IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA(I) 3

Court of Appeal / Civil Appeal from the Singapore International Commercial Court No 5 of 2025

Between

(1) ONI Global Pte Ltd
(2) LAC Global (Singapore) Pte Ltd

… *Appellants*

And

GNC Holdings LLC

… *Respondent*

Court of Appeal / Civil Appeal from the Singapore International Commercial Court No 6 of 2025

Between

GNC Holdings LLC

… *Appellant*

And

(1) ONI Global Pte Ltd
(2) LAC Global (Singapore) Pte Ltd

… *Respondents*

In the matter of Originating Application No 9 of 2025 (High Court (General Division) Summons No 777 of 2025)

Between

GNC Holdings LLC

… *Claimant*

And

(1) ONI Global Pte Ltd
(2) LAC Global (Singapore) Pte Ltd

… *Defendants*

JUDGMENT

[Arbitration — Enforcement — Foreign award — Application to set aside enforcement order — Destruction of evidence uncovered during arbitration — Tribunal refusing application to strike out claims — Whether enforcement of award contrary to public policy of Singapore — Section 31(4)(*b*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Enforcement — Foreign award — Application to set aside enforcement order — Destruction of evidence uncovered during arbitration — Tribunal refusing to draw certain adverse inferences — Whether tribunal failed to consider arguments raised — Whether award was rendered in breach of natural justice — Section 31(2)(*c*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Enforcement — Foreign award — Application to set aside enforcement order — Tribunal making detailed orders for specific performance — Parties not consulted on terms of order for specific performance — Whether tribunal decided on matters beyond scope of submission to arbitration — Section 31(2)(*d*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Enforcement — Foreign award — Application to set aside enforcement order — Tribunal making detailed orders for specific

performance — Parties not consulted on terms of order for specific performance — Whether award was rendered in breach of natural justice — Section 31(2)(*c*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Enforcement — Foreign award — Application to set aside enforcement order — Arbitration claimant allegedly raising new quantum case — Arbitration respondents addressing new quantum case on merits — Tribunal accepting new quantum case — Whether arbitration respondents precluded from seeking to set aside the enforcement order]

ONI Global Pte Ltd and another
v
GNC Holdings LLC and another appeal

[2026] SGCA(I) 3

Court of Appeal — Civil Appeals from the Singapore International Commercial Court Nos 5 and 6 of 2025
Sundaresh Menon CJ, Steven Chong JCA and David Edmond Neuberger IJ
12 February, 11 March 2026

25 May 2026 Judgment reserved.

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

Introduction

1 The parties in the present case were involved in a franchise relationship that broke down. Their dispute over the underlying franchise agreements was brought before an arbitral tribunal seated in Pittsburgh, Pennsylvania. The tribunal issued a final award for damages and specific performance largely in favour of the franchisor ("Award").

2 The franchisee (and its associated company) resisted the enforcement of the Award in Singapore, on grounds pertaining to public policy, natural justice, and scope of submission to arbitration. The Singapore International Commercial Court ("SICC") rejected most of these grounds but found that three orders in the Award were made in breach of natural justice. The parties have brought the present appeals against the SICC's decision.

Background

The parties

3 The franchisor, GNC Holdings LLC ("GNC"), is a company incorporated in Delaware. It is an internationally recognised seller and distributor of health products and dietary supplements marketed under both the GNC brand and other third-party brands. As part of its business, it grants distribution and franchise rights to third parties to distribute its products and operate franchised stores.

4 The franchisee, ONI Global Pte Ltd ("ONI Global"), is a company incorporated in Singapore. GNC and ONI Global had a long-standing franchise relationship concerned with the sale of health products and dietary supplements through franchised stores in Singapore. This franchise relationship in Singapore was, at the material time, governed by a series of agreements that were due to expire on 31 December 2024 ("Singapore Agreements"). GNC and ONI Global (through its associated companies) also had franchise relationships in the Philippines, Malaysia, and Taiwan.

5 LAC Global (Singapore) Pte Ltd ("LAC Global") is an associated company of ONI Global, which operated the franchised stores in Singapore. Although LAC Global did not contract directly with GNC, it agreed to be bound by the arbitration between GNC and ONI Global as if it were party to the Singapore Agreements. LAC Global adopted ONI Global's positions and submissions in the arbitration, and the same can be said of the proceedings both in the court below and before us. For present purposes, we refer to ONI Global and LAC Global collectively, as "ONI".

Facts leading to the dispute

6 In June 2020, GNC commenced bankruptcy proceedings in the US. GNC eventually underwent a change in ownership in October 2020. The relationship between GNC and ONI deteriorated soon thereafter. In 2021, difficulties arose in the Malaysian and Taiwanese franchise relationships, culminating in GNC's early termination of those relationships. ONI, through its associated companies, commenced arbitration alleging that GNC had acted in breach of its obligation of good faith by taking over the businesses that had been built up by ONI and its associated companies ("Malaysia/Taiwan Arbitration"). ONI eventually achieved some success in the Malaysia/Taiwan Arbitration.

7 From around September 2021, ONI began to prepare for the rebranding of 54 franchised stores in Singapore ("Singapore Franchised Stores"), without notifying GNC. On or about 20 May 2022, ONI terminated the Singapore Agreements and rebranded all 54 Singapore Franchised Stores, whereupon GNC stores became LAC stores.

The arbitration

8 GNC and ONI both commenced arbitrations in May 2022, alleging repudiatory breach of the Singapore Agreements by the other. On 28 July 2022, the parties agreed to consolidate the two arbitrations. The arbitration was seated in Pittsburgh, Pennsylvania, and administered by the International Centre for Dispute Resolution ("ICDR") of the American Arbitration Association. On 26 October 2022, a three-member arbitral tribunal ("Tribunal") was constituted. The dispute was governed by the law of Pennsylvania.

9 The central issue in the arbitration was whether ONI was entitled to terminate the Singapore Agreements and rebrand the Singapore Franchised

Stores on 20 May 2022. Notably, a post-termination covenant in the Singapore Agreements required ONI to assign the Singapore Franchised Stores to GNC at the latter's request. Clause 13.4 of the Franchise Agreement stated as follows:

> 13.4 Surrender of Possession, Assignment, Renovation.
>
> [ONI] shall, at GNC's option and within 3 days after GNC gives notice to [ONI], assign to GNC any interest which [ONI] has in any lease or sublease for the premises of any of the Franchised GNC outlets …

10 ONI claimed that GNC had committed a repudiatory breach of the Singapore Agreements, which justified ONI's termination of the said agreements and released it from the post-termination covenant. GNC, on the other hand, alleged that it was ONI that had repudiated the Singapore Agreements, and sought damages and specific performance of the post-termination covenant in cl 13.4 of the Franchise Agreement.

