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

[2024] SGHC 112

Originating Application No 1079 of 2023

Between

Wan Sern Metal Industries Pte Ltd

… *Applicant*

And

Hua Tian Engineering Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside]

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

[2024] SGHC 112

General Division of the High Court — Originating Application No 1079 of 2023
Wong Li Kok, Alex JC
12 January, 1 February 2024

02 May 2024

Wong Li Kok, Alex JC:

Introduction

1 This was an application under s 48 of the Arbitration Act 2001 (2020 Rev Ed) (the "AA") to set aside the arbitral award No 99 of 2023 dated 31 July 2023 (the "Award")[1] made in the SIAC Arbitration No 166 of 2022 (the "Arbitration") by the sole arbitrator (the "Tribunal").

2 The applicant had taken its claims against the respondent through the full ambit of the legal process. The applicant had been heard in adjudication, the Arbitration and in this application to set aside the Award. After I had dismissed the application, the applicant appealed. I set out the reasons for my decision.

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[1] 1st affidavit of Lee Wen Choong dated 18 October 2023 filed in HC/OA 1079/2023 ("1LWC") at pp 2590–2632, Final Award dated 31 July 2023 ("Award").

Facts

The parties

3 The applicant, a Singapore company, was a sub-contractor in a construction project known as "Defu Industrial City" (the "Project").[2] Specifically, the applicant was a sub-contractor for the Project's aluminium windows and doors, glazing works, screens, louvres, fins, box-up, skylights, canopies and linkway.[3] The contract between the applicant and the main contractor, Lian Beng Construction (1988) Pte Ltd ("Lian Beng"), was entered into on 28 November 2017 (the "Lian Beng Contract").[4]

4 The respondent, also a Singapore company, was the applicant's sub-contractor in the Project.[5] Under the sub-contract between the parties made on 4 May 2018 (the "Sub-Contract"),[6] the respondent agreed to supply labour to the applicant for installation works.[7] The parties accepted that the Sub-Contract incorporated the arbitration clause in the Lian Beng Contract.[8]

5 On 15 July 2022, the applicant issued a notice of termination in respect of the Sub-Contract to the respondent.[9] By then, the respondent's work had

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2 1LWC at para 8 and p 1791.

3 1LWC at para 10.

4 1LWC at p 2598, Award at para 24.

5 1LWC at para 11 and p 1791.

6 1st affidavit of Chen Hua dated 25 September 2023 filed in HC/OA 980/2023 ("1CH") at p 116.

7 1LWC at para 11.

8 1LWC at pp 2593–2594, Award at paras 7–9 and 29–35.

9 1LWC at p 2610, Award at para 66.5; Applicant's Written Submissions in HC/OA 1079/2023 dated 9 January 2024 ("AWS") at para 11.

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already been substantially completed.[10] The applicant alleged that the respondent had, amongst other things, failed to deploy a safety supervisor and failed to promptly and diligently rectify defects as required under the Sub-Contract.[11] According to the applicant, these amounted to repudiatory breaches of the Sub-Contract.[12]

Procedural history

6 On 18 May 2022, the respondent lodged an adjudication application against the applicant under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the "SOPA").[13] This was in respect of the respondent's payment claim dated 15 April 2022 and the applicant's payment response dated 10 May 2022 for a negative amount.[14] In the adjudication determination in SOP/AA 078/2022 (the "Adjudication"), the adjudicator allowed the majority of the respondent's claims and rejected all of the applicant's backcharges.[15] The applicant was ordered to pay the respondent the sum of S$616,670.80 and the costs of the Adjudication.[16]

7 On 28 June 2022, pursuant to the arbitration agreement incorporated into the Sub-Contract,[17] the applicant commenced the Arbitration against the

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10 1LWC at pp 2536–2565, Respondent's Written Submissions in the Arbitration dated 22 May 2023 ("RWS (Arbitration)"); 1LWC at p 2545, RWS (Arbitration) at para 34; 1LWC at p 2609, Award at para 66.1.

11 1LWC at p 2612, Award at para 70.1.

12 1LWC at p 2612, Award at para 70.1.

13 1LWC at para 13.

14 1LWC at para 13.

15 1LWC at para 14.

16 1LWC at para 14.

17 1LWC at pp 2598–2599, Award at paras 24–26.

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respondent.[18] The parties agreed that the Arbitration would be a documents-only arbitration.[19] In the Award, the Tribunal dismissed all of the applicant's claims and allowed most of the counterclaims advanced by the respondent.[20] The following decisions of the Tribunal were relevant to this application:

(a) The Tribunal allowed the respondent's counterclaim for S$776,694.51 for the balance value of work done by the respondent in the Project (the "Balance Work Counterclaim").[21]

(b) The Tribunal dismissed the applicant's claims for the sums of S$486,354.68 and S$159,641.71 paid to third party contractors Pan Sing Pte Ltd ("Pan Sing") and Toto Group Pte Ltd ("Toto") respectively, for work done to complete the respondent's work (the "Pan Sing and Toto Claims").[22]

(c) The Tribunal dismissed the applicant's claim for the sum of S$161,000.00 in respect of the respondent's alleged failure to deploy a competent and qualified safety supervisor for the Project (the "Safety Supervisor Fees Claim").[23]

(d) The Tribunal dismissed the applicant's claim for the sum of S$505,080.00 incurred in supplying labour to the Project due to the

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18 1LWC at para 15.

19 1LWC at p 2595, Award at para 18.1.

20 1LWC at p 2626, Award at para 121.

21 1LWC at para 18.

22 1LWC at para 17(a).

23 1LWC at para 17(b).

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respondent's alleged failure to carry out various works on site (the "Labour Supply Claim").[24]

(e) The Tribunal allowed the respondent's counterclaim for the retention sum of S$90,780.07 due to the respondent under the Sub-Contract (the "Retention Sum Counterclaim").[25]

(f) The Tribunal dismissed the applicant's prayer for a declaration that no money was payable to the respondent pursuant to the Adjudication, and allowed the respondent's counterclaim for legal costs of S$15,941.56 in the Adjudication (the "SOPA Declaration and SOPA Costs Counterclaim").[26]

8 On 25 September 2023, the respondent commenced HC/OA 980/2023 seeking an order to enforce the Award. The said order was granted on 26 September 2023.[27]

9 On 18 October 2023, the applicant brought the present application to set aside the Award.

The parties' cases

10 The applicant sought to set aside the Tribunal's decisions at [7] above pursuant to:[28]

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24 1LWC at para 17(c).

25 1LWC at para 18.

26 1LWC at p 2616, Award at para 88; 1LWC at p 2625, Award at para 119.

27 HC/ORC 4515/2023.

28 1LWC at paras 4–5.

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(a) section 48(1)(*a*)(iv) of the AA, on the ground that the Award deals with disputes not contemplated by or not falling within the terms of the submission to the Arbitration, or contains decisions on matters beyond the scope of the submission to the Arbitration (the "Scope of Submission Ground");

(b) section 48(1)(*a*)(v) of the AA, on the ground that the arbitral procedure was not in accordance with the parties' agreement (the "Arbitral Procedure Ground"); and

(c) section 48(1)(*a*)(vii) of the AA, on the ground that a breach of the rules of natural justice occurred in connection with the making of the Award by which the applicant's rights have been prejudiced (the "Natural Justice Ground").

The applicant also argued that if the Award were set aside on any of the above grounds, the Court should not exercise its discretion to remit the Award to the Tribunal for her reconsideration.[29]

11 The respondent objected to the application on the basis that there were no valid grounds for setting aside the Award.[30] The respondent also took the position that even if any of the alleged grounds were made out, the matter should be remitted to the Tribunal for reconsideration[31] pursuant to s 48(3) of the AA, which provides that a court:

> … may, where appropriate and so requested by a party, suspend the proceedings for setting aside an award, for any

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29 1LWC at para 7.

30 Affidavit of Chen Hua dated 16 November 2023 filed in HC/OA 1079/2023 ("2CH") at para 6.

31 2CH at paras 6 and 88.

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> period of time that it may determine, to allow the arbitral tribunal to resume the arbitral proceedings or take any other action that may eliminate the grounds for setting aside an award.[32]

Issues to be determined

12 The issues I had to determine were whether the Tribunal's decisions on the following claims and counterclaims should be set aside under the Scope of Submission Ground, the Arbitral Procedure Ground, and/or the Natural Justice Ground:

(a) the Balance Work Counterclaim;

(b) the Pan Sing and Toto Claims;

(c) the Safety Supervisor Fees Claim;

(d) the Labour Supply Claim;

(e) the Retention Sum Counterclaim; and

(f) the SOPA Declaration and SOPA Costs Counterclaim.

