IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC(I) 08

Suit No 1 of 2017

Between

AKRO Group DMCC

… Plaintiff

And

Discovery Drilling Pte Ltd

… Defendant

Discovery Drilling Pte Ltd

… Plaintiff in Counterclaim

And

(1) AKRO Group DMCC
(2) Parmod Kumar
(3) Sunil Kumar Arora
(4) Arjun Suresh Kandoth
(5) David William Fowler
(6) AYBI Energy FZE

… Defendants in Counterclaim

JUDGMENT

Version No 1: 27 Oct 2020 (22:41 hrs)

[Contract] — [Breach]

[Tort] — [Misrepresentation] — [Fraud and deceit]

[Equity] — [Fiduciary relationships] — [Breach of fiduciary duties]

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AKRO Group DMCC
v
Discovery Drilling Pte Ltd

[2019] SGHC(I) 08

Singapore International Commercial Court — Suit No 1 of 2017
Patricia Bergin IJ
8 April 2019

31 May 2019 Judgment reserved.

Patricia Bergin IJ:

Introduction

1 This case has had a rather extraordinary history.

2 In summary, the plaintiff, AKRO Group DMCC ("AKRO"), commenced the proceedings in the High Court in December 2016 against the defendant, Discovery Drilling Pte Ltd ("DDPL"), seeking payment of US$3,202,559.63 for allegedly outstanding project management fees. DDPL denied its indebtedness on various bases including alleged breaches of contract by AKRO.

3 The matter was transferred into the SICC and a trial date was set for November 2017. However, DDPL was granted leave to amend its Counterclaim to include claims in fraud and conspiracy against AKRO, two of AKRO's directors, AYBI Energy FZE ("AYBI"), a company related to AKRO, and two

former representatives of DDPL. These claims were based on allegedly fraudulent and/or fabricated invoices purportedly from third-party suppliers created by AKRO and AYBI with the involvement and assistance of DDPL's former representatives.

4 After DDPL was granted this leave and filed its amended pleading AKRO took no further part in the proceedings. Its lawyers were granted leave to withdraw from acting further in the proceedings. On DDPL's application in reliance upon AKRO's failure to appear and to comply with the Court's orders, Judgment was entered in favour of DDPL on AKRO's claim against it and on its claim against AKRO but for the claims in respect of the allegedly fraudulent and/or fabricated invoices. DDPL then took some time to gather its evidence on these latter claims.

5 Although DDPL has served all of its pleadings and evidence on all the Defendants in Counterclaim (whom I shall refer to as the "Cross-Defendants"), none of those parties (apart from AKRO) entered an appearance in the proceedings. DDPL claims that in a meeting in May 2018 with the directors of DDPL, one of AKRO's/AYBI's directors "confessed" to committing the fraud.

6 A hearing took place on 8 April 2019 in relation to the assessment of damages in respect of the Judgments that were entered in DDPL's favour and in respect of the claims relating to the allegedly fraudulent and/or fabricated invoices. Neither AKRO nor any of the other Cross-Defendants appeared at the trial. Judgment was reserved on that date.

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Background

7 AKRO is a company incorporated in Dubai in the United Arab Emirates (UAE), and provides specialist professional consultancy services in procurement led project management and supply chain management activities, including in the energy sector. AYBI is a company also incorporated in Dubai, UAE.

8 DDPL is a company incorporated in Singapore and is part of the Drilling Division of the Jindal Group of companies incorporated in Mumbai, India. The Jindal Group has had a lengthy contractual relationship with the Oil and Natural Gas Corporation ("ONGC"), India's largest Government controlled oil exploration and production company, and has been providing offshore drilling services to ONGC since the 1980s.

9 In late 2015 DDPL purchased the rig "Rowan Louisiana" ("the Rig") then located in Houston, Texas, USA, for the purposes of providing it to another company in the Jindal Group, Jindal Drilling and Industries Ltd ("JDIL"), which had been awarded a contract by ONGC for the Charter Hire of the Rig.

10 On 12 December 2015, DDPL and JDIL signed a Memorandum of Understanding confirming that the Rig would be "made available" to JDIL "on lease basis for operations in Indian waters" under the contract awarded to JDIL by ONGC. On 15 December 2015 DDPL and JDIL entered into a Charter Hire Agreement in respect of the Rig pursuant to which the amount of the Charter Hire was fixed at US$28,526 per day. That Agreement required the Rig to be deployed with ONGC by 11 April 2016. DDPL agreed to appoint "a project manager of experience" who would ensure refurbishment and deployment of the Rig "in time". It was agreed that any delay in deployment of the Rig would

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be DDPL's responsibility and that JDIL would be entitled to recover from DDPL liquidated damages of US$87,132 per week or part thereof, for any delay in deployment. It was also agreed that JDIL would be entitled to receive from DDPL any loss of hire due to delay in deployment of the Rig after 11 April 2016 because JDIL would be putting in place "complete operational team and other support systems ready for the operation of the Rig".

11 The Rig required various works including refurbishment, repair and installation of equipment before it would be ready for activation and mobilisation from Texas to India for delivery to ONGC ("the Project"). DDPL made a decision that the refurbishment of the Rig would be completed in Houston. In this regard DDPL needed to obtain specialised project management services ("SPM Services") in order to complete the Project and it approached AKRO to provide such services.

The contract

12 In October 2015 AKRO and DDPL conducted negotiations in Houston, Texas in respect of AKRO providing the SPM Services for the Project.

13 On 4 November 2015 AKRO and DDPL executed an agreement in Delhi, India pursuant to which AKRO agreed to provide the SPM Services to DDPL ("the Contract").

14 The Contract included the following:

> [DDPL] have identified the need to engage a suitably qualified project management company and to provide project management and support services for the activation of their newly acquired Jack-Up drilling unit "Rowan Louisiana" which is to be mobilised from the Sabine Pass in the state of Texas in the USA in Q1 2016.

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> The overall scope will entail the provision of all project management services identified by DDPL in support of the refurbishment programme. Key areas of focus will be the AKRO project delivery assurance process and the project execution plan (PEP) designed and employed to meet or exceed the deadlines and budgets determined and set by DDPL and agreed by AKRO. The PMEP (09001-AKRO-PR-PEP-002) will form the basis and the framework for the deliverables.

15 AKRO agreed to provide services which included Procurement Support services which in turn included the identification and qualification of initial suppliers and service providers. AKRO also agreed to prepare and issue all equipment and tangible tenders and to evaluate them for the purpose of contracts being issued and materials delivered.

16 The Contract provided relevantly as follows:

> 7. Commercial terms
>
> A Service Order will be raised on a day rate basis and cover the period of the project as detailed in the approved Project Execution Plan (Contract start Date 10-04-2016).
>
> The day rate payable will be USD 800.00 per day and will include all USA site costs for accommodation, local transportation, and meals. All international travel for the period will be provided by DDPL.
>
> The project management fee does NOT include any genuine third-party charges applicable (additional insurance premiums incurred, fees and other project specific charges incurred by AKRO) DDPL to reimburse pre-approved Third-party charges at documented cost.
>
> Payment Terms will be 7 days from submission of invoice and supporting timesheet.

17 Two employees of JDIL, Parmod Kumar ("Mr Kumar") and Sunil Kumar Arora ("Mr Arora"), acted as DDPL's representatives in respect of the Project. The two AKRO personnel in charge of the delivery of services for the Project were David William Fowler ("Mr Fowler"), a director of AKRO, and

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Arjun Suresh Kandoth ("Mr Kandoth"), the managing director of AKRO and AYBI.

18 AKRO was required to obtain at least three quotes for materials, equipment and services for the Project and negotiate for the best prices for the provision of such materials, equipment and services. Messrs Fowler and Kandoth provided those quotes to Mr Kumar and/or Mr Arora who would consolidate them into "Comparative Statements" from which the lowest bidder was selected. Thereafter DDPL would issue a Purchase Order to AKRO or AYBI or in some instances, directly to the third-party supplier.

