IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 50

Court of Appeal / Civil Appeal No 48 of 2024

Between

Vietnam Oil and Gas Group

… *Appellant*

And

Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)

… *Respondent*

Court of Appeal / Civil Appeal No 49 of 2024

Between

Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)

… *Appellant*

And

Vietnam Oil and Gas Group

… *Respondent*

In the matter of Originating Application No 346 of 2024

Between

Vietnam Oil and Gas Group

… *Applicant*

And

Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)

… *Respondent*

In the matter of Originating Application No 141 of 2024 (Summons No 988 of 2024)

Between

Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)

… *Applicant*

And

Vietnam Oil and Gas Group

… *Respondent*

JUDGMENT

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

Vietnam Oil and Gas Group
v
Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) and another appeal

[2025] SGCA 50

Court of Appeal — Civil Appeals Nos 48 and 49 of 2024
Sundaresh Menon CJ, Steven Chong JCA and Belinda Ang JCA
8 July 2025

10 October 2025 Judgment reserved.

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

1 It has frequently been observed that our courts are guided by the principle of minimal curial intervention. Parties are held to their contractual bargain when they choose arbitration as their preferred form of dispute resolution, and high thresholds are imposed on those seeking to challenge awards or to resist their enforcement. But when those thresholds are satisfied, it is in the interest of securing the legitimacy of the arbitral process that appropriate relief be granted.

2 The present case arises out of a project to construct a thermal power plant in Vietnam (the "Project"). The parties to the appeals are Vietnam Oil and Gas Group ("PVN"), the owner of the Project, and Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) ("PM"), which was a member of the consortium (the "Consortium") that served as the contractor for

the Project. When some major differences arose, PM sought to terminate its contract with PVN by way of two separate notices of termination. PVN contested PM's right to terminate their contract, and their dispute was referred to arbitration, which led to the issuance of an award (the "Final Award") that was largely in favour of PM. In the proceedings below, a Judge of the High Court sitting in the General Division (the "Judge") held that parts of the Final Award were liable to be set aside on the basis of an excess of jurisdiction and/or a breach of natural justice. However, he declined to set aside the Final Award and instead decided to remit the affected parts to the tribunal to consider matters further. The Judge's decision is the subject of cross-appeals in CA/CA 48/2024 ("CA 48") brought by PVN against the Judge's order for remission and CA/CA 49/2024 ("CA 49") brought by PM against the Judge's finding that parts of the Final Award were liable to be set aside.

Background Facts

The EPC Contract

3 In or around 2013, PVN entered into a contract with the Consortium in relation to the Project (the "EPC Contract").[1] The EPC Contract comprised several contractual documents, including a "Contract Agreement" and the "Conditions of Contract" (the "Conditions").[2] Pursuant to cl 1.4 of the Conditions, the EPC Contract was governed by Vietnamese law.[3] Clause 20.3

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1 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) and another matter* [2024] SGHC 244 ("GD") at [8]; PVN's Written Submissions for CA/CA 48/2024 dated 27 December 2024 ("PVN's CA 48 Written Submissions") at para 5.

2 GD at [8]; PM's Written Submissions for CA/CA 49/2024 dated 27 December 2024 ("PM's CA 49 Written Submissions") at para 5. See the EPC Contract at Joint Agreed Bundle of Documents ("AB") Part B pp 58–226.

3 See cl 1.4 at AB Part B p 88.

of the Conditions contained an arbitration agreement providing that any dispute arising out of or in connection with the EPC Contract was to be referred to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force.[4]

4 Of particular importance to the appeals are cll 16.2(b) and 19.6 of the Conditions, which provided for the parties' rights to terminate the EPC Contract.

(a) Clause 16.2(b) permitted PM to terminate the EPC Contract if payments due were not received within 150 days of the time for payment specified in the EPC Contract.[5]

(b) Clause 19.6 permitted any party to the EPC Contract to terminate the contract if execution of substantially all the works in progress was prevented for a continuous period of 84 days by reason of *force majeure,* of which notice had been given pursuant to cl 19.2. Clause 19.6 further set out the amounts payable by PVN to PM in the event of termination on such grounds.[6]

Events leading to the arbitration proceedings

5 The Project commenced on 30 January 2015.[7] On 26 January 2018, PM was designated on the list of Specially Designated Nationals and Blocked Persons by the United States Office of Foreign Assets Control (the "US

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4 See cl 20.3 at AB Part B p 183.

5 See cl 16.2 at AB Part B p 168.

6 See cl 19.6 at AB Part B p 180.

7 Para 317 of the Final Award; AB Part D p 72.

Sanctions").[8] This prohibited all US persons from engaging in transactions involving PM. Consequently, many of PM's subcontractors suspended the performance of their obligations under their subcontracts with PM.[9] On 5 February 2018, PM issued a notice to PVN pursuant to cl 19.2 of the Conditions,[10] in which it asserted that the imposition of the US Sanctions constituted a *force majeure* event as defined in cl 19.1.[11]

6 Between March 2018 and January 2019, PM and PVN engaged in negotiations on, among other things, the possibility of arranging direct payment between PVN and PM's subcontractors, as well as on ways to arrange payments between PVN and PM without breaching the US Sanctions.[12] Concurrently, between January 2018 and July 2018, PM made several applications for payments due under the EPC Contract (the "Outstanding Payment Applications").[13] PM subsequently sent PVN a letter dated 10 January 2019, in which it reiterated its demand for payment due under the Outstanding Payment Applications, failing which it would proceed to terminate the EPC Contract pursuant to cl 16.2(b) of the Conditions.[14]

7 Eventually, on 28 January 2019, PM issued a notice of termination of the EPC Contract pursuant to cl 19.6 of the Conditions on the ground that the

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8 GD at [11]; PVN's CA 48 Written Submissions at para 6.

9 GD at [12].

10 Cl 19.2 may be found at AB Part B p 179.

11 The notice of *force majeure* is reproduced at para 88 of PM's SOC in the arbitration ("PM's SOC"); AB Part E pp 59–60.

12 GD at [12]–[15]. For a detailed chronology, see the Final Award at paras 316 to 382; AB Part D pp 72–77.

13 PM's SOC at para 238; AB Part E p 131.

14 Final Award at para 359; AB Part D p 75. See also PM's SOC at para 255; AB Part E p 135.

imposition of the US Sanctions constituted a *force majeure* event (the "First Notice").[15] The First Notice provided that the EPC Contract would terminate on 18 February 2019.

8 On 8 February 2019, PM issued a second notice of termination on the ground that various payments had been outstanding for more than 150 days (the "Second Notice"). In the Second Notice, PM stated that it was exercising its right of termination under cl 16.2(b) of the Conditions, and that the EPC Contract would terminate on 22 February 2019.[16]

The arbitration

9 The parties referred their dispute to arbitration under the auspices of the SIAC. PM's case was that it had validly exercised its right of termination of the EPC Contract. This was based on two grounds:

(a) PM's primary case was that the EPC Contract was deemed to have been terminated on 18 February 2019 pursuant to cl 19.6 of the Conditions by reason of *force majeure*.[17]

(b) Alternatively, PM argued that the EPC Contract was deemed to have been terminated on 22 February 2019 pursuant to cl 16.2(b) of the Conditions by reason of PVN's non-payment.[18]

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15 GD at [16]. See the First Notice at AB Part N pp 258–260.

16 See the Second Notice at AB Part N pp 261–264.

17 GD at [21(a)]. See PM's SOC at para 187; AB Part E p 115.

18 GD at [21(b)]. See PM's SOC at para 208; AB Part E p 121.

On the premise that it had validly terminated the EPC Contract, PM claimed monetary relief, including sums that it would be entitled to pursuant to cl 19.6.[19] Additionally, regardless of whether the EPC Contract had been terminated, PM sought payment of the sums due in respect of the Outstanding Payment Applications.[20]

10 In response, PVN contended that the issuance of the First Notice amounted to a wrongful termination of the EPC Contract because the US Sanctions did not amount to a *force majeure* event.[21] Further, the Second Notice was not a valid termination notice since PM had, by its First Notice, previously and wrongfully repudiated the EPC Contract and abandoned the works.[22] PVN also contested the quantum of the outstanding amount that it owed to PM under the Outstanding Payment Applications.

11 On 30 November 2023, the arbitral tribunal ("Tribunal") issued the Final Award. Its findings may be summarised as follows:

(a) PM had failed to establish that the US Sanctions constituted a *force majeure* event based on the test set out in cl 19.1 of the Conditions.[23] Accordingly, PM's purported termination of the EPC Contract by way of the First Notice was without basis.[24]

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19 SOC at para 305; AB Part E p 162.

20 SOC at para 308; AB Part E p 163.

21 GD at [22(a)]. See PVN's Statement of Defence in the arbitration ("PVN's Defence") at para 178; AB Part F at p 193.

22 GD at [22(b)]. See PVN's Defence at para 195(i); AB Part F p 196.

23 Final Award at para 519; AB Part D p 116.

24 Final Award at para 525; AB Part D p 117.

(b) As a matter of Vietnamese law, a notice of termination issued without basis was sufficient, without more, to terminate the contract, whereupon the parties were released from their obligations under the contract.[25] On this basis, the First Notice, without more, would presumably have been sufficient to terminate the EPC Contract.

(c) However, the effective date of termination was held to be the date on which the relevant notice period expired and not the date of the notice of termination itself. Therefore, on the date that the Second Notice was issued (8 February 2019), the EPC Contract was still in place as this was before the date of termination stipulated in the First Notice (18 February 2019).[26]

(d) Crucially, the Tribunal held, at paras 548 and 549 of the Final Award, that:[27]

> 548 In the Tribunal's opinion, a valid Second Notice issued while the contract remains on foot overrides and supersedes the ineffective First Notice. By issuing a Second Notice prior to the First Notice taking effect, [PM] must be taken to have intended the Second Notice to replace or, at the very least, supplement the First Notice. To hold otherwise would lead to the absurd conclusion that a party seeking to terminate a contract only has 'one shot' to do so, and cannot afterwards, even while the contract remains effective, do anything to withdraw or amend its attempt.
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> 549 For completeness, the Tribunal notes that the Vietnamese law experts did not specifically deal with the present scenario involving an unlawful First Notice and a lawful Second Notice (albeit, in any event, the Tribunal is satisfied to proceed on the basis of the above)

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25 Final Award at para 543; AB Part D p 120.

26 Final Award at paras 545 and 547; AB Part D pp 121–122.

27 AB Part D p 122.

(e) The Tribunal went on to hold that PM had validly terminated the EPC Contract on 22 February 2019 by way of the Second Notice,[28] and awarded damages accordingly. Among the damages awarded to PM was a sum of US$307,755,346.38 under cl 19.6(a) of the Conditions, quantified on the basis of PM having effectively and lawfully terminated the EPC Contract by the Second Notice.[29]

The decision below

12 In HC/OA 141/2024, PM obtained leave to enforce the Final Award pursuant to s 19 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). PVN in turn applied by way of HC/OA 346/2024 ("OA 346") to set aside the Final Award, and also applied by way of HC/SUM 988/2024 ("SUM 988") to set aside the earlier order granting PM leave to enforce the Final Award. OA 346 and SUM 988 were heard together before the Judge.

13 The Judge held that there were grounds for setting aside the Final Award in that the Tribunal had acted in excess of jurisdiction and in breach of natural justice: see *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) and another matter* [2024] SGHC 244 ("GD").

