed* work under the Sub-Contract (see [14(a)] above). The respondent in turn contended that the Expectation Damages Issue, while not pleaded, *was* raised in the respondent's written submissions dated 22 May 2023; and the appellant responded substantively in their reply submissions dated 26 May 2023, and did not object to the issue being raised (see the GD at [22]).

20 In respect of the Balance Work Counterclaim, which formed the bulk of the appellant's case before the Judge and, indeed, in this appeal, the Judge rejected all the appellant's arguments, and held that:

> (a) The Arbitrator did not exceed the scope of the submission to arbitration. Although the Expectation Damages Issue was unpleaded and was only raised for the first time in the respondent's written submissions, the appellant had responded (and did not object) to it in its reply written submissions. The Expectation Damages Issue was tied to the question of whether the appellant had validly terminated the Sub-Contract, and whether there was a difference between the value of the completed works and the adjusted contract sum that was claimed by the respondent (see the GD at [24]–[30]).

(b) The Arbitrator did not act in breach of the agreed arbitral procedure. Rule 20 of the SIAC Rules, which the appellant had relied on, did not prevent the Arbitrator from deciding on matters that were not expressly pleaded. In addition, r 27(m) of the SIAC Rules allowed the Arbitrator to decide on unpleaded issues if these had been sufficiently brought to the notice of the other party and that party had an adequate opportunity to respond. In any event, the appellant could not invoke this ground because it had not objected to the point being raised during the Arbitration (see the GD at [35]–[38]).

(c) The Arbitrator did not act in breach of natural justice. First, the Arbitrator had applied her mind to the quantification of the Balance Work Counterclaim. Even if the Arbitrator's decision on the Expectation Damages Issue was based on an erroneous understanding of the appellant's case, this was an error of fact or law, neither of which was a ground to set aside the Award (see the GD at [43]–[44]). Further, the Arbitrator's chain of reasoning flowed reasonably from the arguments that were actually advanced by the parties (see the GD at [48]) and could reasonably have been foreseen and expected by the parties, in all the circumstances, including the fact that the parties had opted for an expedited, documents-only arbitral process (see the GD at [49]–[52]).

The parties' cases on appeal

The appellant's case

21 On appeal, the appellant directs most of its attention to the Balance Work Counterclaim. It contends that the Arbitrator acted in breach of natural justice because she adopted a defective chain of reasoning and also failed to apply her

mind to the essential issues arising from the parties' arguments. According to the appellant, it did not know and could not reasonably have expected that the Expectation Damages Issue would become a live issue in the Arbitration, because it had not featured until the respondent's written submissions dated 22 May 2023, in which the respondent had asserted it in a single paragraph. Further, the Arbitrator disregarded the appellant's submissions and/or failed to understand the appellant's submissions when she found that the appellant had "not contested the quantum of this counterclaim of the [r]espondent".

22 The appellant also contends that the Arbitrator exceeded the scope of the submission to arbitration when she decided the unpleaded Expectation Damages Issue. The appellant maintains that its failure to object to the introduction of the Expectation Damages Issue in its reply written submissions on 26 May 2023 should not be taken to have amounted to an acceptance that the issue fell within the scope of the submission to arbitration.

23 Finally, the appellant contends that the Arbitrator acted in breach of the agreed arbitral procedure, as evidenced by her having decided an issue that was not part of the parties' agreed list of issues.

24 The appellant also maintains its arguments in respect of the other five heads that it previously raised before the Judge below. On appeal, its arguments are largely similar to those forwarded before the Judge. We do not propose to repeat them here. Further, we do not think that there was any merit in the appellant's contentions in respect of the other heads of claim.

The respondent's case

25 The respondent essentially relies on the reasoning of the Judge below. In respect of the Balance Work Counterclaim, the respondent's case is three-fold. First, the appellant had reasonable notice of and ample opportunity to respond to the Expectation Damages Issue, and the Arbitrator understood the appellant's case in this regard. Second, the Arbitrator did not exceed the scope of the submission to arbitration because the appellant's failure to object to the introduction of the Expectation Damages Issue and its engagement with the merits of that issue was rightly taken as its acceptance that the issue fell within the scope of the submission to arbitration. Third, the Arbitrator did not act in breach of the agreed arbitral procedure because the agreed list of issues was not a mandatory part of the agreed arbitral procedure and the Judge rightly observed that r 27(m) of the SIAC Rules meant that the Arbitrator was not strictly limited to the issues that were expressly raised in that list.