19 The refurbishment of the Rig was completed to the point enabling it to be transported to its destination in India. It was not delivered to ONGC by the agreed date. However, ONGC accepted delivery of the Rig but sought liquidated damages from JDIL in respect of the late delivery, which in turn sought liquidated damages from DDPL.

Procedural history

20 As referred to earlier, AKRO commenced proceedings against DDPL in the High Court by way of Statement of Claim filed on 13 December 2016. It claimed, *inter alia*, that DDPL delayed the delivery of the Rig to ONGC by (a) the late arrival, clearance and departure of the heavy lift vessel to transport the Rig to India; and (b) an unplanned voyage leg from USA to Bedi Bunder to Mumbai rather than from USA to Mumbai direct. AKRO claimed US$3,202,559.63 in unpaid Project Management Fees and expenses.

21 On 12 January 2017 DDPL filed its Defence and Counterclaim in which it denied it was the cause of the delay in delivery of the Rig and claimed damages and various other amounts from AKRO both in respect of the late

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delivery of the Rig and in respect of its provision of SPM services. On 27 January 2017 AKRO filed its Reply to DDPL's Defence and its Defence to DDPL's Counterclaim.

22 The proceedings were thereafter transferred into the SICC.

23 AKRO filed detailed AEICs in March and June 2017. Those affidavits were of David William Fowler, the first sworn on 30 March 2017; and the second sworn on 5 June 2017; Arjun Suresh Kandoth, affirmed on 5 June 2017; Parmod Kumar affirmed on 2 June 2017; and Sunil Kumar Arora affirmed on 2 June 2017**.**

24 On 4 July 2017 AKRO filed its Amended Statement of Claim which amended certain aspects of documents referred to in the earlier pleading and identified with more precision the length of the alleged delay in the delivery of the Rig to India. It also filed an amended Reply to DDPL's Defence and an amended Defence to DDPL's Counterclaim.

25 On 18 July 2017 DDPL filed an Amended Defence and Counterclaim ("Counterclaim 1"). Counterclaim 1 added some allegations in relation to the unloading of the Rig at Bedi Bunder with a contention that rather than causing delay, it had saved AKRO from suffering at least 10 days' further delay and demurrage.

26 On 31 August 2017 DDPL filed a Further Amended Defence and Counterclaim ("Counterclaim 2"), adding the Second Cross-Defendant (Mr Kumar) and the Third Cross-Defendant (Mr Arora). Messrs Arora and Kumar had resigned abruptly from DDPL just prior to AKRO filing its Statement of Claim in December 2016. It was in Counterclaim 2 that DDPL made allegations

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of breach of contract, breach of fiduciary duty and fraud against AKRO as First Cross-Defendant. It also alleged that certain invoices were "forgeries". It further alleged that Mr Kumar and Mr Arora conspired with AKRO, Mr Kandoth and Mr Fowler to defraud DDPL.

27 After DDPL filed Counterclaim 2 in which the allegations of fraud and conspiracy were made, AKRO's lawyers indicated to the Court that they were having difficulty obtaining proper instructions. At this time a trial had been fixed for the hearing of the matter in November 2017. Those trial dates were subsequently vacated.

28 On 1 November 2017 an order was made requiring AKRO to file and serve a List of Documents and an affidavit verifying such List by no later than 10 November 2017. Orders were also made on that day that AKRO was required to allow DDPL to inspect and take copies of those documents within seven days of the date of service of the List of Documents ("the Discovery Orders"). The documents, the subject of the Discovery Orders included the original invoices and quotes issued by third-party suppliers to AKRO and AYBI.

29 On 23 November 2017 an order was made that Allen & Gledhill LLP had ceased to be the solicitors acting for AKRO in the proceedings. Neither Mr Kumar nor Mr Arora entered an appearance in the proceedings.

30 On 14 December 2017, by reason of its failure to comply with certain orders of the Court for the filing of a Defence to Counterclaim 2 and its failure to appear further in the proceedings, AKRO's claims against DDPL were dismissed. Judgment was entered in favour of DDPL on its Counterclaim 2 except in respect of the alleged breaches of fiduciary duty and breaches of contract and fraud and conspiracy charges. An order was made that damages

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should be assessed in respect of the Judgments that had been entered and that a trial in respect of the balance of DDPL's claims would be listed in due course.

31 On 9 April 2018 DDPL filed a Further Amended Defence and Counterclaim ("Counterclaim 3") adding Mr Kandoth, as the Fourth Cross-Defendant, Mr Fowler, as the Fifth Cross-Defendant, and AYBI as the Sixth Cross-Defendant.

32 The Second to Sixth Cross-Defendants have never appeared in the proceedings. No Defences have been filed in respect of Counterclaim 3 by any of the Cross-Defendants.

33 The trial for the assessment of damages and the hearing in respect of the balance of DDPL's claims was fixed for hearing on 11, 12 and 13 February 2019.

34 In December 2018/January 2019 DDPL and its solicitors, AsiaLegal LLC, fell into dispute in respect of outstanding fees. On 17 January 2019 leave was granted to AsiaLegal LLC to withdraw from further acting and/or appearing for DDPL.

35 After AsiaLegal LLC ceased acting, DDPL advised the Court that it wished to be represented at trial by a legal practitioner from India who had made application to become a Registered Foreign Lawyer ("RFL"). That application for registration by Mr Visheshwar Shrivastav as an RFL, was approved. DDPL also made application for the vacation of the trial dates in February 2019 to accommodate the registration process and for preparation for the trial.

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36 On 31 January 2019 the trial dates in February 2019 were vacated and new trial dates were fixed for 3 days commencing on 8 April 2019.

37 Mr Shrivastav could appear for DDPL at the hearing in April 2019 if a decision was made that the proceedings are an "offshore case" ("the offshore decision").

38 DDPL brought applications for an extension of time within which to bring an application for the offshore decision and for an offshore decision.

39 In support of those applications DDPL relied upon two affidavits of Ravi Gupta, affirmed on 11 February 2019. Mr Gupta is the Chief Financial Officer of Jindal Pipes Limited, part of the Jindal Group of companies headquartered in India and his responsibilities include the oversight of DDPL.

40 The application for a decision that this action is an offshore case should have been made within 28 days of the close of pleadings, which in this case would have been no later than mid-2018: O 110 rr 36(1) and 36(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court"). However, the Court has power to extend the time within which to bring an application for a decision that the action is an offshore case: O 3 r 4; *Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC* [2016] 4 SLR 75 ("*Teras Offshore*") at [5].

41 DDPL became aware of the necessity for an offshore decision when its Singapore lawyers were granted leave to withdraw and DDPL sought to retain the RFL to represent it in the proceedings. Prior to these occurrences, such a decision was unnecessary.

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42 Neither DDPL nor AsiaLegal LLC called evidence of the extent of the dispute in relation to AsiaLegal LLC's fees. Rather, both accepted that there was a dispute that was not able to be resolved. DDPL indicated that it was experiencing a cash flow problem due to the downturn in offshore drilling contracts. The Court was not advised of any arrangement that might have been made for the payment of AsiaLegal LLC's fees in the future. Nor was it made aware of the arrangements between DDPL and the RFL.

43 The work that was done by DDPL and AsiaLegal LLC to establish the alleged fraud and conspiracy has been very detailed and, in some respects, procedurally complex because it is alleged that AKRO and the other Cross-Defendants created false invoices and other documents throughout the contractual period.

44 The fact that DDPL's dispute with AsiaLegal LLC was the cause for the need to make the application for an extension of time was one matter taken into account in the exercise of the discretion. However, it was also important to take into account the nature of the claims and the procedural history of the matter.

