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

[2024] SGHC 80

Originating Application No 800 of 2023

Between

DEM

… *Applicant*

And

DEL

… *Respondent*

Originating Application No 588 of 2023 (Summons No 2382 of 2023)

Between

DEL

… *Claimant*

And

DEM

… *Defendant*

JUDGMENT

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

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W Co's delivery of the Arbitration documents by post to the Tampines Address and by e-mail to the K E-mail Address was in accordance with the BPA and the SIAC Rules and was therefore proper notice *33*

Service at the Tampines Address and the K E-mail Address continued to constitute proper notice notwithstanding the 8 Sep 2021 E-mail *37*

Further, Mr X continued to have access to the Arbitration documents sent to the Tampines Address and the K E-mail Address *39*

The Arbitration documents served on Mr X gave him proper notice of the arbitration proceedings and the appointment of the Arbitrator *43*

Further and/or alternatively, Mr X did not sustain prejudice as a result of not being served the 2020 NOA *47*

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DEM
v
DEL and another matter

[2024] SGHC 80

General Division of the High Court — Originating Application No 800 of 2023 and Originating Application No 588 of 2023 (Summons No 2382 of 2023)
Kristy Tan JC
13 February, 7 March 2024

19 March 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 HC/OA 800/2023 ("OA 800") is an application by [DEM] to set aside the final award ("Award") made by a sole arbitrator ("Arbitrator") on 26 April 2023 in an arbitration ("Arbitration") administered by the Singapore International Arbitration Centre ("SIAC"). The Award was obtained by [DEL] against [DEM].

2 HC/SUM 2382/2023 ("SUM 2382") is [DEM]'s application to set aside (a) the court order granting [DEL] leave to enforce the Award ("Order") and (b) the judgment entered by [DEL] in terms of the Award ("Judgment") in HC/OA 588/2023 ("OA 588"). The determination of SUM 2382 will follow the result in OA 800.

3 I will refer henceforth to [DEM] as "Mr X" and [DEL] as "W Co". Mr X's primary ground for setting aside the Award is that he was not given proper notice of the arbitration proceedings, having purportedly become uncontactable at the addresses he previously provided under the relevant agreement between the parties. The narrative is not uncommon, but there are twists in the tale.

Facts

The underlying dispute

4 W Co is a company incorporated in Singapore on 2 January 2019.[1] It operates an enrichment centre under a franchised education enrichment brand ("Franchise"). Its sole director is Ms U.[2] W Co purchased the Franchise business pursuant to a Business Purchase Agreement dated 4 January 2019 between Mr X, Ms Y and Z Co as the "Sellers" and W Co as the "Purchaser" ("BPA").[3] Prior to the purchase, (a) Z Co owned and operated the Franchise business; (b) Ms Y held 100% of Z Co's shares; and (c) Mr X was employed by Z Co and had a profit-sharing arrangement with Ms Y in respect of Z Co's business.[4]

5 Along with the BPA, a Shareholders Agreement between W Co, Ms U and Mr X ("SHA"),[5] and an Employment Agreement between W Co and Mr X ("EA"),[6] both dated 4 January 2019, were executed. Under cl 5.1(g) of the BPA,

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1 Affidavit of Ms U filed by W Co in OA 588 on 9 June 2023 ("1U Affidavit") at p 15.

2 Affidavit of Ms U filed by W Co in OA 800 and OA 588 on 22 August 2023 ("3U Affidavit") at para 4.

3 3U Affidavit at para 6; 1U Affidavit at p 25.

4 3U Affidavit at para 5; Affidavit filed by Mr X in OA 800 and OA 588 on 8 August 2023 ("X Affidavit") at para 18.

5 X Affidavit at p 154.

6 X Affidavit at p 141.

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entry into the SHA and EA were conditions precedent for W Co's purchase of Z Co's business.[7]

6 Under the notice clauses in the BPA, SHA and EA, Mr X provided the same (a) address of a flat in Tampines ("Tampines Address"), and (b) e-mail address k[xxxxxxx]@gmail.com ("K E-mail Address"), as his contact details.[8]

7 The three agreements contained provisions for disputes arising out of or in connection with the respective agreements to be referred to arbitration in accordance with the rules of the SIAC. The BPA (cl 17.2) provided for a sole arbitrator,[9] while the SHA (cl 13.2) and EA (cl 9.7(a)) provided for a panel of three arbitrators.[10]

8 From 4 January 2019, Mr X was employed by W Co as "Head – Operations". According to W Co, in around the middle of 2019, Mr X diverted its clientele and staff to a new education centre and misappropriated its teaching curriculum.[11] W Co also discovered that the Franchise business was generating significantly less revenue than expected based on previous representations by Mr X.[12] This led W Co to commence arbitration proceedings against Mr X, Ms Y and Z Co. Mr X's employment with W Co was terminated with effect from 31 May 2019 (according to W Co) or 27 July 2019 (according to Mr X).[13]

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7 1U Affidavit at p 30; X Affidavit at para 20.

8 1U Affidavit at p 34; X Affidavit at pp 150 and 160–161.

9 1U Affidavit at p 35.

10 X Affidavit at pp 149 and 161.

11 3U Affidavit at paras 6 and 60.

12 1U Affidavit at p 114: Award at [103]–[104].

13 1U Affidavit at para 4; X Affidavit at para 7.

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Notice of Arbitration filed on 29 October 2019

9 On 29 October 2019, W Co filed a Notice of Arbitration ("NOA") with the SIAC against Mr X, Ms Y and Z Co (as the first, second and third respondents respectively) ("2019 NOA"). In the 2019 NOA:[14]

(a) The EA, SHA and BPA were collectively defined as the "Agreements" (at para 2).

(b) Mr X's contact details were stated to be the Tampines Address, the K E-mail Address and two mobile phone numbers (at para 4).

(c) The arbitration was stated to be commenced under the arbitration agreements in the EA, SHA and BPA (at para 5).

(d) W Co claimed against Mr X, Ms Y and Z Co for misrepresenting the revenue and profits of the Franchise to W Co, thereby inducing W Co to enter into the BPA, SHA and EA (at para 21). W Co sought to recover the sum paid for the purchase of the Franchise business (at para 33(a)) and losses suffered from January to July 2019 (at para 33(c)).

(e) W Co also claimed against Mr X for "breach of the confidentiality, non-compete and non-solicitation covenants in the Agreements" (at para 31) and for not carrying out his duties under the EA (at para 32). W Co sought damages from Mr X for "breach of his obligations under the Agreements" (at para 33(b)). While this claim was set out under a sub-heading "Breaches of Employment Agreement and Shareholder's Agreement", the main text expressly referred to Mr X's breaches of covenants in and obligations under "the Agreements", which

14 3U Affidavit at pp 137–146.

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term was defined and consistently used in the 2019 NOA to refer to *all* three agreements, *ie*, including the BPA (at paras 2, 5, 18 and 37).

(f) W Co proposed having one arbitrator, to be appointed by the SIAC, adjudicate the matter (at paras 34 and 35).

10 W Co was represented by the same lead counsel, who moved his practice across different law firms, throughout the arbitration proceedings (and in the present proceedings). He was with Ong & Shan LLC when the 2019 NOA was filed. Ong & Shan LLC sent the 2019 NOA to Mr X (a) under cover of a letter dated 5 November 2019 sent by AR registered post to the Tampines Address;[15] and (b) by an e-mail dated 6 November 2019 to the K E-mail Address.[16] It is undisputed that Mr X received the 2019 NOA.[17]

11 On 8 November 2019, Ong & Shan LLC clarified to the SIAC that the 2019 NOA was filed under Rule 6.1(b) of the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) ("SIAC Rules").[18] Under Rule 6.1(b), where a claimant files a single NOA in respect of multiple arbitration agreements, it is deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the NOA is deemed to be an application to consolidate the arbitrations pursuant to Rule 8.1.

12 On 18 November 2019, Farallon Law Corporation ("FLC") sent an e-mail to the SIAC stating that FLC acted for Mr X, Ms Y and Z Co, and were

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15 Affidavit of Ms U filed by W Co in OA 800 and OA 588 on 27 February 2024 ("4U Affidavit") at p 30.

16 4U Affidavit at p 35.

17 X Affidavit at para 25.

18 4U Affidavit at p 60.

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"instructed that on 6 and 7 November 2019, [their] clients were each served a copy of [the 2019 NOA]".[19]

13 On 18 November 2019, the SIAC issued a letter to the parties. The subject line listed three arbitration case numbers and matters in respect of each agreement referred to in the 2019 NOA. The third of these was the Arbitration, in respect of the BPA. The SIAC stated that "[t]he above-captioned arbitration is deemed to have commenced on 18 November 2019 pursuant to Rule 3.3 of the [SIAC Rules]". The respondents were asked to file a Response to the 2019 NOA, comment on W Co's proposal for a sole arbitrator to be appointed by the SIAC and provide their views on W Co's application to consolidate the three arbitrations. The letter was sent to Mr X by courier to the Tampines Address and by e-mail to the K E-mail Address. It was also sent to FLC.[20]

Mr X's Responses to the 2019 NOA

14 On 3 December 2019, FLC served three Responses to the 2019 NOA on Ong & Shan LLC: (a) Mr X's Response in respect of the EA arbitration;[21] (b) Mr X's Response in respect of the SHA arbitration;[22] and (c) Mr X, Ms Y and Z Co's Response in respect of the Arbitration, *ie*, the third arbitration pertaining to the BPA ("3rd Response to 2019 NOA").[23] In all three Responses, Mr X was described as being "[Mr X] of [the Tampines Address]".[24]

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19 4U Affidavit at p 57.

20 4U Affidavit at pp 38–64.

21 3U Affidavit at pp 176–197.

22 3U Affidavit at pp 198–217.

23 3U Affidavit at pp 218–244.

24 3U Affidavit at pp 178, 200 and 221.

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15 In the 3rd Response to 2019 NOA, Mr X denied W Co's allegations of misrepresentation and set out his positive case (at paras 43–57).[25] He also noted that W Co had "allege[d] that [he] ha[d] breached the confidentiality, non-compete and non-solicitation covenants *in the BPA*" (emphasis added); denied any breach of "the confidentiality, non-compete and non-solicitation covenants *in the BPA*" (emphasis added); and set out his positive case (at paras 59–72).[26]

16 The respondents objected to the consolidation of the three arbitrations.

The SIAC's rejection of W Co's consolidation application

17 On 2 March 2020, the SIAC issued a letter to Ong & Shan LLC and FLC, rejecting W Co's application to consolidate the three arbitrations. The SIAC stated that the three arbitrations "shall henceforth continue as separate arbitrations under [the SIAC] Rules". W Co was asked to file an NOA in respect of each arbitration that had not been consolidated and to make payment of additional filing fees for the second and third arbitrations, pursuant to the requirements for W Co to do so under Rule 6.3 of the SIAC Rules.[27]

18 Sometime after the SIAC's 2 March 2020 letter, Mr X ceased to be represented by FLC. When FLC wrote to the SIAC on 26 May 2020 on filing fees, FLC stated that it acted for Ms Y and Z Co (only) and copied Mr X by e-mail to the K E-mail Address.[28] For the rest of the arbitration proceedings, Mr X was not legally represented. In the present proceedings, he stated that it was "[a]s a result of [his] disagreement with [FLC]" that he was "subsequently not

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25 3U Affidavit at pp 233–239.

