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

[2025] SGHC 248

Originating Application No 549 of 2025

Between

Q&M Dental Group
(Malaysia) Sdn Bhd

… *Applicant*

And

Lee Chin Sze

… *Respondent*

JUDGMENT

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

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Q&M Dental Group (Malaysia) Sdn Bhd
v
Lee Chin Sze

[2025] SGHC 248

General Division of the High Court — Originating Application No 549 of 2025
Dedar Singh Gill J
21 October 2025

9 December 2025 Judgment reserved.

Dedar Singh Gill J:

1 HC/OA 549/2025 ("OA 549") is an application by Q&M Dental Group (Malaysia) Sdn Bhd ("Q&M") to set aside portions of the partial award dated 28 February 2025 ("Partial Award") in respect of the Singapore International Arbitration Centre ("SIAC") Arbitration No 979 of 2020 ("Arbitration"). Q&M also seeks an order that the part of the Partial Award so set aside be tried afresh by a newly appointed arbitrator.[1] This application is made pursuant to Art 34(2)(*a*)(iii) of the United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985) ("Model Law") as set out in the First Schedule to the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") and s 24(*b*) of the IAA. I dismiss the application for reasons that I set out below.

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[1] Originating application at paras 2(1)–(2).

Facts

The parties

2 The applicant, Q&M, is an investment holding company incorporated in Malaysia. It provides management services to dental clinics it operates in Malaysia.[2]

3 The respondent, Dr Lee Chin Sze ("Dr Lee"), was a dental surgeon practising at Solaris Dental Centre in Kuala Lumpur, Malaysia. This was a dental surgery clinic owned by D & D Dental Sdn Bhd ("D&D Dental"). D&D Dental was solely owned by Dr Lee prior to 12 December 2012.[3]

Background to the dispute

4 On 12 September 2012, Q&M and Dr Lee entered into the following agreements:[4]

(a) a sale and purchase agreement for Q&M to acquire 70% shareholding in D&D Dental from Dr Lee in consideration for RM840,000 and Dr Lee to retain 30% shareholding in D&D Dental;

(b) a shareholders' agreement setting out the parties' rights and obligations as shareholders of D&D Dental; and

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2 Foo Sien Loon's affidavit filed on 27 May 2025 at para 6.

3 Foo Sien Loon's affidavit filed on 27 May 2025 at paras 7–8.

4 Foo Sien Loon's affidavit filed on 27 May 2025 at para 9.

(c) a service agreement ("Service Agreement") under which Dr Lee was engaged by Q&M as a dental surgeon for an initial term of 10 years starting from 1 November 2012.

5 The shareholders' agreement was amended by way of an Addendum on 1 November 2012 and a Supplemental Agreement on 6 November 2015. The shareholders' agreement, Addendum and Supplemental Agreement are hereinafter collectively referred to as the "SHA".

6 Pursuant to Clause 10 of the SHA, there was a minimum after-tax distributable profit known as the "Profit Target". Dr Lee guaranteed that Q&M would receive 70% of the Profit Target as dividends from D&D Dental for 10 years (from 2013 to 2022). D&D Dental was to pay the dividends within 2 months from the end of each financial year ("FY"). In the event that the dividends from D&D Dental were not sufficient to pay 70% of the Profit Target, Dr Lee would be liable to pay the shortfall to Q&M for that FY ("Shortfall Payable").[5] The term "Shortfalls Payable" shall be used when discussing the shortfalls over multiple years.

7 Dr Lee failed to pay the Shortfalls Payable comprising a total sum of RM247,332.70 for FY2013, FY2014 and FY2015. On 17 November 2016, Q&M and Dr Lee entered into a repayment agreement ("Repayment Agreement"), under which Dr Lee agreed to pay Q&M the total Shortfalls Payable of RM247,332.70 and loans amounting to RM228,057.81 advanced by Q&M. The total payment was to be made through monthly instalments of a minimum of RM7,000 deducted from Dr Lee's monthly professional fees.[6]

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5 Foo Sien Loon's affidavit filed on 27 May 2025 at para 11.

6 Foo Sien Loon's affidavit filed on 27 May 2025 at para 13 and p 1672.

8 Starting from March 2017, in reliance on the Repayment Agreement, RM129,487.81 was deducted by Q&M from amounts payable to Dr Lee. There was an outstanding balance of RM345,902.70 owed to Q&M.[7]

9 On 14 November 2017, Q&M demanded that Dr Lee sell his 30% shareholding in D&D Dental for RM96,578.42 pursuant to Clause 15.7 of the SHA ("2017 Call Option"). Q&M also sought payment of outstanding sums pursuant to the SHA and the Repayment Agreement amounting to RM1,173,925.60.[8] I reproduce Clause 15.7 of the SHA here:

> 15.7 In the event of any breach of any of the terms of this Agreement or the Sale and Purchase Agreement or the Service Agreement by [Dr Lee] or if the [Dr Lee] dies, [Q&M] shall be entitled to purchase the remaining shares held by [Dr Lee] or from its estate by giving a seven (7) days written notice of default to [Dr Lee]. *[Q&M] shall pay the defaulting party for the shares based on the Net Tangible Asset of [D&D Dental] at the date of default and the defaulting party shall transfer the shares and execute all relevant documents as required by [Q&M].* [Q&M] shall also be entitled, at its discretion, require the defaulting party to buy the shares held by [Q&M] for the sum of RM 840,000 plus annual interest of ten percent (10%) calculated from the date of this Agreement to date of payment and require [D&D Dental] to repay all outstanding shareholders' loans and unpaid dividends to [Q&M]. The defaulting party shall pay [Q&M] within two (2) weeks of the written notice from [Q&M] to the defaulting party exercising this right.
>
> [emphasis added]

10 Dr Lee disputed Q&M's demand and resigned from his position as a dental surgeon engaged by Q&M on 20 November 2017.[9]

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7 Foo Sien Loon's affidavit filed on 27 May 2025 at para 14.

8 Foo Sien Loon's affidavit filed on 27 May 2025 at pp 667 and 1672.

9 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1673.

11 On 19 March 2020, Q&M demanded, in reliance on Clause 15.7 of the SHA (see [9] above), that Dr Lee purchase its 70% shareholding in D&D Dental for RM840,000 plus annual interest of 10% calculated from 12 September 2012 to the date of payment ("2020 Put Option").[10] This was on the basis that, amongst others, Dr Lee "failed and/or refused to perform the Repayment Agreement" and did not pay the Shortfalls Payable for FY2016, FY2017, FY2018 and FY2019.[11]

12 Dr Lee did not make the payment for the purchase of Q&M's 70% shareholding in D&D Dental.[12]

Procedural history

SIAC Arbitration

13 On 21 October 2020, Q&M filed a Notice of Arbitration and referred the dispute to the SIAC. The arbitration agreement is set out in Clause 14 of the SHA. It states the following:[13]

> **14. DISPUTE RESOLUTION**
>
> 14.1 This Agreement shall be governed by and construed in accordance with law of Malaysia.
>
> 14.[2] All disputes arising from or in connection with this Agreement shall be resolved by the Parties through friendly consultations. Such consultations shall commence immediately after any Party informs the other Parties in writing thereof. In the event that any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, is unable to be resolved by the Parties within sixty (60) calendar days through

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10 Foo Sien Loon's affidavit filed on 27 May 2025 at para 16.