The applicable legal principles

13 The starting point in a setting-aside application is that the Singapore courts adhere to the policy of minimal curial intervention (*Soh Beng Tee & Co Pte Ltd v Fairmont Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [60]). This policy is undergirded by two principles. The first is the "need to recognise the autonomy of the arbitral process by encouraging finality, so that its advantage as an efficient alternative dispute resolution process is not undermined" (*Soh Beng Tee* at [65(c)]). The second is the parties' acceptance,

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[32] 2CH at paras 6 and 88.

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in opting for arbitration, of the "risks of having only a very limited right of recourse to the courts" (*Soh Beng Tee* at [65(c)]). In particular, a setting-aside application is "not a guise for a rehearing of the merits", so parties "must not be encouraged to dress up and massage their unhappiness with the substantive outcome into an established ground for challenging an award" (*TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM Division*") at [2]). In other words, a losing party should not seek to set aside an award on the basis that the tribunal's decision was wrong on the merits.

14 The cases interpreting the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA") and the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") were relevant to the present application brought under the AA. As observed in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 ("*L W Infrastructure*"), the court is "entitled and indeed even required to have regard to" the IAA and the Model Law in interpreting the AA, especially where the provisions are similar (at [34]). This is because the legislative intent of the AA is to align the curial law governing domestic arbitrations with the Model Law (*L W Infrastructure* at [33]–[34]). In that regard, the Scope of Submission Ground, the Arbitral Procedure Ground and the Natural Justice Ground are *in pari materia* with the grounds for setting aside an award under Arts 34(2)(*a*)(iii) and 34(2)(*a*)(iv) of the Model Law and s 24(*b*) of the IAA respectively. I turn to the applicable principles for each ground.

15 Under the Scope of Submission Ground, the court applies a two-stage test to determine if an award should be set aside: (a) first, the court considers what matters were within the scope of the parties' submission to arbitration; and (b) second, the court asks if the award involved such matters or any "new difference" outside the scope of the parties' submission (*GD Midea Air*

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Conditioning Equipment Co Ltd v Tornado Consumer Goods Ltd and another matter [2018] 4 SLR 271 ("*GD Midea*") at [39]). Five sources will be considered in delineating the matters within the scope of the parties' submission to arbitration: (a) the pleadings; (b) the agreed list of issues; (c) the opening statements; (d) the evidence adduced in the arbitration; and (e) the closing submissions (*CDM and another v CDP* [2021] 2 SLR 235 ("*CDM*") at [18]).

16 Under the Arbitral Procedure Ground, a party seeking to rely on this ground must show that (a) the parties agreed on a particular arbitral procedure; (b) the tribunal failed to adhere to that agreed procedure; (c) the failure was causally related to the tribunal's decision; and (d) the party mounting the challenge is not barred from invoking this ground by failing to raise an objection during the proceedings before the tribunal (*GD Midea* at [63], citing *AMZ v AXX* [2016] 1 SLR 549 ("*AMZ*") at [102]).

17 Under the Natural Justice Ground, an applicant must establish the following four elements: (a) which rule of natural justice was breached; (b) how it was breached; (c) in what way the breach was connected to the making of the award; and (d) how the breach prejudiced the applicant's rights (*Soh Beng Tee* at [29]).

18 Having briefly set out the applicable legal principles, I turn to address each decision of the Tribunal that was challenged by the applicant.

Issue 1: Balance Work Counterclaim

19 The challenge against the Tribunal's decision to allow the Balance Work Counterclaim was the crux of the applicant's case. To provide some context, I start with a summary of the Tribunal's reasoning in the Award. The Tribunal found that the applicant had wrongfully terminated the Sub-Contract, such that

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the respondent was entitled to damages flowing from the wrongful termination.[33] In that regard, the Tribunal noted that the respondent had claimed damages in the form of expectation damages. According to the respondent, its expectation interest at the time it entered into the Sub-Contract was the full value of the adjusted contract sum.[34] The Tribunal accepted the respondent's submission and allowed its Balance Work Counterclaim. This amounted to the full value of the adjusted contract sum, less past payments made by the applicant under the Contract.[35]

20 The applicant relied on the Scope of Submission Ground, the Arbitral Procedure Ground and the Natural Justice Ground to challenge this decision. However, for reasons explained below, none of those grounds were established.

The Tribunal did not exceed the scope of the parties' submission to arbitration

21 Under the Scope of Submission Ground, the applicant argued that the Balance Work Counterclaim was framed in the Arbitration as a claim for the value of work that the respondent had "purportedly *already completed*" [emphasis in original].[36] This was evident from the parties' pleadings, the agreed list of issues and the evidence filed in the Arbitration.[37] The issue of whether the respondent was "entitled to the *full* value of the balance *unfinished* works" [emphasis added] in consequence of the applicant's allegedly wrongful termination of the Sub-Contract (the "Expectation Damages Issue") was not an

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33 1LWC at p 2618, Award at para 102.1.

34 1LWC at pp 2618–2619, Award at paras 98–99 and 102.2.

35 1LWC at pp 2618–2619, Award at paras 98 and 102.3.

36 AWS at para 29.

37 AWS at para 53.

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issue submitted to the Tribunal.[38] Having determined this issue in the Award, the Tribunal thus acted outside the scope of submission to the Arbitration.

22 In response, the respondent contended that the Expectation Damages Issue was clearly raised in its Written Submissions to the Tribunal.[39] The applicant had also understood this issue to form part of the scope of submission to the Arbitration. This could be inferred from the fact that the applicant had specifically replied to this issue in its Reply Written Submissions,[40] where it was expressly argued that the respondent's position in its Written Submissions "[was] wrong as a matter of principle", since it "had not done the balance work at all". The applicant also argued in its Reply Written Submissions that "the Sub-Contract was rightfully terminated".[41]

23 I agreed with the applicant that prior to the respondent's Written Submissions, the live issue in the Arbitration was the respondent's entitlement to the value of work allegedly *already completed* by the respondent.

(a) The respondent, by its Defence and Counterclaim filed in the Arbitration, counterclaimed for the "value of works *done to-date*" [emphasis added].[42] The respondent pleaded that it had submitted a progress claim "for all work done to 15 July 2022 [*ie*, the date of termination]", as it "had completed all the work as per its scope of works

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38 AWS at para 44.

39 Respondent's Written Submissions in HC/OA 1079/2023 dated 11 January 2024 ("RWS") at paras 38–39.

40 RWS at para 40–41.

41 1LWC at pp 2567–2571, Claimant's Reply Written Submissions in the Arbitration dated 26 May 2023 ("CRS (Arbitration)"); 1LWC at p 2570, CRS (Arbitration) at paras 16–17.

42 1LWC at pp 1938–1949, Defence and Counterclaim in the Arbitration dated 24 February 2023 ("D&CC"); 1LWC at p 1948, D&CC at para 57.

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on site".[43] In the applicant's Reply and Defence to Counterclaim, it was "denied that the [r]espondent had completed all of its works".[44]

(b) In the agreed list of issues, the issue for the Balance Work Counterclaim was framed as "[w]hether the [r]espondent is entitled to damages for balance value of *work done* and retention and if so the quantum thereof" [emphasis added].[45]

(c) Chen Hua, the respondent's director, stated in his witness statement that the respondent was claiming for "the balance value of *work done* owing to [the respondent]" [emphasis added].[46] His witness statement also exhibited drawings showing the "works completed" by the respondent.[47]

24 The first time that the Expectation Damages Issue was explicitly raised was in the respondent's Written Submissions. It was contended that because of the applicant's wrongful termination of the Sub-Contract, the respondent was "entitled to the value of the adjusted contract sum, being its expectation interest when [it] entered into the Sub-Contract".[48] The amount claimed under the Balance Work Counterclaim was the *full* value of the adjusted contract sum, less past payments received by the respondent.[49] As pointed out by the applicant,

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43 1LWC at pp 1947–1948, D&CC at para 53.

44 1LWC at pp 1951–1955, Statement of Reply and Defence to Counterclaim in the Arbitration dated 3 March 2023 ("RDC"); 1LWC at p 1954, RDC at para 23.

45 1LWC at p 1963.

46 1LWC at pp 2196–2208, Witness Statement of Chen Hua dated 28 April 2023 ("WS-CH"); 1LWC at p 2206, WS-CH at para 60.

47 1LWC at p 2206, WS-CH at para 64.

48 1LWC at p 2560, RWS (Arbitration) at para 111.

49 1LWC at p 2560, RWS (Arbitration) at para 111.