14 On the issue of natural justice, the Judge held that the Tribunal had breached the fair hearing rule because it had adopted a chain of reasoning that did not have any nexus to either of the parties' cases, and had not given the parties the opportunity to be heard on the approach that it eventually took in coming to its determination. Specifically, the Judge focused on the Tribunal's

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28 Final Award at para 576; AB Part D p 134.

29 Final Award at paras 580 and 647; AB Part D pp 135 and 153.

reasoning at para 548 of the Final Award, that PM *must have intended* for the Second Notice to replace or minimally supplement the First Notice, with the consequence that the First Notice was not effective to terminate the EPC Contract (GD at [42])).

15 In the Judge's view, the Tribunal's reasoning that PM must have intended for the Second Notice to have replaced or supplemented the First Notice had no nexus to the parties' cases. Neither party had advanced this contention as part of its case (GD at [43]).

(a) An important facet of PM's primary case was predicated on its contention that the First Notice was valid and following from this, that the Second Notice was not intended to withdraw or otherwise affect the First Notice (GD at [43]). PM's alternative case, which was that it had terminated the EPC Contract pursuant to the Second Notice, rested on the supposition that this was issued on 8 February 2019 when the EPC Contract had not yet been terminated (GD at [38]), and implicitly on the premise that an invalid First Notice would have no effect at all.

(b) Conversely, PVN's case in respect of the Second Notice was that the EPC Contract had already been terminated pursuant to the (unlawful) First Notice. Therefore, there was no longer any contract in existence to terminate as at the effective date of termination under the Second Notice (22 February 2019) (GD at [39]).

16 The Judge accordingly concluded that the Final Award offended s 24(*b*) of the IAA and Art 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), which has the force of law in Singapore pursuant to s 3(1) read with the First Schedule to the IAA. Further,

on similar grounds, the Tribunal had departed from the parties' cases and the Final Award therefore also fell afoul of Art 34(2)(*a*)(iii) of the Model Law (GD at [44]).

17 However, instead of setting aside the Final Award, the Judge considered it appropriate to make the following order for remission (GD at [48]):

> In the circumstances, I remitted to the Tribunal the question whether the Second Notice … overrode, superseded, replaced or supplemented the First Notice … such that the Second Notice was effective to terminate the EPC Contract on 22 February 2019 and, in the event that the Tribunal decides that the Second Notice was not effective to terminate the EPC Contract, what other consequential changes need to be made to the Final Award.

In the Judge's view, remission was appropriate because it could eliminate the grounds for setting aside. Furthermore, the Tribunal had made other findings including PM's entitlement to payments in respect of which there was no reason to set aside the award (GD at [46]). The Judge also rejected PVN's objection that the Tribunal was incapable of deciding the issue fairly (GD at [47]). Accordingly, the Judge suspended the setting aside proceedings in OA 346, and adjourned SUM 988 pending the Tribunal's decision on the remitted matter (GD at [62]).

18 Finally, the Judge also dismissed PVN's contention that the award of US$307,755,346.38 under cl 19.6(a) of the Conditions ought to be set aside because PM's pleaded case on relief in respect of the Second Notice did not include such relief. The Judge opined that the Tribunal had neither acted in breach of natural justice nor in excess of jurisdiction because PM had repeatedly made references to PVN's obligation to make payment under cl 19.6(a) of the Conditions in the Second Notice itself, and in the section of its pleadings,

opening statement and post-hearing brief concerning the Second Notice (GD at [50]–[61]).

The award on the remitted issue

19 Prior to the hearing before us, the Tribunal heard the parties on the remitted issue and issued an award on 12 March 2025 (the "Remission Award").[30] In the Remission Award, the Tribunal found that no amendment to para 548 of any other part of the Final Award was necessary. It reasoned that the EPC Contract did not preclude the issuance of two notices of termination under different clauses, and at all material times both parties were aware that PM intended to terminate the EPC Contract on both the grounds of *force majeure* and non-payment. Thus, the effect of the Second Notice was to provide an additional, alternative basis for termination should PM's primary position on termination based on *force majeure* fail. Accordingly, the Tribunal answered the Judge's remitted question by affirming that the Second Notice was validly issued and, given the ineffectual character of the First Notice, superseded the First Notice.[31] We did not have regard to the Remission Award in coming to our decision in these appeals.

20 On 30 April 2025, PVN commenced HC/OA 444/2025 ("OA 444") in the General Division of the High Court and applied for the Remission Award to be set aside, relying on essentially similar grounds, namely that the Tribunal had breached the rules of natural justice and acted in excess of jurisdiction; but PVN

30 Supplementary Joint Bundle of Documents Part A pp 10–64.

31 Remission Award at paras 129, 175 and 186; Supplementary Joint Bundle of Documents Part A at pp 48–49, 59 and 63.

further asserts that the Remission Award was affected by apparent bias.[32] The hearing of OA 444 has been adjourned by consent of the parties, pending our determination of the present appeals.

Parties' cases on appeal

21 The parties have filed cross-appeals against the Judge's decision. In CA 49, PM appeals against the Judge's finding that there were grounds for setting aside the Final Award. In CA 48, PVN appeals against the Judge's decision to order remission instead of setting aside the award.

CA 49 (Grounds for setting aside the Final Award)

22 PM challenges both grounds of setting aside identified by the Judge, but largely based on the same arguments. PM argues that the Judge erred in holding that there was no nexus between the Tribunal's reasoning in para 548 and the parties' arguments and evidence in the arbitration. It asserts that the "more general question" of whether PM had lawfully terminated the EPC Contract by issuing the First and/or Second Notice had been addressed by the parties in their arguments and the evidence they led.[33] Among other things, PM points to the evidence of its Vietnamese law expert, Mr Le Ba Thanh Chung ("Mr Chung"),[34] as well as the evidence of PVN's two Vietnamese law experts, Lord Tuong Duy Luong ("Lord Luong") and Professor Tran Viet Dzung ("Prof Dzung").[35]

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32 PVN's Reply Submissions for CA/CA 48/2024 dated 28 May 2025 ("PVN's CA 48 Reply Submissions") at para 2.

33 PM's CA 49 Written Submissions at para 18.

34 PM's CA 49 Written Submissions at para 21(5). See also para 177 of Chung's expert report at AB Part I p 270.

35 PM's CA 49 Written Submissions at para 28. See the relevant Summary of Experts' Positions at AB Part R p 27.

23 PM accordingly asserts that the Tribunal was not precluded from making findings and inferences as to the effect of the Second Notice on the First Notice. This is notwithstanding the fact that PM had not pleaded or advanced a case that in issuing the Second Notice, it intended to override or alter the First Notice; and also notwithstanding the fact that the parties' experts did not expressly deal with the legal consequences when an invalid First Notice was followed by a lawful Second Notice, as acknowledged by the Tribunal at para 549 of the Final Award; see [11(d)] above.[36] Additionally, PM asserts that PVN had in substance addressed the Tribunal on the subject matter of the Tribunal's reasoning, and therefore had not been deprived of the opportunity to do so.[37]

24 As there was sufficient nexus between the Tribunal's chain of reasoning and the parties' cases, PM argues that the Tribunal was entitled to take its own position by drawing its own reasonable inferences and conclusions from the evidence and the parties' cases.[38] The Tribunal's reasoning at para 548 was thus a reasonably foreseeable outcome.[39] Accordingly, the Judge erred in finding that the Tribunal had breached the rules of natural justice and/or exceeded its jurisdiction in coming to its finding at para 548 of the Final Award.

25 Lastly, PM's counsel, Mr Edmund Kronenburg ("Mr Kronenburg") submitted before us that even if the fair hearing rule had been breached, PVN had not suffered any prejudice from the breach. This is because PVN would not have changed its case even if it had been asked by the Tribunal to address the issue raised at para 548. Mr Kronenburg submitted that PVN would just have

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36 PM's CA 49 Written Submissions at para 22.

37 PM's CA 49 Written Submissions at paras 29–30.

38 PM's CA 49 Written Submissions at paras 24, 25 and 33.

39 PM's CA 49 Written Submissions at paras 34–41.

maintained its position that the Second Notice could not withdraw or alter the First Notice, and that the Second Notice was a complete nullity after the First Notice brought the EPC Contract to an end.

26 Conversely, PVN seeks to uphold the Judge's conclusion that there was nothing in the parties' cases or evidence that would have given a reasonable party in PVN's shoes notice of the approach that the Tribunal intended to take in para 548 of the Final Award. As to PM's assertion that the "more general question" concerning the effectiveness of the First and/or Second Notice in terminating the EPC Contract was live before the Tribunal, PVN submits that this is far too abstract a characterisation of the issue before the Tribunal to be meaningful in the context of the parties' cases.[40] PVN also notes that PM's case in the arbitration on the effectiveness of the First and Second Notices was alternative and not cumulative and, it follows that the specific question of whether and how the Second Notice would take effect if the First Notice was held not to have been issued on valid grounds was something that the parties ought to have been afforded the opportunity to address. As was noted by PVN's counsel, Mr Colin Ong KC ("Mr Ong"), PM had consistently maintained throughout the proceedings that the First Notice was valid, and also that the Second Notice was never intended to supersede or in any way affect the First Notice, and this position was wholly inconsistent with the Tribunal's holding at para 548 that PM "must be taken to have intended the Second Notice to replace or, at the very least, supplement the First Notice".[41] We understood this submission to crystallise PM's core complaint of a lack of nexus between the parties' cases and the Tribunal's chain of reasoning.

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40 PVN's Written Submissions for CA/CA 49/2024 dated 14 May 2024 ("PVN's CA 49 Written Submissions") at para 22.

41 PVN's CA 49 Written Submissions at para 23 and 25.

27 Thus, there was no relevant material that was fairly in play or in the arena from which the Tribunal's reasoning could reasonably be said to have flowed, and the Tribunal had not given the parties any notice to enable them to address the point.[42]

CA 48 (Remission)

PVN's case

28 In CA 48, PVN contends that PM had not made a valid request for a remission order. The Judge's order therefore contravened the requirement stipulated in Art 34(4) of the Model Law that a remission order may only be made on the request of a party.

29 In this regard, PVN's first submission is that PM's request for remission under Art 34(4) ought to have been made (a) by way of a fresh summons seeking a remission order together with a supporting affidavit, or (b) in PM's reply affidavit filed in OA 346 to resist PVN's setting aside application.[43] Therefore, even if PM had made an oral request for remission at the hearing before the Judge, such an oral request would have failed to satisfy the necessary procedural requirements. PVN submits that the basis for its procedural requirements lie in rules that generally concern the making of applications under the Rules of Court 2021 ("ROC 2021").[44]

30 PVN further contends that PM's oral request should, in any case, have put forward all the evidence and material to justify the request for remission

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42 See, generally, PVN's CA 49 Written Submissions at paras 54 and 57–63.

43 PVN's CA 48 Written Submissions at para 44.

44 PVN's CA 48 Written Submissions at paras 28–43.

such that prejudice would not be occasioned to PVN.[45] This submission appears to be made without prejudice to PVN's position that PM had not even made an oral request for remission at the hearing before the Judge.