Issues to be determined on appeal

26 The six grounds raised by the appellant on appeal largely mirror those that it raised before the Judge below. As we indicated to Mr Rai during the hearing, and which he eventually accepted, the other five grounds (which did not concern the Balance Work Counterclaim), taking the appellant's case at its highest, could only amount to arguments that the Arbitrator had made an error of law and/or error of fact; had misunderstood its case; or had failed to give reasons for her decision. Those are not grounds that can sustain the setting aside of an arbitral award (see *CVV and others v CWB* [2024] 1 SLR 32 ("*CVV*") at [35] and [62]). In our judgment, this appeal therefore concerns the Balance Work Counterclaim, in respect of which, the following issues arise for our consideration:

(a) whether the Arbitrator acted in breach of natural justice;

(b) whether the Arbitrator exceeded the scope of the submission to arbitration;

(c) whether the Arbitrator acted in breach of agreed arbitral procedure; and

(d) if any one of the above three grounds to set aside the Award in respect of the Balance Work Counterclaim are made out, what consequential orders should be made?

Whether the Arbitrator acted in breach of natural justice in respect of the Balance Work Counterclaim

The introduction of the Expectation Damages Issue

27 We begin our analysis by recounting how the Expectation Damages Issue had arisen in the Arbitration.

28 This was introduced for the first time by the respondent in its written submissions dated 22 May 2023 (see [16] above). Prior to this, the dispute regarding the Balance Work Counterclaim had been whether the respondent was entitled to payment for the value of the completed work (with no mention being made of the uncompleted work). The Judge's summary of the respondent's position prior to its written submissions of 22 May 2023, which is not contested in this appeal, is as follows (see the GD at [23]):

> 23 I agreed with the [appellant] that prior to the respondent's Written Submissions, the live issue in the Arbitration was the

> respondent's entitlement to the value of work allegedly *already completed* by the respondent.
>
> > (a) The respondent, by its Defence and Counterclaim filed in the Arbitration, counterclaimed for the "value of works *done to-date*" [emphasis added]. The respondent pleaded that it had submitted a progress claim "for all work done to 15 July 2022 [*ie*, the date of termination]", as it "had completed all the work as per its scope of works on site". In the [appellant's] Reply and Defence to Counterclaim, it was "denied that the [r]espondent had completed all of its works".
> >
> > (b) In the agreed list of issues, the issue for the Balance Work Counterclaim was framed as "[w]hether the [r]espondent is entitled to damages for balance value of *work done* and retention and if so the quantum thereof" [emphasis added].
> >
> > (c) Chen Hua, the respondent's director, stated in his witness statement that the respondent was claiming for "the balance value of *work done* owing to [the respondent]" [emphasis added]. His witness statement also exhibited drawings showing the "works completed" by the respondent.
>
> [emphasis in original]

29 In its written submissions dated 22 May 2023 at paragraphs 111–112, the respondent contended that it was entitled to damages, to be quantified either: (a) based on the value of completed and uncompleted work that it *expected* to complete under the Sub-Contract when it entered into that agreement, which was said to amount to $916,105.87 (this forming the basis on which the Expectation Damages Issue arose); or (b) based on the value of completed work putatively amounting to $648,297.21:

> 111. The value of the adjusted contract sum, after taking into account the agreed omissions and additions is therefore $1,755,482.47 (excl. GST) or $1,878,366.24 (incl. GST). **As WS [the appellant] wrongfully terminated the Sub-Contract, HT [the respondent] is entitled to the value of the adjusted contract sum, being its expectation interest when HT entered into the Sub-Contract.** As WS also wrongfully asked its other subcontractors to do a portion of HT's works, and after

> taking into account past payment received, the amount due to HT is $916,105.87 (incl. GST of 7%) ($1,878,366.24 - $962,260.37).
>
> 112. In the alternative, if the Tribunal finds that WS had rightfully asked its other subcontractors to do a portion of HT's works (which is entirely denied and disputed to the contrary due to WS' clear delay), the total value of work done by HT is $1,497,717.51, as particularised in the Project Claim, and HT claims the sum of $648,297.21 (incl. GST) being the balance value of work done owing to HT (See Tab 14 4RBD)
>
> [emphasis in original omitted; emphasis added in bold]

The respondent's case in paragraph 111 was that it had expected to earn the value of the Sub-Contract, including works that the appellant wrongfully asked third-party subcontractors to do. These were works which the respondent was now deprived from doing owing to the appellant's wrongful termination of the Sub-Contract. What distinguishes the claim in paragraph 111 from that in paragraph 112 is that the former includes the value of the work that the respondent never did, whether because of the termination of the Sub-Contract or otherwise. It may also be noted that paragraph 112, which was the only claim in the respondent's pleading regarding the Balance Work Counterclaim (see [14(a)] above), was now being presented as an *alternative* claim.

