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

[2025] SGHC 181

Originating Application No 198 of 2025

In the matter of Sections 3 and 24 of the International Arbitration Act 1994 (2020 Rev Ed) read with Article 34 of the Model Law

And

In the matter of Order 48 Rule 2(1)(*d*) of the Rules of Court 2021

Between

Prayudh Mahagitsiri

… *Applicant*

And

Nestle S.A.

… *Respondent*

Originating Application No 469 of 2025 (Summons No 1653 of 2025)

In the matter of Section 19 of the International Arbitration Act 1994 (2020 Rev Ed)

And

In the matter of Order 48 Rule 6 of the Rules of Court 2021

And

In the matter of the Final Award on Liability dated 20 December 2024 in ICC International Court of Arbitration Case No. 27529/HTG/YMK

Between

Nestle S.A.

… *Claimant*

And

Prayudh Mahagitsiri

… *Respondent*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside]
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Sushil Nair JC
26 June 2025

9 September 2025 Judgment reserved.

Sushil Nair JC:

Introduction

1 There are two applications before me arising out of the same arbitration. HC/OA 198/2025 ("OA 198") is an application by Mr Prayudh Mahagitsiri ("Mr Mahagitsiri") to set aside the final award on liability made against him and in favour of Nestle S.A. ("Nestle") in the International Chamber of Commerce Arbitration Case No. 27529/HTG/YMK ("the Arbitration") dated 20 December 2024 ("the Final Award"). HC/OA 469/2025 (HC/SUM 1653/2025) ("SUM 1653") is an application by Mr Mahagitsiri to set aside HC/ORC 2800/2025 ("ORC 2800"), an order of court made on 19 May 2025 granting Nestle permission to enforce the Final Award in the same manner as a judgment or order and for judgment to be entered for Nestle against Mr Mahagitsiri in terms of the Final Award.

2 I will refer to Mr Mahagitsiri (the applicant in OA 198 and the respondent in SUM 1653) as "the Applicant" and to Nestle (the respondent in OA 198 and the claimant in SUM 1653) as "the Respondent".

3 It is common ground between the parties that both applications are co-extensive and this court's determination in OA 198 will be determinative of SUM 1653.[1] For the purposes of this judgment, my focus will be on OA 198.

4 In essence, the Applicant submits that the Final Award should be set aside for the following reasons:

(a) there was a breach of the rules of natural justice in connection with the making of the Final Award by which the rights of the Applicant have been prejudiced, within the meaning of s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"); and

(b) the Applicant was unable to present his case, within the meaning of Art 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") read with s 3 of the IAA.

5 After considering the parties' written and oral submissions, I dismiss both applications. My reasons for doing so are set out hereafter.

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[1] Minute Sheet for OA 198 and SUM 1653 dated 26 June 2025 ("MS") at p 2.

Background

The parties

6 The Applicant is a prominent Thai businessman and is the Chairman of Quality Coffee Products Ltd ("QCP"), a joint venture company incorporated in Thailand.[2] The Respondent is a well-known Swiss public company. It is one of the world's largest international food and beverage companies – it has a presence in 188 countries and offers more than 2,000 brands to consumers worldwide.[3]

The circumstances leading up to the dispute

7 The business relationship between the Applicant and the Respondent began in the 1970s. In 1974, they entered into an agreement ("the 1974 Management Agreement") for the Respondent to manage Thai Soluble Coffee Co., Ltd ("TSC") – a company incorporated by the Applicant in 1972 and owned by the Applicant and other affiliated individuals and companies in Thailand.[4] TSC was to produce Nescafé (a product of the Respondent) for the Thai market.[5] The 1974 Management Agreement was replaced in 1979 and 1988 by subsequent joint venture agreements between the parties.[6] By 1979, the Respondent had acquired a 49.9% stake in TSC.[7]

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2 Affidavit of Prayudh Mahagitsiri dated 27 February 2025 ("PM") at para 1; Affidavit of Charles George Stewart Balmain dated 2 May 2025 ("CGSB") at para 14.

3 CGSB at para 13.

4 PM at para 17 and Tab 1, p 95 at para 3.3.7; CGSB at para 15.

5 PM at Tab 1, p 95 at para 3.3.9.

6 PM at paras 20 and 23; CGSB at para 15.

7 PM at Tab 1, p 96 at para 3.3.11.

8 TSC's business was later transferred to QCP after the latter was incorporated by the Applicant in 1989.[8] The Applicant, the Respondent and QCP then entered into a joint venture agreement on 1 January 1990 ("the JVA"),[9] which governed their relationship in relation to the management of QCP's business and allowed QCP to become the exclusive manufacturer of certain Nestle-branded pure soluble coffee products in Thailand.[10] The Applicant, his wife, and his son own 50% of the shareholding of QCP, while the Respondent and its affiliates own the remaining 50%.[11]

9 Clause 10.1 of the JVA provides as follows:[12]

> 10.1 This Agreement shall come into force on 1st January 1990. It shall remain in full force and effect for an initial period ending on the 31st day of December 2012 and thereafter for successive periods of twelve years each unless or until any party hereto shall, two years prior to the expiration of the initial period or of any of the subsequent periods as the case may be, give notice in writing to all the other parties of its intention to terminate the Agreement at the end of the then running period.

10 On 9 December 2022, the Respondent issued a notice of termination to the Applicant in accordance with cl 10.1 of the JVA ("the Termination Notice"). The Termination Notice stated that the JVA would terminate on 31 December 2024.[13]

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8 PM at para 26; CGSB at para 16.

9 PM at Tab 3, p 224.

10 CGSB at paras 16 and 18.

11 PM at Tab 1, p 97 at para 3.3.20.

12 PM at Tab 3, p 234.

13 PM at para 34 and Tab 5, p 277.

11 After the Termination Notice was issued, the parties exchanged correspondence regarding the validity of the termination and the restrictions and obligations that would arise under the JVA as a result of the termination.[14] It gradually became apparent that the parties were unable to agree on many issues relating to the JVA, including whether either party had breached any of the provisions of the JVA, the validity of the Respondent's termination of the JVA and the scope of the Respondent's obligations under cl 10.3 of the JVA. I will discuss these issues more specifically later in this judgment.

The Arbitration

12 As a result of the disagreements between the parties, the Respondent commenced the Arbitration against the Applicant, seeking declaratory relief on certain points of contractual interpretation relating to the JVA. The Respondent filed its Request for Arbitration on 19 January 2023 ("the RFA").[15] The reliefs sought by the Respondent included declarations that:[16]

(a) the Termination Notice was valid and the JVA would terminate on 31 December 2024;

(b) the obligations under cll 3.1, 8.2 and 8.3 of the JVA would continue in full force and effect until 31 December 2024;

(c) cl 10.3 did not require the Respondent to transfer management control of QCP to the Applicant during the notice period of the JVA

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14 CGSB at paras 22–23 and Tabs 8–9; PM at para 35 and Tab 6.

15 CGSB at para 25; PM at para 45 and Tab 2, p 220 at para 51.

16 PM at Tab 2, p 220 at para 51.

from 1 January 2023 to 31 December 2024 ("the Notice Period") or otherwise; and

(d) the Respondent's approach to the calculation of distribution fees in relation to the JVA was correct and in accordance with its obligations under the JVA.

13 The Applicant filed his Answer to the RFA on 27 February 2023 ("the Answer").[17] In the Answer, the Applicant sought the dismissal of the Respondent's claims in their entirety and counterclaimed for, among other things, the following reliefs:[18]

(a) a declaration that, under cl 10.3 of the JVA, the Respondent is required to take all reasonable measures to, in good faith, assist QCP and the Applicant, for a full period of two years, to ensure continuity of business operations for QCP upon termination of the JVA, with the same or substantially the same overall business performance as it had enjoyed prior to the commencement of the Notice Period;

(b) a declaration that the Respondent had already acted in breach of cl 10.3 of the JVA by persistently refusing to comply with its obligations thereunder; and

(c) a declaration that the Respondent has breached cll 8.4 and 1.5 of the JVA and its implied obligations of good faith thereunder by failing to give the Applicant the first option to conduct and seek permission to

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17 CGSB at para 27; PM at para 48.