11 Foo Sien Loon's affidavit filed on 27 May 2025 at pp 123–124.

12 Foo Sien Loon's affidavit filed on 27 May 2025 at para 17 and p 1673.

13 Foo Sien Loon's affidavit filed on 27 May 2025 at para 19 and pp 42–43.

> amicable consultation, conciliation or other agreed means (which the Parties hereby agree to use their best efforts to employ before resorting to arbitration under this Clause 14.2), *such dispute shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force*, which rules are deemed to be incorporated by reference in this Clause. The Tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the Singapore International Arbitration Centre. The language of the arbitration shall be English and the decision of the arbitrator shall be final and binding on the Parties.
>
> 14.3 During the process of arbitration, all the Parties shall perform their respective rights and obligations continuously under this Agreement, except for those matters under arbitration.
>
> [emphasis added]

14 On 17 December 2020, an arbitrator ("Tribunal") was appointed.[14] Pursuant to Clause 14, the Tribunal's directions were recorded in Procedural Order No 1 dated 8 January 2021:[15]

(a) The IAA shall apply to the Arbitration.

(b) The place and seat of the Arbitration is Singapore.

(c) The governing law of the SHA is Malaysian law.

(d) The language of the Arbitration is English.

(e) The Arbitration shall be governed by the SIAC Rules.

15 During the Arbitration, Q&M took the view that Dr Lee breached the SHA and the Repayment Agreement. It thus sought, *inter alia*, the following reliefs in its Re-amended Statement of Claim dated 15 June 2023:[16]

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14 Foo Sien Loon's affidavit filed on 27 May 2025 at para 22.

15 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1661; Partial Award at [2.2].

16 Foo Sien Loon's affidavit filed on 27 May 2025 at para 23.

(a) a declaration that Dr Lee breached the terms of the SHA in respect of the Shortfalls Payable for FY2013 to FY2022 ("Claim 1");

(b) a declaration that Q&M validly exercised the 2020 Put Option ("Claim 2");

(c) an order that Dr Lee pay Q&M the sum of RM529,076.80 which is the total amount of Shortfalls Payable for FY2016 to FY2022 ("Claim 3"); and

(d) an order that Dr Lee pay Q&M the amount of RM840,000 plus 10% interest from the date of the SHA to the date of payment pursuant to the 2020 Put Option ("Claim 4").

16 In his Re-amended Statement of Defence dated 30 June 2023, Dr Lee pleaded, *inter alia*, that:[17]

(a) He considered the Service Agreement with Q&M repudiated from 23 November 2017.

(b) Q&M is precluded from relying on Clause 15.7 of the SHA to put its shares in D&D Dental to him on account of its election to exercise the 2017 Call Option.

17 Thereafter, Q&M said in its Re-amended Statement of Reply dated 7 July 2023 that:[18]

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17 Foo Sien Loon's affidavit filed on 27 May 2025 at para 24 and pp 185, 189 and 1682; Re-amended Statement of Defence at paras 22.9 and 32.3; Partial Award at [8.1(c)].

18 Foo Sien Loon's affidavit filed on 27 May 2025 at para 25 and p 1668.

(a) Dr Lee had disputed and rejected Q&M's proposal to exercise the 2017 Call Option.

(b) On 20 November 2017, Dr Lee disputed Q&M's rights to purchase his 30% shareholding in D&D Dental.

(c) As a result, the 2017 Call Option was never exercised or consummated and Dr Lee did not transfer his 30% shareholding to Q&M.

18 The hearing for the Arbitration occurred and concluded on 27 July 2023.[19]

Partial Award

19 On 28 February 2025, the Tribunal issued the Partial Award.

20 In respect of Claim 1 and Claim 3, the Tribunal found that Dr Lee breached the SHA for the Shortfalls Payable for FY2013 to FY2017, up to and including 21 November 2017. Dr Lee was therefore ordered to pay Q&M RM145,561.64, being the aggregate Shortfalls Payable in respect of FY2016 and FY2017.[20] As for the Shortfalls Payable in relation to FY2013 to FY2015, they were covered under other claims raised by Q&M concerning the Repayment Agreement.[21]

21 Regarding Claim 2 and Claim 4, the Tribunal dismissed the same. The Tribunal found that the 2017 Call Option was validly issued by Q&M as Dr Lee

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19 Foo Sien Loon's affidavit filed on 27 May 2025 at para 26.

20 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1694, para 10.4.3.

21 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1688, para 10.2.2.

had breached Clauses 26.1.2 and 26.1.3 of the SHA.[22] Accordingly, Q&M acquired the beneficial interest in Dr Lee's 30% shareholding in D&D Dental as at 22 November 2017.[23]

22 By the time the 2020 Put Option was issued on 19 March 2020, Dr Lee had been released from his obligations under the SHA. These included the obligation to comply with the put-option related terms of Clause 15.7 of the SHA.[24] This was by operation of Clause 15.5 which states as follows:[25]

> 15.5 If any Shareholder disposes of the beneficial interest in all of its Shares in accordance with the provisions of this Agreement then it shall be released from all of its obligations hereunder save unless otherwise bound under this Agreement.

23 The Tribunal also found it "irrelevant" that Dr Lee had purported to reject Q&M's exercise of the 2017 Call Option as Clause 15.7 of the SHA (see [9] above) did "not provide for any discretion on the part of [Dr Lee] to avoid the effect of a valid exercise of the [2017 Call Option] by [Q&M]".[26]

24 As the parties had not been able to agree on the amount to be paid by Q&M to Dr Lee from the exercise of the 2017 Call Option, the Tribunal directed that the "matter remains open for consultation and agreement between the [p]arties, or for binding resolution before this Tribunal at a later date".[27] Overall,

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22 Foo Sien Loon's affidavit filed on 27 May 2025 at pp 1690–1691, paras 10.2.10–10.2.12.

23 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1691, paras 10.2.14–10.2.15.

24 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1693, para 10.3.6.

25 Foo Sien Loon's affidavit filed on 27 May 2025 at p 44.

26 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1691, para 10.2.14.

27 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1692, para 10.2.19.

the Tribunal found the 2017 Call Option and the 2020 Put Option to be mutually exclusive.

25 On 11 March 2025, the Tribunal issued Procedural Order No 25, directing parties to discuss the necessary and/or appropriate steps in connection with the Tribunal's determination that the 2017 Call Option had been validly exercised by Q&M.[28]

Q&M's case

26 In OA 549, Q&M seeks to set aside certain parts of the Partial Award insofar as they "[pertain] to the Tribunal's determination regarding the 2017 Call Option and the consequential findings arising therefrom". These portions of the Partial Award shall be referred to as the "Disputed Determinations". Q&M's position is that the Disputed Determinations "deal with a dispute not contemplated by or not falling within the terms of the submission to the Arbitration, or contain decisions on matters beyond the scope of the submission to the Arbitration" [emphasis in original omitted]. In addition, the making of the Disputed Determinations "amounts to a breach of the rules of natural justice by which Q&M's rights have been severely prejudiced".[29]

27 The Disputed Determinations include the Tribunal's determinations:[30]

(a) that the 2017 Call Option was validly issued on account of Dr Lee's breaches of Clauses 26.1.2 and 26.1.3 of the SHA (see paras 10.2.10, 10.2.11, and 10.2.12 of the Partial Award);

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28 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1708.

29 Foo Sien Loon's affidavit filed on 27 May 2025 at para 40.

30 Foo Sien Loon's affidavit filed on 27 May 2025 at para 41.

(b) on the effect resulting from the 2017 Call Option, in which Q&M had become the beneficial owner of Dr Lee's 30% shareholding in D&D Dental by operation of Clause 15.5 of the SHA, and that Dr Lee had been released from all his obligations under the SHA upon the effective date of the 2017 Call Option on 22 November 2017 (see paras 10.2.6, 10.2.7, 10.2.8, 10.2.9, 10.2.13, 10.2.14, 10.2.15, 10.2.16, 10.3.6, 10.3.7, 10.3.8, and 10.3.9 of the Partial Award);

(c) that the issue on the amount to be paid by Q&M to Dr Lee pursuant to the 2017 Call Option remains open for consultation between the parties or for binding resolution before the Tribunal (see paras 10.2.19 and 16.2 of the Partial Award);

(d) that Q&M's Claim 2 and Claim 4 on the 2020 Put Option were dismissed (see paras 10.3.10, 10.5.1, 10.5.2, 10.5.3, 16.1(d), and 16.1(f) of the Partial Award); and

(e) that, due to the effect of the 2017 Call Option, Q&M's Claim 1 and Claim 3 on the Shortfalls Payable are only limited to up until 21 November 2017 (paras 10.2.17, 10.2.18, 10.2.19, 10.4.2, 10.4.3, and 16.1(c) of the Partial Award).