45 When it became apparent that it would be necessary for an offshore decision to be made before the RFL could represent DDPL in the proceedings, DDPL acted promptly and diligently to bring the application for the extension of time within which to bring the relevant applications. DDPL served its applications on AKRO and the Cross-Defendants and there was, once again, no appearance of any of these parties. The fact that none of the other parties had taken any part in the proceedings since DDPL made its allegations of fraud and conspiracy was another matter that was taken into account in the exercise of the discretion.

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46 Notwithstanding the absence of the other parties from the proceedings, it is understandable that DDPL wished to have legal representation in circumstances where its claims are not free from complexity. It is also a matter of some importance from the Court's perspective. These matters were also considered in the exercise of the discretion.

47 In all the circumstances of the case, I was satisfied that leave should be granted to extend the time within which DDPL could bring an application for a decision that the action is an offshore case. The time within which DDPL could bring the application for a decision that the action is an offshore case was extended to 1 March 2019, a time within which the applications were brought.

48 As referred to above, DDPL made application for the offshore decision because the RFL was only entitled to appear for it in the proceedings if it is an "offshore case": s 36O of the Legal Profession Act (Cap 161, 2009 Rev Ed); Rule 3(2) of Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 (Cap 161, S 851). An "offshore case" is relevantly "an action that has no substantial connection with Singapore". If Singapore law is not the law applicable to the dispute and the subject matter of the dispute is not regulated or otherwise subject to Singapore law the action is an offshore case: O 110 r 1(2)(*f*) of the Rules of Court.

49 In determining the application, the focus was on the "particular action": *Teras Offshore* at [10]. This particular action is between AKRO which was incorporated in Dubai, and DDPL which was incorporated in Singapore, is part of a group of companies incorporated in India and is a wholly-owned subsidiary of a company incorporated in Delhi, India.

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50 The Rig, the subject of the proceedings, was repaired and refurbished in Houston, Texas in the USA. The contract negotiations occurred in Houston, between 25 October 2015 and 28 October 2015. The Contract was executed on 4 November 2015 in Delhi, India. The Contract was performed in Texas and then between Texas *via* Corpus Christi in the US Gulf of Mexico and Gujarat, India and Mumbai, India.

51 The dispute is multifaceted. The claim brought by AKRO, which was dismissed, related to unpaid invoices for work allegedly carried out during the performance of the Contract in the USA and *en route* to and in India. DDPL's claims against AKRO, its directors, AYBI and DDPL's former representatives relate to the creation of allegedly false invoices in the USA in a setting allegedly facilitated and assisted by DDPL's ex-representatives in India. The majority of the conduct occurred in the USA and partly *en route* to and in India. The payments that were made by DDPL to AKRO were made *via* its Singapore office.

52 On the assumption that the law of Singapore is applicable to part of the dispute (DDPL brought an alternative claim under the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act")), it was necessary to consider whether the action had "no substantial connection" with Singapore. The fact that DDPL is a Singapore company is not of itself, nor combined with the fact that monies were paid *via* its office in Singapore, a basis for a conclusion that the action or the dispute has a substantial connection to Singapore: *Teras Offshore*.

53 The facts that the Contract was negotiated, entered into and performed elsewhere than Singapore and that the subject matter of the dispute relates to conduct that occurred elsewhere than in Singapore were persuasive matters in

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reaching the conclusion that the action has no substantial connection to Singapore.

54 It was for all these reasons that on 1 March 2019 the decision was made that this action is an offshore case.

The trial

55 At the trial on 8 April 2019, DDPL was represented by the RFL, Mr Visheshwar Shrivastav. As discussed above, no other party appeared at the trial.

56 DDPL relied upon the affidavits of Ravi Gupta affirmed on 25 July 2018 (paras 43–52 and 72–79), 4 October 2018 and 2 April 2019. Leave was granted to DDPL to file and rely upon the affidavit of Mr Gupta sworn on 10 April 2019 for reasons referred to later: see [61] below. DDPL also relied upon the affidavit of Rajender Pal affirmed on 4 October 2018.

57 DDPL relied upon its Written Submissions filed with the Court on 22 March 2019 supplemented by Mr Shrivastav's oral submissions at the trial on 8 April 2019.

Matters for determination

58 On 14 December 2017 Judgment was entered for DDPL in respect of AKRO's claims against it for unpaid invoices; and in respect of DDPL's claims against AKRO in its Counterclaim 2, other than the claims in paragraphs 50A (alleged breaches of contractual and fiduciary duties); and 76A–76C (alleged fraud and conspiracy) of Counterclaim 2. These other claims were the subject of additional evidence at the hearing on 8 April 2019.

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59 It is appropriate to deal first with the assessment of damages in respect of the Judgments that have been entered in DDPL's favour and to then address the claims that were the subject of further evidence at the hearing on 8 April 2019.

60 It is appropriate to say something about the preparation for the hearing and the submissions that were made at the hearing. Directions were given to enable a cost-efficient process, having regard to the cash flow difficulties that DDPL claimed it was experiencing. In this regard the usual order for hearing was adjusted to relieve DDPL from an obligation to produce a core bundle of documents. However, directions were made for the filing of submissions in respect of: (a) the assessment of damages in respect of the Judgments that had been entered in DDPL's favour; (b) DDPL's claims in respect of breach of contract and breach of fiduciary duty; and (c) DDPL's fraud and conspiracy claims.

61 Unfortunately, there were no written submissions in relation to the assessment of damages in respect of the Judgments that had been entered in DDPL's favour. During the hearing on 8 April 2019, after the Court sought clarification, DDPL conceded that it had to adjust its claim both in respect of the assessment of damages and the claims for damages for breach of contract, breach of fiduciary duty and fraud and conspiracy, to take into account the fact that it had sought damages in respect of invoices that had not been paid by it. This adjustment was the subject of Mr Gupta's affidavit of 10 April 2019.

Assessment of damages

62 The aspects of DDPL's claims against AKRO in respect of which Judgment has been entered and damages are to be assessed are listed in

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paragraph 77(h)(i) to (x) of Counterclaim 3. However, during the hearing on 8 April 2019, DDPL abandoned its claims in subparagraphs 77(h)(iii) to (vii). The remaining claims relate to the losses suffered in relation to the delay in the delivery of the Rig (subparagraphs 77(h)(i) and (ii)); and in relation to the payments made in respect of labour hire from Spencer Ogden (subparagraphs 77(h)(viii) to (x)).

Delay in delivery of Rig

63 The first claim relates to the loss suffered by DDPL by reason of the late delivery of the Rig. There are two claims in respect of this delay. The first relates to DDPL's loss suffered as a result of its obligation to pay the Charterer, JDIL, liquidated damages by reason of JDIL's obligation to pay ONGC for the late delivery of the Rig. The second claim is for loss suffered for charter hire from JDIL for 41 days at US$28,526 per day amounting to US$1,169,566.

64 In respect of the first claim; although there was an issue on the pleadings as to the length of the delay in the delivery of the Rig, the unchallenged evidence relied upon by DDPL establishes that the delay in arrival to Mumbai was 19 days; with an additional 22 days to complete the necessary refurbishment works in India that had not been completed before the Rig left the USA. Accordingly, DDPL was required to pay liquidated damages to the Charterer, JDIL, under the Charter Hire Agreement because JDIL was liable to ONGC in the amount of US$1,123,529. DDPL and JDIL entered into a Settlement Agreement pursuant to which the monthly charter hire payable by JDIL to DDPL was reduced by US$1,026 per day with effect from 22 May 2016 to the end of the Charter on 21 May 2019. The total loss suffered by DDPL in the circumstance was US$1,123,470 (US$1,026 multiplied by 1,095 days).

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65 The second claim relates to the loss suffered by reason of DDPL not receiving the charter hire fee of US$28,526 per day for the period between 11 April 2016 and 22 May 2016, a total of 41 days. The amount claimed is therefore US$28,526 multiplied by 41, making a total of US$1,169,566.

