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

[2025] SGHC 5

Originating Application No 901 of 2024 (Summons No 2764 of 2024)

Between

Aastar Trading Pte Ltd

… *Applicant*

And

Olam Global Agri Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award — Adjournment of enforcement proceedings]

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Aastar Trading Pte Ltd
v
Olam Global Agri Pte Ltd

[2025] SGHC 5

General Division of the High Court — Originating Application No 901 of 2024 (Summons No 2764 of 2024)
Kristy Tan JC
12 December 2024

13 January 2025

Kristy Tan JC:

Introduction

1 On 5 September 2024, Aastar Trading Pte Ltd ("Aastar") filed HC/OA 901/2024 ("OA 901") for permission to enforce Appeal Award No AA442 dated 8 August 2024 (the "Final Appeal Award"), which was made in an arbitral appeal conducted under the auspices of The Palm Oil Refiners Association of Malaysia ("PORAM") and seated in Kuala Lumpur, Malaysia, against Olam Global Agri Pte Ltd ("Olam"). An order granting Aastar permission to enforce the Final Appeal Award was made on 6 September 2024 (the "Singapore Enforcement Order") and served by Aastar on Olam on 10 September 2024.

2 On 24 September 2024, Olam filed:

(a) an application in the High Court of Malaya at Kuala Lumpur, Malaysia (the "Malaysian High Court") for the setting aside of the Final Appeal Award (the "Malaysian setting aside application"); and

(b) HC/SUM 2764/2024 ("SUM 2764") in Singapore, seeking an adjournment of the proceedings for the enforcement of the Final Appeal Award (the "Singapore enforcement proceedings") pending the final determination of the Malaysian setting aside application, pursuant to s 31(5) of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"); and failing the grant of the adjournment sought, for the court to refuse the enforcement of the Final Appeal Award.

3 Following a hearing on 12 December 2024, I granted the adjournment of the Singapore enforcement proceedings sought by Olam in SUM 2764 and provided brief reasons for my decision. I now set out the full grounds of my decision to make the adjournment order.

Facts

4 For present purposes, the relevant factual background is stated in short compass.

The underlying dispute

5 On or around 20 April 2022, Aastar and Olam entered into two contracts (the "Sales Contracts") for Aastar to sell Indonesian Refined, Bleached and Deodorised Palm Olein ("RBDPL") to Olam. Under each Sales Contract, the

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sale quantity was 15,000MT to be delivered Free on Board at Tanjung Pura or Bontang, Indonesia (at Aastar's option) for shipment by 30 June 2022.[1]

6 The Sales Contracts incorporated the terms of the PORAM Contract No 2 ("PORAM 2").[2] Clause 25 of PORAM 2 provides for Malaysian governing law.[3] Clause 3(v) of PORAM 2 states:[4]

> **Cargo Readiness**
>
> The Seller shall, at least two (2) calendar days before vessel's expected time of arrival at loadport, confirm to the Buyer or to the Buyer's vessel's agent if so advised by the Buyer, that the cargo shall be ready to load in all respects on the day the vessel is expected to arrive at loadport.

7 Olam chartered the vessel "Yuandong" (the "Vessel") from its demise owners (the "Owners") for loading and shipping the RBDPL purchased under the Sales Contracts.[5]

8 In June 2022, Aastar made several non-compliant load port declarations (for example, nominating three loadings when it was not entitled to do so) and stated intended cargo readiness dates which were after the end of the contractual delivery period.[6]

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1 1st Affidavit of Keshav Chandra Suresh filed on Olam's behalf in OA 901 on 24 September 2024 ("Suresh's 1st Affidavit") at para 13 and pp 72–75.

2 Suresh's 1st Affidavit at para 14.

3 Suresh's 1st Affidavit at para 15 and p 521.

4 Suresh's 1st Affidavit at p 512.

5 Suresh's 1st Affidavit at para 20.

6 Suresh's 1st Affidavit at paras 22–27 and 30.

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9 By the end of June 2022, the parties had agreed that the total quantity of RBDPL to be shipped would be reduced to 27,500MT;[7] Olam had agreed for the Vessel to call at the load port of Kuala Tanjung followed by Tanjung Pura (as requested by Aastar on or around 15 June 2022);[8] and Olam was prepared to extend the contractual shipment period to 10 July 2022.[9]

10 On 29 and 30 June 2022, Olam informed Aastar that the Vessel would arrive at Kuala Tanjung on 2 July 2022, followed by Tanjung Pura on 6 July 2022, and requested that Aastar should have the full cargo ready to load on the day of the Vessel's arrival in accordance with cl 3(v) of PORAM 2.[10]

11 On 2 July 2022, the Vessel arrived at Kuala Tanjung and tendered its Notice of Readiness.[11]

12 On 4 July 2022, Aastar sought to make changes to its load port nominations twice. Aastar first requested to load 17,500MT at Kuala Tanjung and 10,000MT at Dumai, before amending the latter to Lubuk Gaung. Neither Dumai nor Lubuk Gaung were contractually stipulated load ports.[12]

13 On 6 July 2022 at 12.05pm, Olam informed Aastar that it was checking with the Owners on Aastar's request for a change in load port again. Olam further stated that the Vessel had been ready to load from 2 July 2022 and requested Aastar to "commence loading immediately and make sure to load full

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7 Suresh's 1st Affidavit at p 126.

8 Suresh's 1st Affidavit at paras 22–23 and pp 118 and 122.

9 Suresh's 1st Affidavit at pp 220–221.

10 Suresh's 1st Affidavit at pp 118–120.

11 Suresh's 1st Affidavit at p 142.

12 Suresh's 1st Affidavit at paras 36–38 and pp 144 and 146.

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quantity by 10th July".[13] At 3.28pm, Aastar informed Olam that it would be "in a position to start loading tomorrow night [*ie*, 7 July 2022] / early morning on [8 July 2022]" and that it had "the necessary permits in place to export the cargo".[14] At 5.38pm, Olam informed Aastar that it risked losing the Vessel due to Aastar's breaches and urged Aastar to "allow [the] [V]essel to berth and commence loading immediately and ensure full quantity of 27,500MT is loaded by 10th July 2022" [emphasis in original omitted].[15]

14 On 7 July 2022 at 11.07am, Aastar declared cargo readiness for loading the Vessel at Kuala Tanjung and stated that the export permit would be provided within the day.[16] However, the Vessel had already obtained port clearance to leave and the Owners caused the Vessel to depart from Kuala Tanjung that morning, having apparently formed the view that the cargo was not ready.[17] At 12.28pm, Olam put Aastar on notice that Aastar had not complied with its obligations under the Sales Contracts. Reserving its rights, Olam requested Aastar to immediately confirm that the cargo was ready for delivery, a suitable berth was available, and Aastar had taken all steps to arrange for the Vessel to be berthed.[18] At 12.51pm, Aastar replied, stating that the cargo was ready for loading but it was unable to perform its contractual obligation to load the cargo because the Vessel had departed.[19]

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13 Suresh's 1st Affidavit at para 39 and p 148.