18 PM at Tab 4, pp 272–274 at para 171.

deal in the business of Nescafé Hub, Nescafé Street Café, Nescafé Dolce Gusto and Starbucks products in Thailand within QCP.

14 The Respondent subsequently filed its Reply to Counterclaims on 29 March 2023 ("the Reply") and requested for the Applicant's counterclaims to be dismissed in their entirety.[19]

15 The arbitral tribunal ("the Tribunal") comprised Mr J William Rowley KC (as President of the Tribunal), Mr John Beechey CBE (nominated by the Respondent) and Mr Michael J Moser (nominated by the Applicant).[20]

16 The Terms of Reference ("the TOR") – which contained a summary of each party's claims and counterclaims in the RFA, the Answer and the Reply – were finalised on 1 June 2023.[21] In the TOR, it was stated that the seat of the arbitration is Singapore and the governing law of the JVA is English law.

17 The following pleadings were then submitted by the parties:

(a) the Respondent's Statement of Claim on Liability Issues on 28 July 2023;[22]

(b) the Applicant's Statement of Defence and Counterclaim on Liability Issues on 29 September 2023 ("the Defence and Counterclaim");[23]

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19 CGSB at para 28; PM at para 49 and Tab 7, pp 323–324 at para 136.

20 CGSB at Tab 1, p 67 at paras 5.2–5.4.

21 CGSB at para 29 and Tab 1.

22 CGSB at para 30; PM at para 51 and Tab 9.

23 CGSB at para 31; PM at para 52 and Tab 12.

(c) the Respondent's Statement of Reply and Defence to Counterclaims on Liability Issues on 1 December 2023;[24]

(d) the Applicant's Statement of Rejoinder and Reply to Counterclaims on Liability Issues on 19 April 2024 ("the Rejoinder and Reply to Counterclaim");[25] and

(e) the Respondent's Rejoinder to Counterclaims on Liability Issues on 14 June 2024.[26]

18 The parties' agreed list of issues ("the Agreed List of Issues") was submitted to the Tribunal on 29 July 2024.[27] The parties later exchanged their respective pre-hearing submissions on 6 September 2024.[28] A nine-day hearing was held in London from 16 to 26 September 2024.[29] The parties made their respective opening presentations on the first day of the hearing, and the hearing concluded with the parties' respective closing presentations.[30]

19 On 3 November 2024, the Tribunal declared the proceedings closed as regards the filings by the parties of further evidence or submissions on the issues of liability under consideration in the Arbitration.[31]

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24 CGSB at para 32; PM at para 53 and Tab 19.

25 CGSB at para 34; PM at para 54 and Tab 24.

26 CGSB at para 39; PM at para 56 and Tab 35.

27 PM at Tab 1, p 91 at para 2.2.13; CGSB at Tab 5.

28 PM at para 58.

29 PM at para 57.

30 PM at paras 59 and 61.

31 PM at para 62.

The parties' cases in the Arbitration

20 The parties raised numerous issues for determination in the course of the Arbitration. Indeed, the Agreed List of Issues spanned seven pages and comprised 37 issues.[32] For the purposes of the applications herein, however, the Applicant's case is focused on issues regarding the manner in which the Tribunal reached its conclusions in respect of the interpretation and alleged breaches of cll 10.3 and 8.4 of the JVA. I will refer to these issues as "the Clause 10.3 Issue" and "the Clause 8.4 Issue" respectively.

21 I start by briefly setting out the parties' cases relating to the Clause 10.3 Issue and the Clause 8.4 Issue. Clause 10.3 of the JVA provides as follows:[33]

> 10.3 If this Agreement is terminated by NESTLE pursuant to Clause 10.1 above, NESTLE shall within the last period of two years assist the other parties hereto in taking all reasonable measures to prepare the continuation of Q.C.P.'s operations after the date of termination, such as training of management replacement and sales under Q.C.P.'s trademarks.

22 On the Clause 10.3 Issue, the Applicant argued that the express wording of cl 10.3 requires the Respondent to take "'all reasonable measures' to prepare the 'continuation of [QCP]'s operations' as a self-standing distributor of its own branded products after the date of termination, with sales as would substantially match those it enjoyed prior to the commencement of the transition period".[34] This would require the Respondent to deliver a seamless "turn key" transition

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32 CGSB at Tab 5.

33 PM at Tab 3, pp 233–234.

34 PM at Tab 12, p 446 at para 193 and Tab 48, p 2148 at para 50.

of QCP's business operations by the end of the Notice Period.[35] The Respondent is thus in breach of cl 10.3 as it had "plainly failed to discharge its obligations thereunder" by failing to take all reasonable measures to procure the continuation of QCP's operations.[36]

23 The Respondent, in contrast, argued that cl 10.3 only requires the Respondent to assist the other parties to the JVA in taking all reasonable measures to prepare for QCP's operations post-termination.[37] Clause 10.3 also does not require management control over QCP to be transferred to the Applicant.[38] Moreover, the Respondent has "complied at all times with its obligation [under cl 10.3] to assist QCP and the [Applicant] in their preparations for QCP's future operations" by putting forward: (a) a plan for the actions and investments required by QCP to enable it to function as a stand-alone entity post-termination ("the Standalone Analysis"); and (b) a proposal that QCP enter into an exclusive toll-manufacturing agreement with the Respondent to produce the existing QCP product range from 1 January 2025 ("the Toll Manufacturing Proposal").[39]

24 Clause 8.4 of the JVA provides as follows:

> 8.4 Should NESTLE at any time during the currency of this Agreement wish to enter the regular coffee business in Thailand it will give the other parties hereto a first option to do so within Q.C.P.

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35 PM at Tab 1, p 118 at para 4.2.7.

36 PM at Tab 12, p 446 at para 196 and Tab 48, pp 2151–2156 at paras 64–76.

37 PM at Tab 19, p 788 at para 294 and Tab 47, p 2114 at para 42.

38 PM at Tab 9, p 358 at para 57.

39 PM at Tab 1, p 162 at paras 7.3.7–7.3.8, Tab 19, p 801 at para 325 and Tab 47, p 2116 at para 49.

25 On the Clause 8.4 Issue, the Applicant argued that cl 8.4 of the JVA "requires [the Respondent to] offer rights of first refusal to [the Applicant] and QCP, should it 'wish to enter' into any 'regular coffee business' in Thailand over the course of the JVA's term to do so within and as part of QCP".[40] In the context of cl 8.4, the phrase "regular coffee business" includes "all coffee ventures that [the Respondent] may ordinarily wish to 'enter' in Thailand, where coffee is a primary characteristic or distinguishing feature".[41] Given that the Respondent had pursued "such 'regular coffee ventures' outside of QCP and without seeking appropriate permissions" during the currency of the JVA, it was in breach of cl 8.4.[42]

26 The Respondent, however, argued that the Applicant's interpretation of cl 8.4 – and the phrase "regular coffee business" – is "hopelessly broad" and "far beyond the meaning that the words 'the regular coffee business' can possibly bear".[43] The Respondent has thus not breached cl 8.4 of the JVA by engaging in its other ventures (*eg*, Street Café, Nescafé Dolce Gusto, Starbucks, Nescafé Ice Cream).[44]

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40 PM at Tab 12, p 475 at para 265 and Tab 48, p 2156 at para 77.

41 PM at Tab 48, p 2156 at para 77.

42 PM at Tab 12, p 475 at para 265 and Tab 48, p 2159 at para 82.

43 PM at Tab 19, p 807 at para 345 and Tab 47, p 2119 at para 58.

44 PM at Tab 19, pp 813–815 at paras 348–356 and Tab 47, p 2120 at para 62.

The Final Award

27 The Tribunal issued the Final Award on 20 December 2024.[45] Again, I focus only on the parts of the Final Award that deal with the Clause 10.3 Issue and the Clause 8.4 Issue.