66 Damages in respect of the first claim are assessed at US$1,123,470. Damages in relation to the second claim are assessed at US$1,169,566. The total of the damages in respect of the late delivery of the Rig are therefore assessed at US$2,293,036.

Spencer Ogden

67 DDPL alleged that AKRO procured it to engage Spencer Ogden to supply services in the form of labour for the Project. It also alleged that the charges for the supply of labour for the Project were inflated and that by reason of such inflation it suffered loss and damage quantified by it in three categories; first, at US$31,550 in respect of personnel whose job title and charge out rate was changed without any justification; second, at US$229,675.46 in respect of unjustifiable overtime payments; and third, at US$91,099 for payments for work at holiday rates when no such work was provided during that time.

68 The evidence in relation to the first category of claim includes a schedule setting out the incorrect job descriptions of the personnel working on the Project and the amounts that should have been charged at the rates for the personnel with corrected job descriptions. That evidence is unchallenged. Damages should be assessed on this claim at US$31,550.

69 The unchallenged evidence in support of the second claim is that AKRO failed to put in place appropriate planning for manpower and utilised the same workforce at overtime rates, when it would have been more cost efficient and

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time efficient to have a fresh workforce to work at ordinary rates. The evidence includes a chart in which DDPL analyses the payments made to the workforce and the amounts that would be charged if a fresh group of workers were hired at normal rates, excluding overtime during the Holiday Period.

70 In the circumstances, damages are assessed in the amount claimed at US$229,675.46.

71 The unchallenged evidence in support of the third category of this claim includes emails from workers who were on board the Rig at the material time that claims were made for work performed at holiday rates. Those emails confirm that work was not done during those periods.

72 In the circumstances, damages are assessed at US$91,099.

73 The total amount of damages in respect of the Spencer Ogden claim is therefore assessed at US$352,324.46.

74 Although there were other claims referred to in Counterclaim 3 in respect of the Judgments entered in DDPL's favour in 2017, these were not pressed at the hearing on 8 April 2019. DDPL limited its claims in respect of the assessment of damages to those listed in paragraph 77(h)(i), (ii) and (viii) to (x) of the pleading.

75 Damages in respect of the Judgments that have been entered in DDPL's favour are assessed in the total amount of US$2,645,360.46 comprising damages in respect of the delay in delivery of the Rig assessed at US$2,293,036, and in respect of the Spencer Ogden payments assessed at US$352,324.46.

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DDPL's other claims

76 DDPL claims that between November 2015 and March 2016 some quotes/invoices purportedly from third-party suppliers submitted by AKRO to DDPL for payment, were forgeries and/or fabrications.

77 DDPL alleges that the quotes/invoices were forged and/or fabricated and/or altered by AKRO, through Mr Kandoth and/or Mr Fowler, to state prices that were higher than the prices actually quoted or invoiced by the suppliers for the Project, or to create quotes/invoices when no such quotes/invoices were obtained from suppliers for the Project. It is claimed that this enabled AKRO to put in a quote that was purportedly lower than the third-party suppliers so that it would be chosen as the lowest bidder, when in fact AKRO's quote was higher than the real quote provided by the third-party supplier.

78 DDPL claims that AKRO was in both a contractual and fiduciary relationship with it and that the creation of these forged documents was in breach of both its contractual and fiduciary duties.

79 DDPL also claims that AKRO, Mr Kandoth, Mr Fowler, Mr Kumar and/or Mr Arora, or any two or more of them together with the intention of injuring DDPL, manipulated and fraudulently misrepresented to DDPL quotes/invoices provided by the suppliers by forging and/or fabricating and/or altering the same to inflate such quotes/invoices or to create quotes/invoices when no such quotes/invoices were obtained from suppliers.

80 DDPL claim that these actions were taken so that quotes/invoices from AKRO or its preferred suppliers would be selected as the lowest of all quotes/invoices submitted to DDPL when in fact they were not.

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81 DDPL claims that by their conduct, Mr Kumar and Mr Arora were in breach of their duties of loyalty and fidelity to DDPL; their duties to act in DDPL's best interests; their duties to inform DDPL of any activity which could damage its interests; their duties not to act in a manner that conflicted with their duty to DDPL; and their duties not to make any profit from transactions relating to the supply of goods and/or services for the Project without DDPL's consent.

82 DDPL also claims that Mr Kumar and Mr Arora by unlawful acts and means conspired with Mr Fowler, Mr Kandoth and AKRO to defraud DDPL by such conduct. DDPL also claims that AKRO, Mr Fowler and Mr Kandoth by unlawful acts and means conspired together and with Mr Kumar and Mr Arora to defraud DDPL.

83 DDPL makes identical claims against each of the individual Cross-Defendants in respect of an alleged conspiracy together with AYBI.

84 DDPL seeks damages from each of the Cross-Defendants in respect of these alleged forgeries on the multiple bases of breaches of contract, breaches of fiduciary duties, conspiracy and fraud. DDPL makes an alternative claim that if any of the misrepresentations in the quotes/invoices were not made fraudulently, it is entitled to the relief claimed in reliance upon s 2 of the Misrepresentation Act.

85 These claims have not been defended by the Cross-Defendants. Having regard to the seriousness of these claims and notwithstanding the absence of any Defences to Counterclaim 3 and appearances of any of the Cross-Defendants at the trial on 8 April 2019, DDPL was required to call evidence in respect of the alleged fabrications and forgeries.

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The fabricated quotes/invoices

86 There are numerous instances of quotes/invoices that have been manipulated or fabricated or forged which are the subject of the evidence of DDPL's expert, Mr Pal and the evidence of Mr Gupta. However, it is appropriate to give some examples, first in respect of AKRO and then in respect of AYBI.

(1) Trident Maritime Services

87 On 23 November 2015 AKRO wrote to DDPL advising that it had completed a "Vendor Due Diligence" in respect of the Accommodation Upgrade of the Rig. It advised DDPL that it recommended Trident Maritime Systems ("TMS") for those works. That letter included the following:

> To maintain complete transparency we have attached the proposal received from Trident Maritime Systems.
>
> We propose an overall schedule of completion on or before 22nd Jan 2016, subject to the Service Order/Purchase Order and advance payment being received by 25th November 2015. We shall ensure that the work will be performed at Rowen's (sic) Shipyard in accordance with the detailed production timelines to be developed after Contract Award and based in accordance with the above mentioned contract schedule for delivery.

88 In its letter of 23 November 2015 AKRO advised DDPL that the cost for the upgrade was US$149,000 "as per the attached" TMS proposal. The "attached" proposal included a coversheet with TMS's logo and its name above the words which included "Rowan Louisiana" and "Revision 1". The Proposal was addressed to DDPL but to the attention of Mr Fowler at AKRO. It included a Scope of Work under which the General Notes included the following:

> Trident Maritime has developed interior accommodations subcontract fixed price proposal delivered to Rowan Shipyard (F.O.B. Sabine Pass,TX) for USD 149,000.00.

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89 The other costs to which AKRO referred in its letter of 23 November 2015 included an amount of US$30,000 for "coordination with ABS for approval" and a 5% handling fee of US$8,950.

90 DDPL issued a purchase order to AKRO dated 3 December 2015 in respect of this work in the total amount of US$187,950 which included the cost for the upgrade at US$149,000. DDPL paid AKRO the total amount of US$187,950.

91 In July 2017 DDPL contacted TMS directly and requested all quotations and proposals issued by it in relation to the Rig. TMS confirmed by way of an email dated 20 July 2017 that it had only made two proposals, with each proposal comprising one priced cover letter and one detailed scope of work in relation to the Rig. Neither of these documents included the purported TMS proposal that was attached to AKRO's 23 November 2015 letter. In particular, the letter that TMS produced directly to DDPL was a cover letter dated 19 November 2015 with a quote of US$137,996 for the work that had been included in the "attached" Proposal to AKRO's letter at US$149,000.