30 It bears noting that in the respondent's written submissions at paragraphs 117–130, it *additionally* claimed damages for loss of profits valued at $112,140.19. This was for works carried out by the appellant and its third-party subcontractors after the appellant had wrongfully terminated the Sub-Contract. The respondent claimed that it ought to have been permitted to carry out those works and to earn profits from doing so. There is an overlap between the claim for loss of profits and the claim for the value of uncompleted work at paragraph 111; both concern works that the respondent did not carry out, though the claim at paragraph 111 is excessive because it is not limited to profits but

the value of the works that the respondent did not do and so did not have to incur any costs for.

31 The appellant filed its reply written submissions in response on 26 May 2023. It contended that it was entitled to terminate the Sub-Contract. However, even if it was not entitled to do so, it maintained at paragraphs 15–21 that the respondent was not entitled to claim damages for work it had not completed, and that the respondent could not also be entitled to damages for loss of profits, which would amount to double recovery. We set out these paragraphs in full:

> **III. RESPONDENT NOT ENTITLED TO CLAIM FOR BALANCE VALUE OF WORK DONE AND RETENTION**
>
> 15. At paragraphs 108 to 112 of the Respondent's Submissions, the Respondent has taken the position that it is entitled to the balance value of work done as the Claimant had allegedly wrongfully terminated the Sub-Contract.
>
> 16. This is wrong as a matter of principle, as the Respondent is not entitled to claim for the balance value of work done when they had not done the balance work at all.
>
> 17. Further, the Sub-Contract was rightfully terminated. The Claimant repeats paragraphs 43 to 45 of the Claimant's Submissions.
>
> **IV. RESPONDENT NOT ENTITLED TO CLAIM FOR LOSS OF PROFITS**
>
> 18. At paragraphs 117 to 130, [*sic*] of the Respondent's Submissions, the Respondent has taken the position that in addition to damages for the balance value of work done, the Respondent is also entitled to damages for loss of profits.
>
> 19. This is simply wrong in law as it would amount to a double recovery and put the Respondent in an even better position than if the Sub-Contract had not been terminated.
>
> 20. It ought to be repeated that even if the Respondent is entitled to claim for loss of profits, which is denied, the Respondent's expected profit margin of 32% on S$353.086.25 [*sic*] is unreasonable and excessive; the Respondent has failed

> to explain how the profit margin of 32% is derived; and there is no evidential basis or documentation of the Respondent's cost or profit.
>
> 21. In any event, the Sub-Contract was rightfully terminated, and so the Respondent is not entitled to such a claim.
>
> [emphasis in original omitted]

32 It is clear to us from the foregoing that the appellant was aware that the respondent had raised the Expectation Damages Issue in its written submissions dated 22 May 2023, and resisted this by contending at paragraph 16 of its reply written submissions that the respondent could not claim damages for uncompleted work. While the appellant could have taken this one step further by objecting to the respondent's *introduction* of this unpleaded issue – a step which would have made its present objection indisputably clear – in our judgment, the appellant's position, as apparent at least from paragraphs 16, 18 and 19, was that this claim was not admissible because a claim for work that had not been done at all was impermissible in law and further, when coupled with the claim for lost profits, it would give rise to double recovery. As we have foreshadowed at [30] above, in as much as the quantum was computed based on the value of the work that had not been done, this was wrong in law. While a claim could be mounted for loss of profits, this was in effect a claim for the loss of revenue.

33 In the Award, the Arbitrator found that the appellant was not entitled to terminate the Sub-Contract, and accordingly, held that the respondent was entitled to damages for wrongful termination. The Arbitrator then computed this based on the value of all the work the respondent expected to complete when it entered into the Sub-Contract, which was valued at $776,694.51. Although the respondent had claimed $916,105.87 for this head of damage in its written

submissions at paragraph 111 (see [29] above), this figure was subsequently adjusted down to $776,694.51:

> 102. Having considered the parties' submissions, the Tribunal allows the Respondent's counterclaim of $776,694.51 for the balance value of work done. In summary, the reasons for the Tribunal's determination are as follows:
>
> > 102.1. Given the Tribunal's finding that the Claimant had wrongfully terminated the Sub-Contract, the Tribunal finds that the Respondent is in-principle entitled to damages flowing from the wrongful termination.
> >
> > 102.2. The Respondent is claiming damages in the form of expectation damages or interest as a result of the wrongful termination. The Respondent's measure of its expectation damages is the balance value of work done. The Claimant does not object to or address the Respondent's measure of its expectation interest. Instead, the Claimant simply submits that the Respondent is not entitled to the balance value of work done because it has not done the same, without addressing the Respondent's entitlement to damages in the event of the Claimant's wrongful termination. The Tribunal is not persuaded by this submission from the Claimant, as it was the Claimant's wrongful termination of the Sub-Contract that resulted in the Respondent not completing the balance value of works under the Sub-Contract.
> >
> > 102.3. Save for its objections in principle (which the Tribunal has rejected above), the Claimant has also not contested the quantum of this counterclaim of the Respondent. The Tribunal thus sees no reason to not allow the Respondent the full amount claimed.
>
> [emphasis in original omitted]