28 In sum, Q&M argues that the Disputed Determinations pertain to a dispute regarding the precipitating events, validity and effect of the 2017 Call Option, which were not within the scope of its submission to Arbitration.[31] Clause 26 of the SHA, which was the basis of the Tribunal's finding of the valid exercise of the 2017 Call Option, concerned Dr Lee's conduct of engaging in businesses that were in competition with Q&M's business. This was unrelated

[31] Applicant's submissions filed on 16 October 2025 at para 34.

to Dr Lee's failure to pay the Shortfalls Payable under the SHA. Moreover, Dr Lee had rejected Q&M's issuance of the 2017 Call Option.[32]

29 Q&M advances several arguments to substantiate its case.

30 First, Q&M says that the precipitating events, validity and effect of the 2017 Call Option did not form part of its pleaded case in its Notice of Arbitration and its Re-amended Statement of Claim. The 2017 Call Option was raised by Dr Lee in his Re-amended Statement of Defence only to the extent that Q&M is precluded from relying on Clause 15.7 of the SHA to issue the 2020 Put Option. It was not pleaded that the 2017 Call Option was validly exercised. In Q&M's Re-amended Statement of Reply, it responded that Dr Lee had disputed and rejected Q&M's proposal to exercise the 2017 Call Option.[33]

31 Second, the Tribunal gave no directions for the filing of an agreed list of issues in the Arbitration and thus there was no agreed list of issues.[34]

32 Third, the dispute relating to the precipitating events, validity, and effect of the 2017 Call Option was not advanced by either party in the opening submissions. Q&M's position at the Arbitration was merely that Dr Lee's defence (that Q&M was precluded from exercising the 2020 Put Option on account of its election to exercise the 2017 Call Option) was a non-issue because

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32 Foo Sien Loon's affidavit filed on 27 May 2025 at para 42.

33 Foo Sien Loon's affidavit filed on 27 May 2025 at para 44; Applicant's submissions filed on 16 October 2025 at paras 29–33.

34 Foo Sien Loon's affidavit filed on 27 May 2025 at para 45; Applicant's submissions filed on 16 October 2025 at para 35.

Dr Lee had disputed and rejected Q&M's proposal to exercise the 2017 Call Option and hence it was never exercised.[35]

33 Fourth, there was a lack of full and complete evidence concerning the precipitating events, validity and effect of the 2017 Call Option. Q&M contends that the evidence adduced at the Arbitration (*ie*, the 2017 Call Option, Dr Lee's response dated 20 November 2017, Q&M's reply dated 7 December 2017, and Dr Lee's further response dated 23 December 2017) merely showed that Dr Lee disputed and rejected the 2017 Call Option at the material time. The 2017 Call Option was premised on Q&M's allegation that Dr Lee had breached Clause 26 (*ie*, the non-competition and non-solicitation clauses) of the SHA, which was denied by Dr Lee at the time. However, no evidence was presented to prove or disprove Dr Lee's breaches of said clauses and the validity of the 2017 Call Option.[36]

34 Fifth, although the Tribunal had raised some questions and requested the parties to address the Tribunal on Clauses 15.4 and 15.5 (on termination) and the 2017 Call Option at the conclusion of the hearing, neither party appreciated at the time that the Tribunal had intended to deal with issues that, in Q&M's view, were "not contemplated by and outside the scope of the parties' submission to arbitration".[37] In its Closing Submissions dated 3 November 2023, Q&M argued that Clauses 15.4 and 15.5 "[had] yet to come into play"

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35 Foo Sien Loon's affidavit filed on 27 May 2025 at para 46; Applicant's submissions filed on 16 October 2025 at paras 36–37.

36 Foo Sien Loon's affidavit filed on 27 May 2025 at para 47; Applicant's submissions filed on 16 October 2025 at paras 39–41.

37 Applicant's submissions filed on 16 October 2025 at para 43.

because Dr Lee did not comply with the 2020 Put Option and both parties had not ceased to hold their respective shares in D&D Dental.[38]

35 Q&M argues that Dr Lee's submissions also support its case. Dr Lee had expressly acknowledged in his Post-Hearing Submissions filed on 21 November 2023 that "the SHA [had] not been formally terminated under the provisions of Clause 15 of the Shareholders Agreement".[39] He had challenged the assertions made by Q&M in its 14 November 2017 letter in respect of Q&M's right to purchase his 30% shareholding on the basis of his alleged breaches.[40] Nonetheless, Dr Lee's position was that Q&M "had made a clear decision, rightly or wrongly, to put an end to [his] involvement in the SHA and [D&D Dental]".[41] Because of Q&M's election to "take [him] out of [D&D Dental] on the ground of Clause 15.7 in 2017", it was inconsistent for Q&M to "invoke the put option under Clause 15.7" more than two years later.[42] Q&M asserts that the effect of Dr Lee's submissions as outlined here is that Dr Lee did not advance a positive case that the 2017 Call Option was validly issued nor did he contend that the effect of the 2017 Call Option was to transfer beneficial ownership of the shares from him to Q&M.[43]

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38 Foo Sien Loon's affidavit filed on 27 May 2025 at para 48; Applicant's submissions filed on 16 October 2025 at paras 42–44.

39 Applicant's submissions filed on 16 October 2025 at para 46; Applicant's bundle of documents ("ABOD") vol 3 at p 144, para 13.

40 ABOD vol 2 at p 10 at para 11.

41 ABOD vol 3 at p 171, para 87; Applicant's submissions filed on 16 October 2025 at para 48.

42 ABOD vol 3 at p 173, para 92; Applicant's submissions filed on 16 October 2025 at para 49.

43 Applicant's submissions filed on 16 October 2025 at para 50.

36 Sixth, in its Reply Submissions dated 22 December 2023, Q&M further contended that Dr Lee's breaches of the non-competition and non-solicitation clauses in the lead-up to the issuance of the 2017 Call Option were "not in contention" in this Arbitration and that the 2017 Call Option was "without prejudice to any other rights or remedies available" to Q&M [emphasis in originals omitted].[44] Dr Lee only expressed in his Reply Submissions dated 27 December 2023 that it did not matter if the triggering "breaches" alleged were different; once Q&M made an election to opt for one of those options, it should not be permitted to go back on that election.[45]

37 Seventh, Dr Lee did not file a counterclaim in respect of the 2017 Call Option. Q&M places much weight on this because in response to Dr Lee's defence on the alleged existence of implied terms in the SHA, the Tribunal noted that it was "pertinent" that the breaches of implied terms had not been brought as a counterclaim. The same reasoning should therefore extend to the 2017 Call Option.[46]

38 Eighth, Q&M's case is that the Tribunal had mischaracterised Dr Lee's defence. According to Q&M, Dr Lee's position was that he considered the *Service Agreement* repudiated in 2017 and that he had been "disabled" from contributing to the Profit Targets for the remaining years due to Q&M's alleged

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44 ABOD vol 3 at pp 250–251, para 15.1; Applicant's submissions filed on 16 October 2025 at para 51.