11 The evidentiary hearing was conducted from 10–25 October 2023. Shortly after, on 9 November 2023, ONI applied for the dismissal of GNC's claims and the drawing of adverse inferences against GNC (the "Spoliation Application"). ONI claimed that GNC's Executive Vice Chairman ("Mr Wong") had concealed and destroyed evidence relevant to the arbitration. It was undisputed that there were missing text messages from the existing text strings involving Mr Wong, as was apparent from documents that had been produced during discovery in the Malaysia/Taiwan Arbitration. ONI contended that the dismissal of GNC's claims was the only appropriate remedy, as ONI would "never know what other damning deleted messages were sent … that would relate to Mr Wong's 'bigger strategic goal' and plans for Singapore". ONI also sought the drawing of various adverse inferences against GNC in respect of ONI's claims against GNC. The Tribunal subsequently informed the

parties that the Spoliation Application would be heard and determined together with the closing arguments in the arbitration.

12 On 8 January 2024, the parties submitted their respective Post-Hearing Briefs. For context, GNC's claim for damages was set out with reference to two periods: (a) from 20 May 2022 to 31 December 2024; and (b) after 31 December 2024 (which was after the Singapore Agreements were due to expire) (we refer to the latter as "Post-Termination Damages"). In its Post-Hearing Brief, the case GNC advanced on Post-Termination Damages was that *but for* ONI's breach on 20 May 2022, GNC would have either (a) renewed the Singapore Agreements; (b) taken over the Singapore Franchised Stores and operated them itself; or (c) taken over the Singapore Franchised Stores and transferred them to a new franchisee on 31 December 2024. GNC argued that because of ONI's breach, GNC would, at minimum, only be able to re-enter the Singapore market after a 31-month disruption, and that such disruption would have a "substantial impact" on GNC's profits. Accordingly, GNC advanced a claim for Post-Termination Damages covering the damages arising from such disruption in the event the Tribunal granted GNC's claim for specific performance ("GNC's Quantum Case").

13 After the Post-Hearing Briefs were submitted, ONI objected to GNC's Quantum Case on the basis that this was a "new" quantum case which had only been put forward by GNC in its Post-Hearing Brief. The manner in which ONI raised this objection before the Tribunal is the subject of some scrutiny in this judgment. For that reason, we set out the relevant facts in detail below.

14 ONI first raised its objections in respect of GNC's Quantum Case on 12 January 2024, by way of the parties' joint e-mail to the Tribunal ("12 January 2024 E-mail"). In the 12 January 2024 E-mail, ONI stated that it "reserve[d] all

rights in this respect", but contended that it should, at minimum, be granted additional time during the closing oral arguments to address the new arguments "in order to mitigate the prejudice to ONI's due process rights". The relevant portions of the 12 January 2024 E-mail are reproduced below:

> ONI's position is that it is entitled to additional time at the closing hearing. ONI acknowledges that the Tribunal's 14 December 2023 email envisions equal time for the parties. However, GNC belatedly raised a number of arguments for the first time in its Post-Hearing Brief despite having the relevant evidence to do so either since the beginning of these arbitrations, or July 2023 (at the very latest), and ONI requires this additional time to respond to these arguments. GNC has improperly withheld these new arguments and left them for the eleventh hour, when ONI has no further opportunity to respond in writing and properly brief these issues before the Tribunal. ONI reserves all rights in this respect but, at a minimum, ONI should be granted additional time at the closing hearing to address these arguments in order to mitigate the prejudice to ONI's due process rights that are expressly acknowledged under ICDR Rule 22(1) and AAA Rule 33(a), and Procedural Order No. 1 in both arbitrations.
>
> …
>
> Now, in its Post-Hearing Brief – when ONI has no opportunity to respond in writing – GNC articulated a new case on the quantum of damages it claims, addressing a number of the arguments that it ignored in ONI's prior submissions. …
>
> …
>
> ONI has not had an opportunity to brief any of GNC's new arguments in writing. In the interests of due process and equal treatment, ONI should be afforded additional time to address these arguments at the upcoming hearing.
>
> …
>
> For all of these reasons, ONI proposes that it receive 5.5 hours of the 10 hours allocated to the parties, leaving 4.5 hours for GNC. …

15 ONI's request for additional time was granted by the Tribunal. On 4 February 2024, ONI sought leave from the Tribunal to apply to strike out GNC's Quantum Case ("Striking Out Application").

Dear Members of the Tribunal,

Pursuant to Procedural Orders No. 9 (SG) and No. 8 (PH), ONI respectfully requests that the Tribunal grant ONI leave to apply to strike from the record GNC's new quantum case that GNC presented for the first time in its Post-Hearing Brief. ONI specifically refers to paragraphs 196 through 217, 221, and 227 of GNC's Post-Hearing Brief.

As noted in ONI's portion of the parties' email to the Tribunal dated 12 January 2024, and as the Tribunal is by now likely well aware, GNC has belatedly raised a number of entirely new arguments in its Post-Hearing Brief – arguments that GNC was obligated to raise much earlier in these proceedings. Most significantly, GNC has completely changed its quantum case. To be clear, this is not an instance of GNC simply putting a new spin on its prior quantum case based on testimony from the hearing. Rather, GNC has entirely changed tactics on the fundamental basis of its damages case and is demanding somewhere between US$70 and US$100 million more than it previously demanded – despite the clear language in Procedural Order No. 1 in both arbitrations that "[n]o change in the amount of a claim or counterclaim may be submitted after the Pre-Hearing Conference except with leave of the Tribunal." PO 1 (SG), at para. 45; PO 1 (PH), at para. 48. ONI will provide additional specifics in its application, should the Tribunal grant ONI leave.

Although ONI noted GNC's new quantum case in its insert to the parties' 12 January 2024 email to the Tribunal – while reserving all rights – and requested additional time to respond to GNC's new quantum case and other new arguments at the closing hearing, it was only in preparing for the upcoming hearing that ONI has realized the true extent of GNC's new quantum case. Unfortunately, additional time to respond to GNC's new case at the hearing cannot cure the prejudice that ONI has suffered.

The fact is that GNC's assertion of a totally new quantum case at this late juncture deprives ONI of its rights to respond in writing, to put on expert evidence rebutting GNC's new case, and to cross-examine GNC's witnesses and experts on GNC's new case. The only appropriate remedy here is to strike GNC's new quantum case from the record. Anything short of that would raise serious due process concerns.

In Procedural Orders No. 9 (SG) & No. 8 (PH), at paragraph 4, the Tribunal provided that "[a]fter November 9, 2023, any party that seeks to make an application shall be required to seek leave of the Tribunal to do so based on a showing of good cause for why the application could not have been made sooner."