92 AKRO did not suggest to DDPL that it was increasing TMS's proposal so that it could obtain an additional amount for its own services. Rather, it created a document in which it changed TMS's figure from US$137,996 to US$149,000.

93 There is no doubt that this change was not authorised by TMS. The question that then arises is who was responsible for making and/or approving such change. The false Proposal was provided to Messrs Kumar and Arora by either Mr Fowler and/or Mr Kandoth. The irresistible inference is that Mr Kandoth and/or Mr Fowler created the false TMS proposal for provision of it to

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DDPL. However, DDPL claims that it was not only Mr Kandoth and/or Mr Fowler who were involved in the creation of this false document but that Mr Kumar and/or Mr Arora were also involved in and/or acquiesced in the scheme or conspiracy to defraud DDPL in this manner.

94 In support of its claims of Mr Kumar's and Mr Arora's involvement, DDPL relies upon the circumstances of their abrupt departure from employment with the Jindal Group immediately prior to AKRO's commencement of proceedings in December 2016. DDPL also relies on a conversation between Mr Ravi Gupta, Mr Kumar and Mr Arora in relation to the charge of US$30,000 for coordination with ABS for approval of the Rig. This conversation occurred in approximately August 2016 when Mr Gupta questioned Mr Kumar and Mr Arora about the charge and was informed that it was incurred by AKRO to "pay off certain persons" in order to obtain the relevant approval for the Rig. Mr Gupta claimed that he immediately reprimanded both Mr Kumar and Mr Arora for condoning and allowing AKRO to make such payment because such conduct is "expressly condemned" by DDPL. Mr Gupta's evidence was that there had never been an occasion in the history of the Jindal Group where such payments had been requested and/or made. Mr Gupta also noted that, in any event, payment for such services, even if legitimate, were already covered by AKRO's fixed fee of US$800 per day and should not have been endorsed or allowed by Mr Kumar or Mr Arora.

95 Further matters relied upon as proof that Mr Kumar and Arora were party to the conspiracy were that they have not defended the proceedings nor appeared at the trial, nor put on any evidence denying the allegations made against them. DDPL also submitted that Messrs Kumar and Arora failed to ensure that AKRO complied with the terms of its Contract with DDPL. DDPL submitted that although the Court might infer that this failure was caused by a

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mere lack of attention to detail or care in respect of their duties if there were but one or two instances of such conduct, the cumulative effect of the numerous documents that have been adjusted and/or fabricated leads to the irresistible conclusion that their conduct is far more sinister.

96 There is an additional aspect to DDPL's case in this regard. On 30 May 2018 Mr Kandoth met with Mr Gupta and other representatives of the Jindal Group, Mr Henant Kumar Khanna and Mr Kaushal Bengani in Delhi, India. Mr Kumar claimed in his affidavit that he asked Mr Kandoth during this meeting whether he had forged documents to obtain payment for the Project and to support AKRO's and AYBI's claims against DDPL and how he had conspired with Mr Kumar and Mr Arora.

97 Mr Gupta's affidavit evidence included the following:

> 197. Mr Kandoth admitted that he indeed forged the documents that were submitted to DDPL for payment for the Rig together with Mr Kumar and Mr Arora. Mr Kandoth also admitted that he bribed Mr Kumar and Mr Arora to commit the said forgery by:
>
> (a) paying them US$112,000 in cash in UAE;
>
> (b) paying for their hotel accommodation in UAE;
>
> (c) providing each of them a brand new high end mobile phone; and
>
> (d) paying them US$500,000 in total for procuring DDPL to appoint and engage AKRO and/or AYBI as DDPL's supplier for services and goods required for the Project.
>
> 198. Mr Kandoth also mentioned that he would pay to Mr Kumar and Mr Arora more money for giving evidence in favour of AKRO if AKRO succeeded in its action herein against DDPL. A Dropbox link to the sound recordings of the said meeting is exhibited herein at [2311].

98 At the hearing on 8 April 2019, DDPL relied upon the affidavit of Mr Gupta sworn 2 April 2019 which included correspondence between DDPL's

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solicitor in Singapore and Mr Kandoth in May 2018. That correspondence included an email dated 21 May 2018 from DDPL's lawyer in respect of the subject "AKRO – Meeting and subsequent call". That email was in the following terms:

> We refer to our telephone conversation this afternoon wherein you indicated that you were apologetic for your/AKRO's /AYBI's wrongful conduct in relation to the agreement for the Rig "Rowan Louisiana" entered into between AKRO Group DMCC and our client, Discovery Drilling Pte Ltd ("Discovery Drilling"), and suggested that we meet to give you an opportunity to explain and/or account for the allegations and claims brought against you, AKRO and AYBI by our client. Whilst our client is confident of the merits of its case, our client (in particular, Mr Ravi Gupta of DP Jindal Group who is copied here) is prepared to meet you in Delhi on any date this month to discuss the way forward with this matter as a show of good faith. Please let us hear from you on your availability on the proposed dates by tomorrow.
>
> In the meantime, all our client's rights are expressly reserved.

99 On 24 May 2018 in an email in response to DDPL's lawyer, Mr Kandoth wrote:

> Thank you for your email.
>
> I would like to thank Mr Gupta for being magnanimous in agreeing to meet. I propose coming to Delhi to meet either on 29 or 30 May to amicably resolve this issue. Please let me know which date is convenient and a time. There also seems to be misunderstanding in the content of our telecom, which we will like to clear as well during my meeting with him.
>
> I await confirmation.
>
> Without prejudice.

100 The meeting took place in India on 30 May 2018. Mr Gupta's evidence was that at the beginning of the meeting he placed his mobile phone on the table in front of Mr Kandoth and switched it to recording in Mr Kandoth's full view to which he raised no objection. Mr Gupta included a transcript of the tape-

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recorded meeting in his affidavit of 2 April 2019. The transcript of the meeting includes the following exchanges:

> Mr Bengani: You are hand in glove with Pramod Kumar and you kept on saying I didn't ask you to place a PO on me. Your company placed a PO on me and then why should I disclose my …
>
> Mr Kandoth: I was not in hand in glove with Pramod.
>
> Mr Bengani: Yes you were. Please. Please don't insult our intelligence.
>
> Mr Gupta: Don't argue with him, don't argue with him.
>
> Mr Kandoth: No I don't want to argue. I am not here.
>
> Mr Khanna: What is the question can you repeat it please what did you say?
>
> Mr Kandoth: You said that you were hand in glove with Pramod. This is the biggest mistake that we …
>
> Mr Gupta: What was the biggest mistake?
>
> Mr Kandoth: And you said that reference checks. You know, honestly! I am not here to say anything but you know what is honest.
>
> Mr Gupta: This is not this is third party feedback I am giving Arjun Kandoth. So don't give us. When I am saying something. I got evidence for it.
>
> Mr Kandoth: I have not interrupt you.
>
> Mr Gupta: Ya so don't challenge me. You have challenged me in Singapore Court and I will.
>
> Mr Kandoth: I apologise that's what I am saying. I am really very sorry.
>
> Mr Gupta: You have wasted my two years.
>
> Mr Bengani: You are not sorry. You have shaken entire organisation.
>
> Arjun: I apologise beyond the road.
>
> …
>
> Mr Bengani: Please say what you have to say. If you have come here to sit silently then we have other things to do.

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Mr Kandoth: I have come here to apologise. The biggest mistake was to go to court.

…

Mr Gupta: Be frank man. What kind of man you are? How much was paid to them when you signed the contract?

Mr Kandoth: As per their demand.

Mr Gupta: How much they demanded? How much they demanded?

Mr Gupta: No, no, you are just protecting. Okay.

Mr Khanna: You thought by filing their Affidavit you have won the case.

Mr Kandoth: That was a biggest mistake. I agreed to put them as witness I should not have put them as witness.

Mr Gupta: No, no, this was a very smart move on your part. That was very smart move. You are very intelligent man Mr Arjun Kandoth.