28 On the Clause 10.3 Issue, the Tribunal aligned itself with the Respondent's interpretation of cl 10.3 of the JVA (*ie*, that cl 10.3 only requires the Respondent to assist the other parties to the JVA in taking all reasonable measures to prepare for QCP's operations post-termination).[46] It disagreed with the Applicant's interpretation of cl 10.3 after conducting a comparison between the plain wording of cl 10.3 and the Applicant's suggested interpretation:[47]

Text of Clause 10.3[139]	**Respondent's partial interpretation of Clause 10.3[140]**
"[Nestlé] *shall within the last period of two years assist the other parties hereto in taking all reasonable measures to prepare the continuation of Q.C.P.'s operations after the date of termination, such as training of management replacement and sales under Q.C.P.'s trademarks.*"	"***By its express terms,*** *Clause 10.3* ***mandates Nestlé to*** *take 'all reasonable measures' to prepare the 'continuation of Q.C.P.'s operations'* ***as a self-standing distributor of its own branded products*** *after the date of termination,* ***with sales as would*** [sic] ***substantially match those it enjoyed prior to the commencement of the transition period***" (emphasis added).

29 The Tribunal then stated that the word "assist" means to "aid", "help" and "support"; it denotes "a secondary obligation on [the Respondent] to help the other parties 'in [not by] taking all reasonable measures' to prepare for the continuation of QCP's operation 'after the date of termination'".[48]

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45 PM at para 63 and Tab 1.

46 PM at Tab 1, p 164 at para 7.3.12.

47 PM at Tab 1, pp 163–164 at para 7.3.11.

48 PM at Tab 1, p 164 at para 7.3.12.

30 At this juncture, I note that the Applicant takes the position that "[t]he expression 'in [not by] taking all reasonable measures' is grammatically incoherent and nothing can be drawn from this as to the Tribunal's reasoning or determination".[49] This is, in my view, an extraordinary misreading (if not a misstatement) of the Tribunal's words. The Tribunal came to the view that the obligation imposed on the Respondent by cl 10.3 was a secondary obligation. That obligation was to assist the other parties "in [not by] taking all reasonable measures". By placing the words "not by" in parentheses, the Tribunal clearly took the view that the Respondent's obligation was to help the other parties *in their taking* of all reasonable measures.

31 The Tribunal also stated that, under cl 10.3, the Respondent does not have the obligation to ensure that QCP may continue its operations post-termination as a self-standing coffee producer and distributor without material loss of business.[50] In the Tribunal's view, the Applicant's interpretation of cl 10.3 amounts to an "impermissible rewriting" of the JVA and "finds no support whatever from the natural and ordinary meaning of the words" used by the parties.[51]

32 The Tribunal further found that the Applicant failed to show that the Respondent did not comply with its obligations under cl 10.3.[52] From the Tribunal's perspective, the Respondent "did everything that could reasonably have been expected of it to assist the other [p]arties to prepare for the

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49 Applicant's Written Submissions in OA 198 and SUM 1653 dated 19 June 2025 ("AWS") at para 33.

50 PM at Tab 1, p 164 at para 7.3.12.

51 PM at Tab 1, p 165 at para 7.3.17.

52 PM at Tab 1, p 165 at para 7.3.18.

continuance of QCP's operations post-termination".[53] The Tribunal considered that the Respondent's reasonable efforts included, among others things, (a) the provision of the Toll Manufacturing Proposal and the Standalone Analysis;[54] and (b) the assistance (by way of the provision of substantial data) given to QCP when QCP engaged BCG to assess the feasibility of QCP's operations as a new entrant to the Thai coffee market, independent of Nestle.[55] It was, in fact, the Applicant's "intransigent insistence on what he considered [the Respondent's] assistance obligation to comprise" that made it impossible for the Respondent to assist the other parties as required.[56]

33 On the Clause 8.4 Issue, the Tribunal disagreed with the Applicant's submission on the scope of cl 8.4 and the meaning of the phrase "regular coffee business".[57] This was because it made "no commercial sense" for the Respondent to give "such a long term and broad right of first refusal" to the Applicant and QCP, in light of the circumstances where the right was first granted in the early 1970s.[58] It was also not likely that the Respondent would have agreed that QCP should serve as the focal point and corporate vehicle for all of the parties' "regular coffee business" activities in Thailand as defined by the Applicant.[59]

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53 PM at Tab 1, p 169 at para 7.3.33.

54 PM at Tab 1, pp 166–167 at para 7.3.23.

55 PM at Tab 1, p 168 at para 7.3.29.

56 PM at Tab 1, p 166 at para 7.3.19.

57 PM at Tab 1, p 174 at para 7.4.15.

58 PM at Tab 1, p 174 at para 7.4.16.

59 PM at Tab 1, p 174 at para 7.4.17.

34 The Tribunal then found that the phrase "regular coffee business" in cl 8.4 of the JVA meant "the normal or standard coffee business as it existed in Thailand in 1990 and earlier".[60] The cl 8.4 obligation thus did not extend to the Respondent's post-1990 ventures in Thailand,[61] and the Respondent had not breached cl 8.4 of the JVA.

The events after the issuance of the Final Award

35 On 27 February 2025, the Applicant filed OA 198 to set aside the Final Award.

36 The Respondent subsequently filed HC/OA 469/2025 ("OA 469") on 7 May 2025 for permission to enforce the Final Award in the same manner as a judgment or order to the same effect, and for judgment to be entered for the Respondent in terms of the Final Award. OA 469 was allowed on 19 May 2025 in ORC 2800. This was followed by the filing of SUM 1653 by the Applicant on 12 June 2025 to set aside ORC 2800 and to adjourn the enforcement of the Final Award pending the determination of OA 198.

The application in OA 198

37 This judgment will primarily deal with the setting aside application in OA 198. As stated above (at [3]), the parties have accepted that OA 198 and SUM 1653 are concerned with the same issue[62] – whether the Final Award should be set aside on the ground that there has been a breach of the rules of natural justice. It thus follows that my decision on OA 198 will also determine

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60 PM at Tab 1, p 176 at para 7.4.23.

61 PM at Tab 1, p 176 at para 7.4.24.

62 MS at p 2.

the outcome of SUM 1653 (*ie*, if OA 198 is allowed, SUM 1653 will also be allowed, and *vice versa*).

38 The Applicant submits that the Final Award should be set aside as there has been a breach of natural justice for the following reasons. First, the Tribunal failed to properly consider the Applicant's evidence and the submissions contained in the pre-hearing submissions, opening presentations, evidentiary hearing and closing presentations.[63] The Tribunal also failed to consider the relevant events relating to the dispute which occurred in 2024.[64] This omission by the Tribunal was egregious as it was common ground that the rights and obligations of the parties under the JVA would continue during the Notice Period.[65] The developments in 2024 were thus important in the Tribunal's determination of the Clause 10.3 Issue. The Applicant further submits that the Tribunal had prejudged the dispute and approached the issues in the Arbitration with a closed mind, given that it did not bother to engage with the evidence and submissions put forth by the Applicant and failed to consider the further developments which occurred in 2024.[66]

39 Second, on the Clause 10.3 Issue, the Tribunal had determined it solely on the basis of the factual matrix, and failed to consider the Applicant's legal authorities relating to the interpretation of the phrase "all reasonable measures" in cl 10.3 of the JVA.[67] Furthermore, the Tribunal, in coming to its conclusion, failed to consider the Applicant's submissions and the expert evidence on the

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63 AWS at para 19.

64 AWS at para 22.

65 AWS at para 23.

66 AWS at paras 89–94.

67 AWS at para 29.

feasibility of the Toll Manufacturing Proposal and the Applicant's submission on the Roland Berger Proposals ("the RB Proposals").[68] For context, the RB Proposals were reports which the Applicant had engaged Roland Berger to prepare; they were meant to demonstrate "the feasibility of a standalone scenario whereby the continuation of QCP's operations post-termination of the JVA can be maintained".[69] The Applicant has therefore been prejudiced as the Tribunal could have decided the Clause 10.3 Issue in favour of the Applicant if they had not failed to consider the Applicant's evidence and submissions.[70]

40 Third, when the Tribunal determined the Clause 8.4 Issue, it had adopted a chain of reasoning which the Applicant could not have reasonably foreseen and which did not have any nexus to the parties' arguments.[71] This is because the Tribunal had taken into account the reputation and experience of the parties when interpreting the scope of cl 8.4 of the JVA, despite neither party submitting that such a factor should be relevant in the interpretation of cl 8.4. The Tribunal also did not give the parties an opportunity to submit on the relevance of the parties' reputation and experience to the scope of cl 8.4.[72] Moreover, the Tribunal, in its discussion on how cl 8.4 should be interpreted, referred to a case that was never cited by either party.[73] The dispute was thus decided on a ground that was not raised or contemplated by the parties and the Applicant was deprived of an opportunity to address that specific case.[74] As a

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68 AWS at paras 42 and 53–54.