> There is obviously good cause for ONI to present this application now (*i.e.,* after the Tribunal's 9 November 2023 deadline) because GNC first asserted its new quantum case in its Post-Hearing Brief filed on 8 January 2024, *i.e.,* under a month ago. Therefore, ONI obviously could not have brought this application before the Tribunal's 9 November 2023 deadline.
>
> In the circumstances, ONI proposes to make its application orally at the hearing and invites the Tribunal to request additional briefing on ONI's application if, after hearing the parties' arguments at the hearing, it determines that such briefing would be helpful. ONI can also share with GNC any new legal authorities on which it would rely for its oral application in advance of the hearing. Despite the prejudice GNC has caused with its extremely belatedly asserted case, ONI will do its best to both make its application – should the Tribunal grant ONI leave – and address GNC's new quantum case on the merits at the hearing.

16 On 7 February 2024, GNC objected to ONI's application for leave on two grounds, that: (a) GNC did not advance a *new* quantum case; and (b) there was no good reason why the application for leave could not have been made sooner. On 8 February 2024, ONI replied to address GNC's objections:

> Dear Members of the Tribunal,
>
> ONI writes briefly in response to GNC's letter of 7 February 2024 opposing ONI's request for leave to apply to strike GNC's new quantum case from the record. The fact that GNC felt it necessary to submit a 9-page letter primarily focusing on the merits of ONI's not-yet-made application underscores the significance of the issues ONI is raising. ONI reserves its arguments on the merits for the appropriate juncture – *i.e.,* the actual application, should the Tribunal grant ONI leave – but notes that GNC's arguments are without merit and that ONI deserves the opportunity to present its case on those issues to the Tribunal. To deny ONI even the opportunity to make its application would only compound the due process issues caused by GNC asserting an entirely new quantum case after the merits hearing.
>
> GNC's arguments with respect to good cause – the only arguments actually relevant at this stage – are wholly unjustified. GNC's attempt to shield its new quantum case that it raised at least six months late (*i.e.,* should have been raised by GNC, at the latest, in its Singapore reply brief) by arguing that ONI should have requested leave a week or two earlier is

> deeply ironic. The facts are that GNC asserted an entirely new quantum case in its Post-Hearing Brief; ONI noticed this on its initial review – but not the full scope – and alerted the Tribunal to the extent it affected the procedure for the closing hearing (while reserving all rights); ONI dug deeper into GNC's new case and asked assistance from its experts to do the same; ONI and its experts realized the full extent of GNC's new case; and ONI presented the request for leave at issue. This all happened in 3-4 weeks. Notably absent from GNC's letter is any claim that GNC is prejudiced by ONI presenting its application now.
>
> In sum, despite GNC's attempts to argue the merits of ONI's application in its letter, the only issue presently before the Tribunal is whether ONI should be granted leave to present its application. These are significant issues – as GNC's letter shows – and ONI has a due process right to present its case. ONI therefore respectfully requests that the Tribunal grant ONI leave to present its application at the closing hearing and afford ONI the opportunity to be heard.

17 On 10 February 2024, the Tribunal granted ONI leave to make the Striking Out Application and directed that it would hear arguments on the application during the closing arguments.

18 The closing oral arguments were heard from 13–15 February 2024 ("February 2024 Hearing"). The Tribunal heard arguments on the Striking Out Application on the second day, and arguments on the merits of the respective quantum cases on the third day. Though it is not disputed that the parties addressed GNC's Quantum Case on the merits, ONI claims that its "primary position" before the Tribunal was that GNC's Quantum Case should be struck out. After hearing arguments, the Tribunal indicated that it would address the Striking Out Application as part of the Award.

The Award

19 The Tribunal issued the Award on 14 August 2024.

20 In respect of the Spoliation Application, the Tribunal made the following findings:

(a) First, when cross-examined about the deletions, Mr Wong evaded questioning and offered excuses that did not bear scrutiny. Accordingly, the Tribunal disregarded Mr Wong's testimony in reaching its decision.

(b) Second, information within GNC's control had been deleted, and it was more likely than not that some of the missing texts ("Deleted Messages") had relevance to GNC's "intentions regarding [ONI Global] in late 2020 and early 2021".

(c) Third, the information in the *known* deleted text messages was of limited relevance to the arbitration, save that they revealed "that in November 2020, Mr Wong was discussing some sort of plan … that looked beyond Malaysia once [ONI Global] had been replaced there".

(d) Fourth, a reasonable inference could be drawn that Mr Wong "was seeking to conceal harmful information relating to GNC's treatment of [ONI Global] entities in all markets to gain an unjust litigation advantage".

21 The Tribunal, left largely to speculate as to the content of the *additional* deleted texts, found that it could not draw an adverse inference that the deletions dealt with issues regarding, for instance, "specific efforts by GNC to locate … a replacement franchisee for Singapore". This was because, despite the existence of substantial documentation of GNC's efforts to terminate the Malaysia and Taiwan agreements, there was "no evidence of actual conduct … to terminate – or even prepare to terminate – the [Singapore Agreements]". The

Tribunal was also unwilling to extend its conclusions about Mr Wong's "apparently destructive misbehavior [*sic*]" to the rest of the GNC organization.

22 However, the Tribunal considered that it was appropriate to draw an adverse inference that Mr Wong's plans in late 2020 "envisioned terminating the [Singapore Agreements] at some time after he had replaced [ONI Global]'s affiliate in the Malaysia Market".

23 The Tribunal declined to dismiss GNC's claims on the basis of Mr Wong's spoliation of evidence, as there was insufficient basis "to conclude that the destroyed evidence would have altered the outcome of [the Award]". However, the Tribunal did conclude that Mr Wong was not a reliable witness and declined to rely upon his testimony unless it was fully corroborated or against GNC's interest.

24 Turning to the merits, the Tribunal largely found in favour of GNC. The key breach it found, which resulted in the award of significant damages, was ONI's repudiation of the Singapore Agreements and breach of the post-termination covenants. The Tribunal granted several remedies in favour of GNC, which included orders for specific performance of the post-termination covenant in cl 13.4 of the Franchise Agreement, and an award for Post-Termination Damages. These orders form the subject of the applications made to the SICC, and in turn of the present appeals, and are addressed in further detail below.