14 Suresh's 1st Affidavit at pp 165 and 242.

15 Suresh's 1st Affidavit at pp 164 and 248

16 Suresh's 1st Affidavit at p 252.

17 Suresh's 1st Affidavit at p 254.

18 Suresh's 1st Affidavit at pp 162–163

19 Suresh's 1st Affidavit at p 162.

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15 On 10 July 2022, Olam arrested the Vessel in Malaysia after commencing an admiralty action in and obtaining a warrant of arrest from the Malaysian High Court on 8 July 2022 (the "Malaysian admiralty action"). In the Malaysian admiralty action, Olam claimed against the Owners for breach of their charterparty obligations when the Vessel departed from Kuala Tanjung prior to loading and contrary to Olam's instructions, thereby causing Olam loss under its sale and purchase contracts.[20]

16 On 11 July 2022, Olam wrote to Aastar, stating that Aastar's failure to have the cargo ready for loading resulted in the departure of the Vessel from the load port. Reserving its rights, Olam also requested Aastar to provide urgent confirmation that the cargo was fully ready for loading and all export permits and necessary approvals were in place, in order to facilitate Olam's attempt to have the Vessel (or suitable alternative) return for loading.[21]

17 In response, on 12 July 2022, Aastar wrote to Olam stating that it was ready in all respects to load the cargo on 7 July 2022 when the Vessel left the load port. However, Aastar stated that it would not be possible to keep the cargo ready indefinitely due to storage space constraints; thus, it would take 14 days from Olam's notice of shipment to make the entire cargo available again.[22]

18 On 4 August 2022, Olam informed Aastar that its on-sale buyers had terminated their contract with Olam. Olam was therefore not in a position to perform the Sales Contracts.[23]

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20 Suresh's 1st Affidavit at pp 262–271 and 273–282.

21 Suresh's 1st Affidavit at para 45 and p 161.

22 Suresh's 1st Affidavit at para 46 and p 160.

23 Suresh's 1st Affidavit at para 48 and p 168.

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19 On 5 August 2022, Aastar accepted Olam's repudiation of the Sales Contracts and issued a notice of default to Olam.[24]

The PORAM arbitration

20 Pursuant to cl 26 of PORAM 2, disputes under the Sales Contracts are to be referred to Malaysia-seated arbitration in accordance with the PORAM Rules of Arbitration and Appeal in force at the date of the initiation of the arbitration, with the Arbitration Act 2005 (No 646 of 2005) (M'sia) (the "MAA") applying to the arbitration.[25]

21 On 10 August 2022, Aastar notified Olam of its intention to commence PORAM arbitral proceedings against Olam (the "First Tier Arbitration").[26]

22 In the First Tier Arbitration, Aastar claimed against Olam for breach of the Sales Contracts and quantified its loss based on the difference between the contract price and the market price of 30,000MT of RBDPL as at the date of default (*ie*, 5 August 2022) pursuant to cl 24 of PORAM 2.[27] Aastar took the position that despite Aastar's "initial" issues with and/or lack of cargo readiness, Olam had waived these breaches and continued with the performance of the Sales Contracts.[28] Further, Olam had taken the position in the Malaysian admiralty action that the Owners had breached their charterparty obligations by causing the Vessel to depart from Kuala Tanjung when the shipper (*ie*, Aastar) had confirmed cargo readiness and had all the relevant export permits in place

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24 Suresh's 1st Affidavit at para 49 and p 167.

25 Suresh's 1st Affidavit at paras 16–17 and p 521.

26 Suresh's 1st Affidavit at para 50 and p 260.

27 Suresh's 1st Affidavit at pp 196 and 199: Aastar's Statement of Claim in the First Tier Arbitration dated 27 October 2022 ("SOC") at paras 46 and 54.

28 Suresh's 1st Affidavit at p 184: SOC at para 37.

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as of 7 July 2022, thereby exposing Olam to liability for breach of the Sales Contracts; this contradicted Olam's assertions in its correspondence with Aastar that Aastar's failure to perform its cargo readiness obligations had resulted in Olam's inability to perform the Sales Contracts.[29]

23 Olam's defence was that Aastar did not have cargo fully ready for loading in time for completion by the end of the delivery period; Aastar's assertion of cargo readiness on 7 July 2022 was false. The departure of the Vessel was not the cause of any loss allegedly suffered by Aastar since Aastar was not in a position to load the cargo within the delivery period in any event. Any loss suffered by Aastar was caused by its own inability to perform its contractual obligations. Aastar was not entitled to claim damages for loss arising as a consequence of its own breaches.[30] There could be no question of waiver in circumstances where Aastar's misrepresentations had kept Olam unaware of the true position regarding the cargo at the load port.[31] Further, the positions taken by Olam in the Malaysian admiralty action did not support Aastar's claim in the First Tier Arbitration as the contractual relationship between the Owners and Olam differed from that between Aastar and Olam; the steps taken by Olam to protect its position against the Owners did not amount to any admission of Aastar's allegations.[32] Olam also counterclaimed against Aastar for its breaches of the Sales Contracts in failing to confirm and ensure cargo readiness upon the Vessel's arrival in Kuala Tanjung; failing to ensure that the cargo was ready to

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29 Suresh's 1st Affidavit at pp 186–197: SOC at paras 42–45 and 47–51.

30 Suresh's 1st Affidavit at p 413, 426 and 428–429: Olam's Defence and Counterclaim in the First Tier Arbitration dated 8 December 2022 ("Defence") at paras 7–8, 71, 80(a) and 84–87.

31 Suresh's 1st Affidavit at pp 428 and 430: Defence at paras 80(b) and 88–89.

32 Suresh's 1st Affidavit at pp 428–429: Defence at paras 81–83.

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load within the delivery period; and repeatedly misrepresenting the status of cargo readiness.[33]

24 On 27 September 2023, the tribunal in the First Tier Arbitration (the "Tribunal") issued Arbitration Final Award No A442 (the "First Tier Award").[34] Of significance are the Tribunal's findings that:

(a) Aastar did not have cargo ready to load upon the Vessel's arrival at Kuala Tanjung. Despite repeated reminders from Olam to have the cargo and the required export permits ready, Aastar did not do so "until the morning of 7th July 2022" when the Owners decided to have the Vessel depart (First Tier Award at [8.1.5]).

(b) Even if Olam's attempts to continue to perform the Sales Contracts constituted a waiver, that waiver could only be a waiver of the right to terminate the Sales Contracts and not a waiver of Olam's right to hold Aastar responsible for Aastar's breaches "[e]specially as [Olam] expressly and repeatedly reserved [its] rights to otherwise hold Aastar responsible" (First Tier Award at [8.1.10]).

(c) In respect of Aastar's claim, Aastar was within its contractual rights to hold Olam in default on 5 August 2022, which was determined to be the default date. The damages payable by Olam to Aastar were limited to the difference between the contract price and market price on the default date, in accordance with cl 24 of PORAM 2. The damages thus quantified and based on the revised total shipment quantity of 27,500MT was US$18,588,750 (First-Tier Award at [8.2.1]).

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33 Suresh's 1st Affidavit at pp 413 and 433: Defence at paras 9 and 98.

34 Suresh's 1st Affidavit at pp 1590–1610.

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(d) In respect of Olam's counterclaim, it was acknowledged that Olam had at all material times held Aastar responsible for Aastar's breaches. However, cl 24 of PORAM 2 did not make any provision for the award of losses suffered by the defaulting party (*ie*, Olam), and accordingly, Olam's counterclaim for losses suffered by the termination of its onward sales contract was denied (First-Tier Award at [8.3]).