45 ABOD vol 3 at p 269, para 29.3; Applicant's submissions filed on 16 October 2025 at para 52.

46 Applicant's submissions filed on 16 October 2025 at para 56; Foo Sien Loon's affidavit filed on 27 May 2025 at para 51.

intent of "killing him off". It was never Dr Lee's case that the *SHA* was repudiated by the issuance of the 2017 Call Option.[47]

39 Separately, Q&M claims that the Tribunal had, in finding that Q&M had become the beneficial owner of Dr Lee's shareholding in D&D Dental, determined that the word "shall" in Clause 15.7 of the SHA created a "specific and binding obligation" on Q&M to pay the defaulting party.[48] This was not a point canvassed by the parties and there were no reasons provided for the Tribunal's determination. To support its case, Q&M cites the Malaysian case of *Bursa Malaysia Securities Bhd v Mohd Afrizan bin Husain* [2022] 3 MLJ 450 where it was held at [58]–[60] that the word "shall" has no "single firm or settled meaning" and its meaning arises from the context in which it is used. Depending on the context, "shall" could mean: (a) has a duty to; (b) should; (c) may; (d) will; or (e) is entitled to. Accordingly, Q&M holds the view that even if the 2017 Call Option had been validly issued, it did not necessarily follow that Q&M was specifically bound to purchase Dr Lee's shares or that the beneficial interest in Dr Lee's shares would have been transferred to Q&M. In coming to its decision, the Tribunal failed to consider possible alternatives or hear the parties' submissions on the interpretation of the word "shall".[49]

40 Finally, Q&M says that the fact that the Tribunal invited the parties, by way of Procedural Order No 25, to confer on the appropriate and/or necessary procedural steps to be taken following the Tribunal's determination on the 2017

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47 Foo Sien Loon's affidavit filed on 27 May 2025 at para 54.

48 Applicant's submissions filed on 16 October 2025 at para 64.

49 Applicant's submissions filed on 16 October 2025 at para 65.

Call Option, is indicative of the Tribunal dealing with issues outside the terms of its submission to the Arbitration.[50]

41 In light of the surrounding circumstances and the evidence presented before the Tribunal, Q&M argues that Disputed Determinations should be set aside as the Tribunal exceeded its mandate within the meaning of Art 34(2)(*a*)(iii) of the Model Law.[51] Further or alternatively, for broadly the same reasons, there was a breach of natural justice under s 24(*b*) of the IAA as the parties were deprived of the right to be heard on the dispute relating to the precipitating events, validity and effect of the 2017 Call Option. This has caused material prejudice to Q&M as it has led to: (a) Q&M's claim on its Shortfalls Payable being limited; and (b) Q&M's claim on the validity of exercise of the 2020 Put Option being dismissed.[52]

Dr Lee's case

42 Preliminarily, Dr Lee argues that the setting aside proceedings should be heard by the Malaysian courts instead of the Singapore courts on the basis that:[53]

(a) the parties involved are Malaysian;

(b) D&D Dental is a Malaysian company;

(c) the Arbitration was conducted in Malaysia; and

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50 Applicant's submissions filed on 16 October 2025 at para 66.

51 Applicant's submissions filed on 16 October 2025 at para 4.

52 Applicant's submissions filed on 16 October 2025 at paras 5 and 74.

53 Lee Chin Sze's affidavit filed on 17 September 2025 at paras 5–7; Respondent's submissions filed on 17 October 2025 at para 13.

(d) the SHA is governed by and construed in accordance with the laws of Malaysia.

43 Substantively, Dr Lee argues that Q&M is "estopped [from] denying" its act of issuing the 2017 Call Option. It is clear from the SHA that "once a call option has been exercised it has to be followed through" and Dr Lee "did not have the option to dispose of [his] shareholdings to any other third party".[54] He also says that the 2017 Call Option was "not a 'proposal'" by Q&M as seen in para 3 of Q&M's letter dated 14 November 2017, by which Q&M had given notice to Dr Lee that it was exercising its right to purchase the 30% shareholding held by Dr Lee in D&D Dental.[55]

44 Dr Lee says that the issue of the 2017 Call Option was within Q&M's claim at the Arbitration as Claim 4 was for the payment of RM840,000 plus 10% interest under the 2017 Call Option which Q&M "clandestinely introduced into [its] claim".[56] Further, the 2017 Call Option was a matter before the Tribunal in the context of Dr Lee's defence in the Arbitration. The parties were given an "equal opportunity to be heard" and that "Q&M appears to be unhappy with findings of fact or law" by the Tribunal.[57] In his view, Q&M has suffered no prejudice and is simply attempting a second bite of the cherry by taking out this application.[58]

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54 Lee Chin Sze's affidavit filed on 17 September 2025 at para 30.

55 Lee Chin Sze's affidavit filed on 17 September 2025 at para 36; Foo Sien Loon's affidavit filed on 27 May 2025 at p 666.

56 Respondent's submissions filed on 17 October 2025 at para 27.

57 Lee Chin Sze's affidavit filed on 17 September 2025 at para 37.

58 Lee Chin Sze's affidavit filed on 17 September 2025 at paras 38–39.

Issues to be determined

45 These are the issues for my determination:

(a) whether this court has the jurisdiction to hear OA 549;

(b) whether the Disputed Determinations ought to be set aside pursuant to Art 34(2)(*a*)(iii) of the Model Law; and

(c) whether the Disputed Determinations ought to be set aside pursuant to s 24(*b*) of the IAA.

Issue 1: Whether this court has the jurisdiction to hear OA 549

46 It is trite that an application for setting aside an arbitral award may only be made at the seat court (Art 1(2) and Art 34 of the Model Law). The seat of arbitration determines the law governing the conduct of the arbitration (*ie*, *lex arbitri*) and the seat does not change just because the hearing is physically held at a different location (*PT Garuda Indonesia v Birgen Air* [2002] 1 SLR(R) 401 at [24]). Although the Arbitration was conducted physically in Malaysia, there is no dispute that the seat court in this case is the Singapore court. The seat was agreed between the parties pursuant to Clause 14.2 of the SHA which states that disputes "shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force" (see [13] above). The parties' agreement on the seat was also recorded in Procedural Order No 1 dated 8 January 2021.[59] As such, the law governing the SHA is Malaysian law but the law of the seat is Singapore law.

[59] Foo Sien Loon's affidavit filed on 27 May 2025 at p 1661.

47 The Arbitration is an international arbitration within the meaning of s 5(2) of the IAA. As rightly pointed out by Q&M, the parties have their places of business in Malaysia and the obligations of their commercial relationship are to be performed in or are most closely connected to Malaysia. Accordingly, the IAA applies as the *lex arbitri*.

48 Section 8 of the IAA states that the General Division of the High Court of Singapore "is taken to have been specified in Article 6 of the Model Law as courts competent to perform the functions referred to in that Article except for Article 11(3) and (4) of the Model Law." The High Court may thus set aside an arbitral award pursuant to Art 34(2) read with Art 6 of the Model Law. Other grounds for setting aside are prescribed under s 24 of the IAA. Therefore, there is no merit to Dr Lee's submission that the Singapore court has no jurisdiction to hear the matter.

Issue 2: Whether the Disputed Determinations ought to be set aside pursuant to Art 34(2)(*a*)(iii) of the Model Law

49 Article 34(2)(*a*)(iii) of the Model Law states that an arbitral award may be set aside if the party making the application furnishes proof that:

> [T]he award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration …

50 It has been established in *Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd* [2010] 3 SLR 1 ("*Sui Southern Gas*") at [34] that the court must ascertain under this ground: (a) the matters which were within the scope of submission to the arbitral tribunal; and (b) whether the arbitral award (or the part being impugned) involved such matters, or whether it was a "new difference" which would have been "irrelevant to the issues requiring

determination" by the arbitral tribunal. A "new difference" refers to an issue that arises after the arbitral tribunal has been constituted and was not part of the original dispute referred to arbitration (*Sui Southern Gas* at [32]).