34 Particular emphasis should be placed on the Arbitrator's analysis in the Award at paragraph 102.2, which may be broken down into the following propositions: (a) the appellant did not object to or address the respondent's *measure* of damages; (b) the appellant's objection was with the respondent's entitlement to the value of the Sub-Contract for work it did not complete; (c) the

appellant failed to address the respondent's entitlement to damages flowing from the appellant's wrongful termination of the Sub-Contract; and (d) it was because of the appellant's wrongful termination of the Sub-Contract that the respondent was unable to undertake the uncompleted work.

35 Having found that the respondent was entitled to the entire value of the Sub-Contract, the Arbitrator subsequently dismissed the respondent's claim for loss of profits, in the Award at paragraph 115:

> 115. Having considered the parties' submissions, the Tribunal finds that the Respondent is not entitled to its counterclaim of $112,140.19 for loss of profit. In summary, the reasons for the Tribunal's determination are as follows:
>
> > 115.1 At the outset, the Tribunal notes that the Respondent has failed to particularise the dates or periods on which its works were supposedly removed by the [Appellant]. Thus, it is wholly unclear from the Respondent's pleadings, witness statements and written submissions whether the Respondent is referring to works pre or post termination.
> >
> > 115.2 Insofar as these works were post-termination and therefore overlap with the Respondent's claim for damages for the balance value of work done, the Tribunal accepts the [Appellant's] submission that such a claim would amount to a double recovery, disentitling the Respondent to the same.
> >
> > 115.3 Even if it is the Respondent's case that its works were removed pre-termination, the Tribunal still considers, on the material and evidence before it, that the Respondent has not satisfied its burden of proving its claim. Save for the bare witness evidence in the Witness Statement of Chen Hua, the Respondent has not adduced any credible evidence showing that (a) its alleged works were wrongfully removed or omitted and (b) the works were given to other workers or sub-contractors of the [Appellant]. While the Respondent attempts to point to the photograph at [42] of the Delay Expert Report to explain the genesis of the removal of the works, the Tribunal finds this to be entirely unhelpful in proving the Respondent's case and its entitlement to the amount claimed.

[emphasis in original omitted]

The Arbitrator failed to apply her mind to the parties' cases

36 There are at least two situations in which the fair hearing rule is breached: (a) where the tribunal fails to apply its mind to the essential issues arising from the parties' arguments; and (b) where the tribunal adopts a defective chain of reasoning (see *BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60]). The appellant contends that both situations are engaged in this appeal. We begin by considering the former situation. If this breach is to be established as a matter of inference, the inference to be drawn must be shown to be clear and inescapable (see *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN* 2015") at [46]). This ought to be contrasted against a situation where the tribunal *did* apply its mind to the essential issues but *failed to comprehend* the submissions or *construed them erroneously*; that would simply be an error of fact or law, which would not warrant the award being set aside (see *BZW* at [60(a)]).

37 A superficial reading of the Award might suggest that the Arbitrator *did* apply her mind to the parties' cases. Indeed, as the Judge reasoned (see the GD at [42]–[44]), it was the appellant's case that the respondent was not entitled to damages for uncompleted work *and* loss of profits because this would amount to double recovery. The Arbitrator had observed at paragraph 115.2 of the Award (see [35] above) that given that the respondent was entitled to be paid for the value of the Sub-Contract, it could not also recover damages for loss of profits since this would amount to double recovery. In our judgment however, the Arbitrator's reasoning especially at paragraph 102 (see [33] above) demonstrated her failure to appreciate the precise point being taken and this was

especially significant because it was in relation to an unpleaded point, namely, the Expectation Damages Issue.

38 To begin with, it is not clear to us that the Arbitrator even appreciated the fact that the respondent had raised an unpleaded claim when it raised the Expectation Damages Issue in its written submissions. We note the following:

(a) First, in the Award at paragraph 102, no mention was made of the fact that the respondent had belatedly introduced the unpleaded Expectation Damages Issue, without first applying to amend its pleadings.

(b) Second, in the Award, the Arbitrator did not attempt to consider the scope of the parties' submission to arbitration, such as by referring to the agreed list of issues dated 24 April 2023, which did not include the Expectation Damages Issue. In the agreed list of issues at s/n 9, the parties agreed that the issue in respect of the Balance Work Counterclaim was "[w]hether the [r]espondent is entitled to damages for balance value of work done and retention and if so the quantum thereof". This referred only to the value of completed work under the Sub-Contract. Had the Arbitrator referred to the agreed list of issues, she might have realised that the Expectation Damages Issue was not an issue that the parties had previously agreed to put before her.