26 3U Affidavit at pp 239–243.

27 3U Affidavit at pp 246–249.

28 3U Affidavit at pp 251–252.

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represented by [FLC]",[29] but did not explain why he chose not to engage other legal counsel after his apparent "disagreement" with FLC.

19 On 29 May 2020, W Co's lead counsel, now practising at Tang Thomas LLC, wrote to the SIAC (only) informing that W Co wished to proceed with only the Arbitration, *ie*, the BPA arbitration.[30] The SIAC looped FLC into the e-mail communications, and reminded Tang Thomas LLC to keep the respondents copied on all communications. Tang Thomas LLC clarified later that day that W Co would be withdrawing the other two EA and SHA arbitrations.[31] Tang Thomas LLC did not send or copy these communications to Mr X. However, on 29 May 2020, FLC issued a letter to the SIAC, which recapitulated Tang Thomas LLC's notification that W Co would proceed only with the Arbitration and withdraw the other two arbitrations. FLC's letter was copied to Mr X by e-mail to the K E-mail Address.[32]

Notice of Arbitration filed on 14 August 2020

20 On 14 August 2020, Tang Thomas LLC filed W Co's NOA for the Arbitration ("2020 NOA") with the SIAC and served it on RPC Premier Law ("RPC") (who took over the legal representation of Ms Y and Z Co in June 2020[33]) by e-mail to the SIAC and RPC.[34] Tang Thomas LLC *did not send* the 2020 NOA to Mr X.

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29 X Affidavit at para 29.

30 4U Affidavit at pp 83–84.

31 4U Affidavit at pp 86–88.

32 4U Affidavit at pp 90–91 and 93.

33 4U Affidavit at p 99.

34 4U Affidavit at p 109.

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21 Save that there were no claims under the EA and SHA in the 2020 NOA, the content of the 2020 NOA was largely similar to that in the 2019 NOA. W Co maintained its claims against the three respondents for misrepresentation (at paras 12–21); its claims against Mr X for breach of his confidentiality, non-compete and non-solicit covenants in the BPA (at paras 22–33); and the main reliefs sought (at para 34).[35]

22 On 7 September 2020, RPC sent Ms Y and Z Co's Response to the 2020 NOA by e-mail to the SIAC and Tang Thomas LLC.[36] This e-mail was not sent to Mr X. However, later that day, the SIAC replied and added the K E-mail Address in the 'To' field of the SIAC's e-mail. RPC's e-mail of 7 September 2020 and Tang Thomas LLC's e-mail of 14 August 2020 (see [20] above) were in the e-mail thread below the SIAC's 7 September 2020 e-mail. The SIAC "note[d] that [Mr X] has not been copied in recent correspondences, and … re-copied [Mr X] in the said communications".[37]

23 On 22 September 2020, using the same e-mail thread, Tang Thomas LLC stated to the SIAC that "[i]t is unclear to [W Co] if [Mr X] will be submitting any response" and asked the SIAC how the matter should proceed. RPC was copied in this e-mail. However, Tang Thomas LLC input a *misspelled* version of the K E-mail Address in the 'Cc' field of its e-mail.[38] In the result, when the SIAC replied to Tang Thomas LLC on 22 September 2020 using the e-mail thread, the misspelled version of the K E-mail Address continued to be used. The SIAC informed Tang Thomas LLC that following receipt of the

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35 3U Affidavit at pp 372–384.

36 4U Affidavit at p 108; 3U Affidavit at pp 410–418.

37 4U Affidavit at pp 107–109.

38 4U Affidavit at pp 105–106.

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requisite deposits, the SIAC would proceed with the appointment of the sole arbitrator. The SIAC noted that W Co, Ms Y and Z Co agreed that the SIAC may appoint the sole arbitrator.[39]

24 On 23 September 2020, RPC used the same e-mail thread to send an e-mail to the SIAC. RPC copied its e-mail to Tang Thomas LLC and the *accurate* K E-mail Address. The SIAC and Tang Thomas LLC's e-mails of 22 September 2020 (see [23] above) were in the e-mail thread below RPC's 23 September 2020 e-mail.[40]

Appointment of the Arbitrator

25 On 22 October 2020, the SIAC issued a letter to Tang Thomas LLC, Mr X and RPC, notifying them that the President of the SIAC Court of Arbitration had appointed the Arbitrator as the sole arbitrator in the Arbitration.[41] The SIAC's letter enclosed the Arbitrator's letter of appointment dated 21 October 2020, which stated that her appointment was made pursuant to Rule 12.1 of the SIAC Rules. The SIAC's letter was sent by e-mail to the K E-mail Address.[42]

Procedural Order No 1 and preliminary meeting in the Arbitration

26 On 27 October 2020, the Arbitrator sent an e-mail to Tang Thomas LLC, RPC and the K E-mail Address. She noted that Mr X had not submitted a Response to the 2020 NOA and asked that he explain the delay and confirm whether he intended to participate in the Arbitration, within a week. She

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39 4U Affidavit at p 105.

40 4U Affidavit at pp 104–106.

41 4U Affidavit at pp 117–124.

42 4U Affidavit at p 114.

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highlighted that "the Tribunal may still proceed with the arbitration even if any party fails to participate".[43] There was no reply from Mr X.

27 From 27 October 2020 to 10 November 2020, the Arbitrator, Tang Thomas LLC and RPC exchanged e-mails on the draft Procedural Order No 1 ("PO1") for the conduct of the Arbitration and the scheduling of the first preliminary meeting between the Arbitrator and parties. The K E-mail Address was copied in these e-mails. On the Arbitrator's direction, Tang Thomas LLC also sent the suite of these e-mails and the Zoom details for the first preliminary meeting to Mr X by registered post to the Tampines Address and by e-mail to the K E-mail Address on 11 November 2020.[44]

28 The first preliminary meeting was held on 20 November 2020. Mr X did not attend. PO1 was finalised and issued on 30 November 2020.[45] PO1 contained the procedural timetable for the Arbitration, which reflected that the hearing was scheduled for 6 to 8 September 2021.[46] The K E-mail Address was copied in the e-mails between the Arbitrator, Tang Thomas LLC and RPC on PO1.[47]

Pleadings, discovery and witness statements in the Arbitration

29 On 24 December 2020, W Co served its Statement of Claim and Bundle of Documents[48] by e-mail to the K E-mail Address, RPC, the Arbitrator and the

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43 4U Affidavit at pp 126–127.

44 4U Affidavit at pp 129–170 and 172–182.

45 4U Affidavit at p 189; 3U Affidavit at pp 1080–1087.

46 3U Affidavit at pp 1083–1084.

47 4U Affidavit at pp 184–187 and 189–193.

48 3U Affidavit at pp 420–445 and 447–936.

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SIAC.[49] The Statement of Claim pleaded, in more detail than the 2020 NOA, W Co's claims (a) against the three respondents for misrepresentation (at paras 5–32, 47(a) and 48–49);[50] and (b) against Mr X for breach of his confidentiality, non-compete and non-solicit covenants in the BPA (at paras 33–41 and 47(b)).[51]

30 RPC served Ms Y and Z Co's Statement of Defence and Bundle of Documents on 28 January 2021.[52] Tang Thomas LLC served W Co's Reply on 11 February 2021.[53] RPC served Ms Y and Z Co's Rejoinder on 1 March 2021.[54] These pleadings were served by e-mails copied to the K E-mail Address.[55]

31 Tang Thomas LLC and RPC corresponded on document production requests in March and April 2021.[56] W Co produced a Supplemental Bundle of Documents on 8 April 2021.[57] The Arbitrator made Procedural Order No 2 on document production ("PO2") on 18 May 2021.[58] Ms Y and Z Co produced their Supplemental Bundle of Documents[59] and W Co produced its 2nd Supplemental Bundle of Documents on 1 June 2021.[60] Of these, the evidentiary record shows

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49 4U Affidavit at pp 195–196.

50 3U Affidavit at pp 422–437 and 442–444.

51 3U Affidavit at pp 437–441 and 443.

52 3U Affidavit at pp 938–971 and 973–1060.

53 3U Affidavit at pp 1062–1067.

54 3U Affidavit at pp 1069–1078.

55 4U Affidavit at pp 198–199, 202–206 and 208–209.

56 1U Affidavit at p 96: Award at [27(e)]–[27(g)].

57 3U Affidavit at pp 1582–1949.

58 3U Affidavit at pp 1089–1218.

59 3U Affidavit at pp 1951–1972.

60 3U Affidavit at pp 1974–2170.

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that only PO2 and Ms Y and Z Co's Supplemental Bundle of Documents were sent by e-mail to the K E-mail Address.[61]

32 On 28 July 2021, W Co filed four Witness Statements[62] and Ms Y and Z Co filed one Witness Statement.[63] RPC sent Ms Y and Z Co's Witness Statement to Mr X by hand delivery to the Tampines Address on 30 July 2021.[64] Tang Thomas LLC sent W Co's Witness Statements to Mr X by e-mail to the K E-mail Address on 2 August 2021[65] and by registered post to the Tampines Address on 3 August 2021.[66]

Settlement between W Co, Ms Y and Z Co

33 On 20 August 2021, Tang Thomas LLC sent a letter to the Arbitrator, the SIAC, RPC and Mr X, notifying that W Co, Ms Y and Z Co had reached a settlement, and that W Co discontinued its claims against Ms Y and Z Co but would proceed on its claims against Mr X. The letter was sent to Mr X by e-mail to the K E-mail Address and by registered post to the Tampines Address.[67]

34 On 24 August 2021, the SIAC sent an e-mail to the Arbitrator, Tang Thomas LLC, RPC and the K E-mail Address, informing that the case title would be amended to reflect Mr X as the sole respondent in the Arbitration.[68]

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61 4U Affidavit at pp 211–212 and 214–245.

62 3U Affidavit at pp 1220–1305.

63 3U Affidavit at pp 1307–1507.

64 4U Affidavit at p 272.

65 4U Affidavit at pp 260–261.

66 4U Affidavit at p 268.

67 4U Affidavit at pp 274–275.

68 1U Affidavit at p 61.

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Pre-hearing procedural call in the Arbitration

35 A pre-hearing procedural call took place between the Arbitrator and Tang Thomas LLC via Zoom on 24 August 2021. Mr X did not attend. The correspondence scheduling and setting out the Zoom details for the call had been sent or copied to the K E-mail Address beforehand.[69]

36 On 31 August 2021, the Arbitrator sent an e-mail to Tang Thomas LLC, copied to the K E-mail Address and the SIAC. She recapitulated the directions made at the call, including the fixing of a one-day substantive hearing via Zoom on 8 September 2021. She also stated: "[Mr X] is reminded that the Tribunal may proceed with the arbitration and make an award on the merits of the claim against [Mr X], even if any party fails to participate in the arbitration."[70]

37 Tang Thomas LLC sent letters to Mr X by post to the Tampines Address and by e-mail to the K E-mail Address: (a) on 31 August 2021, stating the directions made at the pre-hearing procedural call;[71] (b) on 2 September 2021, setting out the Zoom details for the 8 September 2021 hearing;[72] and (c) on 6 September 2021, enclosing a copy of the Arbitrator's 31 August 2021 e-mail.[73]

W Co's Opening Statement in the Arbitration

38 On 1 September 2021, W Co filed its Opening Statement.[74] Tang Thomas LLC sent the Opening Statement to Mr X by post to the Tampines

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69 4U Affidavit at pp 274, 282 and 284–285.