69 PM at para 42.

70 AWS at paras 56–64.

71 AWS at para 70.

72 AWS at para 75.

73 AWS at paras 76–77.

74 AWS at para 78.

result, the Applicant has suffered prejudice as the Tribunal could have decided the Clause 8.4 Issue in the Applicant's favour if it had adhered to the submissions and evidence put forth by the parties or had given the parties an opportunity to address that specific case or the chain of reasoning it relied on.[75]

The applicable law

41 I turn to the applicable legal principles. I first note that the Applicant's challenge under s 24(*b*) of the IAA and Art 34(2)(*a*)(ii) of the Model Law is primarily on the basis that there has been a breach of the fair hearing rule. These two provisions have been recognised to be "co-extensive in scope and result" as there is no difference between the right to be heard as an aspect of the rules of natural justice under s 24(*b*) of the IAA and as an aspect of being able to be heard within the meaning of Art 34(2)(*a*)(ii) (*ADG and another v ADI and another matter* [2014] 3 SLR 481 at [118]; see also *Government of the Republic of the Philippines v Philippine International Air Terminals Co, Inc* [2007] 1 SLR(R) 278 at [18]). I will thus proceed to analyse the Applicant's two grounds of challenge collectively.

42 For a challenge based on a breach of natural justice to succeed, the burden is on the Applicant to show the following (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29], referring to *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]): (a) which rule of natural justice was breached; (b) how it was breached; (c) in what way the breach was connected to the making of the award; and (d) how the breach prejudiced his rights.

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75 AWS at paras 82–88.

43 In this case, the Applicant is alleging that the fair hearing rule has been breached. A breach of the fair hearing rule can arise in two instances. First, it can arise from the arbitral tribunal's failure to apply its mind to the essential issues arising from the parties' arguments (*BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(a)]). The point or issue which the tribunal allegedly did not consider must be one that is "*essential* to the resolution of the dispute" [emphasis in original] as the tribunal does not have a duty to deal with every issue raised by the parties (*DKT v DKU* [2025] 1 SLR 806 ("*DKT*") at [8(b)]). Furthermore, the tribunal must have completely failed to consider the point or issue (*DKT* at [8(c)]). This will typically be a matter of inference, and such an inference must be clear and virtually inescapable (*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN*") at [46]). The focus is ultimately on whether the tribunal did in fact consider the point *at all* – however incompetently or incorrectly it may have done so (*DKT* at [8(c)]).

44 A second way that a breach of the fair hearing rule can arise is from the chain of reasoning which the tribunal adopts in its award (*BZW* at [60(b)]; *DKT* at [12]). This will occur when the tribunal's chain of reasoning was not one which the parties had reasonable notice that the tribunal could adopt, or not one which has a sufficient nexus to the parties' arguments. The burden is on the Applicant to show that a reasonable litigant in his position could not have foreseen the possibility of reasoning of the type revealed in the award (*Soh Beng Tee* at [65(d)]). The award rendered by the tribunal must, for instance, have reflected "a dramatic departure from the submissions" or adopted "a view wholly at odds with the established evidence adduced by the parties" (*Soh Beng Tee* at [65(d)]).

45 Moreover, the Applicant must prove that he has suffered real or actual prejudice as a result of the breach of the fair hearing rule (*DKT* at [8(d)]). In other words, the breach of natural justice must have actually "altered the final outcome of the arbitral proceedings in some meaningful way" (*Soh Beng Tee* at [91]). The relevant test is whether the tribunal could reasonably have arrived at a different result if not for the breach (see *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 ("*L W Infrastructure*") at [54]).

46 I am mindful that the threshold for finding a breach of natural justice is a high one and that threshold will only be crossed in exceptional cases (*China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 at [87], referring to *Soh Beng Tee* at [54]). In keeping with the policy of minimal curial intervention, the court should read the award in a generous manner and should not "assiduously comb [the award] microscopically" for breaches of natural justice (*Soh Beng Tee* at [65(c)] and [65(f)]).

The Clause 10.3 Issue

47 I will first consider the Applicant's arguments relating to the Tribunal's determination of the Clause 10.3 Issue. For ease of reference, I set out cl 10.3 of the JVA again:

> 10.3 If this Agreement is terminated by NESTLE pursuant to Clause 10.1 above, NESTLE shall within the last period of two years assist the other parties hereto in taking all reasonable measures to prepare the continuation of Q.C.P.'s operations after the date of termination, such as training of management replacement and sales under Q.C.P.'s trademarks.

The failure to consider the Applicant's legal authorities

48 The Applicant submits that the Tribunal breached the fair hearing rule, as it failed to consider the English cases that he cited in his pre-hearing submissions in support of his argument on how the phrase "all reasonable measures" in cl 10.3 should be interpreted.[76]

49 I do not agree with the Applicant's submission. An arbitral tribunal is only obliged to deal with all the *essential* issues that arise from the dispute; it has no obligation to deal with every argument and every point raised by the parties (*TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM Division*") at [72]–[73]; *BSM v BSN and another matter* [2019] SGHC 185 at [31]). The tribunal is also entitled to take the view that the dispute "may be disposed of without further consideration of certain issues" (*TMM Division* at [74]). For instance, if an issue can be resolved by one argument raised by the parties, the tribunal should not be required to consider other arguments which have been rendered academic (*TMM Division* at [75]). Furthermore, if the outcome of an issue necessarily flows from the conclusion of a specific logically prior issue, the tribunal may choose not to delve into the merits of the arguments and evidence for the former (*TMM Division* at [77]).

50 The only reason it would have been essential for the Tribunal to interpret the phrase "all reasonable measures" in this case would be if the Tribunal was of the view that there was an obligation on the Respondent to take "all reasonable measures" within the context of cl 10.3 of the JVA. The Tribunal, however, found that cl 10.3 only imposes a secondary obligation on the Respondent to help the other parties in taking all reasonable measures to prepare

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[76] AWS at para 29.

for the continuation of QCP's operations after the date of termination of the JVA.[77] In other words, the Respondent's contractual obligation under cl 10.3 is only to "assist" and not to "[take] all reasonable measures" to assist; the "other parties" to the JVA were the ones with the primary obligation to take all reasonable measures under cl 10.3.

51 Following from this determination of the Tribunal, there was in fact no need for the Respondent to have taken "all reasonable measures" under cl 10.3. It would therefore have been a superfluous exercise for the Tribunal – in determining the scope of the Respondent's obligation under cl 10.3 – to consider the legal authorities regarding how the phrase "all reasonable measures" should be interpreted. In light of that, I am satisfied that the Tribunal did not breach the fair hearing rule in failing to consider the Applicant's authorities and submissions on the interpretation of "all reasonable measures" in cl 10.3.

The failure to consider the expert evidence

52 The Applicant also submits that the Tribunal committed a breach of natural justice in failing to consider the expert evidence on the Toll Manufacturing Proposal given by Professor Hofbauer, Mr Miolane and Mr Reiner, as well as the Applicant's submissions on the expert evidence.[78] As I indicated previously (at [23]), the Toll Manufacturing Proposal is a proposal provided by the Respondent for QCP to enter into an exclusive toll manufacturing agreement with the Respondent to allow for the production of the existing QCP product range after the termination of the JVA.[79] It must also

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77 PM at Tab 1, p 164 at para 7.3.12.

78 AWS at para 42.

79 PM at Tab 1, p 162 at para 7.3.8; CGSB at Tab 10, p 328.

be recalled that the context in which the Tribunal referred to the Toll Manufacturing Proposal in the Final Award was in their coming to the view that the Respondent had did everything that could reasonably have been expected of it to assist the other parties to prepare for the continuance of QCP's operations post-termination (see [32] above). It was one of the steps (and not the only step) that the Respondent had taken in fulfilling its obligation to assist under cl 10.3 of the JVA. Indeed, the Tribunal had earlier taken the view that the obligation on the Respondent under cl 10.3 was not an obligation to take "all reasonable measures" as asserted by the Applicant (see [28] above).