(c) Third, the parties do not suggest before us that the Arbitrator attempted to clarify the scope of parties' cases, or that the Arbitrator asked whether the respondent wished to amend its pleadings to include a claim to recover damages in respect of the uncompleted work.

(d) Fourth, the Arbitrator dealt with the respondent's entitlement to damages for the entire value of the Sub-Contract (comprising completed work and uncompleted work) in the Award at paragraph 102, on the one hand, and the respondent's claim for loss of profits in the Award at paragraph 115, on the other. While she was alive to the fact that granting the respondent damages computed by reference to the full value of the Sub-Contract *and* loss of profits would amount to double recovery (see the Award at paragraph 115.2), she did not appear to be aware that no question of double recovery would have arisen under the respondent's pleaded case. Nor did she appear to be aware that the claim for the value for uncompleted work amounted to more than loss of profits. Indeed, given that the respondent did not in fact incur any cost in respect of the uncompleted work, the damages claimed were effectively for the loss of *revenue*.

39 We have observed in previous decisions that, in arbitral proceedings generally, pleadings are not necessarily determinative in the same way or to the extent that they might be in court litigation; the consensual nature of arbitration means that the parties may agree to an unpleaded issue being dealt with in the arbitration (see *Phoenixfin Pte Ltd and others v Convexity Ltd* [2022] 2 SLR 23 ("*Phoenixfin*") at [50]). For this reason, recourse may be had to various sources to determine the scope of submission to arbitration including: (a) the pleadings; (b) the agreed list of issues; (c) the opening statements; (d) the evidence adduced in the arbitration; and (e) the closing submissions (see *CDM and another v CDP* [2021] 2 SLR 235 at [18]).

40 In the ordinary course of an arbitration, these sources serve as convenient touchpoints from which the tribunal can best appreciate the parties'

contentions. They similarly provide opportunities for the parties to adjust the parameters of their arguments where necessary or to raise objections to points being taken outside the ambit of their dispute. This element of continuous interaction can be invaluable in that it affords multiple opportunities for the tribunal and the parties to understand the contours of the parties' respective cases.

41 Taken as a whole, this is an important aspect of assessing fairness, because it ensures that the parties have had a reasonable opportunity to present their case, and to understand and respond to the case put against them. This will typically not be the case where a documents-only arbitration is concerned. While this is a choice that parties are entitled to make, the tribunal and the parties should appreciate the somewhat different context in which such a hearing would be conducted, as a result of which, there may be a real chance that the tribunal and/or the parties might have failed to appreciate the contours of the dispute and whether points were being taken by one side that had not been fully understood by the other, or for that matter, by the tribunal.

42 In such a context, where the arbitral process is expedited and to be determined based on documents alone, pleadings can provide a crucial anchor in ensuring that the tribunal is fully cognisant of the parties' cases. In our judgment, where the procedure in a case provides for pleadings, these play a significant role in expedited arbitrations, including documents-only arbitrations. In particular, they serve as the starting point of what issues parties have agreed to arbitrate; and they help in establishing whether the parties have engaged with or departed from those issues in their written submissions. They also assist the tribunal in understanding the true nature of the parties' arguments. We have observed previously that pleadings can and do serve the valuable function of

defining the parameters of the issues which the parties have to address, and thus, they help avoid a situation where a party is faced with an issue it may not have had the opportunity to address (see *CBX and another v CBZ and others* [2022] 1 SLR 47 at [48]). The likelihood of this happening is greater in a documents-only arbitration where the interactions between the parties will not be as iterative as would be the case with the usual process. Hence, the pleadings will generally assume a more significant role in defining the issues and assessing what natural justice demands must be afforded to a party faced with an unexpected claim (see *Phoenixfin* at [52]).

43 All of the foregoing is of course sensitive to the facts and the context of any given case. It will be important to consider the manner in which the unpleaded issue was raised, the other party's response to this, and whether the tribunal provided the parties with a fair opportunity to be heard regarding these issues. When faced with such a situation, it would be prudent for a tribunal to clarify the parties' positions. Steps that can be taken might include clarifying whether the parties are aware that an unpleaded issue has been introduced; whether the aggrieved party wishes to object to this introduction or otherwise respond to the issue; and whether the pleadings should be amended. We pause here to emphasise that in a documents-only arbitration, it will be especially important that a tribunal clarifies with the parties whether it may decide an issue that has not been pleaded. This is so because the parties' agreement to proceed with the documents-only arbitration would typically have been premised on the issues disclosed in the pleadings. This may not extend to issues that were not raised on the pleadings, and the tribunal should therefore seek clarification from the parties on how they wish to proceed. It would similarly be sensible for the parties to make their positions clear, especially given the lack of an oral hearing which might otherwise have provided an invaluable avenue for clarification on

their respective cases. A party that wishes to advance arguments on an unpleaded issue should take steps to amend its pleadings. And if a party discovers that its counterparty has introduced an unpleaded issue, the sensible response would be to draw attention to this circumstance, so that the tribunal can take steps to ensure that the matter proceeds fairly. This, in our judgment, reflects the shared responsibility between the tribunal and the parties to ensure the effective functioning of the arbitral process in the context of a documents-only arbitration.