70 4U Affidavit at pp 289–290.

71 4U Affidavit at p 298.

72 4U Affidavit at pp 305–306.

73 4U Affidavit at p 308. See also 4U Affidavit at pp 289–296.

74 1U Affidavit at p 98: Award at [37].

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Address on 6 September 2021 and by e-mail to the K E-mail Address on 1 and 6 September 2021.[75]

Events from 8 to 20 September 2021

39 The substantive hearing in the Arbitration took place on 8 September 2021. The Arbitrator heard W Co's counsel's oral opening address and the testimony of W Co's witnesses.[76]

40 After the hearing was completed, the Arbitrator found that she had received an e-mail dated 8 September 2021 at 12.32pm ("8 Sep 2021 E-mail").[77] The 'From' field in the e-mail contained a first name beginning with the letter 'J' ("First Name"), the surname "Haw" ("Surname") and an e-mail address j[xxxxxxx]@gmail.com ("J E-mail Address"). None of the First Name, Surname and J E-mail Address comprised any part of Mr X's name. The 8 Sep 2021 E-mail was sent *only* to the Arbitrator; no other addressees appeared in the 'To' field, and there was no 'Cc' field. The 'Subject' line stated "Enquiries on hearing details". The sender claimed to be Mr X; that he had no access to documents sent to the Tampines Address; and that he had no access to the e-mail account at the K E-mail Address ("K E-mail Account"). He asked for correspondence to be sent to the J E-mail Address. The text of the 8 Sep 2021 E-mail is reproduced in full:[78]

> Dear [Arbitrator],
>
> My name is [Mr X]. It have come to my notice that i have been involved in a arbitration case hearing today.

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75 4U Affidavit at pp 310 and 312. See also 4U Affidavit at pp 289–296.

76 1U Affidavit at p 99: Award at [42]–[45].

77 1U Affidavit at p 100: Award at [47].

78 1U Affidavit at p 65.

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> An ex colleague of mine, [Ms Y] has alerted me to my involvement of an arbitration case which you will be chairing.
>
> I understand from [Ms Y] that correspondence had been sent to me. however i would like to note that the residential address of [the Tampines Address] is the residential address of my recently deceased parents and currently under the administrating of my sister. as the place is currently tenanted. i have no access to any letters sent to there.
>
> in addition, i was made known that correspondence has been sent to a e-mail: [K E-mail Address]. do note that *this email was my ex-company email* when i was a partner and shareholder at [W Co]. *i have no access to this e-mail address at all.*
>
> i would appreciate for all correspondence to be sent to my email [J E-mail Address]. currently i am relying on information from [Ms Y] and i would be thankful for more information of the case.
>
> thanks and much appreciated.
>
> [emphasis added]

41 The Arbitrator sent an e-mail on 8 September 2021 at 4.20pm to Tang Thomas LLC, the SIAC, the K E-mail Address and the J E-mail Address. She attached the 8 Sep 2021 E-mail and stated: "The sender purports to be [Mr X], and seeks information on the arbitration. [W Co] is directed to take the necessary action to engage with [Mr X] on the arbitration." She requested an update by 14 September 2021.[79] Tang Thomas LLC replied on 9 September 2021 using the same e-mail thread, *ie*, with the K E-mail Address and the J E-mail Address in copy, stating that they would "proceed to engage with this person" and would "as a preliminary step attempt to verify that the person behind the e-mail is indeed [Mr X]".[80]

42 On 10 September 2021, Tang Thomas LLC sent an e-mail to the J E-mail Address. Tang Thomas LLC (a) stated that as arbitration proceedings were

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79 1U Affidavit at pp 63–65.

80 1U Affidavit at pp 73–74.

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confidential, they would "first need to verify that you are indeed [Mr X] before engaging you substantively on the arbitration matters"; (b) asked for a copy of an identification document of Mr X; (c) asked for payment of Mr X's share of deposits due to the SIAC and attached a copy of the SIAC's letter dated 21 July 2021 on the collection of deposits; (d) asked for a physical mailing address "since you have indicated to the Tribunal that you are no longer resident at [the Tampines Address]"; and (e) stated that they would "follow up with other substantive and administrative matters once the above are provided" and they were "satisfied" that the sender of the 8 Sep 2021 E-mail was indeed Mr X.[81]

43 Tang Thomas LLC received no reply to its 10 September 2021 e-mail to the J E-mail Address.

44 On 14 September 2021, Tang Thomas LLC sent an e-mail to the Arbitrator, copied to the SIAC and the K E-mail Address.[82] Tang Thomas LLC (a) attached a copy of its 10 September 2021 e-mail to the J E-mail Address and informed that they had received no response to that e-mail; (b) highlighted that Mr X had provided the Tampines Address in his Response to the 2019 NOA (see [14] above) and submitted that Mr X was not precluded from accessing the mail sent to the Tampines Address just because the flat was tenanted or under his sister's administration; (c) highlighted that FLC had copied its 26 May 2020 letter to Mr X by way of e-mail to the K E-mail Address (see [18] above), which FLC had arguably obtained from Mr X himself, and submitted that Mr X must therefore have access to the K E-mail Address; (d) submitted that W Co had complied with its obligations under Rule 2.1 of the SIAC Rules and that correspondence sent to the Tampines Address and the K E-mail Address were

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81 1U Affidavit at pp 78–80.

82 1U Affidavit at pp 72–73.

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properly served; (e) requested to proceed with the Arbitration as they were unable to ascertain whether the sender of the 8 Sep 2021 E-mail was indeed Mr X, and even if he were, "his appearance by email on the final day of the hearing [and] subsequent failure to respond to [Tang Thomas LLC's] e-mail of 10 September 2021 [was] indicative of his intention to merely frustrate the proceedings"; and (f) stated that "[f]or the reasons aforesaid, and to maintain the confidentiality of proceedings", the J E-mail Address was not copied.

45 On 17 September 2021, the Arbitrator replied to Tang Thomas LLC, copying the SIAC and the K E-mail Address. She asked W Co to clarify if there was any attempt to "ascertain whether [Ms Y] has been in communication with [Mr X] regarding the arbitration (as indicated in the [8 Sep 2021 E-mail])".[83]

46 On 17 September 2021, Tang Thomas LLC wrote to RPC to ask "if [Ms Y] has been in communication with [Mr X], in respect of the hearing of the Arbitration".[84] RPC sought the following clarification on 17 September 2021: "Is the Tribunal's query about whether [Ms Y] has communicated with [Mr X] about the dates and times of the arbitration hearing or if [Ms Y] and [Mr X] have discussed the evidence to be given at the arbitration hearing?"[85] Tang Thomas LLC replied on 17 September 2021 that "the Tribunal's request pertains to whether [Ms Y] had alerted [Mr X] of his involvement in the arbitration hearing".[86] On 18 September 2021, RPC replied: "We are instructed that [Ms

83 1U Affidavit at p 71.

84 1U Affidavit at p 85.

85 1U Affidavit at p 83.

86 1U Affidavit at p 82.

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Y] did not communicate with [Mr X] in relation to his involvement in the arbitration hearing."[87]

47 On 20 September 2021, Tang Thomas LLC sent an e-mail to the Arbitrator, copied to the SIAC and the K E-mail Address, stating that they had contacted RPC and had been "informed that [Ms Y] did not communicate with [Mr X] regarding his involvement in the arbitration hearing".[88]

48 The arbitration proceedings then proceeded without further engagement of the J E-mail Address.

W Co's Closing Submissions in the Arbitration

49 On 20 October 2021, Tang Thomas LLC served W Co's Closing Submissions[89] by e-mail to the Arbitrator, the SIAC and the K E-mail Address.[90]

The Award

50 Tang Thomas LLC merged with Wee Swee Teow LLP ("WST") in July 2022. The same lead counsel continued to represent W Co[91] (moving back to Tang Thomas LLC later). In November 2022, WST and the Arbitrator exchanged e-mails, copied to the SIAC and the K E-mail Address, regarding declaring the proceedings in the Arbitration closed. The Arbitrator made the

87 1U Affidavit at p 82.

88 1U Affidavit at p 70.

89 3U Affidavit at pp 1509–1580.

90 1U Affidavit at pp 67–68.

91 4U Affidavit at pp 333–334.

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declaration after giving Mr X the opportunity to indicate if he wished to say anything further and receiving no response.[92]

51 On 27 April 2023, the SIAC sent the Award dated 26 April 2023 by e-mail to WST and the K E-mail Address. The SIAC stated that the original copy of the Award would follow by courier.[93] In the Award, the Arbitrator stated that she was satisfied that Mr X had been provided ample notice of the arbitration proceedings because: (a) her communications with the parties and directions had been provided to Mr X by e-mail and/or registered post, in accordance with cl 11.1 of the BPA; (b) there was insufficient basis to conclude that the sender of the 8 Sep 2021 E-mail was Mr X; and (c) in any event, the sender had failed to respond to W Co's counsel.[94] On W Co's substantive claims, the Arbitrator found Mr X liable for misrepresentation[95] and for breach of the non-compete and non-solicit provisions in the BPA.[96] The Arbitrator ordered quantified damages and costs, plus interest, to be paid by Mr X to W Co.[97]

Procedural history in OA 588 and OA 800

52 On 12 May 2023, WST sent a letter to Mr X by AR registered post and certificate of posting to the Tampines Address and by e-mail to the K E-mail Address and the J E-mail Address, demanding payment of the sums awarded.[98]

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92 4U Affidavit at pp 329–331.

93 4U Affidavit at pp 342 and 344–345.

94 1U Affidavit at p 101: Award at [52].

95 1U Affidavit at p 132: Award at [174] and [177].

96 1U Affidavit at p 139: Award at [198].

97 1U Affidavit at p 145: Award at [219].

98 1U Affidavit at pp 147–150.

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53 On 9 June 2023, W Co filed OA 588 for permission to enforce the Award and for judgment to be entered in terms of the Award. W Co applied to serve the order and judgment to be made on Mr X at his last known place of residence at the Tampines Address. An ACRA People Profile search performed by W Co on Mr X on 9 June 2023 reflected his address as the Tampines Address.[99] W Co obtained the Order and the Judgment on 12 June 2023.

54 On 12 July 2023, WST's process server ("Mr Fun") went to the Tampines Address to serve the Order and Judgment. There, Mr Fun was informed by a man that Mr X had moved and that the man was the current owner of the flat, having bought the flat and moved in for around a year.[100]

55 On 20 July 2023, W Co filed an application for substituted service of the Order and Judgment on Mr X by way of (a) e-mail to Mr X's "three (3) last known e-mail addresses", which included the K E-mail Address and the J E-mail Address; and (b) eLitigation to Mr X's Singpass app inbox.

56 On 21 July 2023, Mr X sent an e-mail from the J E-mail Address to Mr Fun and the SIAC, stating that he was "recently made aware that a Final Award had been rendered against [him] in an SIAC arbitration purportedly commenced by [W Co] pursuant to [the BPA]". He asserted that he was "neither reasonably informed nor given notice that the Arbitration was ongoing" and "was not reasonably served with any documents filed in the Arbitration and the Final Award personally by [W Co] and/or SIAC". He asked that all documents filed in the Arbitration and the Award be served on him at an address in Tanjong

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99 1U Affidavit at p 20.