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whether the respondent could claim the entire contract sum, even for works which were *not completed by the respondent*, was not raised prior to the respondent's Written Submissions.[50]

25 The fact that an issue has been raised in one of the five sources identified in *CDM* (*ie*, the pleadings, the agreed list of issues, opening statements, evidence and closing submissions) does not mean that the issue was within the scope of submission to arbitration. As the Court of Appeal in *CAJ and another v CAI and another appeal* [2022] 1 SLR 505 ("*CAJ*") clarified, those five sources are "not *discrete or independent* sources" [emphasis in original] (at [50]). At the same time, the court takes a holistic and practical approach in determining the scope of submission. As explained by the Court of Appeal in *CJA v CIZ* [2022] 2 SLR 557 ("*CJA*") (at [38]):

> … [I]n considering whether the jurisdiction has been exceeded, *the court must look at matters in the round* to determine whether the issues in question were live issues in the arbitration. In doing so, *it does not apply an unduly narrow view of what the issues were: rather, it is to have regard to the totality of what was presented to the tribunal* whether by way of evidence, submissions, pleadings or otherwise and consider whether, in the light of all that, these points were live.
>
> [emphasis added]

Similarly, the Court of Appeal in *CKH v CKG and another matter* [2022] 2 SLR 1 ("*CKH*") highlighted that the relevant test is "what the parties, viewing the whole position and the course of events objectively and fairly, may be taken to have accepted between themselves and before the [t]ribunal" (at [16]).

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50 AWS at para 44.

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26 Hence, the reference to the Expectation Damages Issue in the respondent's Written Submissions was insufficient in itself to show that the issue came within the scope of matters submitted for the Tribunal's determination. However, looking at the totality of the matter, I found that the Expectation Damages Issue *was* within the scope of submission.

27 I start with the applicant's position in its Reply Written Submissions. The applicant argued that "the Sub-Contract was rightfully terminated".[51] However, if the Tribunal disagreed and was minded to allow recovery in relation to the unfinished works, awarding both the Balance Work Counterclaim and loss of profits on those unfinished works would amount to a double recovery.[52] It was argued that between the two claims, the Tribunal should only allow the claim for loss of profits.[53] This was because the claim for balance value of work done was simply "wrong as a matter of principle" when the respondent "had not done the balance work at all".[54]

28 Based on the above response, I agreed with the Tribunal that the applicant *had* in fact made "its objections in principle" to liability (but not quantum) *vis-à-vis* the Expectation Damages Issue.[55] Indeed, in the applicant's own words, its case in the Arbitration was that the respondent's claim for "the full value of the balance unfinished works" and the claim for "loss of profits on the same [unfinished] works" were alternative remedies for wrongful termination.[56] This was notwithstanding that the Balance Work Counterclaim as

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51 1LWC at p 2570, CRS (Arbitration) at para 17.

52 1LWC at pp 2570–2571, CRS (Arbitration) at paras 18–19.

53 AWS at para 50(c).

54 1LWC at p 2570, CRS (Arbitration) at para 16; AWS at para 50(b).

55 1LWC at p 2619, Award at para 102.3.

56 AWS at para 50(a).

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initially framed did not engage with these matters – namely, the respondent's entitlement to the "full value of the balance unfinished works", and damages for the allegedly wrongful termination of the Sub-Contract. As summarised by the respondent, the applicant did not object to the respondent raising the Expectation Damages Issue belatedly, and in fact, responded to the same in its Reply Written Submissions.[57] The applicant's own conduct thus demonstrated that it had accepted the Expectation Damages Issue as a matter within the scope of submission to the Tribunal.

29 The surrounding circumstances buttressed this conclusion. First, one of the key issues pleaded in the Arbitration was whether the Sub-Contract had been validly terminated by the applicant.[58] It followed that the issue of the appropriate *remedy* to be awarded in the event that wrongful termination was established – which would potentially include an award of expectation damages – was also within the scope of submission to the Tribunal. When pressed on this point at the hearing, the applicant's counsel submitted that the respondent had only prayed for specific remedies in the Arbitration, *eg*, damages for the balance value of work done, damages for prolongation, and damages for loss of profits.[59] The respondent did not pray for *general* damages for wrongful termination. According to the respondent, the Tribunal should not have awarded anything other than those specific and narrow remedies. I disagreed. What was within the scope of submission to a tribunal is not limited by what was pleaded by the parties (see [15] above). Instead, as noted in *CJA*, "the court must look at matters in the round" (at [38]). Having considered the Expectation Damages Issue against the context that wrongful termination was a pleaded issue in the

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57 2CH at para 31.

58 1LWC at p 1963.

59 1LWC at pp 1963–1964.

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Arbitration, I was convinced that the Expectation Damages Issue was itself an issue properly within the scope of submission to the Tribunal.

30 Another relevant circumstance was that the Sub-Contract had been terminated in the midst of the maintenance period, during which the respondent was to rectify the discovered defects.[60] In other words, the respondent's works had already been substantially completed at the time the Sub-Contract was terminated.[61] Hence, for those completed works, there were clearly sums owed by the applicant to the respondent under the Sub-Contract. This was consistent with the parties' cases in the Arbitration:

(a) In the Statement of Claim, the applicant arrived at the aggregate sum claimed against the respondent by deducting the various backcharges from the value of "total work done" by the respondent.[62] Similarly, in resisting the respondent's Balance Work Counterclaim, the applicant noted in its Written Submissions that it had already given the respondent credit for the value of the "total work done" by the respondent under the Sub-Contract.[63] Thus, the applicant did not dispute that the respondent had substantially completed its works and had not been paid for those works.

(b) The respondent advanced another counterclaim for the release of the retention sum, which was a sum of money withheld by the applicant to ensure that the works were "completed and free from defects or

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60 1LWC at p 2199, WS-CH at para 18.

61 1LWC at p 2545, RWS (Arbitration) at para 34; 1LWC at p 2609, Award at para 66.1.

62 1LWC at pp 124–136, Statement of Claim in the Arbitration dated 10 February 2023 ("SOC"); 1LWC at pp 131–132, SOC at para 13.

63 1LWC at pp 2416–2447, Claimant's Written Submissions in the Arbitration dated 19 May 2023 ("CWS (Arbitration)"); 1LWC at p 2444, CWS (Arbitration) at para 59.

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> complaints".[64] This indicated that the costs of defects were being considered separately. It was thus undisputed that irrespective of the presence of any defects, there were amounts to be paid to the respondent in relation to the substantially completed works.

Based on the above, whether there was any significant difference between (a) the value of the substantially completed works (for which the applicant itself had given credit in the Arbitration), and (b) the adjusted contract sum (less past payments) claimed for by the respondent, was also an issue within the scope of submission to the Tribunal.

31 At this juncture, I address the applicant's arguments mounted in reliance on the case of *CAJ*. In *CAJ*, the respondent in that case sought liquidated damages against the appellants for a delay in the mechanical completion of a plant. In their closing submissions, the appellants raised for the first time a defence that they were entitled to an extension of time (the "EOT Defence"). The tribunal accepted the EOT Defence, but this was set aside by the Court of Appeal. It held that the EOT Defence could only have fallen within the scope of submission to the arbitration upon introduction by an appropriate amendment to the pleadings (*CAJ* at [52]).

32 I disagreed with the applicant that its case was analogous to *CAJ*.[65] At first glance, the facts of the present case appear similar in that a new issue was only raised for the first time in the Written Submissions. But in *CAJ*, the respondent in that case objected (in its closing submissions) to the appellants raising the unpleaded EOT Defence. In the present case, as noted above at [28],

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64 1CH at p 118, cl 5.3.

65 AWS at para 55.

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there was no such objection by the applicant. Instead, the applicant proceeded to address the Expectation Damages Issue in its Reply Written Submissions. Another point of divergence was that the EOT Defence in *CAJ* was a "specific and fact-sensitive contractual defence which … [did not] arise from and was not a natural consequence of the existing pleaded defences" (*CAJ* at [44]). Rather, its sole relevance to the pleaded issues was that "it would have a bearing on the respondent's claim for liquidated damages" (*CAJ* at [45]). The Expectation Damages Issue was distinguishable. Noting the points canvassed at [29]–[30] above, this issue was clearly connected to the Arbitration. Nor did the determination of this issue require fresh evidence and fact-finding, unlike the EOT Defence in *CAJ*. Hence, the case of *CAJ* did not assist the applicant.

33 Applying the test in *CKH* (see [25] above), viewing the whole position and course of events objectively and fairly, I found that the Expectation Damages Issue *was* an issue that the parties accepted as an issue to be determined in the Arbitration. The Tribunal did not exceed her jurisdiction in determining that issue. The applicant's challenge under the Scope of Submission Ground failed. The applicant could not simply put its head in the sand and block out all the surrounding circumstances of the Arbitration by focusing narrowly on one issue as the ground for setting aside on the Scope of Submission Ground.