25 The Tribunal's orders for specific performance of the post-termination covenant can be found in para 752(3) of the Award ("Order 3"), and are reproduced in full below:

3. With regard to the former 54 GNC store leases in Singapore, the Tribunal orders:

a. within ten business days of the date of this Final Award, Respondents shall provide to GNC Holdings, LLC, a true and complete copy of the lease, sublease, and all other agreements and understandings governing the landlord-tenant relationship for each of the 54 former GNC franchise store locations that ONI Global Pte. Ltd. and/or LAC Global (Singapore) Pte. Ltd. possess as of the date of this Final Award;

b. within fifteen business days of the date that GNC Holdings, LLC, receives all of the documents identified in subparagraph a, above, GNC Holdings, LLC, shall (i) notify Respondents in writing of each store location that it will reopen as a GNC store within twelve months of receiving lawful possession and (ii) for each such store, provide the following written representation and warranty to ONI Global Pte. Ltd. and LAC Global (Singapore) Pte. Ltd., signed by a person with authority to bind GNC Holdings, LLC:

> *"GNC hereby represents and warrants to ONI/LAC that within twelve months of receiving lawful possession (i) it shall operate the store located at [INSERT STORE ADDRESS] (the "Store"), which is currently operated as an LAC-branded store, as a GNC-branded store for a period of no less than twelve months from the time it opens for retail business as a GNC-branded store; and (ii) it shall offer employment to all store-level and non-executive employees who are employed at that Store by ONI or LAC on terms substantially similar to those on which those employees are employed as of the date of this Final Award, such employment to take effect from the time GNC takes lawful possession of the Store and to continue for a period of no less than twelve months from the time it opens for retail business as a GNC-branded store."*

c. for each store that is identified in accordance with subparagraph b, above, ONI Global Pte. Ltd. and LAC Global (Singapore) Pte. Ltd., shall assign to GNC Holdings, LLC, all of their rights and interests in those premises (including all leases, subleases, and other agreements and understandings governing the landlord-tenant relationship) within ten business days of receiving GNC Holdings, LLC's written representation

and warranty or, if landlord consent is required, within five business days of receiving landlord consent;

d. for each store that ONI Global Pte. Ltd. and/or LAC Global (Singapore) Pte. Ltd., identify pursuant to subparagraph c, above, as requiring landlord consent, Respondents shall notify GNC Holdings, LLC, of the store location and the identity of the landlord within ten business days of receiving from GNC Holdings, LLC, the notification, representation and warranty provided pursuant to subparagraph b, above. Further, Respondents shall (i) make all reasonable efforts to secure landlord consent as promptly as possible, (ii) fully inform GNC Holdings, LLC, on a twice-weekly basis of all efforts that they are taking to secure that consent, and (iii) comply with all reasonable requests by GNC Holdings, LLC, to secure that consent (or obtain landlord confirmation that no consent is required), including by introducing GNC Holdings, LLC, to the landlord and permitting GNC Holdings, LLC, to participate in and/or conduct on its own the efforts with the landlord.

e. for any of the 54 former GNC franchise store locations that is not identified by GNC Holdings, LLC, under subparagraph b, above, Respondents may, but shall not be required to, assign to GNC Holdings, LLC, all of their interests in the leases, subleases, and other agreements and understandings governing the landlord-tenant relationship in those premises, and GNC Holdings, LLC, shall be required to accept any such assignment, provided that (i) Respondents make that election within fifteen business days from the expiration of the fifteen business day period in subparagraph b, above and (ii) unless otherwise expressly agreed by GNC Holdings, LLC, in writing, the transfer is not effective prior to the date that Respondents have effected the transfer of all other store locations pursuant to subparagraph c, above. For the avoidance of doubt, GNC Holdings, LLC, is not required to provide the representation and warranty contained in subparagraph b, above, with respect to any store for which the lease is assigned by ONI Global Pte., Ltd. and/or LAC Global (Singapore) Pte. Ltd., to GNC Holdings, LLC, pursuant to this subparagraph e;

f. if GNC Holdings, LLC, fails to comply with the representation and warranty in subparagraph b, above, with respect to any one or more store locations, ONI Global Pte., Ltd. and LAC Global (Singapore) Pte. Ltd., shall be entitled to pursue whatever claims and seek

> whatever remedies are available to them for breach of that representation and warranty;
>
> g. ONI Global Pte., Ltd. and LAC Global (Singapore) Pte. Ltd., are enjoined from taking any actions from the date of this Final Award that would impede, interfere with, or obstruct in any way the full implementation of the provisions of this paragraph 752.3.

26 Turning to the Post-Termination Damages, the Tribunal rejected ONI's Striking Out Application, finding that GNC's expert had "present[ed] from the outset the alternative damages calculation that [had] been pursued in closing submissions". The Tribunal eventually preferred the likelihood that GNC would enter the Singapore market with a new franchisee, and awarded Post-Termination Damages in the sum of US$18,923,012.

Procedural history

27 GNC sought enforcement of the Award in Singapore. On 4 March 2025, an Assistant Registrar of the General Division of the High Court granted leave to enforce the Award in Singapore ("Enforcement Order").

28 On 24 March 2025, ONI filed HC/SUM 777/2025 ("SUM 777"), seeking to set aside the Enforcement Order on grounds pertaining to breach of natural justice, scope of submission to arbitration and public policy under ss 31(2)(*c*), 31(2)(*d*) and 31(4)(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"), respectively. The grounds of ONI's application are summarised below.

(a) Ground 1: GNC destroyed evidence, and in doing so committed fraud on the Tribunal and/or ONI, which substantially impacted the Award. The Award should be refused enforcement because to do otherwise would be contrary to the public policy of Singapore.

(b) Ground 2: The Tribunal failed to apply its mind to a critical argument made by ONI in relation to the adverse inferences to be drawn against GNC. The Award should be refused enforcement on the basis that the Tribunal breached ONI's right to natural justice.

(c) Ground 3: The Tribunal allowed GNC's new and unpleaded damages claim. The Award should be refused enforcement on the basis that (i) the award of damages was outside the scope of the parties' submission to arbitration; and/or (ii) the Tribunal committed breaches of natural justice.

(d) Ground 4: The Tribunal granted new and unpleaded specific performance reliefs. The Award should be refused enforcement on the basis that (i) the terms of the specific performance orders were outside the scope of the parties' submission to arbitration; and/or (ii) the Tribunal committed breaches of natural justice.

The decision below

29 The SICC rejected Grounds 1–3 and most of Ground 4 but found that three orders in the Award (which formed part of Order 3, the order for specific performance) were made in breach of natural justice. Therefore, the SICC allowed SUM 777 in part and ordered that the Enforcement Order be varied to deny the enforcement of the three orders: see *GNC Holdings LLC v ONI Global Pte Ltd* [2025] SGHC(I) 25 ("Judgment").

30 We set out in brief the SICC's findings in relation to each ground below.

31 In respect of Ground 1, the SICC rejected ONI's claim that Mr Wong's destruction of evidence amounted to fraud on the Tribunal or that it substantially

impacted the Award. The SICC observed that there was "clear international consensus" that where a tribunal had fully dealt with the question of the alleged wrongful conduct and decided upon the appropriate extent of remedial consequences, a court should act with the "greatest caution possible … in reagitating and relitigating such a question" (Judgment at [155]–[160]). The SICC found that the Tribunal, being "intimately cognisant of the facts and materials in the arbitration", had carefully considered the claim of fraud, and made serious findings against GNC and Mr Wong, and there was no basis for the SICC to conclude that the Tribunal's consideration of the Spoliation Application was flawed (Judgment at [154] and [160]).