100 Affidavit of Fun Chee Hung filed by W Co in OA 588 on 20 July 2023 at paras 4–5.

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Katong ("Tanjong Katong Address").[101] On 25 July 2023, Mr Fun served the Order and Judgment on Mr X at the Tanjong Katong Address.[102]

57 Mr X engaged Chua & Partners LLP ("C&P") to represent him. C&P filed a Notice of Appointment of Solicitor on 27 July 2023. Mr X alleged that it was only on that day, having gained access to the OA 588 case file, that he was able to access the Award (exhibited to the 1U Affidavit filed by W Co).[103] On 8 August 2023, Mr X filed OA 800 to set aside the Award, and SUM 2382 to set aside the Order and Judgment made in OA 588.

Grounds relied on by Mr X for setting aside the Award

58 Mr X relies on four grounds for setting aside the Award:

(a) First, under s 48(1)(*a*)(iii) of the Arbitration Act 2001 (2020 Rev Ed) ("AA"), that he was not given proper notice of the Arbitration or the Arbitrator's appointment ("Lack of Proper Notice Ground").[104]

(b) Second, under s 48(1)(*a*)(iv) of the AA, that the Arbitrator failed to consider the "essential issue of whether the BPA … is enforceable against [Mr X] for lack of consideration", *ie*, an *infra petita* challenge ("*Infra Petita* Ground").[105]

(c) Third, under s 48(1)(*a*)(vii) of the AA, that there was a breach of the rules of natural justice, specifically, the fair hearing rule, as (i) Mr X

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101 X Affidavit at para 12 and pp 126–127.

102 Affidavit of Fun Chee Hung filed by W Co in OA 588 on 27 July 2023 at para 3.

103 X Affidavit at para 15.

104 Mr X's Written Submissions dated 31 January 2024 ("XWS") at paras 16–66.

105 XWS at paras 67–76.

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did not have the opportunity to be heard because he did not have proper notice of the Arbitration and the Arbitrator's appointment; and (ii) the Arbitrator failed to apply her mind to an essential issue ("Breach of Natural Justice Ground").[106]

(d) Fourth, under s 48(1)(*b*)(ii) of the AA, that the Award is contrary to public policy because Mr X did not have the opportunity to be heard, and W Co's "questionable behaviour … since the 2020 NOA to after the evidentiary hearing in September 2021 all but guaranteed [Mr X's] absence from the Arbitration" ("Contrary to Public Policy Ground").[107]

59 I will address each ground of challenge in turn. Finally, I will touch briefly on an issue raised by W Co as to whether OA 800 was commenced within the time provided under s 48(2) of the AA.

The Lack of Proper Notice Ground

Mr X's case

60 Mr X's evidence was that he did not receive correspondence sent to the Tampines Address, the K E-mail Address and the J E-mail Address at various points in time:

(a) When the BPA was signed, he stated his address as the Tampines Address as it was the residential address of his parents. His mother had passed away but his father was still alive at the time.[108] He stated his e-mail address as the K E-mail Address because it was his "work email".

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106 XWS at paras 77–82.

107 XWS at paras 83–91.

108 X Affidavit at para 23.

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He had created the K E-mail Account during his employment at Z Co and continued using the K E-mail Address for his work at W Co.[109]

(b) When FLC represented him and filed his Responses to the 2019 NOA, he still had access to the Tampines Address and the K E-mail Address. His father had passed away in October 2019 but his sister (who was the administrator of their father's estate) had not decided what to do with the flat at the Tampines Address yet.[110] He was subsequently not represented by FLC due to his disagreement with them.[111]

(c) From an unspecified time in 2020, he did not have access to the correspondence sent to the Tampines Address. The flat at the Tampines Address was under his sister's administration, and also tenanted to one Mr Haw ("Tenant") from January 2020.[112]

(d) He did not use the K E-mail Account from mid-2020. In or around mid-2020, he was contacted by a police officer "to give [his] statement regarding an alleged offence under the Computer Misuse Act 1993 lodged by [W Co]". He understood from the police that it was regarding his alleged access to W Co's confidential information such as its student base, Facebook account and e-mails. He asked the officer for advice on what he should do and was "advised … to err on the side of caution and log out of all [W Co] related communication channels".

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109 X Affidavit at para 24.

110 X Affidavit at para 28.

111 X Affidavit at para 29.

112 X Affidavit at para 31(a).

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After giving his statement, Mr X logged out of the K E-mail Account on his mobile phone and did not log into that e-mail account anymore.[113]

(e) In or around the first half of September 2021, he "reconnected" with Ms Y. During a meeting, she mentioned that (i) she and Z Co had resolved their dispute with W Co; (ii) a hearing for the Arbitration was initially scheduled to take place from 6 to 8 September 2021; and (iii) she did not know if W Co was continuing its claims against him and if the hearing was going ahead. He asked for the Arbitrator's e-mail address to reach out directly to the Arbitrator for more information. Ms Y gave him the Arbitrator's e-mail address verbally.[114]

(f) After he sent the 8 Sep 2021 E-mail to the Arbitrator using the J E-mail Address, he was not aware of any correspondence from the Arbitrator or W Co's counsel sent to the J E-mail Address. He did not receive any push notifications of e-mails from them. He checked the inbox but there was no e-mail from them there. "At that time", it "did not cross [his] mind" to check the 'Junk' folder.[115]

(g) In or around early May 2023, he checked the e-mail account with the J E-mail Address ("J E-mail Account") and there was still no e-mail from W Co's counsel or the Arbitrator in the inbox. "This time", he "decided to check" the 'Junk' folder and "to [his] shock", he found four e-mails regarding the arbitration: (i) the Arbitrator's 8 September 2021 e-mail (see [41] above); (ii) Tang Thomas LLC's 9 September 2021 e-mail (see [41] above); (iii) Tang Thomas LLC's 10 September 2021

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113 X Affidavit at para 31(b).

114 X Affidavit at para 36.

115 X Affidavit at para 39.

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e-mail (see [42] above); and (iv) WST's 12 May 2023 e-mail enclosing their letter of demand (see [52] above).[116]

(h) He was "shocked" when he discovered the e-mails in his 'Junk' folder. He was "further astonished" when he read WST's letter of demand for payment of the sums awarded by 26 May 2023, as he was "not given the opportunity to defend [himself]" in the Arbitration.[117] He did not save a copy of the e-mails in the 'Junk' folder as 'Spam' before he unmarked them. Thus, he was unable to exhibit a record of the e-mails as 'Spam'.[118]

61 Mr X also got Ms Y to file an affidavit. Ms Y's evidence was that "from around 1 January 2021 to 6 September 2021", she was not on speaking terms with Mr X due to personal disagreements relating to the BPA.[119] She only "reconnected" with Mr X in or around the first half of September 2021.[120] Her account of their meeting mirrored Mr X's account.[121] When WST clarified to RPC on 17 September 2021 that their query "pertain[ed] to whether [Ms Y] had alerted [Mr X] of his involvement in the arbitration hearing", she had understood the query to be whether she had informed Mr X that he was still involved as a party to the arbitration proceedings and whether she had told him that he had to attend the Arbitration hearing.[122] RPC therefore replied that "[Ms

116 X Affidavit at para 40.

117 X Affidavit at para 45.

118 X Affidavit at para 40.

119 Affidavit of Ms Y filed on behalf of Mr X in OA 800 and OA 588 on 8 August 2023 ("Y Affidavit") at para 9.

120 Y Affidavit at para 10.

121 Y Affidavit at paras 11 and 12.

122 Y Affidavit at para 15.

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Y] did not communicate with [Mr X] in relation to his involvement in the arbitration hearing" (see [46] above).[123]

62 In his written submissions, Mr X argued that he was not given proper notice of the arbitration proceedings because the 2020 NOA was not sent to him. Only the 2020 NOA could have given him proper notice of the claims W Co ultimately chose to pursue against him and of its proposal for the appointment of the arbitrator in the Arbitration. He suffered prejudice as he did not engage legal counsel to represent him and defend the claims in the Arbitration, which he would have done if he had been given proper notice of the Arbitration.[124]

63 Notwithstanding that cl 11.1 of the BPA stated Mr X's e-mail address as the K E-mail Address, Mr X further argued that the parties did not agree to receive notices or communications by e-mail. Clause 11.1 set out only three agreed modes of delivery: (a) personal; (b) post; or (c) facsimile. The plain and ordinary meaning of "by post" means delivery through the postal service and not electronic transmission. This interpretation of cl 11.1 of the BPA is reinforced when contrasted with the notice provisions in the EA and the SHA, which expressly provided for e-mail as an agreed mode of delivery.[125] W Co sent only limited documents in the Arbitration by post to the Tampines Address and these would not have given Mr X proper notice of W Co's claims against him.[126] It was "insufficient" for the Arbitrator's letter of appointment to have been sent by e-mail to the K E-mail Address.[127]

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123 Y Affidavit at para 16.

124 XWS at paras 34 and 42; X Affidavit at paras 53–58.

125 XWS at paras 51 and 58.

126 XWS at para 61.

127 XWS at para 50.

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64 At the hearing of OA 800 and SUM 2382 ("Hearing"), Mr X's counsel advanced a new argument that, since there was no prescribed form in cl 11.1 of the BPA for a party to give notice of a change in their contact details, the 8 Sep 2021 E-mail should be treated as notification by Mr X of a change in his contact details to the J E-mail Address. From that point onwards, communications and documents in the Arbitration should have been sent to the J E-mail Address.

W Co's case

65 W Co submitted that Mr X had received notice of the arbitration proceedings because the 2019 NOA was served on him;[128] W Co had served documents and communications in accordance with cl 11.1 of the BPA;[129] Mr X's explanations of non-receipt are unsatisfactory and untenable;[130] and the Arbitrator had taken steps to satisfy herself that Mr X was provided with notice of the proceedings.[131] The only inference to be drawn is that Mr X chose to turn a blind eye to and not participate in the arbitration proceedings.[132]

66 Ms U further gave evidence that:

(a) Her police reports did not pertain to Mr X's use of the K E-mail Address.[133] In her first police report on 27 July 2019, she informed the police that Mr X had not returned "the trainers file, student's attendance records, the company's phone and centre's key, and the password to

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128 W Co's Written Submissions dated 31 January 2024 ("WWS") at paras 27(a) and 33.

129 WWS at paras 27(b) and 28–32.

130 WWS at paras 27(c) and 36.

131 WWS at paras 27(e) and 40.

132 WWS at para 44.

133 3U Affidavit at paras 19–20.

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access the data … in the centre computer [*sic*]".[134] In her second police report on 29 July 2019, she reported suspected theft by Mr X of trainer contracts, attendance records of students and trainers, the company mobile phone, the key to W Co's enrichment centre, and the password for the computers.[135] Neither Ms U nor her husband, Mr V, had ever asked Mr X to hand over information relating to, or to cease using, the K E-mail Address because the K E-mail Account belonged to Mr X and was not created, maintained or accessed by W Co.[136] On this basis, Ms U averred that Mr X's claim to have ceased to check his K E-mail Account after his police interview in around mid-2020 is false.

(b) The Tenant to whom the flat at the Tampines Address was allegedly tenanted from January 2020 was the registered proprietor of a trademark used for Mr X's workplace. The trademark was registered in December 2020.[137] Yet, Mr X did not disclose that he shared this connection with the Tenant.[138]

(c) The way in which Gmail accounts operate is that e-mails that have been in the 'Spam' folder for more than 30 days will be automatically deleted, as stated by the Gmail service itself.[139] On this basis, Ms U averred that Mr X's claim to have only seen the e-mails sent to the J E-mail Address when he checked the 'Junk' folder of the J

134 3U Affidavit at pp 122–124.