The PORAM appeal

25 On 24 October 2023, Olam filed an appeal against the First Tier Award (the "Appeal"). An appeal board comprising three arbitrators (the "Appeal Board") was constituted on 16 November 2023.[35]

26 On 14 December 2023, Olam submitted its Points of Appeal. Olam argued that the Tribunal had erred in finding Olam liable to Aastar because, among other things, Aastar did not have cargo accumulated for loading at either load port within the delivery period or the necessary export permits in place to perform its obligations in full.[36] The Tribunal also erred in the calculation of damages[37] and in rejecting Olam's counterclaim.[38]

27 On 18 January 2024, Aastar submitted its Points of Defence. Aastar took the position that it did in fact have the cargo ready to load at Kuala Tanjung on the morning of 7 July 2022; however, the Vessel sailed off, and as Olam never

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35 1st Affidavit of Leong Xiuli filed on Aastar's behalf in OA 901 on 5 September 2024 ("Leong's 1st Affidavit") at pp 97–98: Dissenting Appeal Award dated 13 August 2024 ("Dissenting Opinion") at paras 1.1, 2.3 and 2.4.

36 Suresh's 1st Affidavit at pp 1613, 1616 and 1617: Olam's Points of Appeal in the Appeal dated 14 December 2023 ("POA") at paras 6, 19 and 24.

37 Suresh's 1st Affidavit at pp 1618–1622: POA at paras 28–40.

38 Suresh's 1st Affidavit at pp 1622–1623: POA at para 41.

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presented another vessel, Aastar was under no further obligation to load the cargo.[39]

28 On 12 February 2024, Olam submitted its Points of Reply. One of the key points raised by Olam was that Aastar had adduced no evidence showing that there was any cargo (let alone 17,500MT of RBDPL) ready to load on 7 July 2022.[40]

29 On 14 March 2024, Aastar submitted its Rejoinder to Olam's Points of Reply. In its Rejoinder, Aastar adduced new evidence in the form of four letters purportedly issued by Aastar's Indonesian suppliers to Aastar's Indonesian affiliate[41] (the "Letters"):

(a) a letter from PT Sintong Abadi dated 30 June 2022 stating that 7,500MT of RBDPL was ready on 1 July 2022;

(b) a letter from PT Pacific Palmindo Industri dated 30 June 2022 stating that 5,000MT of RBDPL was ready on 1 July 2022;

(c) a letter from PT Lingga Tiga Sawit dated 30 June 2022 stating that 2,000MT of RBDPL was ready on 30 June 2022; and

(d) a letter from PT Lingga Tiga Sawit dated 6 July 2022 stating that 1,000MT of RBDPL was ready on 6 July 2022.

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39 Suresh's 1st Affidavit at pp 2032, 2057, 2059 and 2062: Aastar's Points of Defence in the Appeal dated 18 January 2024 at paras 4, 46(b), 51 and 56(a).

40 Suresh's 1st Affidavit at pp 2727 and 2729–2732: Olam's Points of Reply in the Appeal dated 12 February 2024 at paras 23(a), 25(b)(i), 25(c), 27(d), 33(a).

41 Notes of Arguments of the hearing of SUM 2764/2024 on 12 December 2024 ("NOA") at p 19:5.

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All four Letters referenced "Vessel Name: MT Yuan Dong V2206" and "Loading Port: Kuala Tanjung". The total quantity of RBDPL referenced in the Letters was 15,500MT.[42] Aastar further submitted that a cargo of 2,000MT had previously been transferred to the shore tank at Kuala Tanjung on 2 July 2022. Thus, cargo availability (totalling 17,500MT of RBDPL) had been ensured by Aastar at Kuala Tanjung.[43]

30 An oral hearing for the parties to present arguments was held before the Appeal Board on 20 and 21 May 2024. Olam disputed the authenticity of the Letters, citing, among other reasons, that the Letters were identical in format and font and contained the same typographical errors despite purportedly being issued by different companies; that the Letters referred to a vessel and a vessel voyage number when it was highly unlikely that Aastar's domestic suppliers would be aware of the intended vessel; and that the information stated in the Letters was contradicted by the contemporaneous evidence of Cotecna, the independent cargo surveyors engaged by Olam for the shipments.[44] Aastar denied Olam's allegations of falsification or fraud.[45] An arbitrator on the Appeal Board commented at the hearing:[46]

> I think basically the comment is we are not investigative, right? All documents that are presented to us, we take it as genuine, and we accept. We can't investigate to see what is wrong. On face value we take all the documents. *We of course make all our own judgment.* I think this is a close hearing, so the issues of

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42 Suresh's 1st Affidavit at pp 3296, 3297 and 3583–3589: Aastar's Rejoinder in the Appeal dated 14 March 2024 ("Rejoinder") at para 35 and Exhibits R-27 to R-29.

43 Suresh's 1st Affidavit at p 3297: Rejoinder at para 36.

44 Suresh's 1st Affidavit at paras 65 and 67 and pp 3907–3910: Transcript of the oral hearing before the Appeal Board on 20 May 2024 at pp 1–4.

45 Suresh's 1st Affidavit at para 68 and pp 3910–3911: Transcript of the oral hearing before the Appeal Board on 20 May 2024 at pp 4–5.

46 Suresh's 1st Affidavit at p 3930: Transcript of the oral hearing before the Appeal Board on 21 May 2024 at fourth page, lines 28–33.

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> fraud, I think its best that its kept here [*sic*]. Because here we are trying to settle a dispute. [emphasis added]

31 On 27 May 2024, Olam wrote to the Appeal Board reiterating that it was a critical issue in the dispute between the parties whether Aastar had cargo ready to load the Vessel within the delivery period; Aastar had produced new evidence in its Rejoinder in the form of the Letters to demonstrate that the cargo was indeed ready; and Olam had real concerns that the Letters were not authentic and constituted a fraud on Olam and the Appeal Board. Olam stated that it was the Appeal Board's role and responsibility to determine the veracity of the Letters relied on by Aastar, and requested that the Appeal Board (a) direct Aastar to produce the original e-mails by which the Letters came into Aastar's possession or (b) grant Olam permission to apply to the Malaysian High Court pursuant to s 29 of the MAA for orders for the preservation and production of the said original e-mails ("Olam's Application to the Appeal Board").[47] Olam's Application to the Appeal Board was repeated in e-mails from Olam to the Appeal Board on 28 and 31 May 2024.[48] Without waiving its pending application, Olam also filed its Closing Submissions on 28 May 2024 (as directed by the Appeal Board).[49] In its Closing Submissions, Olam stated, *inter alia*:

> It is Olam's Submission that the [Appeal] Board has sufficient reason to determine that the [Letters] are fraudulent. However, the [Appeal] Board does <u>not</u> need to find that the [Letters] are fraudulent in order to decide that they are not good evidence of Cargo readiness. Instead, it is enough that the [Appeal] Board decides that the documents are not to be given any weight. … [original emphasis in underline]

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47 Suresh's 1st Affidavit at para 70 and pp 3933–3934.

48 Suresh's 1st Affidavit at paras 72, 74 and 75 and pp 3939–3940 and 3954.

49 Suresh's 1st Affidavit at pp 3888–3892 and 3946.

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32 On 18 June 2024, the Appeal Board declared the Appeal proceedings closed without ruling on Olam's Application to the Appeal Board.[50]

33 On 8 August 2024, the Final Appeal Award was issued. In a split decision, a majority of the Appeal Board (the "Majority") found in Aastar's favour. Out of the 52-page Final Appeal Award, 47 pages comprised the Majority's recitation of the procedural history of the case and of the parties' arguments, four pages came under the heading "The Appeal Board's Findings", and one page contained the orders made by the Appeal Board.[51] The Majority's findings were silent on Olam's Application to the Appeal Board and the issue of the authenticity of the Letters. The Majority agreed with the Tribunal's decision to find Olam in default of the Sales Contracts (Final Appeal Award at [12.11]). However, the Majority found that the applicable date of default was the day after the last agreed shipment date, *ie*, 11 July 2022, and on that basis, recalculated the damages payable by Olam to be US$17,421,750 (Final Appeal Award at [12.13]–[12.20]).