The Tribunal adhered to the agreed arbitral procedure

34 The applicant argued that the Tribunal's decision on the Expectation Damages Issue departed from r 20 of the Arbitration Rules of the Singapore International Arbitration Centre (6th Ed, 1 August 2016) (the "SIAC Rules") and the agreed list of issues, both of which formed part of the agreed arbitral

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procedure.[66] The respondent counter-argued that the Arbitration was conducted under the SIAC Rules and administered by the SIAC.[67] The Tribunal was also appointed by the SIAC.[68] These were all in accordance with the arbitration clause and hence the parties' agreed arbitral procedure.

35 I agreed with the respondent that this challenge was misconceived. The Tribunal had adhered to the agreed arbitral procedure (see [16] above). Rule 20.4 of the SIAC Rules (which the applicant relied on) required the respondent's Defence and Counterclaim to set out in full detail (a) the relevant facts; (b) the relevant legal grounds or arguments; and (c) the relief(s) claimed, together with the amount of all quantifiable claims. However, this rule does not prevent a tribunal from deciding on matters that are not expressly pleaded. Rule 27(m) of the SIAC Rules (which is also a part of the parties' agreed arbitral procedure) provides that unless otherwise agreed by the parties and except as prohibited by the mandatory rules of law applicable to the arbitration, a tribunal may "decide, where appropriate, any issue not expressly or impliedly raised in the [pleadings] of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond". The Expectation Damages Issue was clearly brought to the applicant's attention in the respondent's Written Submissions. The applicant had sufficient opportunity to respond to it in its Reply Written Submissions, and the applicant in fact did so (see [27] above). There was thus no breach of the SIAC Rules.

36 Further, it is not that every departure from an agreed list of issues will amount to a breach of the agreed arbitral procedure. In that regard, the

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66 AWS at para 60.

67 RWS at para 49.

68 RWS at para 49.

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applicant's reliance on *GD Midea* was misplaced. In that case, the Procedural Order provided that "[a]s a general principle, no Party shall be permitted to advance any new factual allegations or any new legal arguments at the Oral Hearing, unless expressly permitted by the Tribunal" (*GD Midea* at [64]). It was in this context that this court found that the agreed list of issues was a part of the parties' agreed arbitral procedure (*GD Midea* at [64]). As the issue of breach of cl 4.2 of the supply agreement in that case was not featured in the agreed list of issues, the tribunal's finding on that clause was held to be in breach of the agreed procedure (*GD Midea* at [64]).

37 In the present case, the applicant failed to show that the agreed list of issues was part of the parties' agreed arbitral procedure. Procedural Order No 1 in the Arbitration did not contain a condition akin to that in *GD Midea*.[69] There was no other evidence adduced by the applicant to show that there was an agreement by the parties to be strictly bound by the agreed list of issues.

38 In any event, even if there was an agreed procedure that had been breached, the applicant was barred from invoking the Arbitral Procedure Ground. It made no objection during the Arbitration – specifically, in its Reply Written Submissions – against the respondent's attempt at introducing a new issue at that stage. The applicant's failure to do so meant that it could no longer be heard to complain that the Tribunal deviated from the agreed procedure by determining that issue (see [16] above).

39 For the foregoing reasons, the applicant's challenge under the Arbitral Procedure Ground failed.

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69 1LWC at pp 118–122.

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There was no breach of the rules of natural justice

40 Broadly, the applicant made two allegations under the Natural Justice Ground. First, the Tribunal either disregarded the applicant's submissions without considering their merits, or did not attempt to understand those submissions.[70] Second, there was no reasonable notice to the applicant that the Tribunal would award the respondent expectation damages in the form of the "full value of the balance unfinished works".[71]

41 The relevant rule of natural justice was the "fair hearing rule", which requires that each party "be given a fair hearing and a fair opportunity to present its case" (*Soh Beng Tee* at [43]). There are two situations in which the fair hearing rule may be breached (*BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60]). The first situation is where the tribunal failed to apply its mind to the essential issues arising from the parties' arguments (*BZW* at [60(a)]). This was related to the applicant's first allegation. The second situation, which engaged the applicant's second allegation, is where the tribunal adopted a defective chain of reasoning. As explained in *BZW* at [60(b)]:

> … [T]he tribunal's chain of reasoning must be: (i) one which the parties had reasonable notice that the tribunal could adopt; and (ii) one which has a sufficient nexus to the parties' arguments … To set aside an award on the basis of a defect in the chain of reasoning, a party must establish that the tribunal conducted itself either irrationally or capriciously such that "a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award"…

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70 AWS at para 72.

71 AWS at para 70.

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The Tribunal had applied her mind to the essential issues

42 I turn to the applicant's first allegation that the Tribunal did not attempt to understand or consider the merits of the applicant's submissions. According to the applicant, the Tribunal was "wrong" to find that the applicant had not challenged the quantum of the Balance Work Counterclaim.[72] In its Reply Written Submissions, the applicant argued that the respondent should only be entitled to at most 10% of the value of works lost for loss of profits.[73] In other words, the applicant's submission was that damages for wrongful termination should be assessed on the basis of the respondent's loss of profits (instead of the full value of the balance unfinished works, as claimed for by the respondent), and that the quantum of damages should be limited to 10% of the value of works lost.

43 In essence, the applicant's argument on natural justice was that the Tribunal had failed to comprehend its submission. But this was not a breach of the rules of natural justice. The Tribunal *had* applied its mind to the essential issue of the quantum of the Balance Work Counterclaim. In the Award, the Tribunal "accept[ed] the [applicant]'s submission that such a claim [on loss of profits] would amount to a double recovery".[74] The Tribunal thus decided to only award the respondent damages under the Balance Work Counterclaim and dismissed the claim for loss of profits. However, the applicant had only contested the quantum of the claim for loss of profits and not the quantum of the Balance Work Counterclaim. Accordingly, the Tribunal "[saw] no reason to not allow the [r]espondent the full amount claimed" for the Balance Work

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72 AWS at para 71.

73 1LWC at p 2571, CRS (Arbitration) at para 20; 1LWC at p 2343, Reply Witness Statement of Lee Wen Choong dated 5 May 2023 at paras 4(c) and 15.

74 1LWC at p 2624, Award at para 115.2.

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Counterclaim.[75] The Tribunal had evidently applied her mind to the applicant's submissions in making her decision.

44 The following passage from *BZW* was apposite (at [60(a)]):

> … [I]f a fair reading of the award shows that the tribunal *did apply its mind to the essential issues but "fail[ed] to comprehend the submissions or comprehended them erroneously*, and thereby c[a]me to a decision which may fall to be characterised as inexplicable", that will be simply an error of fact or law and the award will not be set aside (*TMM Division* at [90]–[91]; *BLC and others v BLB and another* [2014] 4 SLR 79 at [100]) …
>
> [emphasis added]

I did not find the Tribunal's decision on the quantum of the Balance Work Counterclaim to be "inexplicable". Even if it could be so characterised, that the Tribunal came to her decision based on an erroneous understanding of the applicant's submissions would only disclose an error of fact or law, neither of which amounted to grounds for setting aside the Award.

45 Finally, the applicant argued that the respondent had not explained why its expectation interest should be measured based on the contract sum.[76] Relatedly, the applicant also argued that awarding profits lost on the unfinished works was a "more reasonable remedy".[77] In essence, the applicant was objecting to the respondent's measure of expectation damages being based on the full value of the contract sum. However, these substantive arguments were only raised for the first time in this setting-aside application. These belated objections ought to have been raised earlier in the Arbitration, *ie*, in the

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75 1LWC at p 2619, Award at para 102.3.

76 AWS at para 70.

77 AWS at para 70.

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applicant's Reply Written Submissions. The applicant could not challenge the Award on its merits at this stage.

The Tribunal's chain of reasoning was not defective

46 On the second allegation that the Tribunal adopted a defective chain of reasoning, a party would have reasonable notice of the tribunal's chain of reasoning if it (a) arose from the parties' pleadings; (b) arose by reasonable implication from their pleadings; (c) was unpleaded but arose in some other way in the arbitration and was reasonably brought to the party's actual notice; or (d) flowed reasonably from the arguments actually advanced by either party or is related to those arguments (*BZW* at [60(b)]).

47 Looking at the Tribunal's chain of reasoning, the Tribunal rejected the applicant's contention that the Sub-Contract had been rightfully terminated.[78] It followed that the respondent was entitled to damages for wrongful termination.[79] The Tribunal then noted that the respondent had claimed damages for wrongful termination in the form of expectation interest, which the respondent argued should be calculated by deducting past payments from the adjusted contract sum.[80] The applicant's argument – *ie*, that the respondent was not entitled to the Balance Work Counterclaim as it had not done the balance work – was rejected. This was because "it was the [applicant's] wrongful termination of the Sub-Contract that resulted in the [r]espondent not completing the balance value of works under the Sub-Contract".[81] As the applicant had not challenged the

78 1LWC at p 2618, Award at paras 101–102.1.