135 3U Affidavit at pp 125–128.

136 3U Affidavit at para 20.

137 3U Affidavit at para 12 and pp 53–54.

138 3U Affidavit at para 65(a).

139 3U Affidavit at para 47 and pp 316–317.

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E-mail Account in May 2023 is a fabrication. The only way he would have seen these e-mails was if he had received them in the inbox.[140]

Decision

67 Under s 48(1)(*a*)(iii) of the AA, an arbitral award may be set aside by the court if the party who applies to set aside the award proves to the court's satisfaction that he was "not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present [his] case".

68 As the evidentiary record shows, many documents in the Arbitration ("Arbitration documents"), but not the 2020 NOA, were delivered to the Tampines Address and/or the K E-mail Address. Two main issues arise: (a) whether delivery of Arbitration documents in this manner constituted "proper" notice; and (b) if so, whether notice of the delivered Arbitration documents constituted notice of "the arbitral proceedings" and the appointment of the Arbitrator. I find in the affirmative on both issues and decline to set aside the Award under the Lack of Proper Notice Ground. My reasons, in overview, are:

(a) Proper notice of the Arbitration documents was given to Mr X by way of delivery to the Tampines Address and/or the K E-mail Address because:

(i) W Co's delivery of documents by post to the Tampines Address and by e-mail to the K E-mail Address was in accordance with cl 11.1 of the BPA and Rule 2.1 of the SIAC Rules.

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140 3U Affidavit at para 47.

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(ii) Service at the Tampines Address and the K E-mail Address continued to constitute proper notice notwithstanding the 8 Sep 2021 E-mail.

(iii) Further, Mr X continued to have access to documents sent to the Tampines Address and the K E-mail Address, contrary to his present claims otherwise.

(b) The Arbitration documents served on Mr X sufficed to give proper notice of the arbitration proceedings and the appointment of the Arbitrator, notwithstanding that the 2020 NOA was not sent to Mr X.

(c) Further and/or alternatively to [(b)] above, the non-delivery of the 2020 NOA to Mr X does not warrant setting aside the Award because Mr X did not sustain prejudice as a result.

69 I elaborate on my decision.

Legal principles on "proper notice"

70 Lack of proper notice is also a ground for setting aside an arbitral award under Art 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration 1985 ("Model Law"), which has the force of law in Singapore by virtue of s 3(1) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"); and a ground for the court to refuse enforcement of a foreign arbitral award under s 31(2)(*c*) of the IAA. The legal principles that apply to these provisions in the Model Law and the IAA would also apply to s 48(1)(*a*)(iii) of the AA (see *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [34]).

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71 The concept of "proper notice" under Art 34(2)(*a*)(ii) of the Model Law has been observed to mean "notice that is appropriate given the parties' contractual dispute resolution mechanism, including the provisions of their arbitration agreement and any applicable institutional arbitration rules": Gary B Born, *International Commercial Arbitration* (Kluwer Law International, 3rd Ed, 2021) ("*Born*"), "Chapter 25: Annulment of International Arbitral Awards (Updated December 2023)" ("ch 25") at §25.04[B][6]. The Singapore courts have similarly assessed "proper notice" with reference to whether documents in the arbitration were delivered to the address(es) indicated in the parties' contractual documents and/or delivered in accordance with the applicable arbitration laws and/or institutional arbitration rules: see *DBX and another v DBZ* [2023] SGHC(I) 18 ("*DBX*") at [90]–[97] (in the context of Art 34(2)(*a*)(ii) of the Model Law) and *Re Shanghai Xinan Screenwall Building & Decoration Co, Ltd* [2022] 5 SLR 393 ("*Shanghai Xinan*") at [30]–[32] (in the context of s 31(2)(*c*) of the IAA).

72 Further, "proper notice" may be different from actual notice: *OUE Lippo Healthcare Ltd v David Lin Kao Kun* [2019] HKCU 2454 at [67] (in the context of an application to set aside leave to enforce an arbitral award under the Arbitration Ordinance (Cap 609) (HK) on the lack of proper notice ground). The former is concerned with whether the notice is likely to bring the information to the attention of the person notified; it is ultimately a question of fact (at [67]). It has also been observed that "proper notice" can be satisfied where a means of notification reasonably calculated to provide notice was employed and "does not require proof that the award-debtor received actual notice": *Born*, "Chapter 26: Recognition and Enforcement of International Arbitral Awards (Updated September 2022)" at §26.05[C][3][g] (in the context of Art V(1)(b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

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(10 June 1958) 330 UNTS 38 (entered into force 7 June 1959, accession by Singapore 21 August 1986) ("New York Convention"), which provides that recognition and enforcement of an award may be refused on the lack of proper notice ground). Where, however, a party has received actual notice of the arbitration proceedings, it will not be permitted subsequently to complain about the means by which the notice was provided: *Born*, ch 25 at §25.04[B][6].

73 In line with the above discussion, "proper notice" under s 48(1)(*a*)(iii) of the AA would be notice that is effected in accordance with the parties' contract, the AA and/or any applicable institutional arbitration rules. Actual notice is not usually necessary, but where received, will preclude any complaint of lack of proper notice.

W Co's delivery of the Arbitration documents by post to the Tampines Address and by e-mail to the K E-mail Address was in accordance with the BPA and the SIAC Rules and was therefore proper notice

74 In the present case, the chapeau of cl 11.1 of the BPA stated:[141]

> Any notice or communication under or in connection with this Agreement shall be in writing and in the English language and shall be delivered personally, or by post or facsimile *to the addresses set out below* or at such other address as the recipient may have notified to the other Party in writing:
>
> …
>
> [emphasis added]

75 The parties' contact details were listed under the cl 11.1 chapeau. A physical address *and an e-mail address* were listed for *each and every party to the BPA*, *ie*, Z Co, Ms Y and Mr X (as the Sellers) and W Co (as the Purchaser). The Tampines Address and the K E-mail Address were listed for Mr X. Phone

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141 1U Affidavit at p 34.

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numbers were listed for Z Co, Ms Y and Mr X but not W Co. *No facsimile numbers were listed for any party*.

76 Mr X's argument that cl 11.1 permitted only three modes of delivery (personal, post or facsimile) (see [63] above) rests on an interpretation of cl 11.1 that focuses narrowly on the literal words in the phrase "shall be delivered personally, or by post or facsimile". This ignores that delivery is stated to be "to the addresses set out below", which (a) are not limited to physical addresses, and (b) do not contain facsimile numbers at all.

77 The purpose of contractual interpretation is to give effect to the objectively ascertained expressed intentions of the contracting parties as it emerges from the contextual meaning of the relevant contractual language. Both the text *and context* of the contractual provision must be considered: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30].

78 In my judgment, cl 11.1 bears a broader interpretation that notices or communications shall be delivered, *where applicable*, personally or by post or by facsimile, to the addresses set out in the clause. Thus, where physical addresses are set out in the clause, the words "personally, or by post" apply to prescribe personal or postal delivery to those addresses. Where other forms of addresses (in respect of which personal, postal and facsimile delivery are inapplicable) are set out in the clause, delivery would simply be by the relevant means of transmission to such addresses (*eg*, by electronic transmission to e-mail addresses). Put another way, the words "personally, or by post or facsimile" were not meant to delimit the permitted modes of delivery to the exclusion of other forms of addresses the parties chose to set out in cl 11.1. On this view, cl 11.1 permitted the parties to send notices or communications to each other at their respective e-mail addresses set out under the clause.

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79 I find that this is the proper interpretation to place on cl 11.1 because it gives effect to the parties' objective intentions and is a meaning that the expressions used in cl 11.1 can reasonably bear. First, every party to the BPA provided an e-mail address under cl 11.1. It made no sense for them to do so unless they intended for notices and communications to be delivered to them at the respective e-mail addresses provided. As the court in *Shanghai Xinan* put it, where an address is given in a contract, it is a simple inference that the address has been included to facilitate communication between the parties (at [32]). Second, although the chapeau of cl 11.1 referred to delivery by facsimile, none of the parties provided a facsimile number under cl 11.1. Together with the fact that they chose to provide e-mail addresses under cl 11.1 instead, this shows that they knew the stated modes of delivery in cl 11.1 were inapplicable to certain (forms of) addresses they provided under the clause but intended that, where that was so, delivery would be by the relevant means to the relevant addresses provided. The stated modes of delivery (personal, post or facsimile) were intended to be used only where applicable.

80 I am unable to entertain Mr X's submission that when contrasted to the notice provisions in the EA and SHA, it is clear that e-mail was not an agreed mode of delivery under cl 11.1 of the BPA. The notice provisions in the EA and SHA constitute evidence extrinsic to cl 11.1 of the BPA. However, Mr X made no submissions on how or why such extrinsic evidence satisfied the criteria of being relevant, reasonably available to all the contracting parties and relating to a clear or obvious context such as to be admissible evidence to which the court may have regard in interpreting cl 11.1 of the BPA (*Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [34]). In fact, Ms Y and Z Co were parties to the BPA but *not* parties to the EA

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and SHA. Mr X provided no evidence that the EA and SHA were available to them at the time the parties entered into the BPA.

81 I also question the *bona fides* of Mr X's submission that cl 11.1 of the BPA should be interpreted to mean that only personal, postal or facsimile delivery were permitted. This contradicts his other submission that, by way of the 8 Sep 2021 E-mail, he had provided notification under cl 11.1 of the BPA that communications should henceforth be sent to the J E-mail Address (see [64] above). Implicit in his latter argument is a concession that under cl 11.1, delivery by e-mail where the parties have provided e-mail addresses is permitted; *ergo*, cl 11.1 did *not* confine the parties to only personal, postal or facsimile delivery.

82 Turning to the SIAC Rules (which apply pursuant to cl 17.2 of the BPA), Rule 2.1 provides that any written notice, communication or proposal may be delivered by (among others) registered post or e-mail and shall be *deemed to have been received* if it is delivered to (among others) "any address agreed by the parties". The effect of Rule 2.1 of the SIAC Rules is that the parties were entitled to send Arbitration documents by e-mail. Further, documents sent to the agreed physical and e-mail addresses listed under cl 11.1 of the BPA were deemed to have been received by the addressee.

83 I therefore conclude that W Co's delivery of the Arbitration documents by e-mail to the K E-mail Address was permitted under and in accordance with cl 11.1 of the BPA and Rule 2.1 of the SIAC Rules. That being so, service of the Arbitration documents in this manner constituted "proper notice" within the meaning of s 48(1)(*a*)(iii) of the AA. The position is the same with respect to the delivery of the Arbitration documents to the Tampines Address, which Mr X listed under cl 11.1 of the BPA.

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Service at the Tampines Address and the K E-mail Address continued to constitute proper notice notwithstanding the 8 Sep 2021 E-mail

84 In my judgment, W Co's service of the Arbitration documents on Mr X at the Tampines Address and the K E-mail Address continued to constitute proper notice notwithstanding the 8 Sep 2021 E-mail.