31 Lastly, PVN submits that remission to the Tribunal is not appropriate in any case because:

(a) There is no reasonable basis for expecting PVN to retain any confidence in the Tribunal's ability to reconsider the remitted question given that its reasoning in para 548 involved an egregious breach of natural justice. Once the Tribunal had decided that PM's primary case on termination by the First Notice failed, it "should have held that PM's 1st Notice gave rise (as a matter of Vietnamese law) to a wrongful unilateral termination of the EPC Contract". Indeed, the Tribunal was aware that this was ordinarily the position under Vietnamese law (see [11(b)]) above. Instead, the Tribunal proceeded without any expert evidence on the relevant principle of Vietnamese law which supposedly permitted the conclusion set out at para 548, or any evidence supporting PM's putative intentions in issuing the Second Notice when its actual conduct was contrary to the intention that the Tribunal imputed to PM. This is cemented by para 549, which PVN submits shows the Tribunal's acknowledgment that it had "no basis at all from the existing expert Vietnamese law evidence concerning the two Notices of Termination on which to base its decisions in paragraph 548".[46]

(b) PVN further relies on the Remission Award to show that the Tribunal, in fact, could not have been relied on to arrive at a fair

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45 PVN's CA 48 Written Submissions at para 45.

46 PVN's CA 48 Written Submissions at paras 67–69.

reconsideration of the position. It declined to hear the further evidence that was lacking in the first place, and reached an incoherent conclusion for which the Tribunal knew it had no evidence and that was made in the absence of the necessary "building blocks" of Vietnamese law.[47] As noted above, we disregarded this submission.

(c) Further, if para 548 of the Final Award were set aside or reversed, the ramifications for the Award would be significant as the award of damages to PM would have to be set aside, and a significant amount of changes to the Tribunal's decision would have to be made.[48] This too made it untenable to remit such an important question to the Tribunal.

PM's case

32 PM submits that it had made a request for remission to the Judge at the hearing for OA 346, as recorded in the Judge's notes of evidence.[49] It also argues that there ought to be no limit on the time by which a party may make a request for remission or the form that such a request must take. In the present case, PM could not have reasonably been expected to make a request for remission before the possibility was raised by the Judge at the hearing, bearing in mind that there had been no indication prior to the hearing that the Judge might find that there were grounds for setting aside the Final Award.[50] PM also refutes PVN's contention that a request for remission must be made by way of a fresh summons

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47 PVN's CA 48 Reply Submissions at para 2.

48 PVN's CA 48 Written Submissions at para 74.

49 See the Notes of Evidence (19 July 2024) at p 12 lines 1 and 2; AB Part A p 57.

50 PM's Written Submissions for CA/CA 48/2024 dated 14 May 2025 ("PM's CA 48 Written Submissions") at para 7.

with a supporting affidavit on the basis that such a rule would render O 48 r 3 of the ROC 2021 redundant.[51] To provide brief context, O 48 r 3(2) read with O 48 r 3(1) specifies certain applications or requests to the Court that must be made to a Judge or the Registrar by summons in an action or by originating application, such as applications for interim orders under s 12A of the IAA. However, requests for remission are not included among the list of applications or requests falling under O 48 rr 3(1) and 3(2).

33 Furthermore, PM submits that the order for remission was appropriate in the circumstances since the defects in the Final Award concern a single stand-alone point that is curable and remediable, and remission avoids having to set aside other findings when there is no reason or basis to set those aside.[52] PM also disagrees with PVN's assertion that the Tribunal would be unable to decide the issue fairly, as PVN's criticisms of the Tribunal go to the merits of the Tribunal's decision in the arbitration and not to the issue of whether a fair-minded observer would retain confidence in the Tribunal's ability to come to a fair and balanced conclusion on the remitted issue, or would instead reasonably harbour doubts in this regard.[53]

Issues arising in the appeals

34 The following issues arise for our consideration:

(a) Whether the Tribunal's finding at para 548 of the Final Award breached the fair hearing rule;

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51 PM's CA 48 Written Submissions at para 16.

52 PM's CA 48 Written Submissions at paras 18–22.

53 PM's CA 48 Written Submissions at paras 24–25.

(b) Whether the Tribunal exceeded its jurisdiction in coming to the finding at para 548 of the Final Award;

(c) Whether PM had made an oral request for remission and if so, whether the request complied with the applicable procedural requirements; and

(d) Whether the Judge erred in making the order for remission.

Whether the Tribunal acted in breach of the fair hearing rule

The applicable principles

35 We begin by dealing with whether the Tribunal breached the fair hearing rule, which formed the thrust of PM's case in CA 49. It is trite that a party challenging an arbitration award for breach of the rules of natural justice must establish four elements: (a) the specific rule of natural justice that was breached; (b) how it was breached; (c) how the breach as connected to the making of the award; and (d) how the breach prejudiced its rights: *John Holland Pty Ltd (formerly known as John Holland Construction & Engineering Pty Ltd) v Toyo Engineering Corp (Japan)* [2001] 1 SLR(R) 443 at [18]; *BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW v BZV*") at [59]; *CJA v CIZ* [2022] 2 SLR 557 ("*CJA v CIZ*") at [68].

36 In this case, the Judge held that the fair hearing rule was breached due to the chain of reasoning that the Tribunal adopted in para 548 of the Final Award (see GD at [35] and [43]). The applicable principles for resolving such alleged breaches are not in dispute. In essence, one facet of the fair hearing rule requires that a tribunal's chain of reasoning should have sufficient nexus to the case advanced by the parties and be one, of which the parties had reasonable notice that the tribunal could or might adopt. In this vein, a chain of reasoning

is open to a tribunal if: (a) it arises from the party's express pleadings; (b) it is raised by reasonable implication by a party's pleadings; (c) it does not feature in a party's pleadings but is in some other way brought to the opposing party's actual notice; or (d) the links in the chain flow reasonably from the arguments actually advanced by either party or are related to those arguments (*BZW v BZV* at [60(b)]; see also *CJA v CIZ* at [69], citing *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 ("*JVL Agro*") at [159]).

37 The overriding concern underlying these principles is fairness in that a tribunal ought to give the parties a reasonable opportunity to present their cases and to respond to what is being raised against them. A reasonable litigant in the parties' shoes should be able to foresee the possibility of reasoning of the type that is eventually revealed in the award (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [65(a)] and [65(d)]; see also *JVL Agro* at [160]–[161]). This analysis is to be applied in a sensible way and not in a rigid or mechanical way. The tribunal is not bound by or limited to accepting the case put forward by either party. It may reject both positions and find that the resolution of the dispute is to be found in some other positions. But the key question the Tribunal must consider is whether, expressly or impliedly, its conclusion flows reasonably from the arguments that have been advanced, so that no party may fairly say it was taken by surprise and did not and could not reasonably have anticipated the tribunal's conclusion and reasoning.

38 At the same time, the presence of a surprising or unforeseen outcome in an award is by no means determinative of whether the fair hearing rule has been breached (see *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 at [54]–[55]; *cf Soh Beng Tee* at [41]). The question, as we have already noted, is fundamentally one of fairness and whether the

parties had adequate opportunity to address the issues that they knew or ought reasonably to have known were in play.

39 Lastly, as we observed in *Phoenixfin Pte Ltd v Convexity Ltd* [2022] 2 SLR 23 ("*Phoenixfin*"), the extent of the opportunity that needs to be given to a party to address an issue depends on whether the issue is a question of fact, a question of law, or a question of mixed fact and law (at [52]):

> The extent of the opportunity needed to be given depends on the nature of the issue. If the issue is a legal one, then sufficient time to make legal submissions is all that is required. But if the issue is a factual one or a mixed fact and law question then, apart from submitting on the law, a party needs to be able to question the evidence produced in support of the issue as well as have the chance to itself introduce relevant rebuttal evidence. And in order to do all this, there has to be clarity and precision regarding what issue is being raised and what evidence will be relied on to support it.

The Tribunal's chain of reasoning did not have sufficient nexus to the parties' cases

40 PVN's principal complaint is that the Tribunal breached the fair hearing rule because there was a lack of nexus between the parties' arguments and the evidence that was led in the arbitration on the one hand, and the Tribunal's chain of reasoning at para 548 on the other.[54] The Tribunal's reasoning was therefore not a reasonably foreseeable outcome. If the Tribunal was contemplating this, it ought to have brought it to the parties' attention.

41 We agree. In our judgment, a party in PVN's shoes could not reasonably have anticipated the Tribunal's conclusion at para 548 of the Final Award. The Tribunal's conclusion at para 548 was neither addressed in the parties' submissions nor in the expert evidence. Furthermore, the Tribunal's conclusion

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[54] PM's CA 49 Written Submissions at p 12, Header (II)(A)

at para 548 was *contrary* to the factual position that PM had advanced in the arbitration. In order to explain our conclusion, we set out the key arguments and evidence that were presented in the arbitration.

The pleadings and expert evidence

42 Beginning with the pleadings (as noted by the Judge at [20] of the GD):[55]

(a) First, on 26 July 2021, PM filed its Statement of Claim and PVN filed its Statement of Counterclaim.

(b) Second, on 22 July 2022, the parties filed their respective Statements of Defence.

(c) Third, between 21–22 November 2022, the parties filed their respective Statements of Reply to the Statements of Defence.

43 From its Statement of Claim, PM's primary case in the arbitration was that by issuing the First Notice, the EPC Contract was deemed to have been terminated on 18 February 2019 pursuant to cl 19.6 of the Conditions, on the ground of *force majeure*.[56] PM's Statement of Claim also set out its alternative case, which was that by issuing the Second Notice, the EPC Contract was deemed to have been terminated on 22 February 2019 pursuant to cl 16.2 of the Conditions, on the ground of non-payment.[57]

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55 For the Tribunal's recap of the filing of pleadings, see Final Award at paras 91–113; AB Part D pp 33–37. However, the dates cited in the Final Award differ from the dates stated on the respective pleadings by a day.

56 PM's SOC at paras 186–187; AB Part E p 115.

57 PM's SOC at paras 207–208; AB Part E pp 120–121.

44 However, PM's Statement of Claim did not make any express reference to the interaction between the First and Second Notice. It was only in its Statement of Defence to PVN's Counterclaim that PM pleaded the following paragraphs:[58]

> **i) The Second Notice of Termination was valid even if the First Notice of Termination is considered to be ineffective**
>
> 474 Should the Tribunal find that the Claimant is not entitled to rely on the First Notice of Termination, it should decide that the EPC Contract was terminated by the Second Notice of Termination
>
> …
>
> 480 Third, [PM's expert, Mr Chung] notes that in case two termination notices are filed consecutively, it will be necessary to examine whether the subsequent notice amends or withdraws the previous one.
>
> 481 Both the First and the Second Notices of Termination contain a broad disclaimer expressly reserving all the Claimant' s rights: …
>
> 482 *Given that [PM] expressly reserved all its rights, it would be hardly possible to infer that the Second Notice of Termination was intended to withdraw the First Notice of Termination.*
>
> 483 In [Mr Chung's] opinion, the EPC Contract should be terminated on the earlier date provided by the effective termination notice …
>
> [emphasis added]

Subsequently, in its Statement of Reply to PVN's Statement of Defence, PM substantially repeated paras 480–482 of its Statement of Defence.[59]

45 Notwithstanding that paras 480–483 of PM's Statement of Defence were placed in a section concerning the validity of the Second Notice (which was

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58 AB Part G pp 121–122.

59 AB Part G p 224.

PM's alternative case), the substantive content of those paragraphs in fact went towards addressing the effect and validity of the First Notice (which was PM's primary case). The arguments contained in paras 480–483 reflected one of the pillars of PM's primary case, which was that if both the First and Second Notices were legally valid, the Second Notice was not intended to withdraw the First Notice and the EPC Contract would be terminated on whichever termination date was earlier.