34 On 13 August 2024, the dissenting member of the Appeal Board (the "Dissenting Arbitrator") issued a dissenting opinion (the "Dissenting Opinion").[52] The Dissenting Arbitrator opined, *inter alia*, that the crux of the matter was cargo readiness, on which the performance of the Sales Contracts hinged (Dissenting Opinion at [6.1] and [7.1.1]); the departure of the Vessel from Kuala Tanjung was "mainly due to cargo readiness that never materialize[d]" (Dissenting Opinion at [7.5.1]); questions were raised as to the authenticity of the Letters, which were never disclosed to Olam

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50 Leong's 1st Affidavit at p 88: Final Appeal Award at para 11; Suresh's 1st Affidavit at paras 79–81.

51 Leong's 1st Affidavit at pp 42–93.

52 Leong's 1st Affidavit at pp 94–132.

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contemporaneously despite their importance to the status of cargo readiness / loading (Dissenting Opinion at [7.7.1]); the Letters also "clearly conflicted with the reputable independent surveyor Cotecna's contention, who had confirmed that at time of critical loading period, the cargo was not ready [*sic*]" (Dissenting Opinion at [7.7.2]); and Olam should succeed in full in the Appeal (Dissenting Opinion at [8.1]–[8.6]).

The Malaysian setting aside application

35 On 24 September 2024, Olam applied to the Malaysian High Court to set aside the Final Appeal Award (see [2(a)] above) pursuant to ss 37(1)(*a*)(iv), 37(1)(*a*)(v), 37(1)(*a*)(vi), 37(1)(*b*)(ii), 37(2)(*a*), 37(2)(*b*)(i) and/or 37(2)(*b*)(ii) of the MAA on the following grounds.[53]

36 First, the Final Appeal Award was in conflict with the public policy of Malaysia in that the making of the Final Appeal Award was induced and/or affected by fraud in the form of the "forged or backdated" Letters.[54]

37 Second, the Final Appeal Award was in conflict with the public policy of Malaysia in that the Appeal Board breached the rules of natural justice when it did not consider and/or determine, or alternatively, wrongly disregarded Olam's and/or the parties' key arguments on, the following important issues:

(a) the authenticity of the Letters;

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53 Suresh's 1st Affidavit at p 4150: Affidavit of Keshav Chandra Suresh dated 23 September 2024 filed on Olam's behalf in support of the Malaysian setting aside application ("Suresh's Malaysian Affidavit") at para 114.

54 Suresh's 1st Affidavit at pp 4150–4156: Suresh's Malaysian Affidavit at paras 114(a) read with 115–126.

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(b) whether Olam had waived its rights to hold Aastar responsible for loss and damages; and

(c) whether, if Aastar succeeded on liability, damages should be awarded at a level that properly reflected any actual loss suffered by Aastar.[55]

38 Third, the Final Appeal Award "deal[t] with a dispute not contemplated by or not falling within the terms of the submissions [*sic*] to arbitration and/or contain[ed] decisions on matters beyond the scope of submission to arbitration and/or made in excess of powers and/or jurisdiction" in that the Appeal Board refused to hear and/or rule on the key issue of the authenticity of the Letters, which was material to the outcome of the Arbitration.[56]

39 Fourth, the arbitral procedure was not in accordance with the parties' agreement in that the Appeal Board:

(a) failed to make a reasoned award;[57] and

(b) failed to treat each party equally by reason of the matters at [37(a)] and [39(a)] above.[58]

40 Olam subsequently filed an application in the Malaysian High Court for production of the original Letters as well as any correspondence, e-mails or other forms of communication (in their original format) enclosing the Letters

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55 Suresh's 1st Affidavit at pp 4151, 4157–4159 and 4176–4197: Suresh's Malaysian Affidavit at paras 114(b) read with 127–166 and Schedule A.

56 Suresh's 1st Affidavit at pp 4151 and 4170–4171: Suresh's Malaysian Affidavit at paras 114(c) read with 167–174.

57 Suresh's 1st Affidavit at pp 4151 and 4172–4173: paras 114(d)(i) read with 175–182.

58 Suresh's 1st Affidavit at pp 4151 and 4173–4174: paras 114(d)(ii) read with 183–186.

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("Olam's Production Application").[59] Olam also indicated that it would apply to the Malaysian High Court for a subpoena for one Mr Nakul Rastogi, the Director of PT Pacific Palmindo Industri (see [29(b)] above),[60] to be cross-examined by Olam's counsel on the issue of the authenticity of the Letters at the hearing of the Malaysian setting aside application ("Olam's Intended Subpoena / Cross-Examination Application").[61]

The parties' cases

Olam's case

41 Olam submitted that this court should exercise its discretion to grant an adjournment of the Singapore enforcement proceedings pursuant to s 31(5) of the IAA, for three main reasons. First, Olam was pursuing a meritorious application to set aside the Final Appeal Award in the seat court, *ie*, the Malaysian setting aside application.[62] Second, the adjournment would cause no real prejudice to Aastar. Olam's Malaysian lawyers estimated that the Malaysian setting aside application would be heard approximately six to nine months from the date of its filing.[63] The short delay would not prejudice Aastar's ability to enforce the Final Appeal Award as Olam was part of a publicly-listed company with substantial assets in Singapore.[64] Beyond a vague allusion to speculations of "market talk" about a sale of Olam's ultimate parent company

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59 3rd Affidavit of Keshav Chandra Suresh filed on Olam's behalf in OA 901 on 2 December 2024 ("Suresh's 3rd Affidavit") at para 14(a).

60 1st Affidavit of Joost van der Steen filed on Olam's behalf in OA 901 on 24 September 2024 at para 20.

61 Suresh's 3rd Affidavit at para 14(b).

62 Olam's Written Submissions dated 5 December 2024 ("OWS") at paras 53–60.

63 Suresh's 1st Affidavit at para 142.

64 Suresh's 1st Affidavit at para 143.

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which would allegedly "complicate [Aastar's] enforcement" of the Final Appeal Award, Aastar had not particularised any purported prejudice that it would suffer from an adjournment of the Singapore enforcement proceedings.[65] Any financial implications caused by a delay in enforcement of the Final Appeal Award could be satisfactorily compensated by an award of interest.[66] Third, an adjournment was proper due to the primacy of the seat court; to avoid the "unnecessary risk of inconsistent decisions in Singapore and Malaysia"; and to "limit the risk that an enforced award would be subsequently set aside" by the seat court.[67]

42 In the event the adjournment was not granted, Olam submitted that the enforcement of the Final Appeal Award should be refused pursuant to ss 31(2)(*c*) and 31(4)(*b*) of the IAA on the following grounds. First, there was a breach of natural justice in that the Majority had not applied their mind to the issue of the authenticity of the Letters and to Olam's arguments on the quantum of damages and the issue of waiver. Second, it was against the public policy of Singapore to enforce the Final Appeal Award, which was premised on the fraudulent Letters.[68]

Aastar's case

43 Aastar resisted an adjournment of the Singapore enforcement proceedings primarily on the ground that Olam's Malaysian setting aside application was unmeritorious, devoid of a properly arguable basis and made in

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65 OWS at para 61.