44 Returning to the facts before us, the fact that the Expectation Damages Issue was unpleaded forms the necessary context in which the Arbitrator had to situate the appellant's objections. With respect, the Arbitrator's failure to appreciate this context led her to oversimplify the appellant's case to one that objected only to the respondent's entitlement to damages for uncompleted work based on the appellant's putative entitlement to terminate the Sub-Contract. On this basis, having concluded that the appellant had wrongfully terminated the Sub-Contract, the Arbitrator decided that the respondent was entitled to damages for the work it expected to complete when it entered into the Sub-Contract, and on this, she thought that "the [appellant] does not object to or address the [respondent's] measure of its expectation interest" (see paragraph 102.2 of the Award at [33] above). But this was mistaken and overlooked the question of the basis on which the respondent might be entitled to damages for both the *completed* and *uncompleted* work and how this was to be assessed. This encompassed the *substantive* issue of whether the respondent's position may be sustained in law; as well as the *procedural* issue of whether this was an accurate reflection of the respondent's position in its pleadings. Had the Arbitrator considered the latter point, she would have realised that it was necessary to clarify with parties whether she could decide

on the unpleaded Expectation Damages Issue, and in the process, she might have properly considered the appellant's objections.

45 In *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*"), the arbitrator had failed to consider the defendant's other pleaded contentions in its counterclaim for misrepresentation, because of his mistaken belief that these points had been abandoned. Andrew Ang J found that the arbitrator's mistaken impression that the defendant had abandoned part of its case meant that he failed to consider those aspects of its case; in so doing, the arbitrator had acted in breach of natural justice (see *Front Row* at [46]). In the appeal before us, the Arbitrator similarly failed to consider the *entirety* of the appellant's case as regards the Expectation Damages Issue, because of her belief that its objection was premised solely on the respondent's entitlement to that measure of damages. It is this failure which we consider to be a breach of natural justice.

46 As noted above, the Arbitrator was plainly under the mistaken belief that the appellant was not objecting to how the respondent valued its expectation interest. But this was simply not the case. In paragraph 16 of its reply written submissions, at [31] above, the appellant had correctly said that there was no basis in law for claiming the balance value of work that has not been done, and then amplified this at paragraphs 18 and 19 of the same submissions. This was in fact an objection to how the claim was being valued. Admittedly, there is some economy in the way the point was put, but this is precisely why it is important for the tribunal, as it is for the parties, to be clear as to what exactly is being raised by a party in such truncated proceedings. The appellant's point was that to allow such a claim would essentially be to award the respondent damages amounting to a loss of gross revenue, since it did not incur any costs

for works that were not undertaken. This would place the respondent in a better position than if the Sub-Contract had not been terminated and it had to incur the cost of actually completing the contractually stipulated works. Because the Arbitrator failed to appreciate the precise point that was being taken, she ended up making an award in favour of the respondent that was plainly wrong. But that is not a ground for us to interfere. Instead, it is her failure to understand the appellant's position, that resulted in her ascribing an incorrect position to the appellant, that led her to fail to consider the true issue that had been raised, and this is a breach of natural justice.

47 We are also satisfied that actual prejudice was caused by this breach. In this regard, the aggrieved party must show that the breach could *reasonably* have made a difference to the tribunal, rather than whether it would *necessarily* have done so (see *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 ("*L W Infrastructure*") at [54]). We explained in *L W Infrastructure* at [50]–[54] that to establish prejudice, it was not necessary to show that the breach did *actually* alter the final outcome of the arbitral proceedings in some meaningful way (which was how counsel for the plaintiff in *L W Infrastructure* had presented the test of "some actual or real prejudice" set out in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [91]). Rather, the key inquiry is whether the breach *could* have made a material difference. The parties agree that if the Arbitrator is found to have acted in breach of natural justice with respect to the Expectation Damages Issue in the Balance Work Counterclaim, the quantum of damages that the appellant is obliged to pay to the respondent will have to be adjusted. In particular, with respect to the uncompleted work under the Sub-Contract, the respondent may be entitled only to a proportion of that sum, instead of the

entirety of that sum. This in our view suffices to establish actual prejudice caused to the appellant.