53 I am unable to accept the Applicant's submission. I first note that this submission is based on the Tribunal's failure to make any reference in the Final Award to the expert evidence on the Toll Manufacturing Proposal and the corresponding submissions by the parties.[80] This, however, does not inexorably lead to the conclusion that the Tribunal breached the fair hearing rule by failing to consider the expert evidence. As I stated above (at [49]), the Tribunal is only required to deal with all the essential issues arising from the dispute. It is possible that the Tribunal thought that the expert evidence regarding the Toll Manufacturing Proposal was not "key relevant evidence" which it had to refer to in its determination of the essential issues in the dispute (*TMM Division* at [103(d)]).

54 It is therefore insufficient for the Applicant to assert that the Tribunal did not apply its mind to the expert evidence just because the Tribunal omitted to refer to it in the Final Award (see *DBL v DBM* [2024] 4 SLR 979 ("*DBL*") at [46]). This follows from the principle that there is no requirement for the

[80] AWS at para 43.

Tribunal to touch on each and every point in dispute in the Final Award (*TMM Division* at [105], citing *Checkpoint Ltd v Strathclyde Pension Fund* [2003] EWCA Civ 84 at [48]). In other words, the Tribunal had no duty or obligation to explicitly address the expert evidence in the Final Award just because the Applicant had submitted on it. Indeed, as stated by Judith Prakash J (as she then was), natural justice does not require that the parties be given responses on all submissions made (*SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733 at [60]):

> 60 … The fact that [the Adjudicator] did not feel it necessary to discuss his reasoning and explicitly state his conclusions in relation to the third and fourth jurisdictional issues, though unfortunate in that it gave rise to fears on the part of SEF that its points were not thought about, cannot mean that [the Adjudicator] did not have regard to those submissions at all. It may have been an accidental omission on [the Adjudicator's] part to indicate expressly why he was rejecting the submissions since the Adjudicator took care to explain the reasons for his other determinations and even indicated matters on which he was not making a determination. Alternatively, [the Adjudicator] may have found the points so unconvincing that he thought it was not necessary to explicitly state his findings. Whatever may be the reason for the Adjudicator's omission in this respect, I do not consider that SEF was not afforded natural justice. *Natural justice requires that the parties should be heard; it does not require that they be given responses on all submissions made.* … [emphasis added]

55 Moreover, quite apart from the fact that the Tribunal is only required to deal with the essential issues arising from the dispute, the Applicant's burden is to show, on the balance of probabilities, that the Tribunal *completely* failed to consider the expert evidence on the Toll Manufacturing Proposal (*DKT* at [8(c)]; see *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 ("*Glaziers Engineering*") at [38]). This is a matter of inference; if such an inference is to be drawn, it must be "clear and virtually inescapable" from the evidence (*AKN* at [46]). The Court of Appeal has further

cautioned that the court must be especially careful in cases such as the present, where a party is arguing that a decision-maker's silence on an issue is a basis to conclude that the decision-maker failed to consider that issue (*Glaziers Engineering* at [36]):

> 36 … where the allegation is that the decision-maker has wholly failed to consider an important pleaded issue, the court must be especially careful. *It is often being invited to conclude, not from any "explicit indication" … but rather from the decision-maker's silence on a submission that he has failed to even address his mind to that submission. Yet such silence may be equally consistent with the decision-maker considering the submission, but then choosing to disregard or reject it without explaining himself. The difficulty in drawing such an inference is that the decision-maker's silence is inherently ambiguous.* … Given the ambiguities inherent in the decision-maker's silence, the court must be wary that a disaffected party may wrongly characterise what is, in truth, the decision-maker's misunderstanding of or disagreement with a certain submission as a failure to consider that submission entirely. [emphasis added]

56 I am not satisfied that the evidence points to the clear and virtually inescapable inference that the Tribunal did not consider the expert evidence on the Toll Manufacturing Proposal. It is equally (if not more) likely that the Tribunal did consider the expert evidence, but then chose not to refer to it expressly in the Final Award. This is because the expert evidence was relied on by the Applicant for its argument that the Toll Manufacturing Proposal was not satisfactory.[81] That issue (*ie*, whether the Toll Manufacturing Proposal suggested by the Respondent was satisfactory) was ultimately *not* the main issue which the Tribunal had to determine in relation to cl 10.3 of the JVA. Indeed, the Agreed List of Issues does not make any mention of the Toll Manufacturing

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[81] AWS at para 39.

Proposal.[82] What the Tribunal was in fact asked to determine was the scope of the Respondent's obligations pursuant to cl 10.3 and whether the Respondent had breached cl 10.3.[83] It was thus not strictly necessary for the Tribunal to refer to the expert evidence, given that it was not directly relevant to the key issue surrounding cl 10.3 of the JVA.

57 Furthermore, the Tribunal found that the Applicant's "intransigent insistence on what he considered [the Respondent's] assistance obligation [under cl 10.3] to comprise" made it impossible for the Respondent to fulfil its obligations pursuant to cl 10.3 of the JVA.[84] The Tribunal thus concluded that the Respondent did not breach cl 10.3 as it "did everything that could reasonably have been expected of it to assist the other [p]arties".[85] In light of this conclusion, it was not necessary for the Tribunal to consider in detail the issue of whether the Toll Manufacturing Proposal specifically was satisfactory. This is especially since a significant reason why the Tribunal decided the Clause 10.3 Issue in favour of the Respondent was because the Applicant had acted in an intransigent manner and refused to collaborate with the Respondent.

58 In view of all the circumstances, I am not satisfied that the evidence supports the drawing of a clear and virtually inescapable inference that the Tribunal failed to apply its mind to the expert evidence relating to the Toll Manufacturing Proposal. There is therefore no basis for me to find that there has been a breach of the rules of natural justice.

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82 CGSB at Tab 5, pp 158–160 at paras 10–15.

83 CGSB at Tab 5, pp 158–159 at paras 10–11 and 13.

84 PM at Tab 1, p 166 at para 7.3.19.

85 PM at Tab 1, p 169 at paras 7.3.32–7.3.33.

59 Before I turn to the Applicant's next submission, I make a brief point on one of the pieces of expert evidence on the Toll Manufacturing Proposal relied on by the Applicant – Professor Hofbauer's report ("the Hofbauer Report"). In my view, the Hofbauer Report was not relevant to the Tribunal's consideration of whether the Toll Manufacturing Proposal was satisfactory. The Hofbauer Report was focused on evaluating the Respondent's proposals relating to:[86]

> a The relocation of all manufacturing, packaging, and warehousing facilities from the Navanakorn site. … Nestlé has presented four work programmes to achieve the proposed relocation:
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> Relocation of RTD production to the New RTD Site;
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> Relocation of Factory Warehouse and Distribution Centre to the New RTD Site;
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> Relocation of the Green Coffee Warehouse within the Chachoengsao site; and
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> Relocation of Coffee Mixes to the Chachoengsao site.
>
> b The removal and replacement of certain equipment in the soluble coffee factory at Chachoengsao which use aroma and extraction technologies that Nestlé alleges to be its property. The March 2024 Presentation gives two options for the location of the Replacement Equipment:
>
> in a new building to be constructed; or
>
> in the existing building after refurbishment.

60 Furthermore, Professor Hofbauer – during his presentation to the Tribunal – made clear that he was "engaged to undertake an analysis of the reasonableness of [the Respondent's] estimates relating to the disentanglement of QCP's operations from [the Respondent]".[87]

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86 PM at Tab 31, p 1192 at para 58.

87 PM at Tab 45, p 1999 at 70:5–70:7.

61 From the above, it is evident that the Hofbauer Report was not at all concerned with the Toll Manufacturing Proposal. There was thus no need for the Tribunal to even consider the Hofbauer Report when looking at the issue of whether the Toll Manufacturing Proposal was satisfactory.