66 OWS at paras 63–64.

67 OWS at paras 65–67.

68 OWS at paras 68–76.

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bad faith purely to delay Aastar's enforcement of the Final Appeal Award.[69] Aastar added that an adjournment would cause it prejudice as there was "market talk" that Olam's ultimate parent company was negotiating a sale to Saudi Agricultural and Livestock Investment Company and "[t]his may complicate [Aastar's] enforcement".[70] There was also no reason to refuse enforcement of the Final Appeal Award as it was not made in breach of natural justice and its enforcement was not in breach of Singapore's public policy.[71]

Issues for determination

44 The first-order issue for determination was whether the Singapore enforcement proceedings should be adjourned pending the final determination of the Malaysian setting aside application (the "Adjournment Issue"). If the adjournment were granted, the issue of whether to refuse the enforcement of the Final Appeal Award would not fall to be determined presently. As Belinda Ang J (as she then was) put it in *Man Diesel Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537 ("*Man Diesel*") at [33], "a ruling under s 31(5)(*a*) [of the IAA] for an adjournment has to be made prior to a decision on the application to refuse enforcement".

The Adjournment Issue

The law

45 Article VI of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) 330 UNTS 38 (entered into force

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69 Aastar's Written Submissions dated 5 December 2024 ("AWS") at paras 35–71.

70 AWS at para 73.

71 AWS at paras 35 and 70.

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7 June 1959, accession by Singapore 21 August 1986) (the "New York Convention") provides:

> If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V(1)(*e*) [*ie*, a competent authority of the country in which, or under the law of which, that award was made], the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

The provision strikes a compromise between promoting the enforceability of foreign arbitral awards and preserving judicial oversight over awards by allowing the enforcement court to decide whether or not to adjourn enforcement proceedings when there are pending setting aside proceedings in the seat court: *Man Diesel* at [42].

46 In Singapore, Art VI of the New York Convention is given statutory effect by s 31(5) of the IAA (see *Man Diesel* at [43]), which provides:

> Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may —
>
> (*a*) if the court considers its proper to do so, adjourn the proceedings or (as the case may be) so much of the proceedings as relates to the award; and
>
> (*b*) on the application of the party seeking to enforce the award, order the other party to give suitable security.

47 Section 31(5) of the IAA confers a wide and open-textured statutory discretion on the enforcement court, which takes a multi-factorial approach to the exercise of its discretion, weighing in the balance factors of the case in favour of or against the adjournment and striking a fair balance by coming down

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on the side of an outcome that is the most just or least unjust: *Man Diesel* at [45], [46] and [62]. In any given adjournment application, the enforcement court would have to consider *which* factors are relevant and the *weight* to be placed on the relevant factors in the balancing exercise. A perusal of the case law shows that the following factors, while not exhaustive, are commonly considered to be relevant to the enforcement court's exercise of its discretion.

48 First, the enforcement court will consider whether the setting aside application before the seat court is brought *bona fide* and not simply as a delaying tactic: *Man Diesel* at [49(a)] and [54], citing *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* [2005] 2 Lloyd's Rep 326 ("*IPCO*") at [15]; *AIC Ltd v Federal Airports Authority of Nigeria* [2020] Bus LR 627 ("*AIC*") at [35(ii)]; *Consilient Health Ltd v Gedeon Richter plc* [2022] EWHC 1744 (Ch) ("*Consilient*") at [94]. This factor was recognised by the courts in *IPCO*, *AIC* and *Consilient* as a separate factor from the merits of the setting aside application. Indeed, while the merits of the setting aside application may often have a bearing on the court's assessment of whether it was brought *bona fide* (see, *eg*, *Man Diesel* at [47]), the *bona fides* of the setting aside application may also be informed by other considerations such as (a) the timing of the commencement of the setting aside proceedings and (b) the overall conduct of the party seeking to set aside the award.

49 An example of the former consideration is found in *Continental Transfert Technique Limited v The Federal Government of Nigeria and others* [2010] EWHC 780 (Comm). While that case concerned an application by the defendants for a stay of the enforcement of a judgment in the amount of an arbitral award made in the claimant's favour, the parties agreed that the approach to the court's exercise of its discretion under s 103(5) of the Arbitration Act 1996 (c 23) (UK) (the "1996 Act") (which is *in pari materia*

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with s 31(5) of the IAA) was relevant (at [12]–[15]). In that connection, the court observed that the award was made on 14 August 2008 and there was a three-month time limit for the commencement of proceedings to challenge the award in the seat court in Nigeria. The time limit expired in mid-November 2008. However, it was not until 20 April 2009 that the defendants applied to challenge the award out of time, *after* they knew in March 2009 that the claimant had commenced proceedings in England to enforce the award. The court thus concluded that the setting aside application involved delaying tactics (at [24]). Providing a contrasting example is the decision in *Consilient*, where one of the considerations leading to the court's view that the defendant's setting aside proceedings in the Netherlands were not "tactical" or "anything other than bona fide" was the fact that the challenge was brought within the procedural time limits under Dutch law (at [98(ii)]).

50 An example of the latter consideration is found in *Man Diesel*. In that case, an "important circumstance" militating against the adjournment sought by the defendant was the fact that the defendant had commenced a new arbitration against the plaintiff premised on and arising from the very arbitral award which the defendant *later* applied to the seat court to set aside *after* the plaintiff filed proceedings to enforce the award in Singapore; the defendant continued to pursue the new arbitration and the setting aside application concurrently (at [97]). It is unsurprising that where an award debtor takes inconsistent positions on the validity of the award in question, such conduct undermines the credibility and *bona fides* of any application the award debtor takes to set aside the award, which in turn weighs against the adjournment of any proceedings to enforce the award.

51 Second, the enforcement court will consider the strength of the merits of the setting aside application before the seat court. I highlight two points.

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52 One, the *nature* of the assessment. At the stage of the adjournment application, the enforcement court does not engage in a detailed assessment of the facts or legal arguments in the setting aside proceedings: *Man Diesel* at [47]. Rather, the enforcement court undertakes a "preliminary evaluation", as "perceived on a brief consideration", of the strength of the argument that the award is invalid: *Man Diesel* at [65], also citing *Soleh Boneh International Ltd and another v Government of the Republic of Uganda and National Housing Corporation* [1993] 2 Lloyd's Rep 208 ("*Soleh Boneh*") at 212. As Staughton LJ stated in *Soleh Boneh*, the enforcement court is "not asked … to decide the point … here and now" and "must be careful to express no opinion on it" except to say if it were seriously arguable (at 210). The merits of the setting aside application are assessed on a sliding scale that runs from manifest invalidity to manifest validity of the award (*Man Diesel* at [56]; *IPCO* at [15]; *Dowans Holding SA and another v Tanzania Electric Supply Co Ltd* [2011] 2 Lloyd's Rep 475 at [43]) with "various degrees of plausibility in the argument for invalidity" in between (*Soleh Boneh* at 212).