85 First, I do not accept Mr X's counsel's submission that the 8 Sep 2021 E-mail was a notification of Mr X's change of address under cl 11.1 of the BPA (see [64] above). The argument, which was raised only at the Hearing, appeared to be an afterthought. Mr X never said in his evidence that he intended the 8 Sep 2021 E-mail to be a notification under cl 11.1 of the BPA. More importantly, cl 11.1 of the BPA required any change in address to be "notified to the other Party in writing" (see [74] above), *ie*, Mr X had to provide written notification *to W Co*. However, the 8 Sep 2021 E-mail was sent *to the Arbitrator alone* (see [40] above). It was *not* a valid notification by Mr X of a change in his e-mail address under cl 11.1 of the BPA.

86 Second, I find, on a balance of probabilities, that Mr X had contemporaneous sight of the Arbitrator and Tang Thomas LLC's September 2021 e-mails sent to the J E-mail Address (see [41]–[42] above). I explain at [87] below why I do not believe that those e-mails were diverted to the 'Junk' or 'Spam' folder of the J E-mail Account as alleged by Mr X. Mr X chose not to reply to those e-mails because he did not wish to participate in the Arbitration. He therefore cannot complain that, after more than a week of non-response from the sender of the 8 Sep 2021 E-mail, the Arbitrator and Tang Thomas LLC proceeded with the Arbitration on the basis that documents would continue to be delivered to the Tampines Address and the K E-mail Address stated in the BPA.

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87 Mr X's evidence that e-mails from the Arbitrator, Tang Thomas LLC and WST to the J E-mail Address were diverted to the 'Junk' or 'Spam' folder (see [60(f)]–[60(g)] above) is not credible:

(a) When composing the 8 Sep 2021 E-mail within the J E-mail Account, Mr X would have had to key in the Arbitrator's e-mail address. It is odd that a subsequent e-mail from the Arbitrator's e-mail address to the J E-mail Account would then supposedly have been deemed 'Spam', when contact had been *initiated* from *within the J E-mail Account system* to the Arbitrator's e-mail address in the first place.

(b) More critically, Mr X did not dispute the evidence adduced by W Co that e-mails diverted to the 'Spam' folder of Gmail accounts are automatically deleted after 30 days (see [66(c)] above). He did not explain how it was possible for him to have supposedly discovered the Arbitrator and Tang Thomas LLC's *September 2021* e-mails in the 'Junk' folder almost two years later in *May 2023*.

(c) Further, while Mr X alleged that he was "shocked" to discover the e-mails in the 'Junk' folder in *May 2023* (see [60(h)] above), it was only on *21 July 2023* that he contacted WST and the SIAC stating that he was recently made aware of the Award (see [56] above). His inaction for two months is incongruous with someone who supposedly just found out in May 2023 that the Arbitration had proceeded despite his 8 Sep 2021 E-mail. Mr X did not explain the event that prompted him to surface on 21 July 2023. Notably, that occurred after WST's process server had attempted to serve the Order and Judgment at the Tampines Address on 12 July 2023 (at [54] above). Mr X may have realised that he could no longer avoid legal proceedings with impunity.

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88 The irresistible inference is that Mr X had contemporaneous sight of all e-mails sent to the J E-mail Address, including the Arbitrator and Tang Thomas LLC's September 2021 e-mails, but chose to ignore them and avoid the Arbitration. This inference is buttressed by the fact that he could easily have written directly to W Co at any time if he genuinely wished to be contacted at a new address but never did so. In these circumstances, W Co's continued delivery of the Arbitration documents to the Tampines Address and the K E-mail Address remained proper notice.

Further, Mr X continued to have access to the Arbitration documents sent to the Tampines Address and the K E-mail Address

89 In my judgment, Mr X also continued to have access to the Arbitration documents delivered to the Tampines Address and the K E-mail Address, contrary to his present claims otherwise. The implications of this are two-fold. First, he is unable to rebut deemed service of the documents sent to the Tampines Address and the K E-mail Address (under Rule 2.1 of the SIAC Rules) with appropriate evidence of non-receipt (see *Shanghai Xinan* at [33]). Second, where he *knew* that documents were being sent to the Tampines Address and the K E-mail Address, *could access* those addresses, but *chose* not to do so, he cannot, in my view, say in good faith that he was not given proper notice. I explain why I find that Mr X continued to have access to the Arbitration documents delivered to the Tampines Address and the K E-mail Address.

90 First, I do not accept Mr X's evidence that he did not have access to correspondence sent to the Tampines Address from some unidentified point in 2020 (see [60(c)] above). The alleged Tenant of the flat at the Tampines Address from January 2020 was actually a contact of Mr X, a fact Mr X failed to disclose until Ms U provided evidence that the Tenant was the registered proprietor of a

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trademark used for Mr X's workplace (see [66(b)] above). At the Hearing, Mr X's counsel did not dispute this fact or that Mr X knew the Tenant. Instead, Mr X's counsel stated that his instructions were that Mr X had lost contact with the Tenant since the present proceedings in 2023 or 2024. Implicit in this is a concession that Mr X and the Tenant *had* been in contact. Further, the Tenant (Mr Haw) has the same surname as the Surname that appears in the 'From' field in the 8 Sep 2021 E-mail (see [40] above). This further suggests a live connection between Mr X and the Tenant at the material time. It is also telling that Mr X said nothing about his state of knowledge of what the Tenant did with the documents sent to the Tampines Address. In my judgment, the greater likelihood is that Mr X was informed by the Tenant of, and could readily obtain, the Arbitration documents sent to the Tampines Address.

91 Second, it is a fact that the K E-mail Account was never inaccessible to Mr X. He was not physically, technically or legally constrained from accessing this e-mail account at any time he chose. Even assuming (without accepting) that he previously logged out of the K E-mail Account in mid-2020, once it was allegedly "made known" to him (as he claimed in the 8 Sep 2021 E-mail) that correspondence in the Arbitration was being sent to the K E-mail Address, he could and should have accessed the account to check the documents sent there. At the Hearing, Mr X's counsel submitted that Mr X was "afraid" to log back into the K E-mail Account given the alleged advice from the police. However, Mr X never gave evidence that he was "afraid" to log back into the account even more than a year after the alleged advice from the police. If he doggedly chose not to check the K E-mail Account (a) to which he *knew* Arbitration documents were being sent and (b) which he *could access*, it is disingenuous of him to now allege that he was not given proper notice. If he *did* check, he had actual notice.

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92 Third and in any event, I have difficulty believing Mr X's evidence that he ceased to access the K E-mail Account after mid-2020 (see [60(d)] above):

(a) For a start, the timing given by Mr X (mid-2020), which dovetails exactly with when Mr X ceased to be legally represented in the arbitration proceedings, is convenient to the point of arousing suspicion of the truth of his present claims.

(b) Next, as Ms U pointed out, her police reports made in July 2019 concerned Mr X's misappropriation of physical items and the password to a computer in W Co's enrichment centre. She never complained to him or the police about his use of the K E-mail Address, recognising that it was his personal e-mail address (see [66(a)] above). I make no finding as to the alleged police interview that Mr X claimed took place or the alleged advice that Mr X claimed was given by the police. The point is that Mr X's purported reaction of immediately abandoning the use of his K E-mail Account, when Ms U, Mr V and W Co had never complained about his use of the same, is not credible.

(c) Further, Mr X knew that the arbitration proceedings were still afoot in mid-2020 when he ceased to be legally represented (see [17]–[18] above). He must have known that W Co and the SIAC would contact him directly at the Tampines Address and the K E-mail Address moving forward, given that the 2019 NOA and the SIAC's 18 November 2019 letter regarding the commencement of three arbitrations were sent to the Tampines Address and the K E-mail Address at the start of the proceedings (see [10] and [12]–[13] above). He either turned a blind eye to this, in which case he cannot complain of a lack of proper notice; or

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he *did* check for documents at these addresses to suss out the state of the arbitration proceedings, in which case he had actual notice.

(d) In this regard, Mr X made the following two statements in the 8 Sep 2021 E-mail: "I understand from [Ms Y] that correspondence had been sent to me" and "i was made known that correspondence has been sent to a e-mail: [K E-mail Address] [*sic*]" (see [40] above). It is curious, however, that in the present proceedings, while Mr X and Ms Y recounted their apparent September 2021 meeting in some detail, neither alleged that Ms Y had told Mr X at that meeting that Arbitration documents were sent to him (much less sent specifically to the Tampines Address and/or the K E-mail Address). This begs the question whether it was from his own checks that Mr X knew that Arbitration documents were sent to the K E-mail Address.

(e) Finally, in the 8 Sep 2021 E-mail, Mr X had described the K E-mail Address as "[his] ex-company email when [he] was a partner and shareholder at [W Co]" and stated that he "ha[d] no access to this e-mail address at all" (see [40] above). The picture that he painted to the Arbitrator was misleading if not false. Even allowing for his present assertion that he had created the K E-mail Account for his work at Z Co and later at W Co (see [60(a)] above), it was hardly accurate to describe the account as an "ex-company email". It was also not the case that he "ha[d] no access" to the account. The K E-mail Account was his *personal* e-mail account that he alone controlled and was able to access at will, even after mid-2020. Mr X's prevarication before the Arbitrator undermines the credibility of his present claim that he did not access the K E-mail Account from mid-2020.

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(f) The combined weight of the above considerations inclines me to find, on a balance of probabilities, that Mr X did not cease to access the K E-mail Account after mid-2020 and continued to have actual notice of the Arbitration documents sent there.

The Arbitration documents served on Mr X gave him proper notice of the arbitration proceedings and the appointment of the Arbitrator

93 The evidentiary record of service of Arbitration documents shows:

(a) The following key documents were sent to Mr X at the Tampines Address *and* the K E-mail Address: the 2019 NOA (see [10] above); the SIAC's 18 November 2019 letter stating that the three arbitrations had commenced (see [13] above); the meeting details for the first preliminary meeting (see [27] above); the Witness Statements (see [32] above); W Co's notification that it would proceed with its claims against Mr X (see [33] above); the Arbitrator's directions at the pre-hearing procedural call (see [36]–[37] above); the Zoom details for the substantive hearing on 8 September 2021 (see [37] above); and W Co's Opening Statement (see [38] above).

(b) The following key documents were sent to Mr X by e-mail at the K E-mail Address only: FLC's 29 May 2020 letter recapitulating that W Co had decided to proceed on the Arbitration only (see [19] above); the SIAC's 22 October 2020 letter notifying parties of the appointment of the Arbitrator and enclosing the Arbitrator's letter of appointment dated 21 October 2020 (see [25] above); PO1 (see [28] above); the pleadings (see [29]–[30] above); the meeting details for the pre-hearing procedural call (see [35] above); W Co's Closing Submissions (see [49]); and the Award (see [51] above).

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(c) The 2020 NOA was not served on Mr X.

94 W Co's conduct in the matter of the 2020 NOA was not exemplary:

(a) W Co neglected to include Mr X in its e-mail to RPC and the SIAC on 14 August 2020 serving the 2020 NOA (see [20] above).

(b) After the SIAC highlighted on 7 September 2020 that Mr X had not been copied in recent correspondence, W Co did not rectify its error by serving the 2020 NOA on Mr X (see [22]–[23] above).