51 Reference must be made to the pleaded case of each party and the issues of law or fact that are raised in the pleadings to see whether they encompass that dispute (*PT Prima International Development v Kempinski Hotels SA* [2012] 4 SLR 98 ("*Kempinski Hotels (CA)*") at [34]). Besides pleadings, there are four other sources to refer to: (a) opening statements; (b) agreed list of issues; (c) evidence adduced; and (d) closing submissions (*CDM v CDP* [2021] 2 SLR 235 at [18]). This, however, is not meant to be a mechanistic consideration of the five sources as "the overriding consideration is whether the relevant issues had been properly raised before the tribunal" (*Vietnam Oil and Gas Group v Joint Stock Company (power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 2 SLR 273 ("*Vietnam Oil*") at [74], citing *CAJ v CAI* [2022] 1 SLR 505 at [50]).

52 At the outset, I address Dr Lee's contention that Q&M "clandestinely introduced" the 2017 Call Option into its claim through Claim 4 (see [44] above). Dr Lee's submission on this point is unclear, but he appears to be arguing that Claim 4 was actually a claim in respect of the 2017 Call Option. There is no basis for such a position. The 2017 Call Option and the 2020 Put Option are fundamentally different remedies under Clause 15.7 of the SHA. Under the call option, Q&M would purchase Dr Lee's 30% shares for a sum based on the "Net Tangible Asset" of D&D Dental. Under the put option, Dr Lee would purchase Q&M's 70% shares for RM840,000 plus 10% annual interest. Q&M's Claim 4 clearly sought relief pursuant to the 2020 Put Option, not the 2017 Call Option.

53 Emphasis is placed by Q&M on its submission that the "precipitating events, validity and effect" of the 2017 Call Option were not raised in Q&M's Notice of Arbitration and Re-amended Statement of Claim. It was first mentioned by Dr Lee in his Re-amended Statement of Defence for the purposes of his argument that Q&M was precluded from relying on Clause 15.7 of the SHA to issue the 2020 Put Option. Q&M's Re-amended Statement of Reply only made clear that Dr Lee had disputed and rejected Q&M's proposal to exercise the 2017 Call Option.

54 To support its position that the "precipitating events, validity and effect" of the 2017 Call Option were absent from the pleadings, Q&M relies on the authority of *Kempinski Hotels SA v PT Prima International Development* [2011] 4 SLR 633 ("*Kempinski Hotels (HC)*"). There, Prima (the respondent) had pleaded supervening illegality and *force majeure* as the answer to Kempinski's (the applicant) claim for wrongful termination of contract. This was on the basis that the Indonesian authorities issued three decisions ("Three Decisions") which, in Prima's view, rendered the performance of the contract illegal and/or impossible. The arbitrator issued the first and second awards in February 2005 and December 2006 respectively, finding that there were possible modes of performing the contract consistent with the Three Decisions and hence the possibility of damages was available to Kempinski. Thereafter, Prima learnt of the existence of a "New Management Contract" entered into between Kempinski and a third party in April 2006 that made it impossible for Kempinski to perform the contract with Prima. Prima thus wrote to the arbitrator to seek "clarifications" of the first and second awards in light of this discovery and sought to rely on this "New Management Contract" to limit the damages claimed by Kempinski. In the third arbitral award, the arbitrator held that this "New Management Contract" was inconsistent with the contractual obligations

and thus the methods of performance that remained open after the Three Decisions were no longer possible. The possible damages were limited to the date of termination and the date the "New Management Contract" was entered into.

55 The High Court held that Prima "was not truly asking for clarification" and that it ought to have applied to amend its pleading to include the said allegation (at [61] and [63]). The amended pleading would have "served to identify properly to [Kempinski] the case that it had to meet and reply to, and which would have enabled it to put in the necessary response and evidence" (at [63]). Accordingly, the third arbitral award was set aside on the ground that Prima's failure to plead the "New Management Contract" resulted in the tribunal making a decision that was beyond the scope of matters submitted to it (at [64]). Q&M draws an analogy between the present case and *Kempinski Hotels (HC)*, explaining that Dr Lee "had not relied on the precipitating events, validity or legal effect of the 2017 Call Option".[60]

56 At the outset, Q&M's reliance on *Kempinski Hotels (HC)* is wholly misplaced. The decision in *Kempinski Hotels (HC)* was overturned on appeal. In *Kempinski Hotels (CA)*, the Court of Appeal disagreed with the High Court on the setting aside of the third arbitral award. It was of the view that the High Court "took too narrow an approach in determining the extent or scope of the [a]rbitrator's jurisdiction under the parties' submission to jurisdiction" (at [48]). The Court of Appeal also held that "any new fact or change in the law arising after a submission to arbitration which is ancillary to the dispute submitted for arbitration and which is known to all the parties to the arbitration *is part of that dispute* and need not be specifically pleaded" [emphasis added] (at [47]).

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60 Applicant's submissions filed on 16 October 2025 at para 22.

57 In fact, the Court of Appeal noted that such new facts or changes in the law may be raised in the arbitration which was precisely what Prima did "when it raised the New Management Contract as part of its *force majeure* defence to Kempinski's claim" (at [47]). The Court of Appeal found at [47]–[51] that it was not necessary for Prima to plead the "New Management Contract" by way of further amendments to the points of re-amended defence and counterclaim. To the contrary, it was well within the arbitrator's jurisdiction to decide whether, in the event that Kempinski succeeded against Prima on the issue of liability, the "New Management Contract" had the legal effect of limiting the damages that may be claimed as contended by Prima. Further, Kempinski was given sufficient notice of and opportunity to meet Prima's *force majeure* defence and therefore Kempinski suffered no prejudice.

58 Turning to the present case, the crucial question is whether the legal effect of the 2017 Call Option was a part of, or directly related to, the dispute which the parties submitted for arbitration. The scope of the parties' submission to arbitration is delineated by the sources set out above at [51]. After setting out the disputes arising from the SHA, Q&M sought, *inter alia*, a declaration that Q&M validly exercised the 2020 Put Option (*ie*, Claim 2) and an order that Dr Lee pay Q&M the sum of RM840,000 plus 10% interest from the date of the SHA to the date of payment pursuant to the 2020 Put Option (*ie*, Claim 4).[61] In his Re-amended Statement of Defence, Dr Lee pleaded Q&M's issuance of the 2017 Call Option *as part of his defence* to Q&M's claim. Put simply, it is clear from the procedural history of the case that the legal effect of the 2017 Call Option was put in issue as early as 30 June 2023 when the Re-amended Statement of Defence was filed. This may have, depending on the way the

[61] Foo Sien Loon's affidavit filed on 27 May 2025 at p 71, paras 34.2 and 34.3.

parties chose to run their cases, necessitated a discussion on the "precipitating events" and "validity" of the 2017 Call Option but Q&M chose not to address these points. Instead, in its Re-amended Statement of Reply and throughout the Arbitration, Q&M maintained that the 2017 Call Option was a "non-issue" as Dr Lee had disputed and rejected Q&M's proposal to exercise the 2017 Call Option and hence it was never exercised or consummated.

59 Counsel representing Q&M at the Arbitration also had the opportunity to, and did in fact, direct questions regarding the 2017 Call Option to Dr Lee. In particular, counsel for Q&M asked Dr Lee whether he agreed that the exercise of the 2017 Call Option "[had] nothing to do with breaching the shareholders' agreement on the profit target".[62] Counsel also confirmed with Dr Lee that Dr Lee disputed the 2017 Call Option and that it was never exercised.[63] All these questions were presumably to advance Q&M's case that the 2017 Call Option was a "non-issue".[64]

60 However, just because Q&M adopted a strategy insisting that the 2017 Call Option was a "non-issue" did not mean that it was not placed squarely before the Tribunal to decide. Q&M had chosen to advance its case in a certain way but the Tribunal did not agree. Indeed, this was made clear in the Partial Award at para 10.2.14 where the Tribunal found that "it is irrelevant that [Dr Lee] had purported to reject [Q&M's] exercise of the call option, as the terms of clause 15.7 do not provide for any discretion on the part of [Dr Lee] to avoid the effect of a valid exercise of the call option by [Q&M]".[65]

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62 ABOD Vol 2 at p 691, lines 14–20.