53 Two, the *purpose* of the assessment. The strength of the merits of the setting aside application is *not* intended to function as a threshold test for the grant of an adjournment but is simply a *circumstance* to be considered by the enforcement court in deciding how to strike a balance between the parties' competing interests (see *Man Diesel* at [56] and [62]). Where there is a "properly arguable" basis for the setting aside application, this will assist to satisfy the court that it was made in good faith (see *Man Diesel* at [47]). Ultimately, however, the strength of the merits of the setting aside application remains one factor among others that may apply in any given adjournment application, and the weight placed on this factor would depend on all the circumstances of the case. To illustrate, in *Travis Coal Restructured Holdings LLC v Essar Global Fund Ltd* [2014] 2 Lloyd's Rep 494 ("*Travis Coal*"), the

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court took the view that the setting aside proceedings in New York lacked realistic prospects of success and could properly be described as delaying tactics (at [50], [54], [61] and [62]), but nevertheless decided to adjourn the English enforcement proceedings (a) to avoid the risk of conflicting decisions between the English and New York courts; (b) given the evidence that the New York challenge would be determined relatively soon; and (c) on condition that the defendant provide security for the full amount of the award as sought by the claimant (at [73]–[74]). Not infrequently, the enforcement court may reach the view that the award appears neither manifestly valid nor manifestly invalid (see, *eg*, *IPCO* at [51(ii)]; *Consilient* at [108]). In such cases, the enforcement court may naturally have to place greater weight on other factors for or against an adjournment of the enforcement proceedings.

54 Third, the enforcement court is concerned with whether an adjournment will render it more difficult to enforce the award, for example, because of the award debtor's dissipation of assets or improvident trading if enforcement is delayed: *Man Diesel* at [50]–[51], citing *Soleh Boneh* at 212. In *Man Diesel*, the court found that certain actions taken by the defendant, such as transfers of its assets, gave rise to concerns of a risk of dissipation of undisclosed assets, suggesting that enforcement of the award would be more difficult if an adjournment were granted and no security ordered (at [102]–[104]); this factor weighed in the court's total consideration of and decision to dismiss the adjournment application (at [107]). Conversely, in *Dardana Ltd v Yukos Oil Co* [2002] 2 Lloyd's Rep 326 ("*Dardana*"), the court found that the evidence did not show any likelihood that the defendant would, during any adjournment, move funds presently within the jurisdiction so as to make the enforcement of the award more difficult or otherwise make itself or become less amenable to enforcement (at [37]); this was one reason (among others) the court granted an

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adjournment of the enforcement proceedings without any order for security (at [37] and [53]).

55 Fourth, the likely length of an adjournment (and consequent prejudice caused to the award creditor by such delay) is a relevant factor: *Man Diesel* at [47] and [98]. I make three points.

56 One, delay in the ability to enforce an award is itself a form of prejudice to the award creditor, regardless of whether or not it can be compensated by an award of interest, and quite apart from any question of risk of dissipation of assets by the award debtor: *Hulley Enterprises Ltd and others v Russian Federation* [2021] 1 WLR 3429 at [173]; see also *AIC* at [53].

57 Two, in assessing whether the likely period of adjournment is unduly long, the enforcement court may consider not just the quantitative length of the adjournment, but also whether, relative to the amount of time that has been taken in the underlying dispute and arbitral proceedings (and to whom any delay there is attributable), the adjournment would properly be regarded as causing an undue delay in the enforcement leg of the matter. For example, in *Consilient*, the court considered that the delay in enforcement arising from an adjournment, which was anticipated to be up to 15 months, had to be "kept in reasonable perspective" and was "comparatively short" in the context of the long-running six-year dispute between the parties; the underlying arbitral proceedings and a prior related arbitration each having lasted more than two years; and the claimant having only belatedly invoked certain contractual rights in the underlying dispute (at [130] and [150(iv)]).

58 Three, in my view, there is limited utility in comparing the lengths of adjournments across cases given the different context of each case. At the most,

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such comparison may provide a sense check of whether the adjournment sought in the case at hand will result in undue delay.

59 Fifth, the enforcement court may have regard to considerations of international comity: *Dardana* at [23]; *IPCO* at [16]; *Travis Coal* at [37]. In *IPCO*, Gross J (as he then was) opined that comity required deference to the seat court where the arbitration had been domestic in the country of the seat court (at [16]):

> … in the exercise of the discretion under section 103(5) of the [1996] Act, the fact that the arbitration was domestic in the country of origin, must generally be likely to enhance the deference due to the court exercising supervisory jurisdiction in that country. Comity and common sense are likely to require no less; pre-empting the decision on a challenge to an award before the court exercising supervisory jurisdiction in the country of origin would be a strong thing in a case where all parties were domiciled or incorporated in that country.

In *Travis Coal*, Blair J opined that such comity considerations could arise even more generally (at [36]–[37]):

> 36. Finally, there is the question of comity. At para 16 [of *IPCO*], Gross J considers the position in which an award is made abroad in an arbitration between parties of the same nationality. …
>
> 37. In the present case, both parties are not of the same nationality. … But the same kind of comity considerations can in my view arise, depending on the facts. Where it is plain that a challenge to an award is being properly dealt with in the courts of the seat of the arbitration, common sense may indicate that an adjournment is preferable to a decision by the enforcing court dealing with the same issues. …

60 These judicial sentiments, which appear to accord a level of primacy to the seat court, cannot, of course, be taken too far or out of context. Art VI of the New York Convention and s 31(5) of the IAA *already* account for the seat court's primacy and supervisory jurisdiction in reviewing an award through the mechanism of conferring on the enforcement court a discretion to decide

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whether to adjourn enforcement proceedings pending setting aside proceedings before the seat court: *BAZ v BBA and others and other matters* [2020] 5 SLR 266 at [45]–[46] and [49]; *Sacofa Sdn Bhd v Super Sea Cable Networks Pte Ltd and another* [2024] SGHC 54 at [72]. The discretion would be denuded of effect if the enforcement court were expected to always grant an adjournment out of deference to the seat court. Indeed, it is "generally for each enforcing court to determine for itself what weight and significance should be ascribed to the … progress … of an active challenge in the court of the seat": *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 at [75]. In my view, in the enforcement court's exercise of discretion under s 31(5) of the IAA, comity considerations would weigh more heavily in a case where the other factors appear evenly balanced. This would explain the court in *IPCO* holding, after finding that the award was neither manifestly valid nor manifestly invalid, that "[i]n all the circumstances, proper deference, going beyond lip service, must be shown to the pending Nigerian [setting aside] proceedings" (at [51(ii)]–[51(iii)]). Similarly, the court in *Travis Coal* appears to have envisaged comity considerations arising where the setting aside application was "properly" brought (at [37]).

61 In wrapping up the discussion on the applicable legal principles, I reiterate that the factors canvassed above are not exhaustive. Further, their applicability and weight depend on the facts in any given case. The enforcement court will consider the overall circumstances in each case and strike a fair balance between the parties' competing interests.

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Decision

62 In the present case, I exercised my discretion to adjourn the Singapore enforcement proceedings as this was the most just outcome indicated by the totality of the following main considerations:

(a) The evidence showed that the Malaysian setting aside application was brought by Olam *bona fide* and not as a delay tactic.

(b) On a sliding scale, the Final Appeal Award was neither manifestly valid nor manifestly invalid.

(c) There was no evidence that an adjournment would render enforcement of the Final Appeal Award more difficult.

(d) The period of adjournment, and consequent delay to any enforcement of the Final Appeal Award, did not appear unduly long.