32 In respect of Ground 2, ONI's central argument was that when drawing adverse inferences in respect of GNC's spoliation of evidence, the Tribunal failed to consider a critical argument that GNC's plan to "take back" the Singapore business was not limited just to replacing ONI with another franchisee, but also potentially involved GNC taking over the 54 Singapore Franchised Stores itself ("Critical Argument"). The SICC rejected Ground 2, having considered that the requirements for raising a natural justice challenge of an *infra petita* variety were not satisfied: (a) first, the Critical Argument was not put before the Tribunal in a way which required separate attention (Judgment at [165]–[181]); (b) second, ONI failed to establish its case on the adverse inference it was seeking (Judgment at [182]); (c) third, it was not clear that the Tribunal had *completely* failed to consider the Critical Argument (Judgment at [182]); (d) fourth, there was no demonstrable prejudice (Judgment at [182]). The SICC also pointed out that the findings of the Tribunal were ultimately contrary to the Critical Argument, such that the argument could be taken as having been implicitly rejected (Judgment at [183]).

33 In respect of Ground 3, the SICC found, after an examination of the pleadings and evidence, that GNC's Quantum Case *was* presented as an alternative claim in the report of GNC's expert ("Mr Brophy") and encompassed within GNC's Statement of Claim (Judgment at [112]–[118]). Accordingly, it rejected ONI's allegation that GNC had run a new and unpleaded claim. Further, the SICC observed that although ONI claimed to have suffered prejudice from the Tribunal's decision to deal with the Post-Termination Damages claim, it did not "seek to reopen the hearing, to renew the application for disclosure, to apply to lead further evidence, or to apply to resume cross-examination if the refusal of the disclosure application was now unfairly prejudicing [ONI]". The SICC considered that ONI's failure to raise the complaint contradicted its case that it had been denied the opportunity to present its case (Judgment at [141]).

34 In respect of Ground 4, ONI had submitted that Order 3: (a) went beyond the scope of the submission to arbitration; and/or (b) was made in breach of the Tribunal's obligation to afford ONI an opportunity to present its case. The SICC rejected the first argument but accepted the second argument to a limited extent.

(a) On scope of submission, the SICC found that the Tribunal was tasked with "administering equity and granting equitable relief". Accordingly, the SICC rejected the proposition that the only question before the Tribunal was the *binary question* as to whether to grant specific performance precisely in the manner that had been sought by GNC (Judgment at [84]–[85]). The essential question that arose was whether Order 3 as a whole, including the individual orders contained therein, fell within the scope of what had been submitted for arbitration. The SICC found that all of Order 3 was "part of or connected to the

enforcement of [the post-termination covenant]" (Judgment at [88]–[99]).

(b) On natural justice, the SICC noted that the Tribunal could have sought the views of parties on the crafting of Order 3. The SICC eventually held that:

(i) There was no breach of natural justice in relation to orders 3(a)–3(c), 3(d)(i), 3(e) and 3(g), as there could be "no practical injustice" to either party in not having heard the parties' views (Judgment at [102]).

(ii) There *was* a breach of natural justice in relation to orders 3(d)(ii) and 3(d)(iii), as ONI was "deprived of a real opportunity to make a (small) difference to the orders". In this respect, it was observed that the orders were "of a character apt to lead to unnecessary debate and supervision" (Judgment at [103]–[104]).

(iii) There *was* a breach of natural justice in relation to order 3(f), as ONI "could have legitimately put the submission that [order 3(f)] may in fact prejudice them"; this was not a fanciful argument (Judgment at [105]).

35 The SICC rejected the submission that Order 3 was an "integral whole". It accepted Ground 4 in part, holding that Order 3 should be enforced subject to the exception of orders 3(d)(ii), 3(d)(iii), and 3(f) (Judgment at [106]–[107]).

The parties' cases on appeal

36 The parties brought the present appeals against the SICC's decision. In CA/CAS 5/2025 ("CAS 5"), ONI appeals against the SICC's dismissal of the

remainder of SUM 777. In CA/CAS 6/2025 ("CAS 6"), GNC appeals against the SICC's decision to deny the enforcement of the three orders in the Award.

37 In CAS 5, ONI relies on all four grounds raised before the SICC. On Ground 1, ONI asserts that the approach taken by the SICC would mean that fraud which perverts the arbitral process can never be put right by a court. On Ground 2, ONI maintains that the Critical Argument was properly raised before the Tribunal, and the Tribunal had completely failed to consider the point. On Ground 3, ONI's main argument is that the Post-Termination Damages claim *was* unpleaded, or had subsequently been "dropped" by GNC. In the alternative, ONI was denied a reasonable opportunity to be heard on the Post-Termination Damages claim. In respect of Ground 4, ONI argues that the Tribunal was confined to granting relief "in the specific terms" sought by GNC. Further, it contends that the SICC erred in finding that no prejudice was caused by the making of orders 3(a)–3(c), 3(d)(i), 3(e) and 3(g). In addition, having decided that order 3(f) was made in breach of natural justice, the SICC should have refused to enforce Order 3 in its entirety. In response, GNC aligns itself with the reasoning of the SICC.

38 In respect of CAS 6, GNC submits that in refusing enforcement of orders 3(d)(ii) and 3(d)(iii), the SICC appeared to have refused enforcement on grounds beyond those stipulated in the IAA. In any event, orders 3(d)(ii) and 3(d)(iii) would not lead to "unnecessary debate and supervision". Further, in making the three orders, the Tribunal did not act in breach of natural justice because: (a) there was sufficient nexus between the orders and the cases advanced by the parties in the arbitration; and (b) in any event, no prejudice was caused to ONI. In response, ONI asserts that GNC has mischaracterised the SICC's reasoning in relation to its refusal to enforce orders 3(d)(ii) and 3(d)(iii).

ONI also denies that the three orders had sufficient nexus to the cases advanced, and maintains that it was prejudiced.

The issue of hedging

39 During the hearing of CAS 5 and CAS 6, we raised the question of whether ONI had hedged its position by addressing GNC's Quantum Case on the merits at the February 2024 Hearing *in addition to* making arguments in support of the Striking Out Application. After the hearing, at ONI's request, we directed the parties to file further submissions on this issue.

40 ONI submits that it did not hedge its position. Prior to the February 2024 Hearing, ONI had: (a) expressly reserved "all rights" in respect of GNC's Quantum Case; and (b) sought leave to apply to strike out GNC's Quantum Case on the basis of its due process objections. During the February 2024 Hearing, ONI argued its application to strike out GNC's Quantum Case (on 14 February 2024) *before* addressing it on the merits (on 15 February 2024). In addressing the merits, ONI's counsel "started by making clear that its primary position remained that [GNC's Quantum Case] should be struck out because of ONI's due process objections". For the above reasons, ONI contends that the facts of the present case can be distinguished from the facts of *China Machine New Energy Corp v Jaguar Energy Guatemala LLP* [2020] 1 SLR 695 ("*China Machine*").