79 1LWC at p 2618, Award at para 102.1.

80 1LWC at p 2618, Award at paras 98 and 102.2.

81 1LWC at p 2618, Award at para 102.2.

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respondent's measure of the expectation interest,[82] or the quantum tendered by the respondent,[83] the Tribunal allowed the respondent the full amount claimed.[84]

48 While this chain of reasoning did not arise from the pleadings, it stemmed from the parties' Written Submissions and the Reply Written Submissions (see [24] and [27] above), and was reasonably brought to the parties' actual notice (*BZW* at [60(b)]). Further, the chain of reasoning flowed reasonably from the arguments actually advanced by both parties or was related to those arguments (*BZW* at [60(b)]). It bears emphasis that an award will only be set aside on the basis that the Tribunal adopted a defective chain of reasoning *if* the tribunal acted "either irrationally or capriciously", such that "a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award" (*BZW* at [60(b)]). Having failed to object to or address the respondent's measure of its expectation interest, a reasonable litigant in the applicant's shoes could have foreseen that the Tribunal would award the full amount claimed by the respondent.

49 The applicant argued that it could not have foreseen reasoning of the type used in the Award. According to the applicant, the present case fell squarely within the scenario contemplated in *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 ("*Glaziers*"), *ie*, where the outcome came as a surprise, which was in turn indicative of a breach of the fair hearing rule.[85] In *Glaziers*, the Court of Appeal observed that the outcome of a dispute may be surprising in circumstances where the parties did

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82 1LWC at p 2618, Award at para 102.2.

83 1LWC at p 2618, Award at para 102.3.

84 1LWC at p 2618, Award at para 102.3.

85 AWS at paras 26(b) and 69.

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not even address the issue – being an issue that the tribunal ultimately regarded as decisive – "because they (a) did not know; *and* (b) could not reasonably have expected that it would be in issue at all" [emphasis in original] (at [58]). According to the applicant, the "mere assertion" of the Expectation Damages Issue in the respondent's Written Submissions, for the first time, could not have transformed it into a decisive issue.[86] Hence, the applicant "did not know and could not reasonably have expected that [the Expectation Damages Issue] would be an issue" and therefore did not address it.[87]

50 I noted that the applicant's argument (that it did not address the Expectation Damages Issue) was inconsistent with the applicant's earlier explanation of its case. As discussed at [27]–[28] above, the applicant explained that in the Arbitration, its case was that the respondent's claim for the full value of the balance unfinished works and the claim for loss of profits were alternative remedies, and that the former claim was "wrong as a matter of principle". Before me, the applicant even contended that it had challenged the quantum of the Balance Work Counterclaim.[88] Thus, the applicant had the opportunity to address the Expectation Damages Issue in its Reply Written Submissions and it *in fact* did so, albeit cursorily. The applicant's argument under the Natural Justice Ground seemed to be a narrower one – *ie*, the applicant did not, as observed by the Tribunal, "object to or address the [r]espondent's measure of its expectation interest" being based on the full value of the Sub-Contract[89] because it did not expect this to be an issue.

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86 AWS at paras 68.

87 AWS at paras 26(b) and 69.

88 AWS at para 71.

89 1LWC at p 2618, Award at para 102.2.

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51 Looking at the matter holistically, the applicant could reasonably have expected that the measure of expectation damages would be a decisive issue in the Arbitration. In particular, the respondent's measure of its expectation loss had direct relevance to the issue of wrongful termination, which was pleaded in the Arbitration (see [29] above). The applicant thus had reasonable notice of the Tribunal's chain of reasoning, and the chain of reasoning had "sufficient nexus" to the parties' arguments (see [41] above).

52 Further, the fact that the parties had opted for an expedited arbitration without an oral hearing[90] was a relevant consideration in my finding that there was no breach of the natural justice rules. As observed in *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 (at [143]):

> … [I]t is trite that what natural justice demands turns in part on the parties' particular agreement to arbitrate … Of course, parties do not relinquish their due process rights simply by dint of agreeing to an expedited arbitration. That said, the fact that parties agreed to an expedited arbitration will inevitably have a bearing on the expectations that parties may reasonably and fairly have as to the extent of the procedural accommodation that may be afforded to them. …

Having agreed to an expedited arbitration, the implied understanding was that the Tribunal would rely heavily on the parties' Written Submissions and Reply Written Submissions in making her determination. Accordingly, it was all the more incumbent on the applicant to engage with the Expectation Damages Issue fully when it appeared as the crux of the respondent's case in its Written Submissions. However, the applicant merely insisted that the respondent had not finished the works and failed to challenge the respondent's measure of expectation damages. It was the applicant who had chosen to address the issue

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90 1LWC at p 2595, Award at para 18.1.

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half-heartedly. As the applicant failed to show that there was a breach of the rules of natural justice, the Natural Justice Ground was not made out.

53 It follows from the discussion above that none of the grounds for setting aside the Tribunal's decision on the Balance Work Counterclaim were established. I therefore dismissed this head of the applicant's setting-aside application.

Issue 2: Pan Sing and Toto Claims

54 The applicant argued that the Tribunal had misunderstood its case on the Pan Sing and Toto Claims. According to the applicant, its claim was for backcharges incurred in relation to the engagement of Pan Sing and Toto *before* the termination of the Sub-Contract. However, the Tribunal had an "erroneous impression" that the Pan Sing and Toto Claims related to backcharges incurred *as a result of* the termination of the Sub-Contract.[91] Hence, the Tribunal was wrong to have dismissed the Pan Sing and Toto Claims on the basis that the applicant had wrongfully terminated the Sub-Contract.[92] The applicant sought to set aside the Tribunal's decision under the Scope of Submission Ground, the Arbitral Procedure Ground and the Natural Justice Ground.

The Tribunal did not exceed the scope of the parties' submission to arbitration

55 The applicant relied on the arguments at [54] above to allege that the Tribunal had dealt with an issue which was not within the scope of the parties' submission to the Arbitration.[93] The respondent counter-argued that the issues

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91 AWS at para 74.

92 AWS at para 75.

93 AWS at para 77.

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relating to the Pan Sing and Toto Claims were clearly raised and addressed in all the relevant Arbitration documents (*ie*, the pleadings, witness statements, reply witness statements, Written Submissions and Reply Written Submissions).[94]

56 Applying the two-stage test in *GD Midea* (see [15] above), the first question was what matters were within the scope of submission to the Tribunal. I considered the following sources:

(a) In the Statement of Claim, the applicant pleaded that the respondent "was short of manpower and failed to complete the entirety of the works", such that the applicant had to engage Pan Sing and Toto to carry out the respondent's works.[95] Various documents evidencing payments made to Pan Sing and Toto were exhibited to the Statement of Claim.[96] In the Defence and Counterclaim, the respondent denied that its manpower was insufficient.[97]

(b) In the agreed list of issues, the issue was framed as "(a) [w]hether the [applicant] was entitled to terminate the [r]espondent's contract; and/or (b) [w]hether the [applicant] was entitled to its costs for engaging Pan Sing [and/or Toto], and if so the amount thereof".[98]

(c) In the witness statement of the applicant's manager, Lee Wen Choong, it was alleged that the manpower deployed by the respondent

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94 RWS at para 71.

95 1LWC at p 131, SOC at para 12(c).

96 1LWC at para 35; 1LWC at pp 1074–1233.

97 1LWC at p 1945, D&CC at para 35.

98 1LWC at p 1963.

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was "entirely insufficient", with only two workers deployed on site at times.[99] In response, Chen Hua averred in his reply witness statement that the applicant needed Pan Sing and Toto because it had caused a delay and was "rushing its own works to hand over to Lian Beng".[100] In the witness statement of Ding Ming ("Mr Ding"), who was the respondent's site manager and safety supervisor, he referred to a "Delay Expert Report" which concluded that there was a wrongful addition of labour by the applicant.[101] Mr Ding also alleged that the applicant had engaged Pan Sing and Toto because it "had to catch up on the works/accelerate the works, to meet its deadline to Lian Beng".[102]

(d) In its Written Submissions, the applicant argued that it was entitled to terminate the Sub-Contract due to the respondent's repudiatory breach.[103] Further, "[a]s a result of the [r]espondent's failure to complete the [w]orks, the [applicant] had to engage Pan Sing [and Toto] to complete the [r]espondent's scope of works".[104] In its Reply Written Submissions, the respondent contended that the termination of the Sub-Contract was wrongful.[105] Further, the applicant was not entitled to the Pan Sing and Toto Claims as "the delay was caused by [the

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99 1LWC at pp 2173 – 2182, Witness Statement of Lee Wen Choong dated 28 April 2023 ("WS-LWC"); 1LWC at p 2180, WS-LWC at paras 14–15.