48 Accordingly, we find that the Arbitrator acted in breach of natural justice by failing to apply her mind to the parties' cases as regards the Expectation Damages Issue.

Whether the Arbitrator adopted a defective chain of reasoning

49 The appellant's other complaint is that the Arbitrator adopted a defective chain of reasoning. What this requires us to consider is whether her chain of reasoning was one which: (a) the parties had reasonable notice that the tribunal could adopt; and (b) has a sufficient nexus to the parties' arguments; indeed the inquiry is whether a reasonable litigant in the aggrieved party's shoes could have foreseen the possibility of reasoning of the type revealed in the award (see *BZW* at [60(b)]). It is not necessary for us to consider whether the Arbitrator adopted a defective chain of reasoning in respect of the Expectation Damages Issue because we are satisfied that her failure to apply her mind to the parties' cases is a sufficient basis for us to set aside the Award as regards that issue.

Whether the Arbitrator exceeded the scope of the submission to arbitration and/or acted in breach of agreed arbitral procedure in respect of the Balance Work Counterclaim

50 Similarly, it is not necessary for us to consider whether the Arbitrator exceeded the scope of the submission to arbitration and/or acted in breach of agreed arbitral procedure. The Arbitrator's findings on the Balance Work Counterclaim may be set aside by virtue of her failure to apply her mind to the parties' cases.

51 For completeness, as we mentioned (see [26] above), we do not accept the appellant's arguments in respect of the other five grounds raised by them to set aside the Award, because these grounds might indicate at best that the Arbitrator had made an error of law and/or error of fact; had misunderstood its case; or had failed to give reasons. We provide some examples:

(a) The appellant's contentions as regards the Pan Sing and Toto Claims are premised on the Arbitrator's misunderstanding of its case. It argues that the Arbitrator got the sequence of events wrong because she laboured under the impression that the claims had been incurred after the termination of the Sub-Contract, but they had instead been incurred prior to the termination. This, if true, would be an error of fact.

(b) The appellant's grievance with the Safety Supervisor Fees Claim is that the Arbitrator failed to consider that the respondent failed to provide evidence that its workers did the safety supervision work and therefore should not have accepted the respondent's version of events. Given the Arbitrator's express reference to the appellant's submissions, it cannot be said that the Arbitrator failed to consider the appellant's case. The appellant can at best suggest (though it did not take up this point in this appeal) that the Arbitrator ought to have elaborated on her decision to prefer the evidence of the respondent.

(c) Similarly, the appellant's case for the Labour Supply Claim appears to arise out of dissatisfaction with the Arbitrator's finding of fact, which was arrived at because the Arbitrator preferred the respondent's version of events.

52 None of these grounds could possibly warrant the setting aside of arbitral awards. An error of law and/or an error of fact is not a ground for setting aside an award (see *BZW* at [60(a)]). That a tribunal has *misunderstood* a party's case is similarly insufficient; instead, there must be a clear and inescapable inference that the tribunal *failed to apply its mind* to issues in the party's case (see *AKN* 2015 at [46]). As for the failure to give reasons, we recently observed in *CVV* at [32]–[34] that a tribunal's failure to give adequate reasons is not, *in itself*, a reason to set aside an award. We therefore adopt the Judge's reasoning below in respect of these five grounds and find that the parts of the Award addressing these grounds should not be set aside (see the GD at [65], [76], [83]–[84] and [88]).

Consequential orders

53 At the end of the hearing, we indicated to counsel that the only point on which there may be grounds for a challenge is in relation to the Balance Work Counterclaim, because it appeared that the Arbitrator did not appreciate the change in case by the respondent and that the appellant was challenging the basis on which the respondent's claim in respect of the Expectation Damages Issue had been mounted.

54 Counsel for the respondent, Mr Daniel Tay Yi Ming ("Mr Tay"), confirmed that his client has been paid around $962,260 thus far for the completed work under the Sub-Contract and maintained that it was due to be paid a further sum of around $648,297 for those works. It appears that the respondent is due a sum of about $1,610,557, as compared to the total Sub-Contract value of $1,738,954.88. The difference of about $128,397 is attributable to work that the respondent did not have an opportunity to complete because of the appellant's termination of the Sub-Contract. Of the sum of about

$128,397, only a proportion can be claimed by the respondent as damages for loss of profits. In the Arbitration, the respondent had contended in its written submissions dated 22 May 2023 at paragraph 122 that its expected profit margin was 32%. The appellant challenged this percentage as unreasonable and excessive in its reply written submissions dated 26 May 2023 at paragraph 20, and before us, Mr Rai contended that respondent would at best be entitled to 10%. The real difference between the respective figures claimed by parties is therefore only around $28,247, being about 22% of $128,397.