46 In support of this contention, PM relied on the expert evidence of its Vietnamese law expert, Mr Chung, whose expert report dated 15 July 2022 was filed together with PM's Statement of Defence on 22 July 2022.[60] The influence of Mr Chung's evidence could be seen from the references made to it in paras 480 and 483 of PM's Statement of Defence, among other paragraphs. Mr Chung's expert evidence had addressed, among others, the following issues and questions:[61]

> **[Issue 4] Legal effectiveness of a wrongful unilateral termination of a contract**
>
> Question 4: According to Vietnamese law, when a party unilaterally decides to terminate a contract wrongfully and ceases to perform his obligations, will the contract be considered terminated or not? If yes, when is the contract terminated and what are the implications or consequences of the contract termination?
>
> …
>
> **[Issue 5] Legal effectiveness of two notices of unilateral termination of contract**
>
> Question 5: If the answer to question 4 is yes, if a party has given notice of a unilateral termination by it on certain grounds, and thereafter gives or purports to give a further notice of termination of the contract based on different grounds, what (if

60 See paras 98 and 99(f) of the Final Award; AB Part D pp 34–35.

61 See Question 4 set out at AB Part I p 263 and Question 5 at AB Part I p 268.

> any) is the effect of the second notice and at which point is the contract deemed in law to have been terminated?

47 As part of his response to Question 5, Mr Chung explained that if both notices were "lawful", the applicable notice would be the one setting an earlier termination date:[62]

> 180 I am aware of no provisions of laws or judgements of Vietnamese courts addressing the case where there are more than one notice of termination existing and each one sets a different termination date. In the absence of such jurisprudence, in my opinion, it is reasonable to adopt the view that the contract will be terminated on whichever date is the earlier termination date. In other words, whichever notice sets an earlier termination date will be applied. This is because, since both notices exist lawfully, each of the two notices may constitute the basis for termination as discussed in paragraph 1 above. On that earlier termination date, the contract is terminated, and the later termination date set forth under the other notice is no longer relevant.
>
> 181 In summary, in my view, a wrongful unilateral termination will not automatically result in the termination of the contract. *In case there are two lawful notices of termination, and on the premise that the second notice of termination does not amend and withdraw the first notice, whichever notice sets an earlier termination date will be applied.* In other words, the contract will be terminated on whichever date is the earlier termination date.
>
> [emphasis added]

48 Conversely, if the First Notice was found to be without legal basis, Mr Chung opined that the wrongful issuance of the First Notice would not in and of itself result in the termination of the EPC Contract.[63] While such wrongful issuance would constitute a breach of contract, it was for the aggrieved party (namely, PVN) to exercise its corresponding right to terminate the EPC

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62 AB Part I pp 270–271.

63 Para 152 of Mr Chung's expert report; AB Part I p 266.

Contract.[64] Absent such an election by PVN, the result would be that the EPC Contract would remain effective and instead by terminated on the later date provided by the (presumptively valid) Second Notice.

49 Mr Chung's position stood in contradistinction to PVN's position and expert evidence, and also, it appears, the Tribunal's findings at para 543 of the Final Award (see [11(b)] above). In its Statement of Counterclaim, PVN refuted PM's alternative case (concerning the validity of the Second Notice) by asserting the following propositions:[65]

(a) As PM had issued two termination notices, the EPC Contract would be terminated on the date on which the First Notice took effect.

(b) After the First Notice took effect, the EPC Contract would be unilaterally terminated and the Second Notice would no longer be valid and effective.

(c) PM could not revoke its decision to unilaterally terminate the EPC Contract by issuing a Second Notice.

50 In support of the last of the propositions, PVN pleaded the following:

> … according to Lord Luong, the parties are not obliged to continue performing their duties to each other from the moment the contract is terminated. Accordingly, [PM] could not *revoke its own decision to unilaterally terminate the EPC Contract* by issuing another termination notice specifying a different date and different alleged legal grounds.
>
> [emphasis added]

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64 Para 154 of Mr Chung's expert report; AB Part I p 267.

65 See PVN's Statement of Counterclaim at paras 388–390; AB Part F pp 104–105.

51 In the aforementioned passage, PVN was thus asserting, as a matter of Vietnamese law, that the issuance of the Second Notice was not capable of revoking the validity of the First Notice. It also placed reliance on the expert evidence of Lord Luong, whose expert report dated 26 July 2021[66] was filed together with PVN's Statement of Counterclaim on the same day.[67] This view was subsequently reinforced by PVN's second Vietnamese law expert, Prof Dzung, who stated the following in the parties' joint expert report dated 7 October 2022 (the "Joint Expert Report"):

> 119 Prof. Dzung agrees with Lord Luong's point of view regarding the case where a party has given notice of unilateral termination of the contract on certain grounds and then gives or intends to send a further notice for termination of the contract on other ground(s), the date of termination of the contract shall be the date noted in the first notice …
>
> 120 When one party gives the remaining party a unilateral notice to terminate the contract, it is the wish of the party seeking termination. As such, it is for the party sending the notice to give its notice of termination of the contract. The Termination will be subject to the content and conditions as set out in the notice. *If the terminating party subsequently sends out another termination notice based on other grounds, the latter will not nullify nor alter the validity of the first notice.*

52 From the foregoing, we briefly summarise the parties' cases:

(a) PM's primary case rested on the validity of the First Notice. As a matter of *fact,* it expressly maintained that when it issued the Second Notice, it did not intend to withdraw the First Notice.

(b) PM's alternative case rested on the validity of the Second Notice. As a matter of Vietnamese law, PM's case was that if the First Notice

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66 AB Part J p 38.

67 See paras 92 and 94 of the Final Award describing the procedural history; AB Part D pp 33–34.

was wrongfully issued, it would not in and of itself terminate the EPC Contract on the stipulated termination date (18 February 2019). Unless PVN took steps to bring the EPC Contract to an end on the stipulated termination date, the First Notice would have no legal effect at all and would be legally immaterial. In such circumstances, the Second Notice would instead operate to terminate the EPC Contract on 22 February 2019.

(c) PVN's case against the validity of the Second Notice was that as a matter of Vietnamese law, the wrongfully issued First Notice would still operate to terminate the EPC Contract on the stipulated termination date but as a wrongful termination at the instance of PM. Thereafter, the Second Notice would cease to have legal effect. The issuance of the Second Notice could not revoke, nullify or alter the First Notice.

53 For completeness, we briefly touch on the parties' lists of issues and subsequent submissions. These only affirmed and did not alter the parties' cases as described above. For instance, while the parties were unable to agree on a joint list of issues,[68] the parties' respective lists of issues both included "[w]hether [PM] was entitled to terminate the EPC Contract due to non-payment" and "[w]hether the EPC Contract has been effectively terminated, and, if yes, at which date".[69] We therefore do not go into them in detail.

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68 As stated at para 123 of the Final Award; AB Part D p 38.

69 See PM's List of Issues at para 7; AB Part S p 60, and PVN's List of Issues at para 7; AB Part S p 62.

The degree of departure of the Tribunal's chain of reasoning from the parties' cases

54 Having set out the parties' cases, an examination of para 548 of the Final Award shows that the Tribunal adopted a chain of reasoning without a sufficient nexus to the parties' cases. In para 548, the Tribunal held that it was implicit that the Second Notice overrode and superseded the First and that PM must be taken to have intended this. That decision encompassed separate findings of law and fact.[70]

(a) First, that as a matter of Vietnamese law, a Second Notice issued while the contract remained in place could override and supersede the invalid and unlawful First Notice.

(b) Second, that as a matter of fact, PM must be taken to have intended the Second Notice to replace or supplement the First Notice when it issued the Second Notice prior to the First Notice taking effect.

In our judgment, PVN could not reasonably have anticipated and so did have any reasonable opportunity to address both these issues.

55 We begin with the issue of law. It was *neither* party's case that the Second Notice was capable of overriding, superseding or amending the wrongfully issued First Notice. PVN's case against the Second Notice expressly argued against this legal position. Further, PM's case on the Second Notice did not address this point as it hinged on a separate line of legal reasoning, namely that a wrongfully issued First Notice was incapable in and of itself of effecting termination on the stipulated termination date and would have no legal effect at all.

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[70] See para 548 at AB Part D p 122.

56 Indeed, the Tribunal acknowledged this at least in part in para 549 of the Final Award, where it noted that the Vietnamese law experts "did not specifically deal with the present scenario involving an unlawful first notice of termination and a lawful second notice of termination".[71] That being the case, a reasonable party in PVN's shoes would not have foreseen the possibility of the Tribunal making the finding of Vietnamese law that it did. Indeed, it goes further than that because PVN's legal experts, to some degree at least, argued the opposite in that their position was that the First Notice would bring the EPC Contract to an end in any event and at PM's instance either lawfully, or unlawfully, and the Second Notice could not change this.

57 We also reject PM's submission that adequate opportunity was afforded to PVN to address these matters since the parties' experts were given the opportunity to provide their respective opinions on the question of the effect of a subsequent notice of unilateral termination on an initial notice where both notices were based on different grounds.[72] As may be recalled, this appears to have been the thrust of the fifth question that was dealt with by Mr Chung in his expert report (see [46] above), and by Lord Luong in his expert report[73] and Prof Dzung in the Joint Expert Report.[74]

58 The problem with PM's submission is that, as the Tribunal acknowledged, the experts did not specifically address the situation where the initial notice is found to have been *wrongfully issued.* In the Joint Expert Report for instance, both Mr Chung and Prof Dzung provided their responses in the

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71 AB Part D p 122.

72 See PM's CA 49 Written Submissions at para 28.

73 AB Part J at p 26.

74 AB Part J p 160.

context of there being two lawful, valid notices.[75] Furthermore, it also could not fairly be said that the experts clearly understood what the Tribunal was contemplating and yet chose not to address it. This is because the wording of the relevant question was somewhat vague. For ease of reference, we again set out the relevant questions that the experts were asked to address, as set out in the Joint Expert Report.[76]

> **Issue 5: Legal effectiveness of a wrongful unilateral termination of the performance of a contract**
>
> Question 5: According to Vietnamese law, when a party unilaterally decides to terminate a contract wrongfully and ceases to perform his obligations, will the contract be considered terminated or not? If yes, when is the contract terminated and what are the implications or consequences of the contract termination?
>
> **Issue 6: Legal effectiveness of two notices of unilateral termination of a contract**
>
> Question 6: If the answer to question 5 is yes, if a party has given notice of a unilateral termination by it on certain grounds, and thereafter gives or purports to give a further notice of termination of the contract based on different grounds, what (if any) is the effect of the second notice and at which point is the contract deemed in law to have been terminated?

59 The difficulty with Question 6 (which was Question 5 in Mr Chung's expert report; see [46] above) is that it did not specify that the experts' response had to address the interaction between the notices on the premise that the initial notice of termination was wrongfully issued. Although the opening words of Question 6 made reference to Question 5 (which was Question 4 in Mr Chung's expert report), which concerned the effect of a wrongful notice of unilateral termination on the contract, Question 6 did not go on to ask the experts to

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75 See paras 117 and 118 of the Joint Expert Report; AB Part J p 161.

76 The reproduced questions may be found at Prof Dzung and Chung's Joint Expert Report, AB Part J p 133.

provide an answer on that premise. This ambiguity seems to us to be the most plausible explanation for why the experts only predicated their responses on the footing that both notices were valid.

60 In the final analysis, given that:

(a) this was a critical issue governed by Vietnamese law;

(b) neither side's expert squarely engaged with the question;

(c) both sides advanced positions that were different from what the Tribunal concluded; and

(d) at least one side had expressly stated a position under Vietnamese law that was incompatible with what the Tribunal decided,

we consider that the Tribunal's reasoning and conclusion did not bear a reasonable nexus to the arguments. It may also be noted that the Tribunal's decision at para 548, did not deal with PVN's case on the position under Vietnamese law (as set out at [49]–[51] above).