The failure to consider the RB Proposals

62 The Applicant further submits that there was a breach of natural justice as the Tribunal did not consider the Applicant's submissions relating to the RB Proposals.[88] As I have mentioned (at [39] above), the RB Proposals were reports prepared by Roland Berger and meant to demonstrate "the feasibility of a standalone scenario whereby the continuation of QCP's operations post-termination of the JVA can be maintained".[89] To support his submission, the Applicant focuses on the fact that the Final Award did not make any mention of the RB Proposals, and even incorrectly stated that the Applicant refused to submit a developed proposal regarding QCP's own-brand production despite numerous invitations from the Respondent to do so.[90]

63 I do not accept that there is sufficient evidence to show that the Tribunal completely failed to consider the RB Proposals and the Applicant's submissions relating to them. As stated above (at [53]–[55]), the fact that the Tribunal did not specifically refer to or discuss the RB Proposals in the Final Award does not necessarily mean that it did not consider the RB Proposals. For the Applicant's argument to succeed, the evidence must point to the clear and virtually inescapable inference that the Tribunal did not consider the RB Proposals at all

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88 AWS at para 53.

89 PM at para 42.

90 AWS at para 53.

(*DKT* at [8(c)]; *AKN* at [46]). In my view, such an inference should not be drawn for the same reasons I have given as those relating to the expert evidence on the Toll Manufacturing Proposal (see [56]–[57] above). Indeed, it is more likely than not that the Tribunal did consider the RB Proposals but did not refer to them in the Final Award as (a) the issues surrounding the RB Proposals were not the key issues which it had to determine regarding cl 10.3 of the JVA; and (b) there was no need to expressly deal with the RB Proposals given its other findings on the Clause 10.3 Issue.

64 Moreover, contrary to the Applicant's submission, the record of the hearing for the Arbitration reflects that the Tribunal was well-aware of the existence of the RB Proposals.[91] The Tribunal had even asked questions about the RB Proposals during the hearing for the parties' closing presentations.[92] These indicate that the Tribunal did not miss the RB Proposals and the Applicant's submissions on them. Although the Tribunal did indeed comment that the Applicant did not submit any "developed proposal regarding QCP's own-brand production",[93] I am inclined towards the view that this was likely because the Tribunal did not consider the RB Proposals to be a "developed proposal", and not because the Tribunal completely failed to consider the RB Proposals. This is justified given that any doubt regarding whether the Tribunal dealt with an essential point of the dispute should be resolved in favour of upholding the award (*Palm Grove Beach Hotels Pvt Ltd v Hilton Worldwide Manage Ltd and another* [2025] 1 SLR 526 at [71]). As stated above (at [46]),

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91 PM at Tab 43, p 1859 at 34:22–35:13.

92 PM at Tab 43, p 1859 at 34:22–35:13 and Tab 46, p 2058 at 157:1–157:18.

93 PM at Tab 1, p 169 at para 7.3.31.

the court ought to review arbitral awards in a generous manner (*BLC and others v BLB and another* [2014] 4 SLR 79 at [86]):

> 86 … In short, the court is not required to carry out a hypercritical or excessively syntactical analysis of what the arbitrator has written … Nor should the court approach an award with a meticulous legal eye endeavouring to pick holes, inconsistencies and faults in awards, with the objective of upsetting or frustrating the process of arbitration. Rather, the award should be read in a reasonable and commercial way, expecting, as is usually the case, that there will be no substantial fault that can be found with it …

65 As I am not satisfied that the Tribunal failed to consider the RB Proposals and the corresponding submissions by the Applicant, there is similarly no basis for me to find that there has been a breach of natural justice relating to this point.

The Clause 8.4 Issue

66 I turn to deal with the Applicant's arguments surrounding the Tribunal's determination of the Clause 8.4 Issue. For ease of reference, I set out cl 8.4 of the JVA again:

> 8.4 Should NESTLE at any time during the currency of this Agreement wish to enter the regular coffee business in Thailand it will give the other parties hereto a first option to do so within Q.C.P.

The consideration of the parties' reputation and experience

67 The Applicant first submits that the Tribunal breached the fair hearing rule, as it took into account the parties' reputation and experience at the time the JVA was negotiated when considering how cl 8.4 of the JVA should be

interpreted.[94] This is primarily because neither party argued that the parties' reputation and experience is relevant in the interpretation of cl 8.4.[95]

68 The particular portions of the Final Award that the Applicant's submission is based on are as follows:[96]

> 7.4.12 It is equally important to consider the circumstances of the Parties who agreed to the terms of the NA and its predecessors. It is clear from the record that, at the time Nestle and Mr Mahagitsiri were first discussing the possibility of working together *(i.e.,* Nestle's possible use of a factory to be built to manufacture its Nescafe brand of instant coffee in Thailand), *Mr Mahagitsiri was in his mid-twenties with very limited business experience*, although he had a vision of introducing local production of instant coffee on an industrial scale to Thailand. This was all in the context, just referred to, of a nascent local cottage-industry based on hand-roasted and very small scale locally grown coffee beans. By comparison, *Nestle was one of the world's largest food and beverage companies and whose Nescafe product was the world's most popular instant coffee brand.* Nescafe had been launched in Thailand as an imported product in 1939.
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> …
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> 7.4.16 *The notion that Nestle, a sophisticated global business, would give such a long term and broad right of first refusal to Mr Mahagitsiri and QCP makes no commercial sense. This is especially so in circumstances where the right was first granted, apparently in near identical terms, in the early 1970's, when Mr Mahagitsiri was a relatively young and unknown quantity to Nestle.*
>
> [emphasis added]

69 I do not accept the Applicant's submission. There was no breach of natural justice as the Tribunal was fully entitled to consider the reputation and experience of the parties when deciding on the scope of cl 8.4. The Tribunal –

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94 AWS at paras 67–71.

95 AWS at para 75.

96 PM at Tab 1, pp 173–174 at paras 7.4.12 and 7.4.16.

in interpreting cl 8.4 – was required to determine the meaning of the phrase "the regular coffee business in Thailand". In the Final Award, it referred to the principle that the facts or circumstances which existed at the time a contract was entered into should be taken into account when interpreting the contract.[97] It therefore follows that the reputation and experience of the parties, at the time their commercial relationship was negotiated, is a relevant factor in the Tribunal's analysis.

70 Moreover, even if neither party had expressly submitted that cl 8.4 should be interpreted with regard to the parties' reputation and experience, it remained open to the Tribunal to make such a determination in light of the evidence and the arguments before them. Arbitral tribunals are not precluded from adopting a chain of reasoning that is reasonably connected to the arguments canvassed by the parties (*TMM Division* at [65]):

> 65 There is no uniformity in the authorities on the extent to which the arbitral tribunal may decide a pleaded issue using premises not argued by the parties but which were reasonably connected to arguments canvassed by the parties. The interpretation of authorities is further compounded by the fact that natural justice cases almost inevitably turn on the individual facts of the case. Nevertheless, the foundational principle which courts should not lose sight of is that parties who choose arbitration as their preferred system of dispute resolution must live with the decision of the arbitrator, good or bad. Commercial parties appoint arbitrators for their expertise and experience, technical, legal, commercial or otherwise. *These arbitrators cannot be so straightjacketed as to be permitted to only adopt in their conclusions the premises put forward by the parties. If an unargued premise flows reasonably from an argued premise, I do not think that it is necessarily incumbent on the arbitral tribunal to invite the parties to submit new arguments. The arbitral tribunal would be doing nothing more than inferring a related premise from one that has been placed before it.* [emphasis added]

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97 PM at Tab 1, p 172 at para 7.4.9.