41 GNC, on the other hand, maintains that ONI's conduct constitutes precisely the type of impermissible hedging that was warned against in *China Machine*. ONI failed to address the Tribunal on any of the due process complaints it now raises before the court. Instead, ONI adopted a "two-fold response" in seeking to persuade the Tribunal to either strike out GNC's Quantum Case, or to reject GNC's Quantum Case on the merits.

42 GNC also denies ONI's allegation that its counsel had "started [his submissions on the merits] by making clear that its primary position remained that [GNC's Quantum Case] should be struck out because of ONI's due process objections". It also points out that in the five months between the February 2024 Hearing and the close of the arbitration record on 15 July 2024, ONI did not seek to disengage its striking out application from the Award or seek any directions from the Tribunal to address its due process objections. On the basis of the above, GNC contends that ONI's conduct amounted to impermissible hedging.

Issues to be determined

43 The following issues arise for our determination:

(a) Issue 1: Should enforcement of the Award be refused on the basis that GNC's spoliation of evidence rendered the Award in conflict with the public policy of Singapore? (Ground 1)

(b) Issue 2: Should enforcement of the Award be refused on the basis that the Tribunal had failed to consider the Critical Argument and thereby breached the rules of natural justice? (Ground 2)

(c) Issue 3(a): Did ONI's conduct in respect of GNC's Quantum Case amount to impermissible hedging?

(d) Issue 3(b): Should the enforcement of the Award in respect of Post-Termination Damages be refused on the ground that: (i) the Post-Termination Damages claim fell outside the scope of submission to arbitration; and/or (ii) ONI was denied a fair opportunity to present its case in relation to the Post-Termination Damages claim, giving rise to a breach of the rules of natural justice? (Ground 3)

(e) Issue 4: Should the enforcement of Order 3 be refused on the ground that: (i) Order 3 or any part of it fell outside the scope of submission to arbitration; and/or (ii) there was a breach of the rules of natural justice in connection with the making of Order 3 or any part of it? (Ground 4)

Issue 1: Whether GNC's spoliation of evidence renders the Award in conflict with the public policy of Singapore

44 It is undisputed that GNC's Executive Vice Chairman, Mr Wong, had deleted text messages which were potentially relevant to the arbitration. The Tribunal found it reasonable to infer that he had done so to conceal harmful information and gain an unjust litigation advantage, but declined to dismiss GNC's claims on this basis because it found there was insufficient basis "to conclude that the destroyed evidence would have altered the outcome of [the Award]". Before the court, ONI argues that GNC's destruction of evidence amounted to fraud on the Tribunal, which substantially impacted the making of the Award.

The applicable law

45 Section 31(4)(*b*) of the IAA provides that the court may refuse the enforcement of a foreign arbitral award where enforcement would be contrary to the public policy of Singapore.

46 An award obtained by fraud violates the basic notions of morality and justice, and it would offend the public policy of Singapore to enforce such an award (*CZD v CZE* [2023] 5 SLR 806 ("*CZD v CZE*") at [38]). Fraud in this context includes procedural fraud, which is "when a party commits perjury, conceals material information and/or suppresses evidence that would have

substantial effect on the making of the award" (*CZD v CZE* at [38], citing *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 1 SLR 1045 at [41]).

Observations on the "re-litigation" of public policy grounds

47 The present case involves the unusual situation of a party seeking to "re-litigate" before the court the consequences of an act of procedural fraud that had been uncovered during arbitration proceedings and been decided on by the arbitral tribunal, as a ground to resist the enforcement of the final arbitral award. We therefore consider it helpful to begin with some observations on the approach that courts may adopt in such situations.

48 It is uncontroversial that the court can, and indeed *must*, undertake its own assessment of whether an award contravenes the public policy of Singapore (*AJU v AJT* [2011] 4 SLR 739 ("*AJU v AJT*") at [62]). The question is the extent to which the court should accord deference to a tribunal's decision on the same issue where it has already been canvassed before the tribunal as an issue going to the disposal of the arbitration. In such a situation, the court must balance the need to uphold the finality of arbitration and the principle of minimal curial intervention, against its duty to safeguard matters fundamental to the public policy of the jurisdiction in question (see Sundaresh Menon, "Corruption in International Arbitration: The Past, Present and Future", Kaplan Lecture 2025 (1 December 2025) ("Kaplan Lecture") at para 52).

49 Faced with these competing tensions, courts have adopted varying approaches, which can broadly be categorised into three categories – minimal review, maximal review, and contextual review (see Kaplan Lecture at paras 57–63). For context, we set out in brief what each category entails:

(a) Under the minimal review approach, findings of the tribunal are treated as presumptively valid, with the courts intervening only in *exceptional circumstances*, such as in cases involving: "palpable and indisputable illegality" on the face of the award; the surfacing of new evidence; or errors of *law* concerning the public policy of the state (Kaplan Lecture at para 57; see *AJU v AJT* at [64] and [67]; *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] QB 288 ("*Westacre*") at 309F–310A).

(b) Under the maximal review approach, the reviewing court will adopt a *de novo* review of findings on matters of public policy and will not be limited to the evidence submitted to the tribunal or be bound by the tribunal's findings or assessment of the evidence (Kaplan Lecture at para 58).

(c) The contextual review approach represents a middle ground between the two aforementioned approaches. The court must first be satisfied that there is *prima facie* evidence of illegality. The court will then conduct a preliminary inquiry and determine whether to give full faith and credit to the award. If the court is satisfied that the award is potentially unsafe, it will then undertake a more searching inquiry (see Kaplan Lecture at paras 60–61; see *Westacre* at 315F–315H).

50 There are shortcomings in each of the three approaches identified above (see Kaplan Lecture at para 62). That said, we think it is significant to contextualise specifically the present instance of alleged *procedural fraud*. There are three features of the alleged procedural fraud here that must be noted:

(a) First, the alleged procedural fraud went to the procedural management and conduct of the arbitration, in that it concerned a breach

of one party's discovery obligation by the deliberate conduct of one of its senior executives.

(b) Second, all the relevant facts were known to the Tribunal. This is not a case where the alleged misdeeds were uncovered after the award. Rather, they were fully canvassed before the Tribunal.

(c) Third, the procedural fraud issue was assessed and ruled upon by the Tribunal pursuant to an application made for it to determine the consequences of the breach of GNC's discovery obligations.

51 In these circumstances, we agree with the SICC's holding that the court should exercise the "greatest caution possible" before reopening and re-litigating questions of alleged procedural fraud which had been fully dealt with by the tribunal (see Judgment at [155]). This is so for three reasons.