61 We turn to the question of fact. The Tribunal's approach in this regard was, with respect, even more problematic. As we stated in *Phoenixfin,* PVN needed to be able to "question the evidence produced in support of the issue as well as have the chance to itself introduce relevant rebuttal evidence" (*Phoenixfin* at [52]). However, PM did not lead any evidence to show that it intended to replace or supplement the First Notice. Instead, it *expressly pleaded* that the issuance of the Second Notice *was not intended to withdraw* the First Notice (see [44] above). This made sense, since PM's primary case hinged on the First Notice validly and legally effecting termination of the EPC Contract

on 18 February 2019 pursuant to cl 19.6 of the Conditions, on the ground of *force majeure.* Indeed, the entire arbitration had been conducted on this basis.

62 Further, PVN did not even address the question of fact, because neither party ever approached the dispute on the footing that PM intended to supersede or override the First Notice by issuing the Second Notice. PVN's argument against the Second Notice was premised entirely on Vietnamese law (see [49]–[51] above), and as noted there, PVN's position was that PM could not supersede or override the First Notice.

63 What follows from the points at [61]–[62] above is that not only was the issue not addressed on the facts, but the conclusion reached by the Tribunal at para 548 as to PM's intention in issuing the Second Notice was *contrary* to the factual reality it was presented with. It was never PM's case that the First Notice had been intentionally superseded; indeed, PM's case was the opposite. In these circumstances, it could scarcely be said that PVN had any opportunity to address the issue of PM's intention to replace or supplement the First Notice through the issuance of the Second Notice.

64 Taken together, the factual and legal conclusions in para 548 could not have been reasonably anticipated by the parties. These were neither advanced nor directly addressed by either party; and, on the factual element, they were at odds with the position taken by PM.

65 The consequence of this is to be seen in the light of the fact that the Tribunal's conclusion at para 548 was a critical decision that was pivotal to the outcome of the arbitration. Prior to para 548, the Tribunal had already determined that the First Notice was without basis and invalid (see [11(a)] above). And, as a matter of Vietnamese law, the Tribunal also held that the

invalid First Notice would be sufficient without more to bring the EPC Contract to an end (see [11(b)] above). If the Tribunal had concluded on this basis that the invalid First Notice did in fact bring about termination, this would likely have meant that PM would be found to have wrongfully terminated the EPC Contract, which we imagine could have major ramifications on the incidence and quantum of damages payable. The question of whether the Second Notice could override, supersede or supplement the First Notice or in some other way render it a legal nullity was therefore a pivotal issue in the arbitration. The effect of the Tribunal's failure to give the parties' sufficient notice of its intended chain of reasoning cannot be understated.

66 To this, Mr Kronenburg submitted that even if there had been a breach of the fair hearing rule, no prejudice had been occasioned to PVN. According to Mr Kronenburg, even if PVN had been afforded the opportunity to address the Tribunal on the issue, PVN would not have deviated from its position that the Second Notice was legally incapable of withdrawing or altering the First Notice, and that the Second Notice therefore could have no effect once the First Notice effected termination of the EPC Contract.

67 We do not accept this. It is well-established that a breach of natural justice must result in prejudice in order to found any relief (*Soh Beng Tee* at [91]). However, this does not require the court to be satisfied that the tribunal *would* have reached a different result if there had been no breach. As we stated in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [54], the relevant inquiry examines whether the breach resulted in the tribunal being "denied the benefit of arguments or evidence that had a real as opposed to a fanciful chance of making a difference to his deliberations". The element of prejudice is established if "the material

could reasonably have made a difference to the arbitrator", as opposed to it necessarily having such effect.

68 Applying these principles, the Tribunal's failure to bring its contemplated chain of reasoning to the notice of the parties did prejudice PVN. If PVN had been given notice, it would be reasonable for it to have adduced expert evidence on the specific scenario contemplated by the Tribunal, as well as make submissions on the incompatibility between the Tribunal's view of the factual position pertaining to PM's putative intention in issuing the Second Notice, and the entire course of the arbitration which had been predicated on the opposite factual position, as well as the fact that *no one had at any stage advanced the factual position* that the Tribunal took. It would also be conceivable that PVN would have highlighted PM's own averment that the issuance of the Second Notice was not intended to withdraw the First Notice. It is not clear to us how it could be said that none of this would have a reasonable prospect of making a difference to the Tribunal.

69 We therefore affirm the Judge's holding that there was a breach of the fair hearing rule.

Whether the Tribunal had exceeded its jurisdiction

70 Having found that there was a breach of the fair hearing rule, we turn to consider whether the Tribunal's finding at para 548 was made in excess of its jurisdiction or was a decision on a matter beyond the scope of the submission to arbitration under Art 34(2)(*a*)(iii) of the Model Law. We first observe that given the view we have taken of this matter, it is not necessary for us to come to a decision on this issue. We nonetheless set out our views on this issue. It will

be evident that some parts of this should be seen to be provisional (see at [86]–[90] below).

71 Article 34(2)(*a*)(iii) of the Model Law reflects the principle that an arbitral tribunal has no jurisdiction to decide any issue that has not been referred to it for determination by the parties (*PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 at [31]). The voluntary nature of arbitration as a form of dispute resolution means that the tribunal derives its jurisdiction from the consent of the parties, and only has the authority to bind the parties to findings on issues that they have agreed to refer to it for determination (*Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279 ("*Bloomberry*") at [68]; *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 ("*Swire Shipping*") at [39]). However, a practical view has to be taken regarding the substance of the dispute that has been referred to arbitration (*CJA v CIZ* at [37], citing *Bloomberry* at [68]).

72 As a result, an arbitral award may be set aside where an arbitral tribunal has improperly decided matters that had not been submitted to it or failed to decide matters which had been submitted to it (*CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 ("*CRW v Persero*") at [31]). However, a court must be careful to distinguish between the erroneous exercise by an arbitral tribunal of an available power vested in it, which would amount to a mere error of law, and a purported exercise by a tribunal of a power it did not possess, which would be liable to be set aside (*CRW v Persero* at [33]).

73 As stated in *CJA v CIZ* at [38], the court adopts a two-stage enquiry to assess whether an arbitral award ought to be set aside under Art 34(2)(*a*)(iii) of the Model Law:

(a) First, the court identifies what matters were within the scope of submission to the arbitral tribunal; and

(b) Second, the court assesses whether the arbitral award involved such matters, or whether it involved some difference outside the scope of the submission to arbitration and that was, accordingly, irrelevant to the issues requiring determination.

74 At the first stage, the court ascertains the matters within the scope of the parties' submission to arbitration by reference to five typical sources: (a) the parties' pleadings; (b) the list(s) of issues; (c) the opening statements; (d) the evidence adduced; and (e) the closing submissions in the arbitration (*CJA v CIZ* at [38], citing *CDM v CDP* [2021] 2 SLR 235 ("*CDM v CDP*") at [18]). However, this again is not to be seen as calling for a mechanistic consideration of the five sources, because the overriding consideration is whether the relevant issues had been properly raised before the tribunal (*CAJ and another v CAI and another appeal* [2022] 1 SLR 505 ("*CAJ v CAI*") at [50]).

75 The courts do not undertake an overly restrictive or exacting review when considering the proper scope of the submission to arbitration. The mere fact that a tribunal has decided a dispute on a matter which a party has not identified as being the nub of a dispute is not material as long as the issue falls within the scope of submission (*CDM v CDP* at [44]). Where an issue or claim may be encompassed within a more general issue that was within the scope of the parties' pleadings, the determination of the specific issue may not be an excess of jurisdiction (*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [74]). The underlying principle is that in considering whether the tribunal's jurisdiction has been exceeded, the court must look at matters in the round to determine whether the issues in question were live issues

in the arbitration, having regard to the totality of what was presented to the tribunal (*CJA v CIZ* at [37]–[38]).

76 With respect, we think that the Judge might have erred in holding that the Final Award offended Art 34(2)(*a*)(iii) of the Model Law on the basis that the Tribunal had departed from the parties' cases in its finding at para 548 of the Final Award. Notwithstanding our observations in respect of the Tribunal's breach of the fair hearing rule, in our view, the issue of whether the Second Notice overrode, superseded, replaced or supplemented the First Notice could be seen as a logically anterior issue to the validity of the Second Notice, and at least in principle, this was an issue within the scope of the parties' submission to arbitration, though even on this basis, on the facts and given how the matter had proceeded, the Tribunal ought to have alerted the parties to the specific issue, as noted in the previous section of this judgment. We elaborate.

The pleadings and evidence

77 As stated above, the pleadings and the evidence adduced showed that the legal effect of the Second Notice on the First Notice was an issue raised by the parties in the arbitration, albeit that it was not discussed in the scenario that the Tribunal arrived at. PM had also pleaded that as a matter of fact, it did not intend to withdraw the First Notice by the issuance of the Second Notice.

78 We further note that Mr Chung's expert report had expressly discussed the legal effect of the Second Notice on the First Notice. In addressing the question of the legal effectiveness of two notices of unilateral termination of a contract, Mr Chung had also noted a possible view that the principle of freedom

of contract might suggest that it is possible to withdraw, replace or amend a notice of termination prior to the termination date:[77]

> 170 On that basis [that a contract will be terminated on the date set in the notice of termination], I continue to discuss below the question whether a notice of termination can be withdrawn or amended before the purported termination date as set in such notice of termination?
>
> 171 Since the law is silent on this question, different views may exist.
>
> 172 The first view is that, based on the freedom of contract principle, it is able to withdraw, replace or amend a notice of termination before the termination date. However, if such revocation, replacement, or amendment causes loss and damage to the other party which has acted in reliance on the notice, then the terminating party is liable to compensate for such loss and damage. On the one hand, this view upholds the will of both parties in case the contract is terminated (otherwise, the contract will be terminated contrary to the will of the party which wanted to revoke, replace, or amend the notice of termination). On the other hand, it protects the interest of the terminated party in case it suffers loss and damage in reliance on the notice of termination.
>
> …
>
> 177 If the first view is adopted, i.e., a notice of termination can be withdrawn, replaced or amended, the legal effect of those two notices first depends on the impact of the second notice on the first notice i.e., ***whether the second notice has an impact either expressly or impliedly to withdraw, replace or amend the first notice. Wordings of the second notice and other evidence such as conducts [sic] of the terminating party may be relevant to answer this question***.
>
> [emphasis added in bold and italics]

79 Furthermore, as stated above, both parties had included the question of "[w]hether [PM] was entitled to terminate the EPC Contract due to non-payment" and "[w]hether the EPC Contract has been effectively terminated, and, if yes, at which date" in their respective lists of issues (see [53] above).

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[77] AB Part I p 270 at paras 172 and 177.

The Final Award did not appear to involve a new difference outside the scope of the submission

80 The potential difficulty in the present case arises from the fact that the parties did not join issue on whether the Second Notice could or did withdraw or amend the First Notice. Neither PM nor PVN made it a part of their own case that the First Notice had been withdrawn or amended by the Second Notice. However, in our view, this may not be determinative of whether an issue falls within the scope of submission. An excess of jurisdiction concerns the question of whether the issue that has been determined by a tribunal falls within the scope of the submission to arbitration. This is to be distinguished from the question of whether the tribunal afforded the parties a fair opportunity to raise relevant arguments and then considered these arguments in coming to its decision. If the concern is that the tribunal made a determination that is not in line with the parties' respective positions on a given issue, then that is typically more pertinent to the question of natural justice (*CFJ and another v CFL and another and other matters* [2023] 3 SLR 1 ("*CFJ v CFL*") at [123]). The courts have adopted a practical approach to determining the scope of submission, and tribunals may consider and determine issues which are a "necessary step" or "anterior issue" to an issue squarely within the court's scope of submission.