(e) There were comity considerations weighing in favour of an adjournment.

63 I elaborate on my decision.

The Malaysian setting aside application was brought bona fide and not as a delay tactic

64 I was satisfied that the Malaysian setting aside application was brought by Olam *bona fide* and not as a delay tactic, for three reasons.

65 First, the evidence supported the view that Olam was minded all along to apply to the Malaysian High Court to set aside the Final Appeal Award and had not done so for the purpose of delaying the Singapore enforcement

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proceedings. The Final Appeal Award was issued on 8 August 2024. Under s 37(4) of the MAA, Olam had 90 days from the date it received the Final Appeal Award to apply to set it aside. Olam filed the Malaysian setting aside application on 24 September 2024, within seven weeks of the issuance of the Final Appeal Award and well within the statutory time limit for the application to be brought. Olam's evidence was that it had started preparing the Malaysian setting aside application by late August 2024, before Aastar served the Singapore Enforcement Order on Olam on 10 September 2024 (see [1] above).[72] I accepted Olam's evidence not only because it was unchallenged by Aastar but also because it cohered with the documentary evidence: the papers filed in the Malaysian setting aside application on 24 September 2024 were voluminous[73] and I doubted that they could have been conceived and prepared within the span of a mere 14 days only upon and in reaction to Aastar's commencement of the Singapore enforcement proceedings. In other words, the fact that the Malaysian setting aside application was, chronologically, filed (shortly) after Aastar served the Singapore Enforcement Order on Olam was a neutral factor in this case.

66 Second, my view of the merits of the Malaysian setting aside application (see [68]–[73] below) did not impair my view that it was brought by Olam *bona fide*.

67 Third, there were no extraneous circumstances suggesting that Olam lacked *bona fides* in commencing the Malaysian setting aside proceedings, unlike, for example, the case of the defendant in *Man Diesel* which took inconsistent positions in separate proceedings on the validity of the award (see [50] above).

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72 Suresh's 1st Affidavit at paras 86 and 137–138.

73 Suresh's 1st Affidavit at pp 4091–8740.

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The Final Appeal Award was neither manifestly valid nor manifestly invalid

68 One of the grounds raised by Olam for setting aside the Final Appeal Award was that the Majority had breached the rules of natural justice by failing to consider and to determine the essential issue of the authenticity of the Letters (see [37(a)] above). On a brief consideration of the matter as the case law adjured (see [52] above), I was of the view that Olam had a properly arguable case on this ground. The specific rule allegedly breached would be the fair hearing rule: see *BZW and another v BZV* [2022] 1 SLR 1080 at [60(a)] (which Olam's Malaysian law expert, Mr Lee Shih ("Mr Lee"), testified was part of the applicable case law in Malaysia).[74] Three inquiries were implicated. First, whether the authenticity of the Letters was an essential issue for determination. Second, whether the Majority had indeed failed to consider and determine the issue. Third, under Malaysian law (according to Mr Lee, citing *Master Mulia Sdn Bhd v Sigur Rus Sdn Bhd* [2020] 12 MLJ 198), whether such failure "would have had a material effect on the outcome of the arbitration".[75]

69 On the first inquiry, Olam's case in the Arbitration and in the Appeal was that Aastar did not have cargo fully ready for loading in time for completion by the end of the delivery period and that Aastar's assertion of cargo readiness on 7 July 2022 was false; the departure of the Vessel from Kuala Tanjung on 7 July 2022 thus could not be causative of any loss suffered by Aastar (see [23] and [26] above). Aastar countered that it did in fact have the cargo ready to load at Kuala Tanjung on 7 July 2022 (see [27] above) and sought to further advance that position in the Appeal by adducing in its Rejoinder, for the first time, the Letters, which purportedly showed that Aastar had ensured cargo availability at

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74 1st Affidavit of Lee Shih filed on Olam's behalf in OA 901 on 24 September 2024 ("Lee's 1st Affidavit") at p 36: Lee Shih's Expert Report ("Lee's Report") at para 83.

75 Lee's 1st Affidavit at p 36: Lee's Report at paras 80–82.

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Kuala Tanjung (see [29] above). Olam disputed the authenticity of the Letters. In this light, it was properly arguable that whether Aastar had cargo available and ready, on which question the authenticity of the Letters would have a bearing, were essential issues for determination by the Appeal Board. After all, if the Letters were fabricated, it would beg the question why Aastar went to the lengths of fabricating evidence to bolster its case on cargo readiness if cargo had in fact truly been ready.

70 On the second inquiry, three indications suggested a failure by the Majority to consider and determine the issue of the authenticity of the Letters. One, the Appeal Board never ruled one way or the other on Olam's Application to the Appeal Board for the production of the original e-mails by which Aastar had received the Letters (see [31]–[33] above). Two, the findings section in the Final Appeal Award was completely silent on the issue of the authenticity of the Letters. While the Majority stated that "[Aastar] confirmed cargo readiness on 7th July 2022 with [Aastar] presenting sufficient purchase contracts and export permits for the cargo while [Olam] disputed the accuracy of this confirmation as they believed that only off-specification 2,000 MT was available" (Final Appeal Award at [12.7]), Aastar's own position was that the Majority's reference to "purchase contracts" was *not* a reference to the Letters, but rather, to Aastar's purchase contracts with its suppliers, PT Bina Karya Prima and PT Mahesi Agri Karya.[76] Aastar also conceded that the Majority did not make an express finding on the authenticity of the Letters in the Final Appeal Award.[77] Three, the Majority's silence on the authenticity of the Letters juxtaposed uncomfortably against (a) the Appeal Board's comment during the oral hearing

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76 1st Affidavit of Mannepalli Gayatri Ram filed on Aastar's behalf in OA 901 on 11 October 2024 ("Ram's 1st Affidavit") at para 89; AWS at para 46.

77 Ram's 1st Affidavit at para 91.

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that it would make its "own judgment" on the Letters (see [30] above), and (b) the express concerns articulated in the Dissenting Opinion over the authenticity of the Letters (see [34] above).

71 Aastar countered that the Majority did consider Olam's arguments on the authenticity of the Letters but did not consider the Letters material and did not give any weight to them, which was precisely what Olam had argued in its Closing Submissions the Appeal Board should do (see [31] above).[78] Aastar highlighted that: (a) the Majority had summarised the parties' submissions on the authenticity of the Letters at [9.11] and [10.8] of the Final Appeal Award;[79] (b) the Dissenting Opinion showed that the Appeal Board had "collectively consider[ed]" the issue of the authenticity of the Letters but "were at odds on the issue";[80] (c) the Majority had stated that they had "considered all written submissions presented" before them (Final Appeal Award at [12.1]);[81] and (d) extensive discussions on the authenticity of the Letters took place during the oral hearing, where the Appeal Board had asked questions and considered the information presented to it.[82] In response to arguments (a) and (c), it could be said that a general statement by a tribunal that it has considered a party's submissions "cannot in itself resolve the issue of whether the tribunal actually did so" (*AKM v AKN and another and other matters* [2014] 4 SLR 245 at [100]). In response to arguments (b) and (d), it could be said that the Majority's omission of any mention of the issue in its findings, in contrast to the Dissenting Opinion and the canvassing of the issue at the oral hearing, was potentially

78 Ram's 1st Affidavit at para 106; AWS at paras 47, 53 and 63.

79 AWS at paras 47–48.

80 AWS at paras 49–50.

81 AWS at para 53.

82 AWS at paras 54–60.

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suggestive of a failure by the Majority to consider and determine the issue. In any event, the short point at this juncture was that it was at least properly arguable that the Majority had not applied their mind to the issue of the authenticity of the Letters.