Mr Kandoth: You are rubbing salt on my wound.

Mr Gupta: How much you paid them?

…

Mr Kandoth: Paid them 112000 Dollars.

Mr Gupta: 112000 dollars that is peanuts. It is peanuts. For a 18 million dollars contract, in which forgery is about 40-50%. You raised invoices about 18 million dollars and a 8 million dollar court order will shortly be on your head … for the forgeries.

…

Mr Gupta: You remember further and better particulars your lawyer was asking, we spent about 10 days and the arguments went in the court for 3 days. For that further and better particulars I have paid 100000 dollars to lawyers. You paid them 112000 dollars?

Mr Kandoth: Yes.

Mr Gupta: What was the total amount payable to them? How much?

Mr Kandoth: The total amount was about half a million dollars.

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…

Mr Kandoth: You have asked me about forgeries, who did it?

Mr Gupta: What did I ask you for the forgeries? How the forgeries started? Whose idea was this? How did you do? Because only if you are honest now then we can think of something, otherwise we don't trust you. Why should we trust you when you are not replying? You want us to trust you or not, then come out. Start from the beginning how the forgeries started, who told you, how did it happen? What all invoices were forged? How much was the amount? Because if you don't speak anything how we can help you and it is just creating distrust. If you want us to trust you then be honest. I did not have my lunch because my flight was delayed. So at least have some mercy on me, come out with the truth. We have repeated this question 10 times.

…

Mr Kandoth: I am sorry.

Mr Gupta: You are not sorry.

Mr Kandoth: I am sorry.

…

Mr Gupta: So if it is no then tell us why you are hiding all this now or Pramod is very dear friend of yours.

Mr Kandoth: No … he is not a friend.

Mr Gupta: So what was he, if he was not your friend? Why did he give this job to you?

Mr Kandoth: He was not.

…

Mr Gupta: You were the Managing Director of this company so the control is with you, then so let us continue this fight.

Mr Kandoth: I don't have the money.

101 Mr Kandoth remained silent at times during the meeting. However, on a number of occasions he said that he was "sorry". When it was suggested to him that Mr Kumar was "God", he said that he was "never God". He repeated that he was "sorry" and that he had "come to seek mercy". Mr Kandoth said that the

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"biggest mistake was to go to the legal system" and that he was at the meeting "to apologise". He agreed that the apology would not make the financial damage good but that he had not come to the meeting "with a strategy".

102 In respect of the US$30,000 allegedly paid to ABS, Mr Kandoth said it was "just a gesture". He agreed that he provided a phone to each of Mr Kumar and Mr Arora and that he paid for their hotels and air tickets when they travelled to Singapore to make their affidavits. He then repeated that this was the "biggest mistake".

103 DDPL claims US$11,004 as the difference between US$149,000, the amount that it paid to AKRO and TMS's actual quote of US$137,996. It also claims the loss of US$30,000 that it paid allegedly in respect of the ABS approval together with the 5% handling fee of US$8,950 totalling US$49,954.

104 In addition to the quotations and claims in respect of the "accommodation upgrade" and the proposal from TMS, DDPL also relied upon the quote that was purportedly issued by TMS to AKRO in respect of the costs of the installation of additional flooring and handling fees at 5%. The claim made by AKRO on DDPL in respect of this quotation was US$31,148.00 with a handling fee of US$1,557.40. AKRO provided DDPL with what purported to be a letter from TMS to Mr Fowler which included a "Bid Price" of US$31,148.00. When DDPL went directly to TMS, TMS produced the actual letter it had provided to AKRO with the "Bid Price" of US$14,148.00.

105 Clearly TMS did not authorise the adjustment or manipulation of its letter. The irresistible conclusion is that Mr Fowler and/or Mr Kandoth made the change and produced it to Mr Kumar and Mr Arora.

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106 DDPL claims the difference between the amount it paid AKRO of US$32,705.40 and the actual quotation received from TMS of US$14,148.00, being a loss of US$18,557.40.

107 The combined amount that DDPL seeks by way of losses incurred in respect of these TMS transactions is US$68,511.40.

(2) Carlton Industrial Engineers

108 AKRO provided DDPL with two quotes for 2 units in relation to "Flare Boom & King Posts" for the Rig. The Comparative Statement listed two quotes; one from AKRO in the amount of US$388,720.50, and one from Carlton Industrial Engineers (Carlton) of US$423,740.00.

109 AKRO's lower quote was selected for the supply of the equipment and a Purchase Order was issued by DDPL dated 5 February 2016 in the sum of US$388,720.50 which was the amount paid by DDPL to AKRO.

110 In around July to August 2017 DDPL contacted Carlton directly to confirm whether it issued the quotation to AKRO that had been included in the Comparative Statement. Carlton denied issuing the quote and provided their "actual quotes" dated 24 October 2015 and 19 November 2015. The quotation dated 24 October 2015 was in the amount of US$217,744.00. That quotation was revised in a later quotation dated 19 November 2015 to US$179,200.00.

111 In respect of this transaction, DDPL claims the difference between AKRO's quote of US$388,720.50 which amount it paid and the actual quote received from Carlton of US$179,200.00 being a loss of US$209,520.50.

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112 Once again, DDPL points to a number of deficiencies in relation to the documentation that was produced in respect of this transaction. It claims that the deficiencies were such that neither Mr Kumar nor Mr Arora should have sanctioned this purchase. The fact that they did sanction it in circumstances where the deficiencies existed is once again relied upon to submit that this conduct was not mere carelessness, but rather conduct in concert with Messrs Fowler and Kandoth.

113 In respect of each of the above examples, DDPL relies upon the fact that AKRO took no further part in the proceedings after DDPL was permitted to amend its pleading to make the allegations of conspiracy and fraud. A significant step that was taken at this time was the application for and the granting of the Discovery Orders in respect of documents that included the original invoices received from TMS and Carlton. DDPL submitted that the irresistible conclusion to be reached in respect of AKRO's failure to comply with the Discovery Orders and its failure to take any further part in the proceedings after August/September 2017 is the guilty knowledge of AKRO, Mr Kandoth and Mr Fowler. Equally, it was submitted that the conduct of Mr Kumar and Mr Arora in failing to answer the allegations of their involvement with AKRO, Mr Kandoth and Mr Fowler demonstrates their guilty knowledge.

(3) LQT Industries LLC

114 Another example of fabricated documents relied upon by DDPL is in respect of two Purchase Orders that it issued to AKRO in respect of supplies allegedly provided by LQT Industries LLC ("LQT").

115 The first relates to Purchase Order RL/090 in respect of LQT's invoices annexed to a corresponding invoice numbered 379. That invoice dated 17

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March 2016 was for a total amount of US$736,951.00 which was paid by DDPL to AKRO. The LQT invoices annexed to the AKRO document were numbered 8498 for US$455,801.00; 8499 for US$184,163.00; and 8500 for US$96,987.00.

116 After Mr Kumar and Mr Arora left DDPL, DDPL contacted LQT directly and obtained LQT's invoices issued for the Rig and the Project. The invoices that were provided to DDPL by LQT were the same invoice numbers and dates as the invoices that were annexed to AKRO's invoice. However, the actual invoices provided by LQT included different values substantially lower than the amounts invoiced in those provided and annexed to AKRO's invoice. LQT's invoiced amounts were in respect of 8498 at US$326,720.00; 8499 at US$139,840.00; and 8500 at US$72,255.00. The total amount of those invoices was US$538,851.00, a difference of US$198,136.00.

117 DDPL makes a claim for the losses suffered in respect of these invoices in the amount of US$198,136.00.

118 The second relates to Purchase Order RL/091. AKRO made a claim on DDPL in the amount of US$21,500.00 and annexed an LQT invoice in that amount which was paid in full by DDPL.

119 Once again, after Mr Kumar and Mr Arora left DDPL, DDPL contacted LQT directly and obtained the original invoices from LQT in the amount of US$11,000.00.