100 1LWC at pp 2355–2358, Reply Witness Statement of Chen Hua dated 5 May 2023 ("RWS-CH"); 1LWC at p 2358, RWS-CH at paras 14–15.

101 1LWC at pp 2213–2218, Witness Statement of Ding Ming dated 28 April 2023 ("WS-DM"); 1LWC at p 2218, WS-DM at para 32.

102 1LWC at p 2218, WS-DM at para 33.

103 1LWC at pp 2440–2441, CWS (Arbitration) at paras 42–45.

104 1LWC at p 2441, CWS (Arbitration) at paras 46 and 49.

105 1LWC at pp 2548–2550, RWS (Arbitration) at paras 49–57.

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> applicant] as indicated in the Delay Expert Report", not by the respondent.[106]

Based on the above, whether the termination of the Sub-Contract was wrongful and whether the respondent's manpower was insufficient (such that the applicant was entitled to engage Pan Sing and Toto) were both issues which were properly within the scope of submission to the Tribunal.

57 Turning to the second stage of the test in *GD Midea*, the question was whether the Award had dealt with matters within the scope of the parties' submission to the Arbitration. I failed to see how the applicant's contention – *ie*, that Pan Sing and Toto were engaged "before the termination of the Sub-Contract … and not as a result of the subsequent termination of the Sub-Contract"[107] – was relevant. This contention appeared to stem from the applicant's misunderstanding of the Tribunal's reasoning. The Tribunal knew exactly what the applicant's case was (*ie*, that Pan Sing and Toto were engaged before the Sub-Contract was terminated). Nothing in the Award suggested that the Tribunal had determined the issue of whether the applicant was entitled to backcharges incurred *as a result of* the termination. Instead, the Tribunal found that based on the agreed list of issues and the parties' submissions, "the [applicant]'s entitlement to these backcharges hinge[d] on whether the [applicant] was entitled to terminate the Sub-Contract".[108] Having determined that the termination was wrongful, it followed that the applicant could not establish the Pan Sing and Toto Claims.[109] The Tribunal also found that the

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106 1LWC at p 2558, RWS (Arbitration) at para 98.

107 1LWC at para 35.

108 1LWC at p 2615, Award at para 84.

109 1LWC at p 2616, Award at para 85.

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applicant did not have credible evidence on the alleged delay and manpower shortage on the part of the respondent.[110] The issues that the Tribunal ruled on were squarely within the scope of the parties' submission to the Arbitration.

58 Accordingly, the applicant's challenge under the Scope of Submission Ground was not made out.

The Tribunal adhered to the agreed arbitral procedure

59 The applicant alleged that the Tribunal had decided on an issue which the parties did not agree to put forward for determination.[111] As a result, the Tribunal had acted in breach of the parties' agreed arbitral procedure.[112] The respondent counter-argued that there was no departure from any arbitral procedure, repeating the arguments raised at [34] above.[113]

60 I agreed with the respondent. As noted at [57] above, the issue determined by the Tribunal was *not* whether the applicant was entitled to backcharges incurred *as a result of* the termination of the Sub-Contract. The applicant thus failed to demonstrate that the Tribunal had determined an issue that was not agreed by the parties. Based on the documents placed before the Tribunal (see [56] above), it was clear that the issues determined by the Tribunal had been agreed by the parties. In the absence of any breach of the parties' agreed procedure, I dismissed the applicant's challenge under the Arbitral Procedure Ground.

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110 1LWC at pp 2615–2616, Award at para 84.

111 AWS at para 78.

112 AWS at para 78.

113 RWS at para 74.

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There was no breach of the rules of natural justice

61 The applicant argued that the Tribunal had failed to consider the merits of its submissions or even try to understand them.[114] The respondent counter-argued that the Tribunal had understood and considered the applicant's pleaded case but rejected it on the merits.[115]

62 I found that the Tribunal had applied its mind to the essential issue in the Pan Sing and Toto Claims – *ie*, whether the respondent's allegedly insufficient manpower entitled the applicant to engage Pan Sing and Toto. From the Award, it was clear that the Tribunal had considered "the [applicant]'s pleadings … and witness statements, … the parties' agreed list of principal issues and the parties' respective written submissions and reply written submissions".[116] After considering the parties' cases, the Tribunal found that the applicant "[did] not appear to have led any credible evidence on any delay and manpower shortage of the [r]espondent entitling it to engage Pan Sing and Toto respectively".[117] I agreed with the respondent that the Tribunal *had* considered whether the respondent was responsible for any delay and manpower shortage, and rejected the applicant's case.[118]

63 The applicant contended that the Tribunal "had gotten the sequence wrong" in finding that the applicant had failed to provide any credible evidence of delay and manpower shortage on the part of the respondent.[119] According to

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114 AWS at para 79.

115 RWS at para 77.

116 1LWC at p 2615, Award at para 84.

117 1LWC at pp 2615–2616, Award at para 84.

118 RWS at para 79.

119 AWS at para 76.

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the applicant, the very fact that Pan Sing and Toto were engaged to carry out the respondent's works before the termination of the Sub-Contract "[was] evidence of the [respondent's] delay and manpower shortage".[120]

64 The applicant was essentially saying that the Tribunal had made a wrong decision on the merits because she laboured under a flawed understanding of the evidence before her. This did not amount to a breach of the rules of natural justice. The Tribunal had patently considered the applicant's evidence and found it insufficient. Again, any inexplicable decision arising from the Tribunal's failure to comprehend the applicant's submissions would be an error of fact or law (see [44] above). This was not a valid ground to set aside the Award. As there was no breach of any rules of natural justice, the Natural Justice Ground failed.

65 In light of the above, I dismissed the applicant's challenge to set aside the Tribunal's decision on the Pan Sing and Toto Claims.

Issue 3: Safety Supervisor Fees Claim

66 The applicant contended that the Tribunal had failed to properly consider the issue of whether the respondent had provided any safety supervisors. More specifically, it was said that the Tribunal had dismissed the applicant's claim even though the respondent did not furnish evidence of work done or permits to work prepared by its alleged safety supervisors.[121] In this regard, the applicant relied on the Scope of Submission Ground, the Arbitral Procedure Ground and the Natural Justice Ground.[122]

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120 AWS at para 76.

121 AWS at para 80.

122 AWS at para 80.

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The Tribunal did not exceed the scope of the parties' submission to arbitration

67 The applicant did not submit specifically (whether orally or in its Written Submissions) on why the Tribunal's decision should be set aside under the Scope of Submission Ground. In any event, I was not persuaded by the applicant's challenge on this ground. The Tribunal framed the issue as whether the applicant was entitled to "a backcharge … for its provision of a safety supervisor (Ahmmed Roni) that the Respondent had allegedly failed to provide".[123] I agreed with the respondent that this issue was addressed in all the relevant documents submitted to the Tribunal:[124]

(a) In the Statement of Claim, the applicant explicitly pleaded that the respondent had "failed to deploy a competent and qualified Safety Supervisor", such that the applicant had to supply one to the respondent.[125] The respondent denied this in the Defence and Counterclaim. It was alleged that Ahmmed Roni had supervised the works of the applicant and its other sub-contractors, not those of the respondent.[126]

(b) The issue of "[w]hether the [r]espondent failed to deploy a competent and qualified safety supervisor" was included in the parties' list of agreed issues.[127]

123 1LWC at p 1803, Award at para 55.

124 RWS at para 92.

125 1LWC at p 130, SOC at para 12(b)(i).

126 1LWC at p 1944, D&CC at paras 29–31.

127 1LWC at p 1962.

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(c) The applicant relied on the witness statement of Ahmmed Roni. His evidence was that he was the only safety supervisor appointed by the applicant.[128] He was also the only individual who had prepared the permit to work.[129] Further, five individuals identified as the respondent's safety supervisors – namely, Mr Ding, Yan Fei, Xie Leizi, Lin Xingmin and Chen Xianping (the "respondent's Safety Supervisors") – had no necessary qualifications to be safety supervisors.[130] The respondent relied on the witness statements of the respondent's Safety Supervisors. They gave evidence of their qualifications, records of their presence at the work site, and the duties they carried out as safety supervisors.[131]

(d) The applicant argued in its Written Submissions that the respondent's Safety Supervisors were not in fact deployed as safety supervisors.[132] For instance, the qualifications held by Mr Ding, Chen Xianping and Yan Fei were "all dated".[133] There was also no proof that the respondent's Safety Supervisors had carried out the work of safety supervisors. A key task of a safety supervisor was the preparation of the permit to work, which was not done by the respondent's Safety

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128 1LWC at pp 1966–2044, Witness Statement of Ahmmed Roni dated 28 April 2023 ("WS-AR"); 1LWC at p 1969, WS-AR at para 9(b).