(c) In the present proceedings, W Co was not candid about its failure to serve the 2020 NOA on Mr X. Prior to the Hearing, W Co kept silent on whether it had done so. W Co's written submissions instead sought to give the impression that the 2019 NOA was the only relevant NOA.[142] This is obviously a legally untenable position. While Rule 6.1 of the SIAC Rules deemed that W Co had commenced three arbitrations when it filed the single 2019 NOA under that rule, and while the SIAC had notified the parties under Rule 3.3 of the SIAC Rules on 18 November 2019 that the three arbitrations had commenced, it was also a requirement under Rule 6.3 of the SIAC Rules for W Co to file a separate NOA for the Arbitration once the SIAC rejected W Co's application to consolidate the three arbitrations. The 2019 NOA remained relevant if, for example, any limitation defence was raised since the claims (where maintained in the Arbitration) would be deemed to have been brought on 29 October 2019 when the 2019 NOA was filed. However, for the purposes of determining the issues and claims in the Arbitration, it was the 2020 NOA that would apply. The Arbitrator clearly took this view

142 WWS at para 33.

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as well, referring to the 2020 NOA as the operative NOA.[143] It does not appear that W Co told the Arbitrator that it had not served the 2020 NOA on Mr X.

(d) Mr X took grave issue with W Co's opacity over how (if at all) the 2020 NOA was sent to him, canvassing this point at length in his written submissions.[144] Having been amply put on notice of this issue, W Co should have been prepared to shed light on this matter at the Hearing. Yet, when asked at the Hearing whether the 2020 NOA had been sent to Mr X, W Co's counsel did not have a ready answer and stated that he had to check. I therefore directed that a further affidavit be filed by W Co to state the answer. It was only in the further affidavit filed by W Co that W Co exhibited e-mail records showing that the 2020 NOA was *not* sent to Mr X.[145]

95 Mr X understandably took umbrage at W Co's conduct.[146] I make clear that I do not endorse how W Co handled this episode. However, in my view, the relevant inquiry at law remains:

(a) whether non-service of the 2020 NOA, in circumstances where Mr X was served with a suite of other key Arbitration documents (at [93(a)]–[93(b)] above), means that Mr X was not given proper notice of the arbitration proceedings or the appointment of the Arbitrator; and

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143 1U Affidavit at p 93: Award at [13].

144 XWS at para 39.

145 4U Affidavit at pp 108–109.

146 Letter from C&P to the court dated 5 March 2024 ("C&P Letter").

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(b) even if the answer to [(a)] above is yes, whether there is any reason the court should exercise its residual discretion not to set aside the Award.

96 In my judgment, in the particular circumstances of the present case, Mr X had proper notice of the arbitration proceedings in the Arbitration, notwithstanding that the 2020 NOA was not served on him.

97 First, Mr X was served with the 2019 NOA and the Statement of Claim in the Arbitration. The 2019 NOA claimed against Mr X for misrepresentation and breaches of his confidentiality, non-compete and non-solicit covenants under the BPA (as Mr X himself acknowledged in his 3rd Response to 2019 NOA (see [9(e)] and [15] above), in contrast to his present contention (with which I disagree) that the 2019 NOA alleged breaches of these covenants under the EA and SHA instead of the BPA[147]). The Statement of Claim pleaded W Co's claims against Mr X (and the other respondents) for misrepresentation and against Mr X for breach of his confidentiality, non-compete and non-solicit obligations under the BPA (see [29] above). The Statement of Claim, against the background of the 2019 NOA, gave Mr X full notice of the claims being advanced by W Co in the Arbitration, even in the absence of the 2020 NOA (which would simply have served to make clear that the same claims raised in the 2019 NOA were maintained against Mr X (see [21] above) – a point obvious from the Statement of Claim as well).

98 Second, Mr X was served with the Witness Statements, W Co's Opening Statement and W Co's Closing Submissions. This means he also had notice of W Co's evidential and legal case in respect of the claims advanced by W Co.

147 XWS at paras 12 and 39(c).

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99 Third, Mr X was served with PO1 (containing the procedural timetable for the Arbitration) and the details for all hearings (procedural and substantive) in the Arbitration. This means he had notice of all essential steps in the arbitration proceedings, including notice of the dates of and means of attending the hearings.

100 Fourth, Mr X was served with the Award. He had notice of the outcome of the arbitration proceedings.

101 In my judgment, Mr X also had proper notice of the appointment of the Arbitrator. Mr X accepted that cl 17.2 of the BPA provided for the appointment of a single arbitrator pursuant to the SIAC Rules, and that absent Mr X's agreement, Rule 12.1 of the SIAC Rules provides that the sole arbitrator shall be appointed by the President of the SIAC Court of Arbitration.[148] As stated in the Arbitrator's letter of appointment dated 21 October 2020, the Arbitrator was precisely appointed under Rule 12.1 of the SIAC Rules. The SIAC's correspondence on this appointment was sent to Mr X (see [25] above), and he therefore had notice of the appointment of the Arbitrator.

102 I therefore find that Mr X has not established under s 48(1)(*a*)(iii) of the AA (as he bears the burden of doing) that he was not given proper notice of the arbitration proceedings or the appointment of the Arbitrator in the Arbitration.

Further and/or alternatively, Mr X did not sustain prejudice as a result of not being served the 2020 NOA

103 Section 48(1) of the AA, like Art 34(2) of the Model Law, provides that an arbitral award "may" be set aside by the court on the grounds enumerated

148 XWS at para 45.

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thereunder. In *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 ("*CRW*"), the Court of Appeal observed that the court may, in its discretion, decline to set aside an arbitral award even though one of the prescribed grounds for setting aside under Art 34(2) of the Model Law has been established. The court ought to exercise this residual discretion only if no prejudice has been sustained by the aggrieved party (at [100]; cited also in *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279 at [72]). Put conversely, if there is no real or actual prejudice, the court might decline to set aside the award: *CHH v CHI* [2021] 4 SLR 295 at [51] (concerning s 48(1) of the AA).

104 In my judgment, Mr X suffered no real or actual prejudice from the non-service of the 2020 NOA on him. He alleged that had he been given proper notice, he would have engaged legal counsel to defend the claims against him (see [62] above). However, I find that this self-serving assertion is contradicted on three counts. First, when FLC ceased to represent Mr X, the arbitration proceedings were still afoot but he chose not to engage new legal counsel. Second, Mr X had actual notice (as I have found) of other Arbitration documents indicating that he remained involved in the Arbitration. He did not need to receive the 2020 NOA specifically in order to decide to engage legal counsel to represent him in the Arbitration. Third, Mr X received (as I have found) the Arbitrator and Tang Thomas LLC's September 2021 e-mails sent to the J E-mail Address but chose to ignore W Co's attempt at engagement. This does not evidence a genuine intention to defend the claims in the Arbitration.

105 At bottom, a holistic appreciation of the evidence impels the conclusion that Mr X deliberately decided not to participate in the Arbitration. Given his calculated decision, it would not reasonably have made a difference to him even if the 2020 NOA had been sent to him. From another perspective, the outcome

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of the Arbitration would not reasonably have been altered even if the 2020 NOA had been served on Mr X because he would, in all likelihood, have persisted in his intentional strategy of not participating in the Arbitration.

106 Therefore, even if non-service of the 2020 NOA on Mr X satisfied the Lack of Proper Notice Ground, I would decline to set aside the Award in the exercise of my discretion given that no real or actual prejudice was sustained by Mr X from non-service of the 2020 NOA on him in the particular circumstances of the present case.

Coda: W Co should have maintained a service log

107 W Co did not tender a service log. Documentary records of service were produced piecemeal. This did not conduce to ascertaining the chronology of service events. Where a party does not participate in an arbitration, it is common practice and useful for the party proceeding with the arbitration to maintain a service log recording the details of all instances of service of arbitration documents and correspondence on the non-participating party, which can be tendered to the tribunal and annexed to the arbitral award if the tribunal wishes (see, for example, *DBX* at [22] and [90]). This would also facilitate the hearing of any subsequent court challenge on the lack of proper notice ground.

The *Infra Petita* Ground

Mr X's case

108 Mr X claimed that he did not receive any consideration for entering into the BPA. He claimed that he was not a shareholder of Z Co. Ms Y was the sole shareholder. Even though he was listed as a Seller in the BPA, he did not sell anything to W Co. Ms U and Mr V requested that he be listed as a party to the

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BPA because of his profit-sharing arrangement with Ms Y and because he was going to assist W Co with its operations after the sale of the Franchise to W Co.[149] Mr X did not receive any part of the purchase price for the Franchise, which was to be paid by W Co to Z Co.[150] He entered into the EA and the SHA to fulfil the conditions precedent under cl 5.1(g) of the BPA (see [5] above).[151] Under the SHA, he was to subscribe for 30% of the shares in W Co. He subsequently sold 10% of his shares in W Co to Ms U and remained a 20% shareholder. However, he never received the 20% shareholding.[152]

109 Mr X argued that the Arbitrator failed to consider and address the "essential issue" of whether the BPA was unenforceable against Mr X for lack of consideration.[153] The list of issues identified by the Arbitrator did not include this issue (Award at [134]–[135]). Instead, the Arbitrator took the view that the issues relating to the profit-sharing arrangement between Mr X and Ms Y, and Mr X's shareholding in W Co, were irrelevant (Award at [74]–[76]).[154] Mr X accepted that it is irrelevant whether he had in fact received consideration; the relevant inquiry is whether the Arbitrator had addressed the issue.[155]

W Co's case

110 W Co did not dispute that the issue of whether Mr X had received consideration for entering into the BPA was an issue that should have been

149 X Affidavit at para 18.

150 X Affidavit at para 19.

151 X Affidavit at para 20.

152 X Affidavit at paras 20(b) and 21.

153 XWS at paras 70 and 72.

154 XWS at paras 74 and 75.

155 XWS at para 72.

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addressed by the Arbitrator. This was confirmed by W Co's counsel at the Hearing. W Co's position was that the Arbitrator *had* addressed her mind to this issue, specifically in the Award at [73]–[77], and was satisfied that Mr X had received consideration under the BPA. Even if the Arbitrator's reasoning was poor or if she had misunderstood the arguments, this would not be sufficient ground to set aside the Award.[156]

111 W Co further contended that Mr X *had* received consideration for entering into the BPA.[157] Mr X transferred his equity stake in Z Co to W Co in exchange for 30% of the shares in W Co, which were issued to him under the SHA. He was registered as a 30% shareholder in W Co by at least 10 January 2019.[158] In February 2019, he asked to sell 10% of his shares and Ms U agreed to buy this 10% stake. Subsequently, as the EA was prematurely terminated, the SHA provided for Mr X's entire shareholding in W Co to be transferred to Ms U. Mr X's claim that he did not receive any shares in W Co is thus a lie.[159]

Decision

112 In assessing whether an arbitral tribunal has or has not dealt with an issue before it, its arbitral award should be read "reasonably, generously, commercially, as a whole and in context" with a care for what the tribunal is conveying "even if not expressly, at least implicitly" in the award (see *BTN and another v BTP and another and other matters* [2022] 4 SLR 683 ("*BTN*") at [134]). Further, a failure by a tribunal to deal with an issue referred to it will not necessarily render its award liable to be set aside. There must have been real or

156 WWS at paras 72–76.

157 3U Affidavit at paras 51–55.

158 3U Affidavit at pp 339–341.

159 3U Affidavit at para 54.

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actual prejudice caused as a result: *CRW* at [32]. The essential question for the court is whether there would have been any reasonable difference to the tribunal's deliberations and the final outcome of the arbitration proceedings if the tribunal had not failed to deal with the issue in question. Where there could have been no reasonable difference or the same result could or would have ensued, there would be no justification for curial intervention: *BTN* at [96].