72 On the third inquiry, assuming the Majority had not considered the issue of the authenticity of the Letters, it was properly arguable that, had they done so, that would have materially impacted the outcome of the Appeal. It was Aastar's own case that the Majority found that Aastar had cargo ready on 7 July 2022.[83] It was debatable if the Majority would have reached that same view (and found Olam to be the defaulting party) if the Letters were determined to be fabricated (see [69] above). The Dissenting Arbitrator, who had expressly addressed and stated his reservations on the authenticity of the Letters, reached the conclusion that cargo readiness never materialised and Olam should succeed in the Appeal (see [34] above).

73 On balance, I considered that this ground of setting aside was properly arguable. It meant that, on a sliding scale, the Final Appeal Award was not manifestly valid (although it could not, at this stage, be characterised as manifestly invalid either). Given this finding, I did not think it was necessary to express a view on the other setting aside grounds raised by Olam, especially given the caution that the enforcement court is not tasked to "decide the point" and should be "careful to express no opinion on it" at this stage (see *Soleh Boneh* at 210).

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[83] Ram's 1st Affidavit at paras 89 and 94.

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An adjournment would not render enforcement of the Final Appeal Award more difficult

74 I was satisfied that an adjournment of the Singapore enforcement proceedings would not render enforcement of the Final Appeal Award more difficult, for three reasons.

75 First, Olam averred that it was a financially sound, solvent and stable company which had the resources to meet its liabilities under the Final Appeal Award, as borne out by the fact that it was an indirect subsidiary of Olam Group Limited, a public company listed in Singapore,[84] and by annual reports and financial statements for 2021, 2022 and 2023 which it exhibited.[85] Aastar did not challenge this evidence, which I thus accepted.

76 Second, there were no allegations, much less evidence, that Olam was engaged in the dissipation of assets or improvident trading. The most that Aastar could muster was an allegation that there was "market talk" that Olam Group Limited was "negotiating a sale" to a third party which "may complicate" the enforcement of the Final Appeal Award.[86] At the hearing of SUM 2764, both parties affirmed their understanding that the potential sale was merely under consideration.[87] More importantly, there was no explanation from Aastar on

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84 Suresh's 1st Affidavit at para 11.

85 2nd Affidavit of Keshav Chandra Suresh filed on Olam's behalf in OA 901 on 4 November 2024 ("Suresh's 2nd Affidavit") at para 66; Suresh's 2nd Affidavit at pp 232–236: Affidavit of Keshav Chandra Suresh dated 23 September 2024 filed on Olam's behalf in support of Olam's application for a suspension of the Final Appeal Award at paras 190–191; Suresh's 2nd Affidavit at pp 263–287, 293–323, 325–430, 432–537.

86 Ram's 1st Affidavit at para 133; AWS at para 73.

87 NOA at p 12:7–19.

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how the potential sale might allegedly affect the enforcement of the Final Appeal Award. I thus placed no weight on Aastar's allegation.

77 Third, I noted that Aastar did not see fit to make a cross-application, pursuant to s 31(5)(*b*) of the IAA (see [46] above), for security for the adjournment sought by Olam. This indicated to me that Aastar itself was not unduly concerned that Olam would fail to make good on the sums due under the Final Appeal Award if and when the Malaysian setting aside proceedings concluded in Aastar's favour. This buttressed my view that an adjournment would not render enforcement of the Final Appeal Award more difficult.

The adjournment / delay did not appear unduly long

78 Olam gave evidence that its Malaysian lawyers estimated that the Malaysian setting aside application would be heard approximately six to nine months from the date it was filed.[88] This was not challenged by Aastar. Although Aastar submitted that it was unclear whether the challenge would end at the level of the Malaysian High Court,[89] this was speculative at the time of my decision, and in any event, Aastar provided no countervailing time estimates that I could meaningfully consider. I was thus left with the estimate provided by Olam, which I did not think pointed to an unduly long adjournment or delay in the enforcement of the Final Appeal Award. When viewed in conjunction with my earlier finding that an adjournment would not render enforcement of the Final Appeal Award more difficult (see [74]–[77] above), it was clear to me that any prejudice suffered by Aastar from an adjournment would be fairly limited.

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88 Suresh's 1st Affidavit at para 142.

89 NOA at p 22:4–5.

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Comity considerations weighed in favour of an adjournment

79 Finally, there were particular comity considerations in the present case which weighed in favour of an adjournment.

80 First, the grounds of the Malaysian setting aside application substantially overlapped with the grounds raised by Olam to resist the enforcement of the Final Appeal Award (see [36]–[37], *cf*, [42] above). Both sets of grounds included asserted due process violations such as the breach of natural justice, and neither party suggested that Malaysian law and Singapore law differed significantly on such issues. There was thus a risk of inconsistent judgments if the Malaysian setting aside proceedings and the Singapore enforcement proceedings were to be heard and decided concurrently. It was desirable to avoid such a risk.

81 Second, the Malaysian setting aside proceedings also involved Olam's Production Application and Olam's Intended Subpoena / Cross-Examination Application (see [40] above). It remained to be seen how the Malaysian High Court would determine these applications and the impact (if any) they would have on the Malaysian setting aside application, particularly in relation to the setting aside ground that the Final Appeal Award had been procured and/or induced by fraud. I considered it prudent not to run ahead of the Malaysian High Court's determination of these applications.

82 Third, I was cognisant that the Final Appeal Award arose from an arbitration appeal under the auspices of PORAM, a trade association in Malaysia. PORAM 2's standard form terms specifically provide for disputes to be referred to arbitration seated in Malaysia (see [20] above). In my view, this factor enhanced the deference due to the supervisory jurisdiction of the Malaysian courts, particularly as any findings made in respect of the conduct of

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the Appeal Board may have implications on the future conduct of other arbitrations under the auspices of PORAM.

Striking the balance

83 It was apparent that none of the circumstances discussed above pointed *against* the grant of an adjournment. The strength of the merits of the Malaysian setting aside application was, at worst, a neutral factor. The *bona fides* of the Malaysian setting aside application; the fact that an adjournment would not render enforcement of the Final Appeal Award more difficult; and the fact that the adjournment / delay was not unduly long, all pointed in favour of granting an adjournment. In these circumstances, comity considerations also came more to the fore and were given greater weight. Weighing all these factors in the round, I came to the conclusion that it was most just to strike the balance in favour of an adjournment.

Conclusion

84 I therefore granted prayer 1 of SUM 2764 for an order that the Singapore enforcement proceedings be adjourned pending the final determination of the Malaysian setting aside application. Olam had included a further prayer in SUM 2764 to address the Singapore enforcement proceedings in the event that the Malaysian setting aside application failed. I ordered that the remainder of SUM 2764 be held in abeyance pending the final determination of the

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Malaysian setting aside application. Costs of the hearing on 12 December 2024 were reserved to the hearing of the remainder of SUM 2764.

Kristy Tan
Judicial Commissioner

Prem Gurbani (instructed), Tan Hui Tsing and Deborah Koh Leng Hoon (DennisMathiew) for the applicant;
Corina Song Swee Lian, Daniel Liang Junhong and Thomas Benjamin Lawrence (Allen & Gledhill LLP) for the respondent.

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