71 In this case, the Applicant did argue – in the Defence and Counterclaim – that a broad interpretation of the phrase "regular coffee business" in cl 8.4 is supported by the factual context in which the JVA was entered into:[98]

> 273 *The broad meaning of "regular coffee business" is also supported by the factual context in which the JVA, and Clause 8.4, were agreed and concluded.* Clause 8.4 has formed a fundamental component of the Parties' bargain since the inception of their contractual relationship. *As explained above, it provided an important safeguard for Mr. Mahagitsiri when entering into an agreement with a significantly more powerful partner that he would be able to share in the proceeds of their coffee-related joint undertaking.* … [emphasis added]

72 This argument can also be found in the Applicant's Rejoinder and Reply to Counterclaim:[99]

> 480 Applying principles of contractual interpretation under English law, which are not in dispute, Nestlé's unduly narrow interpretation of the term "regular coffee business" should be rejected at least for the following reasons:
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> …
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> d Third, Nestlé's assertion that Mr. Mahagitsiri's interpretation of Clause 8.4 "ignores commercial common sense" is flawed. *The JVA is not just any arms-length contract – it is a relational contract, and there was (and still remains) a clear disparity in bargaining power between Mr. Mahagitsiri and Nestlé – as Nestlé itself points out, it is a "sophisticated global business." In addition to adopting a commercial lens in interpreting Clause 8.4, the factual matrix must also be taken into account under English law.* …
>
> [emphasis in original omitted; emphasis added]

73 Given that the Applicant did argue that the factual matrix surrounding the signing of the JVA is relevant to the Clause 8.4 Issue, and further alluded to

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98 PM at Tab 12, p 477 at para 273.

99 PM at Tab 24, p 1066 at para 480.

the commercial relationship and the difference in the bargaining power of the parties, it would have been foreseeable to a reasonable litigant in the shoes of the Applicant that the Tribunal would consider the reputation and experience of the parties at the time they entered into the JVA when determining the Clause 8.4 Issue (see *Soh Beng Tee* at [65(d)]). In my view, such a consideration by the Tribunal was reasonably connected and had a sufficient nexus to the arguments raised by the parties (*BZW* at [60(b)]). Furthermore, the Tribunal's findings regarding the reputation and experience of the parties were justified based on the contents of the pleadings and the evidence before it.[100] I am thus satisfied that the Tribunal did not breach the fair hearing rule when it took into account the parties' reputation and experience in its analysis of the Clause 8.4 Issue.

74 However, even if I am wrong and the Tribunal did breach the rules of natural justice in considering the reputation and experience of the parties (which is, in my view, not the case), I am not persuaded that any such breach would have caused the Applicant to suffer any real or actual prejudice. The Applicant has to prove that, if not for the breach, the Tribunal could reasonably have arrived at a different conclusion (see *L W Infrastructure* at [54]). I can do no better than to quote the words of the Court of Appeal in *Soh Beng Tee* (at [91]):

> 91 … It appears to us that in Singapore, an applicant will have to persuade the court that there has been some actual or real prejudice caused by the alleged breach. While this is obviously a lower hurdle than substantial prejudice, it certainly does not embrace technical or procedural irregularities that have caused no harm in the final analysis. There must be more than technical unfairness. It is neither desirable nor possible to predict the infinite range of factual permutations or imponderables that may confront the courts in the future. What we can say is that to attract curial intervention it must be established that the breach of the rules of natural justice must,

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100 PM at Tab 13, p 506 at para 5 and pp 508–513 at paras 10–36 and Tab 19, pp 698–699 at paras 35–39.

> at the very least, have actually altered the final outcome of the arbitral proceedings in some meaningful way. *If, on the other hand, the same result could or would ultimately have been attained, or if it can be shown that the complainant could not have presented any ground-breaking evidence and/or submissions regardless, the bare fact that the arbitrator might have inadvertently denied one or both parties some technical aspect of a fair hearing would almost invariably be insufficient to set aside the award.* [emphasis added]

75 I do not think that the Tribunal would have interpreted the phrase "regular coffee business in Thailand" in a different way, even if the reputation and experience of the parties was not a factor in its analysis. This is because that factor was merely one of the factors which the Tribunal considered when it looked at the circumstances which existed when the parties began their contractual relationship. It also considered other factors:[101]

(a) The Tribunal referred to the importance of the meaning and scope of "the regular coffee business in Thailand" as it existed in 1974 and to the evolution of the coffee business in Thailand from 1974 to 1990 (*ie,* the year the JVA was entered into). It found that, apart from the growth of instant coffee, the coffee market in Thailand had hardly changed between 1974 and 1990; it was dominated by instant coffee and traditional ground coffee. This was based on evidence from the Applicant and his industry experts (Mr Miolane and Mr Reiner).

(b) The Tribunal pointed out that QCP was incorporated in 1989 for the purpose of operating a plant in Chachoengsao that the Applicant and the Respondent had decided to build to meet the demands of a growing coffee business in Thailand. It further noted that the plant's capability

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101 PM at Tab 1, pp 172–173 at paras 7.4.10–7.4.13.

> then and now was and is limited to the physical manufacture of instant coffee and canned liquid coffee.

76 There is, in my view, no indication that the Tribunal's determination of the meaning of the phrase "regular coffee business in Thailand" completely turned on its consideration of the parties' reputation and experience. In light of that, I am of the view that the Tribunal would have reached the same conclusion that it did on this issue, even if it had not considered the parties' reputation and experience as a factor.

The reference to a case that was not in the record

77 The Applicant further submits that the Tribunal breached the fair hearing rule when it referred to the case of *Excelsior Group Productions Limited v Yorkshire Television Limited* [2009] EWHC 1731 (Comm) ("*Excelsior Group*"), as the case was never cited by either of the parties and the Applicant was not given any opportunity to address the applicability of the case to the Clause 8.4 Issue.[102]

78 In my view, there has been no breach of natural justice occasioned by the Tribunal's reference to *Excelsior Group*. I set out the parts of the Final Award which refer to *Excelsior Group*:[103]

> 7.4.20 In the *Globe Motors* case, Lord Justice Beatson quoted with approval from Mr Justice Flaux's judgment in *Excelsior Group v Yorkshire Television.* In that case, Flaux J was considering whether the phrase "all the transmitters of the IBA serving ITV", in a clause in a long-term agreement made in mid-1990 for the production and exportation of television films, covered digital transmitters, as well as the analogue

102 AWS at paras 76–78.

103 PM at Tab 1, pp 175–177 at paras 7.4.20–7.4.25.

transmitters which existed when the contract was made. He accepted, at [14], that:

> "it may be that, even if a concept or entity did not exist at the time the contract was made, the contract, properly construed by reference to the words and phrases used meant at the time, may have used words of sufficient width to encompass that concept or entity when it comes into existence".

7.4.21 However, this led him to the conclusion that the words used did not cover digital transmitters which did not exist and were not even contemplated in 1990. He added, at [93], that:

> "it would be a complete distortion of the principles of construction to conclude that [the clause] should be given some wider meaning than the words of the clause will bear, merely because the way that the television industry has developed, unanticipated at the time".

7.4.22 By contrast, the phrase "any and all media now known or hereafter devise" as used in a later contract was considered to be flexible enough to encompass a concept or entity not in existence at the time of the agreement when it came into existence.

…

7.4.25 To adopt the words of Mr Justice Flaux, it would be a distortion of the principles of construction to give the clause in question a wider meaning than its words will bear merely because of the way the wider coffee business in all its aspects has developed in a way unanticipated at the time the clause was agreed.

79 As seen from the above, the Tribunal alluded to the case of *Globe Motors, Inc and others v TRW Lucas Varity Electric Steering Limited and another* [2016] EWCA Civ 396 ("*Globe Motors*") before discussing *Excelsior Group*. This is because, in *Globe Motors*, Beatson LJ discussed *Excelsior Group* (at [66]):

> 66 More recently, in *Excelsior Group v Yorkshire Television* [2009] EWHC 1751 (Comm), Flaux J took a similar approach. He was considering whether the phrase "all the transmitters of the IBA serving ITV" in a clause in an agreement made in July 1990 for the production and exploitation of television films in

> which it was contemplated that it would last for many years covered digital transmitters as well as the analogue transmitters which existed when the contracts were made. He accepted (at [14]) that "it may be that, even if a concept or entity did not exist at the time the contract was made, the contract, properly construed by reference to what words or phrases used meant at the time, may have used words of sufficient width to encompass that concept or entity when it comes into existence", but stated that the words had to be interpreted in accordance with what they meant objectively when the agreement was made. He concluded (see [88]–[90] and [92]–[93]) that the words "all the transmitters" did not cover digital transmitters which did not exist and were not even contemplated in 1990. He stated (at [93]) that "it would be a complete distortion of the principles of construction to conclude that [the clause] should be given some wider meaning than … the words of the clause will bear, merely because the way that the television industry has developed, unanticipated at the time" of the agreements has turned out to be disadvantageous to Excelsior. By contrast, the phrase "any and all media now known or hereafter devised" in a later contract was flexible enough to encompass a concept or entity not in existence at the time of the agreement when it came into existence.