55 Considering the relatively small sum in dispute as compared to the cost that the parties may incur in the process of setting aside the Award, we directed them to explore a consensual resolution of this issue. As it turned out, this was not possible, and we therefore turn to consider the consequential orders as to the Balance Work Counterclaim.

56 Given our finding that the Arbitrator had acted in breach of natural justice with respect to the Balance Work Counterclaim, there are several courses of action open to us, including setting aside the Award on this issue or suspending the proceedings on this issue and remitting the Award to the Arbitrator for her consideration (see *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 ("*AKN* 2016") at [17]–[34]). These are mutually exclusive orders as made clear by Art 34(4) of the Model Law (see *AKN* 2016 at [17]–[18] and [39]). We note that while the dispute before us is governed by the AA, this presents no obstacle in considering the Model Law. As explained in *L W Infrastructure* at [34], there is a clear legislative intent to align the AA with the IAA and Model Law; unless a clear departure is contemplated in the legislation, the cases interpreting the IAA and the Model Law are relevant when interpreting the corresponding provisions in the AA.

These observations therefore apply equally to s 48(3) of the AA, which is substantially similar to Art 34(4) of the Model Law.

57 We previously observed in *BZW* at [66]–[70] that the principle of limited curial intervention militates *against* the exercise of the power to remit in Art 34(4) of the Model Law, rather than in favour of it. In deciding whether to exercise this power, it is relevant for the court to consider whether the breach is in relation to an isolated point; whether the arbitrators are unfit to continue the hearing; and also to have regard to the time that has elapsed since the hearing of evidence and submissions. It is also helpful to note that in *CAJ and another v CAI and another appeal* [2022] 1 SLR 505 ("*CAJ v CAI*") at [69]–[71], we held that awards were generally remitted to deal with a point which was already before the tribunal, meaning that the point had already been pleaded. There, we agreed with the High Court that the tribunal's decision on an unpleaded defence was made in excess of the tribunal's jurisdiction and in breach of natural justice (see *CAJ v CAI* at [52] and [54]). It was not strictly necessary for us to consider the question of remission because the unpleaded defence was not within the tribunal's jurisdiction. Nevertheless, we noted there that we would not have exercised our discretion to remit the award. The only way that the tribunal could have properly adjudicated on the unpleaded defence would have been by allowing an application to amend the defence, which would have been manifestly unfair to the other party given the late stage of the proceedings.

58 Returning to the facts before us, we note that the Arbitrator's breach is isolated to the Expectation Damages Issue, which arose in the context of the Balance Work Counterclaim. While this might suggest that we *could* remit this part of the Award to the Arbitrator, we decline to exercise our discretion to do so. Given that the Expectation Damages Issue was unpleaded, remitting this part

of the Award would require her to additionally consider an application to amend the respondent's pleadings to include the Expectation Damages Issue (see *CAJ v CAJ* at [71], where the same issue arose). We do not think it is appropriate for this to be raised before the Arbitrator at this late stage. The respondent ran its case on a certain basis and then at a very late stage sought to introduce a new claim in a manner which was inappropriate, and it should be left to face the consequences of its tactical choices.

59 In the circumstances, we set aside the Award insofar as it concerns the Balance Work Counterclaim.

Conclusion

60 We therefore allow the appeal in part.

61 There is a final point on costs. As we have noted at [55] above, we had explored and explained the position to both counsel, and when neither of them had anything to say in response to our indications as to how we saw the position, we urged the parties to consider coming to a settlement on the Expectation Damages Issue. The immediate response of the respondent's counsel, Mr Tay, was that his client, "as the [more] successful party … would be claiming the cost from the appellant anyway". Even if the respondent thought it might be entitled to the costs of the appeal, we do not think it was appropriate for Mr Tay to rely on that as the first port of call for refusing to negotiate what was clearly a small point, and to do so without even seeking his client's instructions. Order 3 rr 1(2)(*c*)(iii) and 1(2)(*d*) of the Rules of Court 2021 set out the importance of ensuring cost-effective work proportionate to "the amount or value of the claim" and the efficient use of court resources. These are principles that can and should apply to all aspects of dispute resolution. We did not think those principles were

appreciated, much less adhered to, in this context. This may have a bearing on our eventual costs order.

62 Given that each party has succeeded in part, unless the parties come to an agreement on costs, they are to file and exchange submissions on what they contend the proper costs order should be. These are to be limited to six pages each and are to be filed within 21 days of this judgment.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Judith Prakash
Senior Judge

Ashok Kumar Rai and Yeo Wei Ying Jolyn (Cairnhill Law LLC) for the appellant;
Daniel Tay Yi Ming and Lee Yun Long (Chan Neo LLP) for the respondent.