(a) First, as we observed in *China Machine* at [103], the court accords "substantial deference" to the tribunal in the exercise of its procedural discretion. This stems from the fact that the tribunal possesses a wide discretion to determine the arbitral procedure, and from the recognition that that discretion is exercised "within a highly specific and fact-intensive contextual milieu, the finer points of which the court may not be privy to" (*China Machine* at [103]). In *DMZ v DNA* [2025] 2 SLR 398, we observed that it would be "most exceptional" that the court would countenance the second-guessing of a procedural determination "absent express empowerment to do so under the Model Law or the IAA" (at [43]–[44]). This discretion extends even to cases involving the application of Singapore law as the *lex arbitri*. In *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354 ("*Vedanta Resources*"), the appellant sought declaratory reliefs from the court in

respect of certain procedural issues which had been determined by the tribunal. The appellant undertook that it would not use the declarations granted to unilaterally bypass the tribunal; instead, it would rely on the declarations to request the tribunal to reconsider its procedural decision (at [15]). We found that there was no legitimate basis to invoke the court's jurisdiction. The court's intervention could not be justified on the sole basis that the tribunal's decision pertained to the *lex arbitri*. Even if the tribunal had erred in its application of the law in Singapore, "this was an error of law and such an error was insufficient to justify curial intervention" (at [21]). More pertinently, we found the application to be a "blatant violation of the principle of minimal curial intervention" under Singapore law (at [47]–[48]):

> … regardless of whether the appellant's application in OS 980 was characterised as a backdoor appeal or an attempt to obtain an abstract ruling to put pressure on the Vedanta Tribunal, the granting of the declarations by the court would infringe the principle of minimal curial intervention. As the respondent submitted, the Vedanta Tribunal had already directed its mind to and decided on the appellant's applications for cross-disclosure, in the exercise of its broad powers to determine the appropriate arbitral procedure. Since the Vedanta Tribunal was the master of its own procedure (see [29] above), it would be inappropriate for the court to intervene in its decision. Moreover, for the court to entertain applications such as the present would mean that whenever a party is dissatisfied with a tribunal's decision on a procedural matter which the party claims is not covered by existing case law, it can invite the court to rule on the procedural matter in order for such a ruling to be used as a tool to persuade the tribunal to reconsider its decision. *This is a violation of the principle of minimal curial intervention at the highest level.*
>
> [emphasis added]

(b) Second, the nature and effect of the fraudulent conduct is typically to be assessed with reference to how the *tribunal* would have decided in a counterfactual *absent the fraud*. This is consistent with the

terms of s 24(*a*) of the IAA which specifically deals with the setting aside of an award, the making of which has been induced or affected by fraud. Where the tribunal is fully aware of the circumstances, the award does not readily come within the ambit of an award induced or affected by fraud. Evidently, the tribunal is better placed to make the assessment of the significance of the procedural breach. As observed by the SICC below (Judgment at [160]):

> The application was decided with all the advantages of advanced preparation and with the advantage of the Tribunal being fully cognisant of all relevant facts and evidence as they fell out at the hearing. *This is particularly relevant to the necessity to gauge as far as could be done the proven material effect of any fraud or misconduct as to disclosure and evidence.*
>
> [emphasis added]

(c) Third, and related to the above, it is trite that the court cannot review the merits of an arbitral award. This should remain true even in respect of an award allegedly tainted by fraud because the inquiry, as we have just noted, is concerned with how the fraud affected the *making* of the award, and not how the fraud might have affected the *correctness* of the award. In the absence of further evidence that was not before the tribunal, or a finding of an impermissible flaw in the tribunal's process (such as a breach of natural justice), there will typically be no room for the court to substitute the tribunal's findings as to the materiality of concealed information for its own conclusions.

Our decision

ONI misinterpreted the SICC's holding

52 On appeal, ONI argues that the SICC's approach "means that a deception perpetrated on a tribunal and the other party that perverts the arbitral

process can never be put right by a [court]". This submission flows from a misapprehension of the SICC's holding:

(a) ONI claims:

> The SICC held that there was a "*clear international consensus*" that a party ***cannot*** be "*reagitating*" and "*relitigating*" a question of wrongful conduct that had already been put before and decided by the Tribunal. …
>
> [emphasis in original in italics, emphasis added in bold italics]

(b) The SICC in fact held (Judgment at [155]):

> It cannot be gainsaid that an award materially brought about by fraud … is within the public policy exception in s 31(4)(*b*), ***making the question one for the Court in the application for recognition and enforcement***. … Also, as ***an aspect of such caution***, when the Tribunal has fully dealt with the question of the alleged wrongful conduct and has decided upon the appropriate extent of the remedial consequences of that finding as part of the rendering of the final award, ***the greatest caution possible should be shown by the Court*** in reagitating and relitigating such a question. …
>
> [emphasis added in bold italics]

53 Evidently, the SICC recognised that in cases involving procedural fraud, the final determination lay with the enforcement court. It did not altogether exclude the possible existence of circumstances in which the court may be justified in "reagitating and relitigating" a question of alleged wrongful conduct. In fact, the SICC went on to suggest that one such circumstance was where "the Tribunal's consideration of these serious questions was flawed or not open to it" (Judgment at [160]). We therefore do not accept ONI's suggestion that the SICC incorrectly stated the applicable legal framework for assessing ONI's challenge.

There are no circumstances which warrant the re-litigation of the Tribunal's decision on the Spoliation Application

54 We turn next to the application of the legal framework, and as we have foreshadowed, in our judgment, there are no circumstances which warrant the re-litigation of the Tribunal's decision on the Spoliation Application. The fraud in question involved what was in effect a failure to comply with discovery obligations in the arbitration. The Tribunal, being fully alive to the nature of the alleged fraud, provided detailed reasons for why it considered that the fraud could be cured with the drawing of a limited adverse inference. Such procedural rulings are accorded deference by the court (see [51(a)] above).

55 We do not consider that the Tribunal's decision involved any obvious errors of fact or law so as to displace the deference we would typically accord such a ruling. Insofar as ONI alleges that the Tribunal had breached the rules of natural justice by failing to consider the Critical Argument (see [32] above), we address this argument in Ground 2 below.

56 Further, the Tribunal's approach is not inconsistent with decisions rejecting challenges because of a lack of evidence as to the *materiality* of the Deleted Messages. Where an applicant asserts procedural fraud in the form of the concealment or non-disclosure of material information or documents as the basis for engaging the public policy grounds in the IAA, the applicant should typically establish that the information or documents concealed is "so material that earlier discovery would have prompted the arbitrator to rule in favour of the applicant" (*Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 3 SLR 725 at [106]).

57 In *CYE v CYF* [2023] SGHC 275 ("*CYE v CYF*"), the claimant alleged that there were likely to be further undisclosed WhatsApp exchanges or

correspondence. However, the claimant also conceded that it had no way of knowing "what communications took place … and whether such conversations touched on issues relevant to the arbitration" and was unable to say with certainty whether such evidence could have any material impact on the tribunal's findings (*CYE v CYF* at [151]). In these circumstances, S Mohan J held that the claimant's allegation of procedural fraud was bound to fail (*CYE v CYF* at [151]).