120 DDPL makes a claim for losses suffered in respect of this transaction in the amount of US$10,500.00.

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121 It is clear that the LQT invoices that AKRO attached to the quote that it provided to DDPL were falsified by changing the amounts as referred to above.

122 DDPL also highlighted the deficiencies in the documentation in respect of both of these transactions claiming that in spite of these deficiencies, Mr Kumar and Mr Arora sanctioned the payments to AKRO. Once again, DDPL submitted that this conduct is not mere carelessness, but rather, when combined with the other matters referred to above, demonstrates that both Mr Kumar and Mr Arora were involved in a conspiracy to defraud DDPL together with Mr Kandoth, Mr Fowler and AKRO.

123 The total amount claimed by DDPL in respect of the LQT transactions is US$208,636.

124 It is now appropriate to refer to examples of quotes/invoices that DDPL claims were forged or fabricated by AYBI and the Cross-Defendants.

(4) Derrick Solutions International Pte Ltd

125 The first example relates to Purchase Order RL/31 for the purchase of a shale shaker. The Comparative Statement referred to 3 quotes; one by AYBI at US$240,402; one by Derrick Solutions International Pte Ltd ("Derrick") at US$305,670; and one by Nov Brandt Oilfield Services (Middle East) LLC (NOV) at US$250,875. Clearly, the lowest quote was that of AYBI and a Purchase Order was issued to it on 2 January 2016 in the amount quoted.

126 During the course of its analysis of documents in preparation for trial, DDPL found a quote from Derrick in respect of a different rig named "Jindal Discoverer" dated 9 September 2015. DDPL compared that quote to the quote

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that was included with AYBI's documents in support of the detail in the Comparative Statement.

127 The two quotes were identical but for two things. The first was that the Jindal Discoverer quote was addressed to "Jindal Drilling & Industries Limited" and the quote produced by AYBI was addressed to "Discovery Drilling Pte Ltd". The second was that the reference to "Jindal Discoverer" was removed from the quote produced by AYBI.

128 The irresistible conclusion to be drawn from the comparison of these two documents is that the quote produced by AYBI to DDPL for the shale shaker was fabricated for the purpose of providing a false quote that was higher than AYBI's quote to induce DDPL to prefer AYBI's quote as the lowest of the three quotes in the Comparative Statement.

129 The other irresistible conclusions are that Mr Fowler and/or Mr Kandoth produced this false quote for that purpose. It is also clear that Mr Kumar and Mr Arora would have had access to the Jindal Group records to enable the fabricated document to be produced and were parties to this scheme with AYBI, Mr Fowler and Mr Kandoth.

(5) SMI Oilfield Technology and Products FZE; National Oilwell Varco

130 Another example of fabricated documents involving AYBI relates to Purchase Order RL/33 in respect of the purchase of solid control equipment for the Rig.

131 The relevant Comparative Statement contained three quotes; one by AYBI at US$496,800; one by SMI Oilfield Technology and Products FZE ("SMI") at US$763,467; and one by National Oilwell Varco ("Varco") at

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US$1,104,153. Clearly the quote by AYBI was the lowest and the Purchase Order was issued to it dated 2 January 2016 in the amount quoted.

132 In this instance DDPL discovered that the proposal allegedly provided by Varco was duplicated from a raw budgetary quotation dated 5 August 2015 from Varco to JDIL. The comparison of the two documents shows that they are identical save that one was addressed to JDIL and the other was addressed to DDPL. There were also inconsistencies between the addressee and the rest of the text; and the date 5 August 2015 was removed.

133 DDPL discovered that the proposal or quote produced by SMI was also "duplicated and doctored" from a proposal given by SMI to JDIL for the rig "Jindal Discoverer". The two quotes are identical but for the addressee's and the project/rig name and reference number.

134 The irresistible conclusions to be drawn in respect of these documents is Mr Kumar and Mr Arora would have had access to the original quotes from which the duplicates were created and were clearly involved with Mr Fowler, Mr Kandoth and AYBI in their creation.

(6) Other AYBI quotes

135 DDPL also discovered that in a number of instances AYBI received quotes that were lower than its own quote and those of other companies in respect of certain supplies for the refurbishment of the Rig that were not produced to DDPL or included in the Comparative Statements.

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Lack of supporting documentation generally

136 DDPL also makes claims in respect of a number of invoices in respect of which it was not able to obtain the original documentation from the suppliers. In this regard, DDPL relied upon the evidence of its expert, Mr Rajender Pal.

137 Mr Pal is a partner of Rajender Sachin & Associates, a firm of Chartered Accountants which provides auditing, accounting and related services. The firm was established in 2005 and has its headquarters in Gurugram, Haryana, India and a branch office in Delhi, India.

138 Mr Pal obtained a Bachelor in Commerce in 1996 and a Master in Business Administration (Information Technology) in 2001 from Maharshi Dayanand University, Rohtak. He obtained qualifications in International Financial Reporting Systems in 2010 and Valuations in 2011 from the Institute of Chartered Accountants of India. He was also awarded an Advanced Diploma in Direct & Indirect Tax in 2013 from NIIT Imperia.

139 Mr Pal has specialised and has extensive experience in internal audit, statutory audit, concurrent bank audit, special audit and pre-inspection surveys, book debt inspection, forensic audit, stock audit/inspection, bank and company audit and company law matters.

140 Mr Pal was asked by DDPL to report upon, *inter alia*, whether certain of AKRO's and/or AYBI's documents were forged or fabricated and, if so, what were the losses suffered by DDPL by reason of those forgeries/fabrications.

141 Mr Pal analysed the Purchase Orders and invoices referred to above in respect of TMS, Carlton and LQT and concluded that those documents were in fact fabricated.

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142 Mr Pal also analysed the contractual arrangement between AKRO and DDPL and proffered the following opinion in respect of AKRO becoming a direct supplier to DDPL:

> There is no justification for doing such a drastic change. A SPM services provider cannot become a supplier and if he does so he ought to record good solid reasons for doing so as there is clear conflict of interest. It appears that AKRO took the advantage of the limited timeline available to repair/refurbish the Rig and abused the same to deviate from processes consequent to which we have noted serious discrepancies in the documentation which have been dealt in detail in our report.

143 Some of the discrepancies identified by Mr Pal in his detailed report included differences in formats of invoices/quotations, discrepancies in manpower rates charged, independent evaluation of quotations, and lack of independent confirmations from vendor/sub-vendors. In a number of instances, there were no substantiating documents furnished by AKRO or AYBI to DDPL.

144 Mr Pal observed that given that "part value of goods and services supplied through AKRO (and AYBI) may have been rendered to DDPL, the fairest and most reasonable manner to deal with these purchase orders would be to deal with the average value in this field". In those circumstances Mr Pal expressed the view that it was appropriate to calculate a percentage of the invoices that he reviewed.

145 Mr Pal reviewed the fabricated invoices and made an assessment of the percentage by which AKRO and/or AYBI had inflated the charges. He then averaged those percentages at 35.57%. Mr Pal then calculated 35.57% of the amounts of the invoices that were paid for the services provided.

146 Mr Pal originally included all of the invoices that DDPL had provided to him for such an assessment. These figures were adjusted during the hearing

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on 8 April 2019 after DDPL conceded that a number of those invoices had not been paid. The total amount paid to AKRO was re-calculated at US$16,146,064.49. On Mr Pal's calculation at 35.57%, DDPL makes a total claim of US$5,743,155.14.

147 It is necessary to refer separately to the AYBI invoices that form part of the total amount calculated by Mr Pal because DDPL seeks damages against AYBI for its conduct in producing the false invoices. It is not sued in respect of the AKRO invoices. The total amount of the AYBI invoices in respect of which DDPL is entitled to damages is US$3,270,505.65. The application of 35.57% to that figure results in a total of US$1,163,318.86.