63 ABOD Vol 2 at p 691, lines 31–35.

64 ABOD Vol 2 at p 565, line 27.

65 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1691.

61 Of significance is the fact that at the end of the hearing on 27 July 2023, the parties were specifically invited to address the Tribunal on two questions in their submissions. The second question was expressed by the Tribunal as such:[66]

> Second question is Clause 15.4 and 15.5 of the SHA on termination. Termination has been raised in relation to the fact that it hasn't expressly been terminated or purported to be terminated by any party. But there are termination related clauses in the SHA. So, that's Clause 15.4, 15.5. *Please address me on that.* No.2. There is a 2017 call option issued by the Claimant. There is a 2020 put option issued by the Claimant. *Now there is, then therefore there arises the question of priority, precedence, relationship between these two contractual exercises.*
>
> [emphasis added]

62 Q&M says that it is only "[w]ith the benefit of retrospect" that "these questions appear to have foreshadowed the [Disputed] Determinations that the Tribunal made in the Partial Award".[67] I disagree. Even without the benefit of hindsight, it would have been plainly clear to the parties that the Tribunal was asking for submissions such that it could determine the legal effect of the 2017 Call Option on the 2020 Put Option.

63 Aside from the above, Q&M highlights the fact that Dr Lee himself never claimed that the exercise of the 2017 Call Option was valid nor did he take the position that the SHA was repudiated by the 2017 Call Option. Therefore, whether the 2017 Call Option was validly exercised was never an issue for the Tribunal to determine.[68] Dr Lee also appeared to be unable to explain at the Arbitration what he meant by "election" between the 2017 Call Option and the 2020 Put Option.

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66 ABOD Vol 2 at p 716, lines 27–35.

67 Applicant's submissions filed on 16 October 2025 at para 42.

68 Applicant's submissions filed on 16 October 2025 at para 28.

64 In my judgment, these arguments do not assist Q&M's case. The primary submission advanced by Dr Lee at the Arbitration was that the SHA was void and hence Clause 15.7 was inoperable as the object or consideration for the SHA was unlawful and/or otherwise contrary to the public policy of Malaysia. But Dr Lee also pleaded in his Re-amended Statement of Defence an *alternative* argument contemplating the scenario where the SHA was found not to be void and the breaches alleged of Dr Lee were established. The relevant parts of Dr Lee's Re-amended Statement of Defence are reproduced here:[69]

> 32. … [Dr Lee] did receive the Written Notice by hand on about 6th May 2020 but denies he is obliged to comply with [Q&M's] demands thereunder.
>
> 32.1. The SHA is void and thus Clause 15.7 of the SHA is inoperable.
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> …
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> 32.3. *Alternatively, if the SHA is not void and the breaches alleged of [Dr Lee] by [Q&M] are established,* [Q&M] is precluded from relying on Clause 15.7 of the SHA to put its shares in D&D to [Dr Lee] for the sum of RM840,000.00 on account of its election to rely on Clause 15.7 to call on [Dr Lee] to sell his shares in D&D to [Q&M] on 14th November 2017.
>
> [emphasis added]

65 In other words, Dr Lee's *primary* case was that the SHA was void (the corollary is that the exercise of the 2017 Call Option must be invalid); however, his *alternative* case was that if the SHA was not void and he was found to have committed the alleged breaches, Q&M is precluded from exercising the 2020 Put Option. Dr Lee reiterated his alternative case in his Post-Hearing Submissions:[70]

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69 Foo Sien Loon's affidavit at pp 186 and 189; Re-amended Statement of Defence at paras 24–25 and 32.1.

70 Foo Sien Loon's affidavit filed on 27 May 2025 at pp 1537, 1548 to 1550.

> 60. Clearly, by making the call and accelerating/inflating its claims against Dr Lee, [Q&M] had *effectively put an end to the parties' relationship under the SHA* and the Service Agreement.
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> …
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> 87. While Dr Lee had disputed the assertions in [Q&M's] letter of 14.11.2017, the fact remains that at this point, [Q&M] had made a clear decision, rightly or wrongly, to *put an end to Dr Lee's involvement in the SHA* and D&D. …
>
> …
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> 89. *Clause 15.7 of the Shareholders Agreement provides two mutually exclusive options* to [Q&M] in the event of a breach by Dr Lee, which is either to buy Dr Lee's shares under the first part of the clause (i.e. the call option) or to sell its shares to Dr Lee under the second part of the clause. It is clear that [Q&M] cannot do both.
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> 90. Dr Lee responded by his own termination letter of 20.11.2017, whereby he had considered himself discharged from the Service Agreement and he thereafter ceased engagement with [Q&M] (other than to complete the treatment of patients with ongoing cases).
>
> 91. Neither side sought to [*sic*] continuation of the relationship. [Q&M's] response of 7.12.2017 was not to retract its exercise of the call option but to simply invite Dr Lee to have a "discussion" to resolve the matters "in relation to the Call Option Exercise Notice and the Letter of Demand", failing which it would proceed with legal proceedings against Dr Lee for "this matter".
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> 92. In the circumstances, having elected to go down one path to take Dr Lee out of D&D on the ground of Clause 15.7 in 2017, even if [Q&M] was right in its assertions of breach by Dr Lee, it was inconsistent for [Q&M] to, more than 2 years later by its letter dated 19.3.[2020], move to invoke the put option under Clause 15.7, more so, after it had continued to manage and operate the Solaris Clinic and D&D without Dr Lee (and inevitably incur more losses in the process in subsequent years).
>
> [emphasis added]

Having regard to the parties' cases and the evidence before it, the Tribunal was well-entitled to take the view that Q&M was precluded from exercising the 2020 Put Option because the 2017 Call Option was validly exercised and Dr Lee was

released from his obligations under the SHA from 22 November 2017. Whether the Tribunal was legally or factually correct is not a matter for this court to determine.

66 Separately, Q&M takes issue with the Tribunal's view that "shall" imported a "specific and binding obligation" on Q&M to pay the defaulting party. Q&M says that it was not a point canvassed by the parties and no reasons were provided for the Tribunal's decision. To the extent that Q&M suggests that "shall" may have a meaning different from what was determined by the Tribunal, that is an appeal against the merits of the Tribunal's decision which this court is not entitled to revisit.

67 Further, adopting Q&M's argument would be to take an overly parochial approach to the scope of submission to arbitration. One of the issues put to the Tribunal was whether the 2020 Put Option was validly exercised (*ie*, Claim 2). The legal effect of the 2017 Call Option was brought to Q&M's actual notice early in the proceedings, when Dr Lee filed his Re-amended Statement of Defence. Given Dr Lee's position that the 2020 Put Option could not have been validly exercised by reason of the prior issuance of the 2017 Call Option, the Tribunal's decision on the validity of the 2017 Call Option was entirely within the ambit of submission to arbitration. Q&M had the opportunity to meet Dr Lee's defence and was not in any way prejudiced. It chose not to address the Tribunal on its case regarding the "precipitating events" (*eg*, Dr Lee's breaches of the non-solicitation and non-competition clauses) and the "validity" of its exercise of the 2017 Call Option. Instead, Q&M's strategy was to maintain its position that the 2017 Call Option was a "non-issue".

68 In such circumstances, Q&M cannot be permitted to seek a backdoor appeal of the Tribunal's determination on the merits through OA 549. As such,

I dismiss Q&M's application to set aside the Disputed Determinations on the basis of Art 34(2)(*a*)(iii) of the Model Law.