81 In *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM Division*"), a buyer agreed to purchase two vessels. After the seller issued a notice of readiness ("NOR") for the vessels, the buyer rejected the NOR on the basis that the vessels were not physically ready for delivery, as required under the agreements (at [12]). In the arbitration, an aspect of the seller's argument revolved around cl 11 of the agreements, which required the vessels to be delivered physically ready (at [9]). The seller argued in its closing submissions that, among other things, a breach of cl 5 (which related to

the notices, time and place of delivery) stemming from its alleged failure to deliver vessels that were physically ready for delivery amounted at most to a breach of an intermediate term and not of a condition (at [24(d)] and [67]–[69]). In his award, the arbitrator held that cl 11 was a collateral warranty, and that the buyer could not therefore rely on cl 11 to reject the NOR (at [25]).

82 The buyer applied to set aside the award on various grounds, including that the arbitrator's finding on cl 11 was made in excess of jurisdiction because whether cl 11 was a condition was not an issue raised in the pleadings or the parties' memorandum of issues (at [31]). Indeed, it was not part of the seller's case that cl 11 was a condition, and it does not appear that the buyer's case in the arbitration had referred to cl 11 at all (see the buyer's case summarised at [22]). In its decision, the High Court dismissed the buyer's challenge on the basis of an excess of jurisdiction. The court reasoned that the parties' memorandum of issues had invited the arbitrator to determine whether the buyer's non-acceptance of the NOR amounted to a repudiatory breach, and that it was therefore open to the arbitrator to "take the view that he ought to determine whether cl 11 was a condition because that would have a bearing on the question of whether the [buyer] had repudiated the [agreements]" (*TMM Division* at [57]). That part of *TMM Division* has been explained on the basis that the legal characterisation of cl 11 was a "necessary step" and an "anterior issue" to the issue of repudiatory breach that had been submitted to the arbitrator (see *GD Midea Air Conditioning Equipment Co Ltd v Tornado Consumers Goods Ltd and another matter* [2018] 4 SLR 271 at [57] and *Swire Shipping* at [51]).

83 In a similar sense, we consider that whether the Second Notice could affect the First Notice could be seen as an "anterior issue" or a "necessary step" to determining the validity of the Second Notice. At its essence, this was a case

where there were two overlapping notices of termination and there was a question as to their interaction and impact or effect on one another. To the extent the parties expressly sought determination of the question whether the EPC Contract could be or was terminated by the Second Notice (see [53] above), we consider that it would have been within the Tribunal's mandate to consider the point.

84 Therefore, with respect, we do not think the Judge was correct to hold that the Tribunal had acted in excess of jurisdiction on this basis.

85 At the hearing before us, Mr Ong submitted that the excess of jurisdiction lay in the fact that PM had taken a specific position in its pleadings (namely, that PM had not intended to withdraw the First Notice in issuing the Second Notice) that was diametrically opposite to the conclusion the Tribunal had come to. It was suggested that this was a conclusion the Tribunal had no jurisdiction to reach. Mr Ong's submission further developed PVN's position in its written submissions, in that the Tribunal's finding at para 548 was "exactly contrary" to PM's express intention to terminate the EPC Contract by way of the First Notice, as stated in PM's pleadings.[78]

86 In our judgment, this is a question that warrants closer consideration, and as we have said before, our views are provisional. On the one hand, it has consistently been recognised that a tribunal has the ability to come to an independent conclusion or inference, and is not bound to adopt either of the parties' positions but is entitled to come to its own conclusions or inferences on the facts and evidence before it (*Soh Beng Tee* at [65(e)]; *CJA v CIZ* at [72]; *CFJ v CFL* at [132]). Where a tribunal rules in a manner distinct to what the

[78] PVN's CA 48 Written Submissions at paras 12 and 13.

parties have pleaded or otherwise raised, subject to the considerations set out above, including at [37], this does not necessarily bring the tribunal's decision outside the scope of the submission to arbitration. In our view, this will be the case where the difference between the parties concerns contentious points of law or of fact.

87 However, on the other hand, it seems to us the position may be different where:

(a) one party takes a position in respect of a factual point concerning its own acts; and

(b) the other party either accepts or at any rate does not dispute that factual position.

88 In such a case, the position may be analogised to what in substance is an agreed fact between the parties. To the extent the tribunal draws its jurisdiction from the agreement of the parties, it is not clear to us how it would be consistent with that jurisdiction for the tribunal to go behind such agreed facts and make a finding to the contrary.

89 We accept this may largely be a theoretical concern. For one thing, it would be a highly unusual set of circumstances. For another, we also think that in such cases, there would very likely be an independent, and perhaps clearer ground for complaint founded on a breach of natural justice, as is the case here.

90 As we have observed, it is not necessary for us to come to a decision on this issue and we say no more on it.

Whether PM's request for remission satisfied the relevant procedural requirements

91 Having upheld the Judge's holding that the Tribunal had acted in breach of the fair hearing rule, we turn to consider PVN's argument that the Judge did not comply with the necessary procedural requirements before ordering that the matter be remitted to the Tribunal.

92 Before we consider PVN's arguments on the proper procedure, we first clarify a foundational factual point. At the hearing before the Judge, PM's counsel did make an oral request for remission, and framed it as a fallback case should the Judge find that there were grounds for setting aside the Final Award. Although PVN disputes that an oral request was made,[79] this is foreclosed by the Judge's notes. We reproduce the relevant excerpts of those noted:[80]

> Mr Kronenburg: If Court takes view that there was breach, submit that should remit to Tribunal.
>
> …
>
> Within Court's power to remit if Court disagrees with PM's submission on 1st Issue. No reason why Tribunal cannot deal with the issue.

93 As we noted at an earlier stage of these proceedings (see *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ Electrosila Energomachexport)* [2025] 1 SLR 414), there was no dispute that Mr Kronenburg in fact made this submission, and there is no basis to find that the Judge erred in recording it (at [28]). We also affirmed that the Judge's notes were the official record of the hearing, and dismissed PVN's application to

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79 PVN's CA 48 Written Submissions at para 51.

80 AB Part A p 57 at lines 1–2; AB Part A p 58 at lines 20–22.

challenge it (at [48]). In our view, it was not open to PVN to dispute the fact that an oral request for remission had been made by PM.

94 On this premise, we consider PVN's assertion that PM's oral request was nonetheless not procedurally compliant. PVN submits that the ROC 2021 requires PM to request an order for remission and set out its supporting grounds for its application (a) by way of a separate summons seeking a remission order accompanied by a supporting affidavit; or (b) in its reply affidavit filed in OA 346 to resist PVN's setting aside application.[81] Furthermore, before us, Mr Ong clarified his position that these procedural requirements only applied with the onset of the ROC 2021, and did not apply under the previous statutory regimes.

95 In our judgment, PVN's submissions on the procedural requirement for a request for a remission order were untenable whether under the ROC 2021 or otherwise.

A request for remission in the context of the ROC 2021

96 Article 34(4) of the Model Law stipulates that when a court is asked to set aside an award, a court may suspend the setting aside proceedings and make a remission order at the request of a party:

> (4) The court, when asked to set aside an award, may, where appropriate *and so requested by a party,* suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.
>
> [emphasis added]

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81 PVN's CA 48 Written Submissions at para 44

97 While the Model Law does not specify the form that such a request must take, Singapore has adopted domestic subsidiary legislation to govern how applications to the court under the IAA and the Model Law are to be made (*BZW v BZV* at [45]–[46]). Such applications are governed under O 48 of the ROC 2021.

98 Order 48 r 2 of the ROC 2021 provides that certain applications must be made by originating application and be served with an affidavit in support. These include applications to set aside an award under s 24 of the IAA or Art 34(2) of the Model Law, or applications to decide on the challenge of an arbitrator under Art 13(3) of the Model Law. Order 48 r 3 of the ROC 2021 further provides that certain applications or requests to the court, such as an application for interim orders or directions under s 12A of the IAA or an application for permission to enforce an award under ss 18 or 19 of the IAA, must be made by summons in an action or by originating application. Notably, a request for remission under Art 34(4) of the Model Law is not among any of the specified applications or requests in O 48 rr 2(1) and 3(1) of the ROC 2021.

99 In short, there is nothing in the ROC 2021 that sets down any mandatory requirements as to the form of a valid request for remission. We also note that O 69A rr 2 and 3 of the ROC 2014, which were the statutory predecessors to O 48, were similarly worded and likewise did not list a request for remission as one of the applications that needed to be made by way of an originating summons or a summons in the action.

100 PVN contends that a request for remission under Art 34(4) is subject to other provisions of the ROC 2021. First, PVN submits that O 3 rr 5(1), 5(7) and 5(8) of the ROC 2021 requires that all applications in an action must be made

by a summons and supported by affidavit with all the necessary supporting evidence, and must be served.[82] Specifically, O 3 r 5(1) provides that:

> Subject to these Rules, all applications to the Court in an action must be made by summons in Form 1 or Form 2, whichever is appropriate, and supported by affidavit.

101 In our judgment, this is misconceived. Order 3 r 5(1) is expressly subject to the rest of ROC 2021, including O 48 r 3's delineation of the specific applications under the IAA which must be commenced by summons or an originating application. PVN's proposed interpretation of O 3 r 5(1) would denude O 48 r 3 of its significance.

102 Second, PVN submits that PM failed to obtain the prior approval of the court to make an application for a remission order as required under O 9 r 9(8) and O 2 r 9(9) of the ROC 2021.[83] Order 9 r 9 concerns the making of a single application pending trial, which is intended to consolidate all matters necessary for a trial to proceed expeditiously. In particular, O 9 r 9(8) provides that "the Court's approval to file further applications other than those directed at a case conference must be sought by letter setting out the essence of the intended application and the reasons why it is necessary at that stage of the proceedings." Order 2 r 9(9) mirrors this requirement for applications in "pending proceedings". Order 9 r 9(10) also imposes the requirement that no application may be taken out during the period starting 14 days before the commencement of the trial except in a special case and with the trial Judge's approval. On this basis, PVN contends that PM needed to obtain the Court's prior approval to make the application for a remission order, and had failed to do so.

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82 PVN's CA 48 Written Submissions at paras 39–40.

83 PVN's CA 48 Written Submissions at paras 36–38.

103 We again disagree.

(a) Order 9 r 9 of the ROC 2021 pertains to single applications pending *trial*. This can be inferred from O 9 r 9(3), which provides that the single application must deal with all matters necessary for the case to proceed expeditiously, including the issues *at trial*, the production of documents and the amendment of pleadings (O 9 rr 9(4)(*c*), 9(4)(*f*) and 9(4)(*k*) of the ROC 2021). O 9 r 9 was intended to be invoked primarily in respect of trials pursuant to originating claims, rather than hearings pursuant to originating applications.

(b) A contextual interpretation with O 48 r 3(3) indicates that O 9 r 9(7) is not intended to apply to the present situation. Order 48 r 3(3) provides that "[w]here the case is one of urgency or an application under section 18, 19 or 29 for permission to enforce an award or foreign award, such application may be made without notice on such terms as the Court thinks fit". In our view, the unthinking application of the requirements of O 2 r 9 and O 9 r 9(7) would result in the absurd outcome that a party seeking permission to enforce interim orders on an urgent and *ex parte* basis would need to write to court for approval to file the application.