148 I am satisfied that it is more probable than not that the other invoices paid by DDPL in respect of which it was unable to obtain the original documents, were also dealt with by the Cross-Defendants in the same manner as those that were fabricated and referred to above. I am also satisfied that Mr Pal's approach of calculating an average percentage and applying it to those invoices that were paid by DDPL is, in all the circumstances, reasonable. This applies to both the AKRO and AYBI invoices.

Conclusion on DDPL's other claims

149 The claims against AKRO are that this conduct amounted to breach of its contractual and fiduciary duties that it owed to DDPL. Although the claim of the existence of a fiduciary duty was denied in AKRO's original Defence to Counterclaim 1, it did not appear in the proceedings to propound such a Defence. The contractual provisions between DDPL and AKRO placed AKRO in a position of trust where it was acting on DDPL's behalf in managing the

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Project, and in particular, in calling for and managing the tenders for the supply of equipment.

150 Notwithstanding that AKRO changed its role (with the assistance of Mr Kumar and Mr Arora) to that of a supplier, it was obliged to negotiate with the suppliers on DDPL's behalf and to report honestly to DDPL in respect of those quotes. DDPL was dependent upon AKRO to engage honestly with the third party suppliers and with it to ensure that DDPL was not financially compromised by its actions in dealing with these third parties. AKRO undertook or agreed to act for or on behalf of DDPL in its interests in the exercise of a power or discretion, (the obtaining of and choosing the quotes) which would affect the interests of DDPL in a legal and practical sense. In this regard AKRO owed DDPL fiduciary duties to ensure that it obtained those quotes honestly: *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 68 and 96–97; *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [194]; *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 at [42]–[43].

151 In breach of its fiduciary obligations AKRO created false documents so that DDPL's records would show that its own quotes were to be preferred.

152 Clearly such conduct was also in breach of its contractual obligations to DDPL to manage the Project.

153 Although they were officers of an associated company in the Jindal Group, Mr Arora and Mr Kumar took on the role of DDPL's representatives for the management of the Project including dealing with AKRO. Having taken on that role they owed duties of loyalty and fidelity to DDPL; to act in the best

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interests of DDPL; to inform DDPL of any activity which could damage its interests; not to act in a manner that conflicted with their duty to DDPL; and not to make any profit from transactions relating to the supply of goods and/or services for the Project without DDPL's consent.

154 I am satisfied that Mr Arora and Mr Kumar were parties to the scheme that originated with Mr Kandoth, Mr Fowler and AKRO to create and propound the fabricated invoices the purposes of benefiting AKRO and damaging DDPL.

155 Mr Arora and Mr Kumar owed contractual and fiduciary obligations to DDPL as its representatives in respect of the Project. They were clearly in breach of their fiduciary obligations to DDPL in receiving secret profits in the form of payments of cash and the receipt of mobile phones. In the meeting on 30 May 2018, Mr Kandoth admitted that he paid Messrs Kumar and Arora a total of US$500,000.

156 AKRO by itself and in concert with Mr Kandoth and Mr Fowler and Mr Arora and Mr Kumar created these fabricated or falsified documents. This conduct was pursued with the intention of harming DDPL and obtaining a benefit for itself.

157 It is also the case that AYBI by itself and in concert with Mr Kandoth and Mr Fowler and Mr Arora and Mr Kumar created fabricated or falsified documents. This conduct was pursued with the intention of harming DDPL and obtaining a benefit for itself.

158 Mr Arora and Mr Kumar were also involved with AKRO, Mr Kandoth and Mr Fowler in the conspiracy as pleaded. They acted with the intention of harming DDPL and made secret profits for themselves as referred to above.

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159 Mr Arora and Mr Kumar were also involved with AYBI, Mr Kandoth and Mr Fowler in the conspiracy as pleaded. They acted with the intention of harming DDPL and made secret profits for themselves as referred to above.

160 It is unnecessary to consider the provisions of the Misrepresentation Act because I am satisfied that the representations that were made in the falsified documents were intentionally made for the above-mentioned purposes.

Entry of judgment

161 DDPL seeks entry of judgment in its favour against AKRO in respect of the delay in delivery of the Rig and the Spencer Ogden charges in the amount of US$2,645,360.46. It also seeks the entry of judgment against AKRO and the other Cross-Defendants in the amount of US$5,743,155.14 in respect of the fabricated and forged invoices and those invoices in respect of which there were no supporting documents.

162 DDPL is entitled to the entry of judgment in those amounts totalling US$8,388,515.60.

Punitive Damages

163 DDPL seeks punitive damages for fraud, misrepresentation and breach of fiduciary duties. Punitive damages may be awarded "where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence and condemnation": *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 at [176].

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164 DDPL did not make any claim in its pleading for punitive damages. The only time any mention was made of such a claim was in its written submissions dated 22 March 2019.

165 Having regard to the particular history of this case and in the absence of such a pleading, this claim will not be entertained.

Costs

166 DDPL also seeks an order that the Cross-Defendants pay its reasonable costs of the proceedings.

167 It is appropriate to take into account all the circumstances of the case in making an award of costs. Although these proceedings commenced in the High Court, they were transferred to the SICC at an early stage and AKRO took part in the proceedings until DDPL was granted leave to bring the Counterclaim in respect of the conspiracy and fraud counts.

168 DDPL was put to great expense in respect of the pursuit of the genuine documents that it finally obtained from the third-party suppliers to prove its case against AKRO and the Cross-Defendants.

169 In all the circumstances, I am satisfied that an order should be made against each of the Cross-Defendants that they pay DDPL's reasonable costs of the proceedings.

Interest

170 DDPL seeks an award of interest on the amount of damages awarded to it. In all the circumstances, DDPL claims that it has been out-of-pocket in respect of those payments, which were over-payments, since 1 May 2016.

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171 I am satisfied that interest should be awarded on the amount of the judgments in respect of the fabricated and other invoices from 1 May 2016 at 5.33% per annum to the date of entry of judgment in the amount of US$943,600.39 (in respect of the First to Fifth Cross-Defendants) and US$191,133.29 (in respect of the Sixth Cross-Defendant).

172 If the judgment is not paid, DDPL will be entitled to post judgment interest at 5.33% per annum.

Orders

173 In respect of the Judgment already entered in favour of Discovery Drilling Pte Ltd against AKRO Group DMCC, damages are assessed at US$2,645,360.46.

174 Judgment is entered in favour of Discovery Drilling Pte Ltd on the balance of its claims against each of AKRO Group DMCC, the First Cross-Defendant, Parmod Kumar, the Second Cross-Defendant, Sunil Kumar Arora, the Third Cross-Defendant, Arjun Suresh Kandoth, the Fourth Cross-Defendant, David William Fowler, the Fifth Cross-Defendant in the amount of US$5,743,155.14.

175 Interest on US$5,743,155.14 is to be paid at 5.33% per annum from 1 May 2016 to the date of entry of judgment.

176 Judgment is entered in favour of Discovery Drilling Pte Ltd against AYBI Energy FZE, the Sixth Cross-Defendant, in respect of its invoices in the amount of US$3,270,505.65, 35.57% of which is US$1,163,318.86.

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177 Interest on US$1,163,318.86 is to be paid at 5.33 % per annum from 1 May 2016 to the date of entry of judgment.

178 Judgment is entered in favour of Discovery Drilling Pte Ltd against Parmod Kumar, the Second Cross-Defendant, and Sunil Kumar Arora, the Third Cross-Defendant in respect of the secret profits that they received from Mr Kandoth in the amount of US$500,000.

179 The Cross-Defendants are to pay Discovery Drilling Pte Ltd its reasonable costs of the proceedings.

Patricia Bergin
International Judge

The plaintiff and the defendants in counterclaim were not represented and did not appear;
Visheshwar Shrivastav (V Shrivastav & Co) (Registered Foreign Lawyer) for the defendant and plaintiff in counterclaim.

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