113 In the present case, I find that the Arbitrator had implicitly formed the view that the BPA was supported by consideration from the parties, including Mr X. This is demonstrated by the following.

114 I start by observing that Mr X's written submissions effectively conceded that the W Co shares he was supposed to acquire under the SHA were consideration for him giving up his share of the "beneficial interest" in Z Co:[160]

> 2 … [Mr X] had a 30:70 profit-sharing arrangement with [Ms Y] in [Z Co].
>
> 3 Pursuant to [the BPA], [W Co] acquired the entire Franchise from [Z Co] (being *[Ms Y's] 70% beneficial interest* therein) for the consideration of S$200,000.
>
> …
>
> 5 … As [W Co] would acquire the entire Franchise from [Z Co] under the BPA, Mr X entered into a separate [SHA] with [W Co] and [Ms U] for 30% of [W Co's] shares … *to reflect his 30% beneficial interest in the Franchise*. … The [SHA] and [EA] were condition precedents [*sic*] to [W Co's] obligation to purchase the Franchise under the BPA.
>
> [emphasis added; footnotes in original omitted]

115 This in fact coheres with the position conveyed by W Co in the Arbitration that Mr X was a party to the BPA because he had an arrangement

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160 XWS at paras 2, 3 and 5.

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with Ms Y to share in the profits of Z Co and because he was the person essentially managing the operations of the Franchise including Z Co's financial records. The Arbitrator expressly noted W Co's position in the Award at [74].[161] The Arbitrator also noted in the Award at [76] that, following the sale of the Franchise to W Co, Mr X was employed by W Co as "Head – Operations" from 4 January 2019, and was also a 20% shareholder in W Co.[162]

116 It would have been obvious to the Arbitrator from the factors cited in her Award at [74] and [76], and she must have implicitly formed the view, that consideration had been provided to Mr X for his entry into the BPA, such consideration being (a) his employment with W Co, and (b) his acquisition of shares in W Co, after the sale of the Franchise to W Co. While the Arbitrator also commented that no further details were provided regarding the SHA or Mr X's shareholding in W Co and that since "[W Co] does not advance any argument or claim relating to [the SHA] or [Mr X's] shareholding in [W Co]", she would "say no further on the matter",[163] these comments pertained to the *specifics* of Mr X's shareholding in W Co (which, as the Arbitrator rightly noted, was not in dispute before her). They do not detract from my view that the Arbitrator implicitly regarded the shareholding Mr X was to acquire in W Co as part of the consideration provided for his entry into the BPA.

117 If Mr X's contention is that he did *not* receive shares in W Co as he was supposed to, first, that is disputed by W Co which provided evidence that Mr X had held shares in W Co (see [111] above). Second, even if Mr X did not receive the shares in W Co to which he was entitled, this does not mean that there was

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161 1U Affidavit at p 106: Award at [74].

162 1U Affidavit at p 107: Award at [76].

163 1U Affidavit at p 107: Award at [76].

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no consideration for his entry into the BPA, but rather, that W Co had breached its obligation to furnish the agreed consideration. Third, at worst, even if the Arbitrator was wrong to take the view that Mr X had received consideration for his entry into the BPA, this does not mean that she had failed to apply her mind to the issue.

118 Further and in any event, even if I am wrong that the Arbitrator had implicitly determined that Mr X's entry into the BPA was supported by consideration, I find that her failure to deal with this issue would not have made any reasonable difference to the outcome of the arbitration proceedings. This is because, had the Arbitrator dealt with the issue, she would have quickly come to the obvious conclusion that Mr X *had* received consideration for his entry into the BPA, given that the execution of the EA and SHA were conditions precedent under cl 5.1(g) of the BPA (see [5] above). The Arbitrator would then have proceeded to determine W Co's claims against Mr X for breaches of the BPA in the exact same manner as she had decided in the Award.

119 There is therefore no basis to set aside the Award on the *Infra Petita* Ground, and I decline to do so.

The Breach of Natural Justice Ground

Mr X's case

120 Mr X argued that the fair hearing rule was breached as: (a) he did not have the opportunity to be heard due to lack of proper notice of the Arbitration; and (b) the Arbitrator failed to consider an essential issue.[164] At the Hearing, Mr

[164] XWS at paras 78–81.

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X's counsel confirmed that the Breach of Natural Justice Ground was predicated on, and stood or fell with, the Lack of Proper Notice and *Infra Petita* Grounds.

W Co's case

121 W Co argued that Mr X was given the opportunity to present his case; his current predicament was of his doing; and he suffered no prejudice as the Arbitrator had considered the defences he claimed he would have raised.[165]

Decision

122 As I have rejected the Lack of Proper Notice Ground and the *Infra Petita* Ground, it follows that the Breach of Natural Justice Ground is not established. I decline to set aside the Award on this ground.

The Contrary to Public Policy Ground

Mr X's case

123 Mr X's case centred on what he termed W Co's "questionable behaviour". Despite failing to serve the 2020 NOA on Mr X, W Co proceeded with the Arbitration.[166] After the 8 Sep 2021 E-mail was sent, W Co concluded four days after its one attempt to engage with the sender that it was unable to ascertain if the sender was indeed Mr X. However, W Co had been less than forthright in September 2021. On 12 May 2023, W Co (through WST) sent its letter of demand to the J E-mail Address. This was inconsistent with its prior

165 WWS at paras 45–67.

166 C&P Letter at para 11.

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position that it could not confirm that the sender of the 8 Sep 2021 E-mail was Mr X. In W Co's application for substituted service, W Co stated that:[167]

> While we cannot verify if [Mr X] was indeed the maker of the email received by the sole Arbitrator on 8 September 2021 …, the details stated therein matched whatever we knew of [Mr X] and it is more likely than not that if the Court Orders are served on [Mr X] by sending the same to [the J E-mail Address], it will be effective in bringing the Court Orders to [Mr X's] knowledge and attention.

124 Mr X submitted that W Co's "questionable behaviour from the beginning since the 2020 NOA to after the evidentiary hearing in September 2021 all but guaranteed [Mr X's] absence from the Arbitration". Upholding the Award in these circumstances would shock the conscience or is wholly offensive to the ordinary reasonable and fully informed member of the public.[168]

W Co's case

125 W Co submitted that Mr X's allegation of breach of public policy was "vague and generalised" and ought to be rejected as Mr X had not met the threshold for intervention on this ground.[169] In response to Mr X's argument that it was inconsistent of W Co to have sought substituted service of the Order and Judgment on Mr X by e-mail to the J E-mail Address in July 2023, while taking the position in September 2021 that the identity of the sender of the 8 Sep 2021 E-mail could not be confirmed, W Co's counsel argued at the Hearing that since W Co had not heard from Mr X in two years by 2023, it was not wrong for W Co to try to serve Mr X by any means.

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167 Affidavit of Ms U filed by W Co in OA 588 on 20 July 2023 at para 8.

168 XWS at paras 85–91; X Affidavit at para 49.

169 WWS at paras 77–81.

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Decision

126 Public policy under Art 34(2)(*b*)(ii) of the Model Law encompasses a narrow scope, and operates only in instances where the upholding of an arbitral award would shock the conscience, be clearly injurious to the public good, be wholly offensive to the ordinary reasonable and fully informed member of the public, or violate the forum's most basic notions of morality and justice: *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 at [59]. The position is no different under s 48(1)(*b*)(ii) of the AA: *Fisher, Stephen J v Sunho Construction Pte Ltd* [2018] SGHC 76 at [60].

127 Mr X relied on *Sun Tian Gang v Hong Kong & China Gas (Jilin) Ltd* [2016] HKCU 2334 ("*Sun Tian Gang*") where the court held that enforcement of the arbitral award in that case would be contrary to the public policy of Hong Kong as the award-debtor had been unable to present his case in the arbitration (at [60]). However, the facts in *Sun Tian Gang* are far removed from the present. The award-debtor had been arrested and incarcerated and was thus prevented by circumstances beyond his control from presenting his case in the arbitration (at [59]–[60]). In contrast, Mr X (a) could continue to access the Tampines Address and the K E-mail Address, (b) could have given proper notification of a change of address, and/or (c) could have responded to the Arbitrator and Tang Thomas LLC's e-mails sent in September 2021 to the J E-mail Address. He was not *prevented* from being heard or presenting his case in the Arbitration.

128 As for the alleged "questionable behaviour" of W Co, while W Co neglected to serve the 2020 NOA on Mr X, I do not think this was done deliberately. If W Co intended to shut Mr X out of the Arbitration, it would not have subsequently sent Mr X a suite of other Arbitration documents, including substantive documents such as its Statement of Claim and Witness Statements.

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As for Mr X's point that, in essence, W Co had already suspected, back in September 2021, that the sender of the J E-mail Address could well be Mr X, this is neither here nor there given that Mr X ultimately did not notify W Co of a change in his address and did not respond to Tang Thomas LLC's 10 September 2021 e-mail to the J E-mail Address. I find that it was reasonable in those circumstances for the Arbitrator and W Co to proceed with the Arbitration without further reference to the J E-mail Address. Further, whatever the propriety of W Co later deciding in *July 2023* to identify the J E-mail Address in its substituted service application, that cannot impugn the *earlier* conduct of the arbitration proceedings and the making of the Award.

129 Accordingly, I decline to set aside the Award on the Contrary to Public Policy Ground.

The time bar issue

130 Under s 48(2) of the AA, "[a]n application for setting aside an award may not be made after the expiry of 3 months from the date on which the party making the application had received the award". Here, the Award was served by the SIAC on Mr X at the K E-mail Address on 27 April 2023. OA 800 was filed on 8 August 2023. W Co initially identified in the parties' list of issues an issue of whether OA 800 was brought out of time. However, W Co did not address this issue in its written submissions, and W Co's counsel stated at the Hearing that it was not pursuing this issue. Mr X argued that "receive the award" under s 48(2) of the AA means actual receipt, without citing authority for the proposition. He submitted that he only received the Award on 27 July 2023 after gaining access to the OA 588 case file, and OA 800 is thus not time-barred.[170]

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170 XWS at paras 99–101.

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131 A similar provision to s 48(2) of the AA is found in Art 34(3) of the Model Law, and it has been consistently held that Art 34(3) of the Model Law *prevents* a court from entertaining setting aside applications brought under Art 34 after the expiry of the three-month period: *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 1 SLR 1045 at [81]; *ABC Co v XYZ Co Ltd* [2003] 3 SLR(R) 546 at [9]. In my view, the position is no different under s 48(2) of the AA.

132 As I have found that there are no grounds for setting aside the Award, it is academic and unnecessary for me to decide the time bar issue. *If*, however, there were grounds for setting aside the Award, the time bar issue would have had to be resolved even though W Co chose not to pursue it, as its determination would affect whether the court has *power* to set aside the Award.

Conclusion

133 I dismiss OA 800 and SUM 2382. Parties are to file their submissions on costs, limited to four pages, within one week from the date of this judgment.

Kristy Tan
Judicial Commissioner of the High Court

Nicholas Tan, Sheryl Koh and Siddartha Bodi (Chua & Partners LLP) for the applicant in OA 800 and SUM 2382;
Joshua Thomas Raj and Vigneesh s/o Nainar (Tang Thomas LLC) for the respondent in OA 800 and SUM 2382.

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