(c) The correct view is that O 2 r 9 of the ROC 2021 is part of a general overview of how an originating claim or an originating application under Part 1 of the ROC 2021 proceeds. It is expressly highlighted that an action "does not need to proceed in precisely the same way as set out in this Order" (O 2 r 1).

104 In sum, we are satisfied that the procedural requirements in O 2 r 9 and O 9 r 9 of the ROC 2021 should be read with due appreciation of their real

intent. In any case, even where the ROC 2021 does impose requirements, these are typically subject to the court's discretion to order otherwise under O 3 r 2(1).

The nature of a request for remission under Art 34(4)

105 We turn to consider the nature of a request for remission, which should be properly situated in the life cycle of a challenge to an arbitral award. It would not be typical for the respondent to a setting aside application to begin by requesting that certain matters be remitted to the tribunal. As a matter of practical sense, save in clear cases, the respondent is first concerned with resisting the grounds of the setting aside application. The request for remission, if made, is typically advanced as an alternative, fallback case. It therefore does not make sense to require that party pre-emptively to file a summons for a remission order, when the same party will submit that remission is unnecessary and the award should be upheld as it is. Where necessary, such requests are typically made *in the course of the setting aside hearing* and not prior to or at the outset of the hearing.

106 In line with this, in *Bagadiya Brothers (Singapore) Pte Ltd v Ghanashyam Misra & Sons Pte Ltd* [2023] 4 SLR 984 ("*Bagadiya Brothers*"), the General Division of the High Court, in deciding to remit the award to the arbitrator, implicitly took the approach that there is no restriction on the procedural *form* in which a request for remission under Art 34(4) is to be made. In that case, the defendant's counsel had not raised the issue of remission in the affidavits or at the oral hearing before the court, and it was only after the court invited further submissions on the issue of remission that the request was made for remission in the alternative (at [24], [26] and [29]). Nevertheless, the court granted an order for remission. The court further held that the defendant's failure to request for remission at the oral hearing did not prevent the court from

exercising its power to remit since setting a cut-off time by which remission had to be requested for would place a strain on the plain meaning of Art 34(4) (at [69]).

No prejudice was occasioned to PVN from PM's request at the hearing

107 Lastly, we note that no prejudice was occasioned to PVN from PM's request at the hearing. As the Judge's notes of the hearing demonstrate, when asked by the Judge why it would be inappropriate to make a remission order, PVN's counsel was able to make its submissions backed by authority:[84]

> Ct If decide that Tribunal's decision in Award, paragraph 548 breached natural justice, appropriate for issue to be remitted to Tribunal to remedy breach? PVN can make its arguments.
>
> C Ong Not appropriate to remit.
>
> Award, paragraph 535 – under Vietnamese law – 1st Notice still effective to terminate Contract.
>
> Award, paragraph 548 – no reference to Vietnamese law.
>
> Award, paragraph 548 – not the only time Tribunal tried to bend around case.
>
> Tribunal cannot decide this issue fairly – not fair for them to add submissions that have not been made.
>
> Core Bundle 367 - PM's post hearing brief.
>
> Agreed Bundle 4434.
>
> *BZW*.
>
> Ct Why do you say on facts of this 1 case, not appropriate to remit?
>
> C Ong Tribunal used word "unlawful"
>
> Tribunal should act consistently.
>
> Tribunal ingrained in wanting to achieve position that it wanted to – used word "effective" in different ways.

[84] AB Part A p 50 line 16 to 51 at 14.

> Award, paragraph 525 – 1st Notice ineffective.
>
> Award, paragraph 543.
>
> Compare with Award, paragraph 548.
>
> Award, paragraph 549 – shows Tribunal knew no Vietnamese law evidence – yet proceeded on basis of paragraph 548 – intellectually not honest.
>
> These paragraphs show that Tribunal cannot be trusted to rehear this issue. Knew some problems but forcing the issue.

108 Mr Ong also had the opportunity to respond substantively to PM's reasons for why a remission order should be made. After Mr Kronenburg made an oral request for remission in the alternative, in terms that it was "within Court's power to remit if Court disagrees with PM's submission on 1st Issue" and that there was "[n]o reason why Tribunal cannot deal with the issue", Mr Ong was given the opportunity to reply.[85] Mr Ong responded substantively, citing *Bagadiya Brothers* and *CEF and another v CEH* [2022] 2 SLR 918.[86] We were therefore not satisfied that PVN suffered any prejudice in the form of being unable to respond due to being taken by surprise. In any case, it was always open to Mr Ong to request that the hearing be stood down or adjourned if he needed to consider his response more fully.

109 For these reasons, we disagree that there is any procedural requirement in the ROC 2021 obliging PM to have made its request for remission by way of a summons accompanied by affidavit, or in its reply affidavit filed in the setting aside application. A valid request had been made pursuant to Art 34(4) and the Judge was entitled to consider it.

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85 AB Part A p 58 lines 20–22.

86 AB Part A p 60 at lines 3–5.

Whether the Judge erred in making the order for remission

110 Having disposed of PVN's procedural challenges, we turn to PVN's substantive contention that the Judge erred in exercising his discretion to order remission.

Principles governing the court's discretion to make an order for remission pursuant to Art 34(4)

111 The starting point is that remission is meant to enable a tribunal to cure or eliminate *remediable* defects in its award (*BZW v BZV* at [65], citing *International Commercial Arbitration: Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (Report of the Secretary-General)*, UN GAOR Commission on International Trade Law, 18th Sess, UN Doc A/CN.9/264 (1985) at p 74, paras 13–14). It also bears emphasising that in deciding the appropriate remedy, the court's fundamental concern is in preserving the integrity of the arbitral process, and not the correctness of the tribunal's reasoning or result (*DJP and others v DJO* [2025] 1 SLR 576 ("*DJP v DJO*") at [50]). Therefore, as a starting point, remission of an award may be appropriate when the identified defect is capable of being cured.

112 At a basic level, certain defects are, by their nature, incapable of being remedied. For instance, it would not be appropriate to remit an award where the tribunal has made a decision in excess of jurisdiction on an unpleaded defence (see *CAJ v CAI* at [52], affirmed in *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] 1 SLR 88 ("*Wan Sern*") (at [57])). Beyond such cases, the court assesses several factors to determine whether remission is appropriate in the circumstances. We examine these in turn.

Whether the defect would affect the confidence in the tribunal's ability to afford a fair process in considering the remitted issue(s)

113 Where the question of remission arises in the context of remedying a breach of natural justice, the obvious concern is whether the remittal to the very same tribunal would aggravate rather than address the complaint. Hence, the first question to be answered is whether a fair-minded observer could reasonably apprehend that the tribunal may not be able to afford the parties a fair process in its consideration on the remitted issues. This would be so if the tribunal had conducted the matter in such a manner that it would be invidious and embarrassing for it to try to free itself of all previous ideas and to redetermine the same issues (*Lovell Partnerships (Northern) Ltd v A W Construction plc* (1996) 81 BLR 83 ("*Lovell*") at 99I).

114 Although the test in *BZW v BZV* at [67(b)] (citing *Lovell* at 99H) was framed in terms of "whether a reasonable person would no longer have confidence in the Tribunal's ability to come to a fair and balanced *conclusion* on the issues if remitted", the real focus is on confidence in a fair *process*, rather than confidence in a fair *conclusion*. This stems from the recognition that the parties to an arbitration are not entitled to any particular conclusion because having chosen arbitration as their mode of dispute resolution, they must live with the decision of the arbitrator "good or bad" (see *TMM Division* at [65]). However, what the curial court will strive to ensure is that the dispute has been determined through a fair, impartial and equal *process* (*DJP v DJO* at [1]). Thus, where the defect in question would cause a fair-minded observer to reasonably apprehend that the tribunal may be unable to afford the parties a fair *process* in its determination on the remitted issues, remission will usually be inappropriate.

115 An example of this can be found in *BZW v BZV*, where remission was not granted because the arbitral tribunal had, among other things, employed a

chain of reasoning that was not and could not have been foreseen. For instance, in respect of the appellants' defence of estoppel raised in response to the respondent's claim that the vessel was fitted with contractually non-compliant generators, the tribunal mistakenly considered the *respondent* to have made a representation for the purpose of establishing the estoppel defence, even though the statement-maker in question was in fact the *appellants'* representative (at [61(b)]). After the error was pointed out, the tribunal seemed to deny the obvious effect that the error had on its chain of reasoning. This, among other breaches, did not inspire confidence in the tribunal's ability to afford parties a fair process in considering the issues, if remitted (at [69]).

116 It cannot be gainsaid that whether a fair-minded observer would continue to have confidence in the tribunal is a question that depends on the individual facts and circumstances of each case. However, we consider that exacting scrutiny would typically be applied to concerns over the tribunal's ability to afford parties a fair and balanced consideration on a remitted issue where a tribunal had already come to a decision on that issue in breach of the fair hearing rule. This is because the party at the receiving end of the breach may justifiably be concerned about questions of prejudgment amounting to apparent bias.

117 As we held in *DJP v DJO,* allegations of prejudgment amounting to apparent bias are made against decision-makers whose conduct of the decision-making process gives rise to a reasonable suspicion or apprehension that he or she may have prejudged the dispute at hand. The test to be satisfied is whether a fair-minded and informed observer would, having considered all the facts and circumstances of the case, reasonably suspect or apprehend that the decision maker had reached a final and conclusive decision, or might be predisposed to a given view, before being made aware of all relevant evidence and arguments

that the parties wish to present (*DJP v DJO* at [38], citing *BOI v BOJ* [2018] 2 SLR 115 at [97] and [109]). In *DJP v DJO*, we held that the use of related awards as templates in drafting the impugned award to a very substantial degree would give rise to a reasonable suspicion in the mind of the fair-minded observer that the tribunal was improperly influenced by degrees of anchoring and confirmation biases. The anchoring and confirmation biases respectively refer to the subconscious tendency to rely too heavily on conclusions and information it had received earlier, at the expense of new information and a fresh analysis, and the difficulty of persuading a decision-maker to change its mind from an initial view it had come to (*DJP v DJO* at [73]–[74], citing *G (A Child: Care Order) (Complex Developmental Needs) (No 1)* [2023] EWFC 168 (B) at [140] and *HCA International Ltd v Competition and Markets Authority and another* [2015] 1 WLR 4341 at [4]).

118 That said, the weight to be placed on a complaint of anchoring and confirmation bias will depend on its context. For instance, where it stems from previously expressed remarks of a general nature made by an arbitrator in a non-adjudicative context or in the context of a completely unrelated case, such concerns may carry much less weight: see further IBA Council, *IBA Guidelines on Conflicts of Interest in International Arbitration* (25 May 2024) at para 4.1.1 which suggests that there is no concern of actual or apparent bias where an arbitrator has previously expressed a legal opinion in a law review article or public lecture concerning an issue that subsequently arises in an arbitration.