Issue 3: Whether the Disputed Determinations ought to be set aside pursuant to s 24(*b*) of the IAA

69 Section 24(*b*) of the IAA provides that the court may, in addition to the grounds set out in Art 34(2) of the Model Law, set aside an award of the arbitral tribunal if:

> [A] breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

70 It is well-established that to succeed under s 24(*b*) of the IAA, the party seeking to set aside the arbitral award must show (*John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] 1 SLR(R) 443 at [18]):

(a) First, the specific rule of natural justice that was breached.

(b) Second, how it was breached.

(c) Third, how the breach was connected to the making of the award.

(d) Fourth, how the breach had prejudiced the applicant's rights.

71 As held by *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 ("*JVL Agro*") at [147] and [149], a tribunal denies a party a reasonable opportunity to respond to the case against it if it:

(a) requires the party to respond to an element of the opposing party's case which had been advanced without reasonable prior notice;

(b) curtails unreasonably a party's attempt to present the evidence and advance the propositions of law which are reasonably necessary to respond to an element of the opposing party's case; or

(c) adopts a chain of reasoning in its award which has no nexus to the case advanced by the parties and which it had not given the complaining party a reasonable opportunity to address.

72 A particular chain of reasoning would be open to a tribunal in any one of four circumstances: (a) if it was expressly pleaded; (b) if it was raised by reasonable implication from a party's pleadings; (c) if it was in some other way brought to the opposing party's actual notice; or (d) if the links in the chain flowed reasonably from the arguments actually advanced by either party or were related to those arguments (*JVL Agro* at [150], [152], [154], [156] and [159]).

73 Q&M submits that "the parties were not given the opportunity to be heard on matters relating to the precipitating events, validity and effect of [the] 2017 Call Option."[71] The reasons for this largely overlap with Q&M's reasons for why the Tribunal had decided on matters outside of the scope of submission to arbitration.[72] In gist, Q&M says that:[73]

(a) The parties were not invited to address the issues surrounding the validity of the 2017 Call Option.

(b) There was no evidence adduced in the Arbitration regarding Dr Lee's precipitating breaches of Clauses 26.1.2 and 26.1.3 of

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71 Applicant's submissions filed on 16 October 2025 at para 73.

72 Applicant's submissions filed on 16 October 2025 at para 74.

73 Applicant's submissions filed on 16 October 2025 at para 75.

the SHA. This deprived Q&M from seeking damages for Dr Lee's breaches of Clauses 26.1.2 and 26.1.3.

(c) The parties were not invited to address the question concerning the outstanding sum of RM1,173,925.60 demanded by Q&M from Dr Lee in the letter dated 14 November 2017.

(d) The parties were not invited to address the effect of the 2017 Call Option.

74 Q&M argues that there was no sufficient nexus between the chain of reasoning which the Tribunal adopted and the case which the parties themselves had chosen to advance. Consequently, "[n]o reasonable litigant in the applicant's shoes could … have foreseen the possibility of the Tribunal deciding that the 2017 Call Option was validly exercised and [releasing] Dr Lee from his obligations under the SHA". After all, both parties had been of the opinion that the SHA had not been terminated by operation of Clause 15.[74]

75 I find that Q&M's submissions are misconceived. The validity of the 2017 Call Option was not a novel issue conjured by the Tribunal at the hearing. It arose, at least, by reasonable implication from the parties' pleadings. When Dr Lee pleaded in his Re-amended Statement of Defence that Q&M was precluded from exercising the 2020 Put Option due to its prior election to exercise the 2017 Call Option, this necessarily raised the question of whether the 2017 Call Option was validly exercised in the first place.

76 As for Q&M's argument that both parties were aligned in their opinion that the SHA was not terminated in 2017, Dr Lee's position at the Arbitration

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[74] Applicant's submissions filed on 16 October 2025 at paras 76–77.

was not entirely clear. While Dr Lee agreed with counsel for Q&M during the Arbitration hearing that he "disputed the call option and the call option was never exercised",[75] he stated unequivocally in his Post-Hearing Submissions that Q&M had effectively "put an end" to the parties' relationship and Dr Lee's involvement under the SHA (see [65] above). In any event, the Tribunal explained that it was "irrelevant" that Dr Lee had purported to reject Q&M's exercise of the 2017 Call Option since Clause 15.7 did "not provide for any discretion on the part of [Dr Lee] to avoid the effect of a valid exercise of the [2017 Call Option] by [Q&M]".[76]

77 Indeed, the Tribunal's finding that the 2017 Call Option was validly exercised was supported by evidence of Dr Lee's breaches of Clauses 26.1.2 and 26.1.3. One of the breaches alleged by Q&M in its letter to Dr Lee dated 14 November 2017 was that he provided services as a dental surgeon in Lee Dental Surgery, a dental clinic held under Lee Dental Centre Sdn Bhd, a company engaged in business that was in competition with Q&M.[77] The Tribunal agreed with this and explained in the Partial Award at para 10.2.11:

> At the hearing, [Dr Lee] stated that [Q&M] had been aware of [Dr Lee]'s involvement in Lee Dental Centre Sdn Bhd. However, [Dr Lee] has not shown that [Q&M] had consented to or had agreed to waive [Dr Lee's] breaches of clauses 26.1.2 and 26.1.3 of the SHA. In particular, the Tribunal notes that, in [Dr Lee's] letter dated 20 November 2017, [Dr Lee] had referred to [Dr Lee's] email to [Q&M] of 31 October 2017 (i.e., an email sent almost five years after the execution of the SHA), in which [Dr Lee] had made the bare assertion that *"… Q&M has always known this from the outset so I am surprised that you are raising this issue*." [emphasis in original]

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75 Foo Sien Loon's affidavit filed on 27 May 2025 at p 140, lines 31–35.

76 Foo Sien Loon's affidavit filed on 27 May 2025 at p 1691, para 10.2.14.

77 ABOD Vol 2 at p 6, para 2(b).

78 In respect of Q&M's claim that it has been deprived of the opportunity to seek damages for Dr Lee's breaches of Clauses 26.1.2 and 26.1.3 and that the parties were unable to address the question concerning the RM1,173,925.60 demanded by Q&M, it was plainly open to Q&M to raise these arguments before the Tribunal, especially in light of the Tribunal's invitation for parties to address the "question of priority, precedence, relationship" between 2017 Call Option and 2020 Put Option. Additionally, on 11 March 2025, the Tribunal issued Procedural Order No 25 as follows:

> 1. … the Tribunal directs the Parties to confer and discuss the necessary and/or appropriate procedural steps to be taken in this Arbitration going forward. The objective of such discussions between the Parties should be the *resolution of all remaining issues in dispute* in this Arbitration, *including any issue to be determined in connection with or arising from the Tribunal's determination made at paragraph 10.2.12 of the Partial Award*.
>
> …
>
> [emphasis added]

Paragraph 10.2.12 of the Partial Award states the Tribunal's finding that Dr Lee had breached Clauses 26.1.2 and 26.1.3 of the SHA and that the 2017 Call Option had been validly exercised by Q&M. In other words, the Tribunal was alive to the fact that there were outstanding issues (flowing from its determination of Dr Lee's breaches of Clauses 26.1.2 and 26.1.3 as well as the valid exercise of the 2017 Call Option) which would have to be resolved. The Tribunal was prepared to hear the parties in respect of these consequential issues.