80 It is clear from the foregoing that the portions of *Excelsior Group* which the Tribunal relied on as part of its reasoning in the Final Award could be found in *Globe Motors* (at [66]). Given that it is not disputed by the Applicant that *Globe Motors* was cited by both parties in their pleadings (and was, in fact, first cited by the Applicant himself in the Defence and Counterclaim),[104] I am not satisfied that there has been a breach of natural justice. Although *Excelsior Group* was never formally part of the arbitration record, it cannot be said that the Tribunal relied on a proposition or a case that the parties *never* had sight of or *never* had the opportunity to address, as *Globe Motors* did in fact form part of the record. Furthermore, it is evident that the parts of the Final Award which referred to *Excelsior Group* were largely a reproduction of the relevant paragraph (*ie*, [66]) in *Globe Motors*. It therefore cannot be said that the

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104 PM at para 147.

Applicant was deprived of an opportunity to be heard on the applicability of *Excelsior Group* to the Clause 8.4 Issue, or that the Clause 8.4 Issue was decided on a ground that was beyond the contemplation of the parties.

81 The Applicant further submits that, even if *Globe Motors* was cited by the parties, there was still a breach of the fair hearing rule as neither party had relied on *Globe Motors* in relation to the Clause 8.4 Issue.[105] It was thus not open to the Tribunal to adopt a chain of reasoning which relied on *Globe Motors* (at [66]) for the Clause 8.4 Issue.

82 I am unable to accept the Applicant's submission. As stated above (at [44]), the Tribunal's chain of reasoning will not breach the fair hearing rule if it is (a) one which the parties had reasonable notice that the Tribunal could adopt; or (b) one which has a sufficient nexus to the parties' arguments (*BZW* at [60(b)]; *DKT* at [12]). The reason the Applicant cited *Globe Motors* in the Defence and Counterclaim and the Rejoinder and Reply to Counterclaim was to persuade the Tribunal that a "flexibility of approach" is required in the interpretation of cll 10.1 and 10.3 of the JVA.[106] In other words, the Applicant used *Globe Motors* as authority for how the Tribunal should interpret specific clauses in the JVA. When the Tribunal referred to *Globe Motors* in the Final Award, it was similarly relying on *Globe Motors* to support its interpretation of a clause in the JVA (albeit a different clause, *ie*, cl 8.4). The chain of reasoning that the Tribunal adopted for the Clause 8.4 Issue was therefore one that the parties had reasonable notice of as it "flow[ed] reasonably from the arguments actually advanced by either party or is related to those arguments" (*JVL Agro*

105 AWS at paras 80–81.

106 PM at Tab 12, p 447 at para 199(b) and Tab 24, p 1020 at para 273(c).

Industries Ltd v Agritrade International Pte Ltd [2016] 4 SLR 768 at [159]) and had a sufficient nexus to the parties' arguments (*BZW* at [60(b)]). In this regard, it does not matter that neither the Applicant nor the Respondent cited *Globe Motors* in their arguments on the Clause 8.4 Issue. Indeed, no breach of natural justice will have been occasioned if the Tribunal comes to a conclusion that reasonably flows from the parties' arguments, even if that conclusion was not argued by either party (*AQU v AQV* [2015] SGHC 26 at [18]).

The failure to consider the Applicant's evidence and submissions

83 Finally, I turn to the Applicant's argument that the Tribunal only took into account the parties' evidence and submissions in the pleadings and failed to consider the content in the pre-hearing submissions, opening presentations, evidentiary hearing and closing presentations.[107] The Applicant further asserts that the Tribunal failed to consider the events and developments relating to the dispute that occurred in 2024.[108] The Applicant also submits that the evidence clearly shows that the Tribunal had prejudged the dispute and approached the issues at hand with a closed mind,[109] and that a breach of natural justice has occurred as a result.

84 I am unable to agree with the Applicant. I reiterate that an inference that the Tribunal failed to consider the Applicant's evidence and submissions should only be drawn if such an inference is one that is "clear and virtually inescapable", and it must be shown that there was a "failure to even consider" the evidence and submissions in question (*AKN* at [46]–[47]). In my judgment,

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107 AWS at paras 19–20.

108 AWS at para 22.

109 AWS at paras 89–94.

there is insufficient evidence before me to permit such an inference to be drawn. The Applicant argues – in a blunderbuss and largely unhelpful manner – that the Tribunal had ignored the evidence which came about and the submissions that were made after the pleadings were filed in the Arbitration. He does not, however, specify which are the key arguments and evidence the Tribunal had failed to consider, and how those arguments and evidence are material to the dispute between the parties. In this regard, the Applicant merely asserts – in a manner similar to his submissions relating to the RB Proposals and the expert evidence on the Toll Manufacturing Proposals and (see [53] and [62] above) – that the Tribunal did not make any reference in the Final Award to the substantive aspects of the Applicant's pre-hearing submissions, the Applicant's opening presentation, the evidentiary hearing, and the parties' closing presentations.[110] As I have alluded to above (at [53]–[55]), that is not a proper basis for arguing that the Tribunal failed to consider the parties' evidence and submissions – the fact that the Tribunal did not refer to the parties' submissions and presentations does not necessarily lead to the clear and virtually inescapable inference that the Tribunal failed to consider them (see *DBL* at [46]).

85 I also do not accept the Applicant's argument that the Tribunal clearly failed to consider the "key developments" which occurred in 2024 that were relevant to the dispute.[111] The Applicant is first unable to articulate what were these "key developments" that were relevant to the dispute which the Tribunal did not consider. Furthermore, in my view, it cannot be argued that the Tribunal had completely shut its mind and was not cognisant of the events which occurred in 2024. Indeed, as stated above (at [64]), the Tribunal was well-aware

110 AWS at para 19.

111 AWS at paras 22–23.

of the RB Proposals – these were contained in presentations made by Roland Berger in March and April 2024.[112] In the Final Award, the Tribunal also made reference to events which happened in 2024.[113] I am therefore satisfied that the Applicant is not able to show that the Tribunal has breached the rules of natural justice, as it is not evident that the Tribunal failed to consider the parties' submissions and evidence after the pleadings were filed or that the Tribunal failed to consider the events relating to the dispute which occurred in 2024.

86 In relation to the Applicant's argument that the Tribunal had prejudged the merits of the dispute between the parties, I note that this argument is premised on the assertions that: (a) the Tribunal failed to consider the evidence and submissions provided by the parties after the pleadings were filed and the events relevant to the dispute which occurred in 2024;[114] (b) the Tribunal failed to consider the Applicant's evidence and submissions relating to the Clause 10.3 Issue;[115] and (c) the Tribunal determined the Clause 8.4 Issue based on a chain of reasoning that the parties did not have reasonable notice of.[116] In light of my preceding conclusions, I find that there is no basis for the Applicant to submit that the Tribunal had prejudged the issues in the dispute.

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112 PM at Tabs 33–34.

113 PM at Tab 1, p 160 at para 7.3.5 and p 189 at paras 7.7.8–7.7.9.

114 AWS at para 90.

115 AWS at para 91.

116 AWS at para 92.

Conclusion

87 For the foregoing reasons, I dismiss OA 198 and SUM 1653. I will now hear the parties on the issue of costs.

Sushil Nair
Judicial Commissioner

Daryl Larry Sim and Vanessa Ku (Rajah & Tann Singapore LLP) for the applicant in HC/OA 198/2025 and the respondent in HC/OA 469/2025 (HC/SUM 1653/2025);
Thio Shen Yi *SC*, Kevin Elbert and Stacey Lim (TSMP Law Corporation) for the respondent in HC/OA 198/2025 and the claimant in HC/OA 469/2025 (HC/SUM 1653/2025).