129 1LWC at p 1969, WS-AR at para 9(c).

130 1LWC at pp 1969–1970, WS-AR at para 10a; 1LWC at p 2338, Ahmmed Roni's Reply Witness Statement dated 5 May 2023 at para 5.

131 1LWC at pp 2210–2211, Witness Statement of Chen Xianping dated 28 April 2023 ("WS-CXP"); 1LWC at pp 2216–2217, WS-DM at paras 20–25; 1LWC at pp 2220–2221, Witness Statement of Lin Xingmin dated 28 April 2023 ("WS-LXM"); 1LWC at pp 2223–2224, Witness Statement of Xie Leizi dated 28 April 2023 ("WS-XLZ"); 1LWC at pp 2226–2227, Witness Statement of Yan Fei dated 28 April 2023 ("WS-YF").

132 1LWC at p 2433, CWS (Arbitration) at para 24.

133 1LWC at p 2433, CWS (Arbitration) at para 24(a).

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Supervisors.[134] They were not the ones giving the daily toolbox safety briefings either.[135] Instead, it was Ahmmed Roni who prepared the permit to work reports[136] and the toolbox meeting records.[137]

(e) The respondent argued in its Written Submissions that the respondent's Safety Supervisors were all qualified.[138] They had also performed their duties as safety supervisors.[139] Ahmmed Roni was the applicant's safety supervisor "for the purposes of the [Lian Beng] Contract", and his appointment did not mean that the respondent had failed to supply a safety supervisor under the Sub-Contract.[140]

Hence, the issue identified by the Tribunal above was indisputably within the scope of the parties' submission to the Arbitration.

68 The next question was whether the Tribunal had exceeded the scope of submission. The Tribunal concluded that the respondent "had, on the balance of probabilities, provided a safety supervisor".[141] In coming to this determination, the Tribunal found that the Sub-Contract "[did] not provide for any requisite qualifications and responsibilities" of a safety supervisor.[142] This finding was made in relation to the issue raised by the applicant. The witness statements

134 1LWC at p 2433, CWS (Arbitration) at para 24(d).

135 1LWC at p 2433, CWS (Arbitration) at para 25.

136 1LWC at p 2433, CWS (Arbitration) at para 24(d) and 26(c).

137 1LWC at p 2433, CWS (Arbitration) at para 26(d).

138 1LWC at p 2554, RWS (Arbitration) at para 79.

139 1LWC at p 2554, RWS (Arbitration) at para 83.

140 1LWC at p 2554, RWS (Arbitration) at para 82.

141 1LWC at p 2606, Award at para 57.1.

142 1LWC at p 2606, Award at para 57.2.

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filed on the applicant's behalf and its Written Submissions questioned the qualifications of the respondent's Safety Supervisors (see [67(c)] and [67(d)] above). The Tribunal also found that even if the respondent had breached its obligation to provide a safety supervisor, the applicant's claim would still have failed. This was because the applicant failed to show that Ahmmed Roni had been deployed because of the respondent's breach.[143] Looking at the materials put forward in the Arbitration (as summarised at [67] above), the applicant itself had placed before the Tribunal the issue of its entitlement to backcharges incurred in relation to the engagement of Ahmmed Roni. The Tribunal did not exceed the scope of submission to the Arbitration in making her findings.

69 In light of the above, the applicant's challenge under the Scope of Submission Ground was baseless.

The Tribunal adhered to the agreed arbitral procedure

70 In both its written and oral submissions for this application, the applicant did not explain how the Tribunal departed from the parties' agreed arbitral procedure in determining the Safety Supervisor Fees Claim. I was therefore not persuaded that there were any such breaches, and this sufficed to dispose of the applicant's challenge under the Arbitral Procedure Ground.

There was no breach of the rules of natural justice

71 The Natural Justice Ground was the focus of the applicant's case in relation to the Safety Supervisor Fees Claim. The applicant objected to the Tribunal's approach on two issues. The first issue was whether the respondent's

143 1LWC at p 2606, Award at para 57.3.

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Safety Supervisors had prepared the permits to work.[144] The second issue was whether there was actual proof that the respondent's Safety Supervisors had done any safety supervisory work.[145]

72 On the first issue, the applicant contended that the Tribunal had failed to address her mind to the issue.[146] I disagreed. As pointed out by the respondent, the Tribunal had explicitly referred to the applicant's case.[147] The Award cited the applicant's argument that the respondent "[had] not provided any proof that [the respondent's Safety Supervisors] carried out the work of a safety supervisor such as preparing Permit to Work reports".[148] The applicant was asking the Court to infer that the Tribunal, despite having made explicit reference to the applicant's submissions, nevertheless failed to consider the issue. Such an inference, "if it is to be drawn at all, must be shown to be clear and virtually inescapable" (*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [46]). There was no basis to draw any such inference in this case, bearing in mind the Tribunal had expressly addressed the applicant's case.

73 The applicant raised the alternative argument that the Tribunal had regard to the issue "in only the most superficial sense without making any attempt to understand [it] and thereby failed to deal with [it] substantively".[149] I noted that the Tribunal did not make an explicit finding on whether the respondent's Safety Supervisors had prepared the permits to work. However, this did not mean that the Tribunal made no attempt to understand the issue or

144 AWS at para 81.

145 AWS at para 83.

146 AWS at para 81.

147 RWS at para 98.

148 1LWC at p 2605, Award at para 55.2.

149 AWS at para 81.

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deal with it substantively. Rather, the Tribunal considered the parties' cases and expressed that she was "more persuaded" by the respondent's argument,[150] *ie*, that there was no requirement under the Sub-Contract for safety supervisors to prepare the permit to work reports.[151] Given this, it would have been unnecessary to make a specific finding as to whether the respondent's Safety Supervisors had prepared those reports. Further, as noted in the Award, the parties had agreed that the final award would be issued "with reasons in key or summary only".[152] That this issue was not expressly addressed in the Award did not in itself prove any breach of natural justice. Hence, the applicant's objection in relation to the first issue fell away.

74 As to the second issue (*ie*, whether there was any proof that the respondent's Safety Supervisors had carried out safety supervisory work), the applicant contended that the Tribunal did not address her mind to it.[153] The Tribunal accepted that the respondent had provided a safety supervisor in accordance with the Sub-Contract "simply because their purported safety supervisors had the necessary qualifications and certifications".[154]

75 I was not persuaded by this argument. The Tribunal's finding was not premised solely upon the qualifications of the respondent's Safety Supervisors. The Tribunal concluded that the respondent had deployed the requisite safety supervisors "[b]ased on the evidence provided" by the respondent.[155] Such evidence included witness statements by the respondent's Safety Supervisors.

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150 1LWC at p 2606, Award at para 56.2.

151 1LWC at p 2606, Award at para 57.2.

152 1LWC at p 2595, Award at para 18.2.

153 AWS at para 83.

154 AWS at para 83.

155 1LWC at p 2606, Award at paras 57.1.

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They gave evidence on, among other things, how they "would carry out [their] duties as safety supervisor, by ensuring the safety of the site where [the applicant was] carrying out works on, and [the applicant]'s workers".[156] I noted that in the Award, the Tribunal did not state the specific evidence she relied upon in so finding for the respondent. However, the Tribunal also clarified that it should "not be assumed that any evidence … not specifically set out [in the Award] has not been considered by the Tribunal".[157] The Tribunal did not set out all the relevant evidence "[i]n view of the expedited procedure" that the parties had opted for, and "in the interest of saving time and costs".[158] In light of all these, the applicant's contention that the Tribunal had not directed her mind to the second issue also failed. There was no breach of any rules of natural justice, and so the Natural Justice Ground failed on that basis.

76 To conclude, the applicant's challenge to set aside the Tribunal's decision on the Safety Supervisor Fees Claim failed on all three grounds. I hence dismissed this head of the applicant's setting-aside application.

Issue 4: Labour Supply Claim

77 For the Labour Supply Claim, the applicant argued that its case in the Arbitration was that the labour supply for all installation works had been sub-contracted to the respondent.[159] Hence, the fact that the applicant's workers were deployed to work on site sufficed to prove that they were deployed to carry

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156 1LWC at p 2211, WS-CXP at para 6; 1LWC at p 2217, WS-DM at para 25; 1LWC at p 2221, WS-LXM at para 6; 1LWC at p 2224, WS-XLZ at para 6; 1LWC at p 2227, WS-YF at para 6.

157 1LWC at p 2601, Award at para 39.