79 I turn now to address the two cases cited by Q&M as analogous to the present case – *JVL Agro* and *AKN v ALC* [2015] 3 SLR 488 ("*AKN v ALC*"). Q&M avers that in the two cited cases and the present case: (a) the tribunal raised an issue of its own accord at the eleventh hour and in passing; (b) that

issue turned out in the award to be dispositive; and (c) the tribunal did so without giving the parties the right to present evidence or submissions on that dispositive issue and without directing the parties to address the issue.[78]

80 I start with *JVL Agro*.[79] In that case, it was found that the defendant did not advance the collateral contract exception (to the parol evidence rule) as part of its case, whether through its pleadings or submissions, despite bearing the burden of advancing this issue. The High Court held that this precluded the tribunal from adopting the collateral contract exception as part of its chain of reasoning unless it directed the plaintiff specifically to deal with that exception (at [163]–[168]). In the course of oral submissions, the tribunal informed the plaintiff's counsel that the defendant's counsel "might rely" on the collateral contract exception. However, the High Court found that this exchange was "couched in the language of hypothesis for comment rather than that of thesis for proof". It did not amount to a direction for parties to submit on this issue. Rather, the tribunal directed the parties specifically to respond only to a point relating to equitable estoppel (at [179]–[180]).

81 In my view, the present case is distinguishable from *JVL Agro*. At the outset, the issuance of the 2017 Call Option was pleaded by Dr Lee in his Re-amended Statement of Defence. It was not raised by the Tribunal at the eleventh hour. Even if it was not pleaded to the level of particularity that Q&M suggests was necessary (*eg*, the circumstances leading up to the alleged breaches of the non-solicitation and non-competition clauses), it was nonetheless pleaded as a defence to Q&M's claim regarding the 2020 Put Option. Moreover, unlike the tribunal in *JVL Agro*, the Tribunal here had *expressly directed* parties to make

78 Applicant's submissions filed on 16 October 2025 at para 82.

79 Applicant's submissions filed on 16 October 2025 at para 80.

submissions on the "question of priority, precedence, relationship" between the 2017 Call Option and the 2020 Put Option.

82 I next consider *AKN v ALC*.[80] There, the purchasers of certain assets of an insolvent company under an agreement commenced arbitration against the company's liquidator, the company's shareholders and its secured creditors. The purchasers prayed for, among other things, "damages" in the Notice of Arbitration. Throughout the arbitration, the parties proceeded on the basis that the purchasers' claim was for actual loss of profits which had been quantified by the purchasers. The tribunal concluded that the purchasers "[could not] prove any actual loss" but then awarded damages to the purchasers for their loss of an *opportunity* to earn profits. The idea of loss of such an opportunity was raised by the tribunal only on the last day of the 20-day arbitral hearing (at [69]). The Court of Appeal agreed with the High Court that the tribunal had throughout the proceedings understood the purchasers' claim to be one for loss of profits and yet took it upon itself to re-characterise the purchasers' claim as one for loss of an opportunity to earn profits (at [70] and [74]). Although the tribunal suggested at the last day of the hearing that it would need help to determine the quantum of the chance lost were it to proceed on a "loss of chance" analysis, the parties were never given an opportunity to address the tribunal on that point. It was found that the tribunal reached a conclusion of loss of a 55% chance "without any apparent analysis or consideration over and above its 'slightly better than even' approximation, and without any submissions having been sought or made on the quantum of the chance lost". Moreover, the tribunal never gave an opportunity for any of the respondents to adduce further evidence on the matter (at [76]).

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[80] Applicant's submissions filed on 16 October 2025 at para 81.

83 Again, for reasons similar to that espoused in [81], the present case is not akin to *AKN v ALC*. Q&M had ample notice of the question of the legal effect of the 2017 Call Option. Contrary to Q&M's submission at the hearing, this was also not an issue raised by the tribunal on the last day of the Arbitration hearing when all the evidence had been taken and issues agreed upon. Dr Lee had raised it long ago by way of the Re-amended Statement of Defence and Q&M had the opportunity to respond and cross-examine Dr Lee on this point. In *AKN v ALC*, the tribunal did not ask for further arguments on the "loss of an opportunity" point. On the other hand, the Tribunal in this case had explicitly requested for both parties to address him on the relationship between the 2017 Call Option and the 2020 Put Option. It would have been apparent to Q&M that the Tribunal was alive to the possibility of determining the validity of the 2017 Call Option and consequently how that affected the exercise of the 2020 Put Option. In my judgment, a reasonable party to the Arbitration could objectively have foreseen the Tribunal's chain of reasoning.

84 To this end, it may be helpful to draw a distinction between the present case and the recent Court of Appeal decision in *Vietnam Oil*. There, the respondent ("PM") issued two notices of termination of contract to the applicant ("PVN") – one on 28 January 2019 providing for termination on 18 February 2019 ("First Notice") and the other on 8 February 2019 providing for termination on 22 February 2019 ("Second Notice"). At the arbitration, PM's primary case was that the contract was deemed to have terminated on 18 February 2019 by reason of *force majeure.* PM's alternative case was that if the First Notice was found to be without legal basis, it would not result in termination of the contract. Unless PVN exercised its corresponding right to terminate the contract for wrongful issuance of a termination notice, the contract

would remain effective and instead be terminated by the Second Notice on 22 February 2019.

85 The tribunal in *Vietnam Oil* rejected PM's primary case. It also found, in contrast to PM's alternative case, that the First Notice was issued without basis but could have been sufficient to terminate the contract under Vietnamese law (at [11(b)]). The effective date of termination was held to be 18 February 2019 (being the date of termination stipulated in the First Notice). Thus, when the Second Notice was issued on 8 February 2019, the contract was still afoot (at [11(c)]). It held that as a matter of law, the valid Second Notice would override and supersede the ineffective First Notice; and that as a matter of fact, PM must have intended this (at [11(d)]). The tribunal further noted that the Vietnamese law experts had not specifically dealt with the scenario involving an unlawful First Notice and a lawful Second Notice. The Court of Appeal held that it was neither party's case that the Second Notice was capable of overriding or superseding the First Notice (at [55]). Further, PM had not led any evidence to show that it intended to replace or supplement the First Notice, and instead expressly pleaded that the Second Notice was not intended to withdraw the First Notice (at [61]). Therefore, it was held that there was a breach of the fair hearing rule.

86 The present case can be distinguished from *Vietnam Oil*. In contrast to *Vietnam Oil* where neither party advanced the case that the Second Notice could override or supersede the First Notice, Dr Lee's Re-amended Statement of Defence expressly contemplated the scenario where the SHA was not void. Under this scenario, his position was that Q&M was precluded from exercising the 2020 Put Option because of its election to exercise the 2017 Call Option. Even though Dr Lee never expressly pleaded at the Arbitration that the 2017 Call Option was validly exercised (see [76] above), the corollary of his

alternative case is that the 2017 Call Option was validly exercised in the first place. Otherwise, how was it to preclude the 2020 Put Option?

87 Unlike the tribunal in *Vietnam Oil* which adopted a position contrary to both parties' cases, the Tribunal here agreed with Dr Lee's *alternative* case. The Tribunal also disagreed with Q&M's case that the 2017 Call Option was not exercised (and hence a moot point) by reason of Dr Lee's rejection of the same.

88 Accordingly, Q&M's application to set aside the Disputed Determinations pursuant to s 24(*b*) of the IAA is dismissed. Given that there is no breach of natural justice, I shall not discuss whether there was prejudice caused to Q&M.

89 In light of my finding that there is no basis for setting aside pursuant to Art 34(2)(*a*)(iii) of the Model Law and s 24(*b*) of the IAA, it is also not necessary for me to determine whether the Disputed Determinations may be set aside without disturbing the remainder of the Partial Award and the consequential remedy to be given.

Conclusion

90 For the reasons above, I dismiss OA 549. I will hear parties on costs separately.

Dedar Singh Gill
Judge of the High Court

Jerrie Tan Qiu Lin and Ng Yuan Siang (Eugene Thuraisingam LLP)
for the applicant;
The respondent in person.