119 In our view, where a tribunal had previously decided a point in breach of the fair hearing rule, a fair-minded observer might similarly be concerned about the prospect of the tribunal being improperly influenced by the anchoring and confirmation biases when asked to reconsider the very same point. As has already been noted, much will turn on the significance and materiality of the

breach. Without laying down any fixed rules, it seems to us that concerns of prejudgment may be especially pronounced where a critical point is decided in breach of the fair hearing rule in circumstances involving a denial of the fair opportunity to present one's case or the adoption of a chain of reasoning that is not connected to what the parties have advanced. In *Sinclair Roche & Temperley and others v Heard and another* [2004] IRLR 763, Burton J, sitting as President of the UK Employment Appeal Tribunal, observed, when determining whether a matter should be remitted to the employment tribunal for consideration (at para 46.5), that:

> … If the tribunal has already made up its mind, on the face of it, in relation to all the matters before it, it may well be a difficult if not impossible task to change it: and in any event there must be the very real risk of an appearance of pre-judgment or bias if that is what a tribunal is asked to do. There must be a very real and very human desire to attempt to reach the same result, if only on the basis of the natural wish to say "I told you so". …

120 In *Lovell*, Mance J (as he then was) was faced with the question of whether to remit or set aside an interim award, in which the arbitrator decided several issues having to do with a sub-contractor's claim and a contractor's counterclaim, in a manner that determined the counterclaim. Mance J held that the arbitrator had erred in, among other things, failing to communicate to the parties the issues he intended to determine in the interim award, and thereby depriving them an opportunity to address the resolution of those issues. This was all the more serious since neither the arbitrator nor the parties had suggested that the counterclaim was fit for determination by an interim award. Furthermore, the sub-contractor had previously insisted that discovery and the adducing of further documentary and oral evidence were necessary to determine several issues relating to the claim and counterclaim, but no such opportunity was afforded before the interim award was issued (at 98H–99E). In the circumstances, Mance J proceeded to set aside the award, and opined that it

could be "invidious and embarrassing" for an arbitrator who had drawn conclusions from documentary evidence and reached a decision on a number of factual issues "to be required to try to free himself of all previous ideas and to redetermine the same issues on fuller evidence" (at 99I).

121 *Lovell* was subsequently applied in *Hui v Esposito Holdings Pty Ltd* (2017) 345 ALR 287 ("*Esposito Holdings*"), where the Federal Court of Australia examined the interaction between a tribunal's breach of the fair hearing rule and the concern of any consequent prejudgment. There, the arbitrator rendered, after a preliminary hearing, a partial award in which he made findings in relation to the availability of the defences of set-off (at [172]). This was notwithstanding the fact that the arbitrator had made clear, prior to the hearing, that the preliminary hearing would not concern such defences (at [58]–[59]), and that the arguments against the defences of set-off were only raised by the arbitration claimant in its closing address at the preliminary hearing, which was met with objections (at [161]–[162] and [169]). The arbitrator had thereby denied the arbitration defendants a reasonable opportunity to present their cases (at [227]).

122 The court in *Esposito Holdings* then assessed whether this pointed to prejudgment. Beach J affirmed the test in *Lovell* (see [113] above) as "illustrat[ing] the connection between a breach of the no hearing rule and the basis on which an arbitrator breaching that rule ought to be removed for prejudgment" (*Esposito Holdings* at [242]). Applying that test (see [245]), he opined that the arbitrator had conducted himself in a manner that the arbitration defendants could not no longer have confidence in him. This was because the arbitrator had stepped well outside the bounds of the preliminary hearing and decided various substantive questions in a final manner without giving some of the parties the right to be heard. On balance, Beach J therefore declined to remit

the partial award on the ground that remittal would be inappropriate if there had been prejudgment arising from not hearing one of the parties (*Esposito Holdings* at [253]).

123 These cases demonstrate the possible interaction between a tribunal's breach of the fair hearing rule and the concerns of prejudgment amounting to apparent bias if the award were to be remitted. Whether it is viewed through the lens of the possible improper influence of the confirmation and anchoring biases, or that it would be "invidious and embarrassing" for a tribunal to free itself of previous decisions to redetermine the same issues, the point is that a fair-minded observer might well have cause for concern in these circumstances. The point was aptly put by Akenhead J in *Secretary of State for the Home Department v Raytheon Systems Ltd* [2015] 159 ConLR 168 ("*Raytheon Systems*") at [11] (cited in *BZW v BZV* at [67(a)]) as follows:

> … there is a real risk, judged objectively, that even a competent and respectable arbitral tribunal, whose acts or omissions have been held to amount to serious irregularity causing substantial injustice may sub-consciously be tempted to achieve the same result as before.

124 *Raytheon Systems* was decided in the context of a challenge under s 68(2)(d) of the UK Arbitration Act 1996, which concerns a failure by a tribunal to deal with all the issues that were put to it. Insofar as this is similar to a challenge of the *infra petita* variety (where the tribunal falls into error by failing to consider all the material issues that had been raised in the arbitral proceedings (see *DKT v DKU* [2025] 1 SLR 806 at [7])), we provisionally consider that the concerns of prejudgment and/or of the kind envisioned by Mance J in *Lovell may* not apply with equal force. In such cases, there has been no decision on the point that could indicate prejudgment, and remission might

well be an appropriate remedy (see, for example, *CKG v CKH* [2021] 5 SLR 84 ("*CKG v CKH*"), affirmed in *CKH v CKG and another matter* [2022] 2 SLR 1).

Centrality of the impugned issue to the arbitral award

125 The next factor, which may affect the analysis of one's continued confidence in the tribunal, is whether the breach is in respect of a single isolated or stand-alone point, or a point or points that are central to the award (see *Soh Beng Tee* at [92], cited in *BZV v BZW* at [66(c)].

126 In our judgment, the centrality of the impugned point must be assessed in the context of the entire award. The court should consider whether the issue in question can fairly be described as affecting a substantial part of the award, or even as being pivotal to the case as a whole. This exercise ought not to be viewed in purely numerical terms. Whether the breach turns on a single issue or concerns an aggregation of several smaller issues cannot be determinative. The single dispositive issue may be crucial to the outcome of the entire case; while the many small issues may involve relatively small valuation disputes.

127 To illustrate this, assume a hypothetical award dealing with a construction dispute with numerous items, each of equal value. If only a few of those items were determined in breach of the fair hearing rule, we would not ordinarily think that as being pivotal to the case. Conversely, where the breach is in respect of a single point of liability that may impact a significant portion of the rest of the award, we do not think that such a point can be considered as an isolated or limited point that may be cut off from the award. In *Soh Beng Tee*, it was suggested in *dicta* that remission would have been appropriate in respect of the arbitrator's finding that time was set at large in respect of a construction contract, because that was a stand-alone issue among several other severable

and unchallenged issues that the arbitrator had decided (at [92]). This was notwithstanding that the relevant finding by the arbitrator led to the developer as opposed to the contractor being held to be in repudiatory breach of the contract, and as a result of which the contractor's claim for damages was allowed and the developer's claim for liquidated damages was denied. We first observe that this was not a part of the decision of the court, which rested on the fact that there had been no breach of natural justice (at [72]). However, to the extent that *Soh Beng Tee* appeared to endorse the position that a point concerning the entire question of liability for repudiation could be considered as a single isolated or stand-alone point merely because there are several other severable issues, we would respectfully depart from that position. The importance of the issue must be examined in the context of the entire award.

The need for a party to amend its pleadings if remission is granted

128 A third factor that may be relevant is whether remitting the issue would likely require a party to amend its pleadings. As we held in *CAJ v CAI,* remission is generally meant to give the tribunal the opportunity to deal with points already before it, meaning that the point would typically have been pleaded or would arise from existing pleadings. Therefore, we considered that remission would not have been appropriate on the facts of *CAJ v CAI*, because the only way the tribunal could properly adjudicate on a newly introduced defence of an extension of time was for the appellant to apply to amend its defence. It would certainly have been unfair to the respondent to allow any such amendment at a late stage. Similarly, in *Wan Sern*, we held that it was not appropriate to remit an arbitrator's award of a certain head of damages given that remission would require the arbitrator to consider an application to amend the respondent's pleadings to include that head of damages. As the respondent had only sought to introduce its claim for that head of damages at a very late stage of a

documents-only arbitration, we held it appropriate for that party to be left to face the consequences of its tactical choices (at [58]).

129 Hence, remission would be inappropriate if it would necessitate an amendment of a party's pleadings, in circumstances that would be manifestly unfair to the other party.

Time and cost savings

130 A last consideration that a court may take into account is the time and cost savings if the award were to be remitted (see *BZW v BZV* at [70], citing *Raytheon Systems* at [11]; see also *Bagadiya Brothers* at [79] and *CKG v CKH* at [70]). However, in our view, considerations of time and cost savings may be peripheral in instances where the defect in the arbitral process is so severe and material that a fair-minded observer would no longer have confidence in the Tribunal's ability to come to a fair and balanced conclusion on the remitted matters.

Application to the present circumstances

131 We respectfully disagree with the Judge's view that remission was an appropriate remedy.

(a) First, as we have explained, the Tribunal's breach of the fair hearing rule was serious in nature. Its decision at para 548 bore no relationship to the arguments of the parties, and indeed, it was *contrary* to the factual position taken by PM in the arbitration.

(b) Second, the Tribunal's decision at para 548 was a pivotal decision that potentially went to the heart of the dispute on liability. As stated at [65] above, but for the Tribunal's finding at para 548, PM could

conceivably be found to have wrongfully terminated the EPC Contract. This in turn could have affected several of the Tribunal's findings on damages that were contingent on para 548, including findings on the amount owed by PVN to PM for work done under cl 19.6(a),[87] the repatriation costs owed by PVN to PM under cl 19.6(e),[88] and the compensation for preservation works done by PM pursuant to cl 16.3(a).[89]

(c) Third, the Tribunal had come to its decision despite knowing that neither party's expert evidence had addressed the issue. In our judgment, this does give rise to the concern of prejudgment if the matter were remitted for the purpose of receiving such evidence. While we did not have any regard to the Remission Award in considering whether there had been a breach of natural justice affecting the Final Award, we note for the sake of illustrating the concern with prejudgment in these circumstances, that when the Final Award was remitted to the Tribunal to afford it the opportunity to address or remedy the breach which the Judge found was established, the Tribunal declined to take any steps in that direction. In our view, this would likely give rise to the prospect of the fair-minded and informed observer reasonably suspecting that the Tribunal's stance, even in the face of the court's finding of a breach of natural justice and an order of remittal to rectify it, stemmed from such prejudgment. For the avoidance of doubt, we make this point not as a finding of actual bias or prejudgment but to demonstrate the difficulty of making a remittal order in such circumstances, and of the real chance

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87 Final Award at paras 586–647; AB Part D pp 136–153.

88 Final Award at paras 663–668; AB Part D pp 156–158.

89 Final Award at paras 730–743; AB Part D pp 175–177.

of any response on the part of the Tribunal being vulnerable to a complaint of apparent bias. In short, given the significance and materiality of the breach by the Tribunal, we consider that remission was not an appropriate course in this case.

(d) Fourth and finally, if an order of remission was made, it would likely have been necessary for PM to change its case as stated in its Statement of Defence, since PM would no longer be able to maintain that the Second Notice was not intended to withdraw the First Notice if it intended to adopt the Tribunal's reasoning at para 548. In our judgment, that highlights the impossibility of concluding that the matter could fairly be remitted.

Conclusion

132 For these reasons, we dismiss PM's appeal in CA 49, and allow PVN's appeal in CA 48. We set aside the Judge's remission order in OA 346, and we set aside para 548 of the Final Award as well as any other parts of the Final Award consequential to para 548. We award costs in the aggregate sum of $140,000 to PVN by way of costs in respect of both appeals together with reasonable disbursements which are to be agreed or, failing that, to be settled by us.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Dr Colin Ong KC, Daniel Koh and Genevieve Wong (Eldan Law LLP) for the appellant in CA 48 and respondent in CA 49;
Edmund Kronenburg, Stephanie Sim and Chan Yu Jie (Braddell Brothers LLP) for the respondent in CA 48 and appellant in CA 49.