158 1LWC at p 2601, Award at para 39.

159 AWS at paras 84 and 87.

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out the respondent's scope of works.[160] The applicant sought to set aside the Tribunal's decision on the Labour Supply Claim under the Scope of Submission Ground, the Arbitral Procedure Ground and the Natural Justice Ground.[161] As with the Safety Supervisor Fees Claim, the applicant did not explain, be it in its written or oral submissions, how the first two grounds were established in relation to this claim.

The Tribunal did not exceed the scope of the parties' submission to arbitration

78 I start with the Scope of Submission Ground. The issue of whether the respondent had failed to supply labour to carry out various works on site was indubitably within the scope of the parties' submission to the Arbitration. A few examples would suffice to illustrate this point:

(a) The applicant pleaded in the Statement of Claim that the respondent had failed to supply labour, such that the applicant had to supply additional labour on site.[162] This was denied in the respondent's Defence and Counterclaim.[163]

(b) The issue of whether the respondent had failed to supply labour was explicitly contained in the agreed list of issues.[164]

(c) In the witness statement of Lee Song Chuan Simon ("Mr Lee"), who was the applicant's project manager, it was stated that the

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160 AWS at paras 84 and 87.

161 AWS at para 84.

162 1LWC at p 130, SOC at para 12(b)(i).

163 1LWC at p 1944, D&CC at para 32.

164 1LWC at p 1962.

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respondent "was unable to allocate enough workers" due to its commitment to at least two other projects.[165] It was alleged that as a result of the respondent's insufficient manpower, the applicant had to deploy its own workers.[166] Evidence of toolbox meeting records was adduced to show that the applicant's workers were present on site.[167] As for the respondent, Mr Ding's witness statement listed out the works undertaken by the respondent's workers.[168] It also exhibited records of the manpower that the respondent had on site.[169] Mr Ding further alleged that the additional labour supplied by the applicant was for its own scope of works.[170]

79 The Tribunal did not exceed her jurisdiction in disposing of the Labour Supply Claim. She found that the applicant "[had] not provided any satisfactory evidence and [had] not discharged its burden of proving that the [r]espondent [had] failed to supply sufficient labour".[171] This finding dealt with an issue that fell squarely within the scope of the parties' submission. The applicant's challenge under the Scope of Submission Ground thus failed.

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165 1LWC at p 2048, para 8.

166 1LWC at p 2176, WS-LWC at para 10.

167 1LWC at pp 264–1073.

168 1LWC at p 2217, WS-DM at para 28.

169 1LWC at p 2217, WS-DM at para 27.

170 1LWC at p 2217, WS-DM at para 27.

171 1LWC at p 2608, Award at para 60.1.

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The Tribunal adhered to the agreed arbitral procedure

80 I also dismissed the applicant's challenge under the Arbitral Procedure Ground. The Tribunal was not in breach of any agreed arbitral procedure. As noted above at [77], the applicant had also not identified any such procedure.

There was no breach of the rules of natural justice

81 Under the Natural Justice Ground, the applicant argued that since it had sub-contracted all labour works to the respondent, "a reasonable litigant would have expected the Tribunal to find that all works being done onsite by the [a]pplicant's workers were for the Project".[172] This argument was misconceived. The relevant test under the Natural Justice Ground is *not*, as the applicant framed it, whether a reasonable litigant would have expected the tribunal "to *find*" in favour of the party. That would be a challenge against the tribunal's findings on the merits, which was impermissible (see [13] above). The relevant test is whether the Tribunal conducted herself either irrationally or capriciously, such that "a reasonable litigant in [the applicant's] shoes could not have foreseen the possibility of reasoning of the type revealed" in the Award (see [41] above).

82 Applying the correct formulation to the present case, the Tribunal did not act irrationally or capriciously. The mere fact that the applicant's workers were doing work on site did not prove that they were performing the *respondent's* scope of works. In dismissing the applicant's Labour Supply Claim, the Tribunal explained that she was "not persuaded" by Mr Lee's "unsubstantiated and unsupported" evidence.[173] The Tribunal also stated that the

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172 AWS at para 88.

173 1LWC at p 2608, Award at para 60.1.

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applicant failed to prove that its workers, as tabulated in the toolbox meeting records, had been deployed to carry out the respondent's works.[174] The Tribunal's reasoning flowed from the arguments and evidence placed before it by both parties. As a reasonable litigant *could have* foreseen the Tribunal's reasoning, the applicant could not establish the Natural Justice Ground.

83 The applicant failed to show that the Tribunal's decision on the Labour Supply Claim should be set aside under any of the three grounds. I therefore dismissed the application to set aside this decision.

Issue 5: Retention Sum Counterclaim

84 According to the applicant, the setting-aside of the decision on this counterclaim was consequential on the Court setting aside the decisions on the Pan Sing and Toto Claims, the Safety Supervisor Fees Claim and/or the Labour Supply Claim.[175] Since I have not set aside any of those decisions, the applicant's challenge to set aside this counterclaim was not engaged.

Issue 6: SOPA Declaration and SOPA Costs Counterclaim

85 The applicant sought to set aside the Tribunal's decisions on the SOPA Declaration and the SOPA Costs Counterclaim under the Natural Justice Ground. It was alleged that the Tribunal had disregarded the applicant's submissions "without considering the merits thereof" or had failed to "really try to understand" them.[176] Specifically on the SOPA Declaration, the applicant argued that contrary to the Tribunal's finding, the applicant *had* in fact challenged the adjudicator's determination on the value of the work done by the

174 1LWC at p 2608, Award at para 60.2.

175 AWS at para 89.

176 AWS at para 93.

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respondent.[177] According to the applicant, its case in the Arbitration was that due to the respondent's shortcomings, the applicant had to engage Pan Sing and Toto to carry out the respondent's works. This engagement was before the respondent was terminated.[178] It followed that the adjudicator's finding on the value of work purportedly done *by the respondent* prior to its termination was wrong, since Pan Sing and Toto had done some of the respondent's works. Hence, on a proper understanding of the applicant's case, the applicant *was* objecting to the amount determined in the Adjudication to be the value of work done by the respondent prior to its termination.[179] It was thus "wrong" for the Tribunal to award the SOPA Costs Counterclaim.[180]

86 I was not persuaded by the applicant's arguments. As noted at [62] above, nothing in the Award suggested that the Tribunal had misunderstood the applicant's case on the Pan Sing and Toto Claims. There was also no convincing basis upon which I could infer that the Tribunal had failed to "really try to understand" the applicant's case on the SOPA Declaration.

87 I also disagreed with the applicant that the Tribunal had disregarded its case without considering its merits. As admitted by the applicant, its purported failure to dispute the value of work done was only "[o]ne of the reasons" that led the Tribunal to refuse the applicant's prayer for the SOPA Declaration.[181] There was another (and more significant) reason for dismissing this claim. By failing to make a setting-aside application to the Court (as required under the

177 AWS at para 71.

178 AWS at para 91.

179 AWS at para 91.

180 AWS at para 92.

181 AWS at para 90.

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SOPA), the applicant had waived its right to set aside the adjudication determination.[182] The Tribunal had considered the applicant's claim and ultimately decided to dismiss it for its want of merit. There was no breach of any rules of natural justice.

88 The applicant's argument on the SOPA Costs Counterclaim turned on the Court setting aside the Tribunal's decision not to grant the SOPA Declaration. Since I refused to do so, the applicant's argument on the SOPA Costs Counterclaim also failed. The applicant failed to establish that the Tribunal's decisions on the SOPA Declaration and the SOPA Costs Counterclaim should be set aside under the Natural Justice Ground. I thus dismissed the application to set aside the Tribunal's decisions on both matters.

Conclusion

89 In conclusion, I dismissed the setting-aside application in its entirety. Accordingly, I did not have to consider the issue of whether to remit the matter back to the Tribunal for reconsideration. The applicant had presented its application in an "omnibus" fashion. There were aspects of the Award (such as the Balance Work Counterclaim) which merited a close review in this application. The applicant however applied to set aside almost all of the decisions in the Award and on multiple grounds under the AA in respect of each. On some of those grounds, the applicant did not even present any arguments or submissions (see [67], [70] and [77] above). This approach runs the risk of distracting the Court from the real issues in contention and failed to do proper justice to the applicant's submissions.

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182 1LWC at p 2616, Award at paras 87.1–87.2.

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90 In that regard, the respondent sought indemnity costs on the basis that the applicant's arguments were unmeritorious. However, I considered that the present case did not cross the high threshold to justify an exceptional order of indemnity costs. I hence rejected the respondent's prayer for indemnity costs and ordered costs on the standard basis in the amount of S$15,000 to the respondent.

Wong Li Kok, Alex
Judicial Commissioner

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

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