58 As with the case in *CYE v CYF*, ONI has accepted that it *does not know* the contents of the Deleted Messages. Before the SICC and this court, ONI did not submit on the contents of the Deleted Messages. Instead, ONI argues that it cannot be faulted for its failure to adduce sufficient evidence of the Deleted Messages, as this was a direct result of GNC's destruction of evidence. ONI also asserts that "Mr Wong would not have destroyed irrelevant documents". But the Tribunal was aware of all this and considered that it could address the adverse consequences to ONI with a more limited sanction than ONI sought. We are unable to see that this was so obviously wrong that it would warrant our intervention. We therefore affirm the SICC's conclusion on this issue.

Issue 2: Whether the Tribunal committed a breach of the rules of natural justice in connection with the Critical Argument

59 ONI's case in respect of Ground 2 is that the Tribunal failed to consider a critical argument that GNC's plan to "take back" the Singapore business was not limited to replacing ONI with another franchisee, but also potentially involved GNC taking over the 54 Singapore Franchised Stores and running them *itself*. The SICC found that the four requirements for raising a natural justice challenge of an *infra petita* variety (meaning a failure to consider a live issue) were not satisfied (Judgment at [182]).

The applicable law

60 As this court held in *DKT v DKU* [2025] 1 SLR 806 ("*DKT v DKU*") at [8], a successful *infra petita* challenge rests on four conditions being met: (a) the point must properly have been brought before the tribunal for its determination; (b) the point must be essential to the resolution of the dispute; (c) the tribunal must have completely failed to consider the point; and (d) there must have been real or actual prejudice occasioned by the breach of natural justice.

Our decision

61 We are satisfied that there is no reason to disturb the SICC's findings on this issue.

The Critical Argument was not properly brought before the Tribunal

62 We agree with the SICC that ONI did not properly bring before the Tribunal for determination an argument or contention to the specific effect that GNC intended to run the Singapore business *itself*. We make two points.

63 First, there is no evidence that ONI had positively advanced such a point before the Tribunal. ONI's key assertion in this respect is that the Critical Argument was put to the Tribunal by its lead counsel in the arbitration, Mr Gary Born ("Mr Born") during the closing hearings. ONI relies on the following extract, as reproduced in its written submissions before this court:

> [CHAIRMAN]: In that one, it strikes me as fairly reckless to push somebody into ending the franchise without having somebody else in the wings, at least. Like in Taiwan, you had Ting Hsin in the wings, conceptually. In Malaysia, you had Caring in the wings, conceptually. But I – please, tell me where I'm wrong, but I don't see anything in the record where there is anybody in the wings.

> [MR. BORN]: So, first of all there is Rachel Lau, who is well and truly in the wings. We don't know what exactly the wings entailed because he deleted all the messages that describe that. But yes, you do have someone in the wings within the person of Rachel Lau.
>
> Second, and this is very important, recall what Mr. Wong specifically said a week before the May 6, 2022 notice of default. He said, I want you to take back Singapore and have an office there. Recall also that GNC here seeks ONI's 54 stores. They may have -- I can't tell you what their exact backup plan was, probably because [Mr. Wong] deleted all the messages that describes it. **But if you take his messages at their word, then another possible backup plan was for GNC to operate the 54 stores the way it operates stores in Ireland. That is what Mr. Wong said. I want you to have an office there. And, therefore, it is entirely possible that that was their plan.** I think, to be honest, the most likely scenario was they didn't expect termination on the part of ONI because they thought they could continue as they had over the preceding year to squeeze ONI and, therefore, they didn't immediately need a backup plan.
>
> […]
>
> **MR. BORN: As we're on this, recall how much they have tried to rely on the post-termination obligations and the turnover of the stores. And so the notion that their Plan A, or whatever the backup to ONI might have been, was they just take over and run the stores. It is not at all speculative or something that should be used to distinguish this from the Malaysia situation.**
>
> [emphasis in original]

64 That extract provides only very limited support for ONI's case. Even though the substance of the Critical Argument is mentioned, it is also important to assess the relevant context in and purpose for which the point was made. It was raised in response to a question raised by the Tribunal as to whether there was any evidence on the record that suggested that ONI had any plan in place as to what it would do if it ended the Singapore Agreements. This was hardly the advancing of the Critical Argument. As held in *DKT v DKU* at [8(a)], it is not open to a party to bring a challenge on account of the tribunal's failure to consider a case which that party *wished* it had made before the tribunal, rather

than *the case which it had actually run*. The Tribunal cannot be expected to make a determination on, or to *know* that it has to make a determination on, every single point that may have been mentioned, however faintly, in the pleadings, evidence, and/or submissions.

65 Second, ONI did not specifically seek the drawing of an adverse inference in the terms of the Critical Argument (see Judgment at [166]). The Critical Argument was not raised as one of the six adverse inferences sought in ONI's Rejoinder and Reply on Counterclaims, and the extract reproduced at [63] above makes no mention of adverse inferences.

There is no evidence that the Tribunal completely failed to consider the Critical Argument

66 There is a further difficulty that stands in the way of ONI's contention. A court will only infer that a tribunal completely failed to consider a point, if that inference is shown to be "clear and virtually inescapable" (*DKT v DKU* at [8(c)]). ONI has not shown that to be the case in relation to the Critical Argument.

67 ONI relies on the fact that when the Tribunal made a finding that "there was no evidence that GNC was separately taking steps to locate and conduct due diligence and make plans to secure a replacement franchisee", it made no reference to the possibility of the Critical Argument. However, the fact that an award fails to address an argument expressly does not by itself evidence the tribunal's failure to have considered it (*BZW v BZV* [2022] 1 SLR 1080 ("*BZW v BZV*") at [60(a)]). More importantly, on a closer examination of the Award, it is not evident that the Tribunal "completely failed" to consider the Critical Argument. The Tribunal had in fact made a *broader* finding that there was no evidence of "actual conduct" by GNC to terminate or prepare to terminate the

Singapore Agreements and this rendered the Critical Argument unviable because, as a matter of logic, that had to rest on termination of the Singapore Agreements:

> The difficulty for the Tribunal is that it is left largely to speculate about what additional texts might have been deleted or when they might have been deleted. The Tribunal is, however, helped by what the existing evidentiary record establishes because, it concludes, an adverse inference cannot be adopted that contradicts established facts. … *Thus, **for example**, the Tribunal is unable to find that additional deletions dealt with issues regarding specific efforts by GNC to locate, and perform due diligence on, a replacement franchisee for Singapore.* This is because, ***despite substantial documentation of Mr. Wong's (and GNC's) efforts to terminate the Malaysia and Taiwan agreements*** *and perform due diligence on replacement franchisees,* ***there is no evidence of actual conduct by GNC to terminate – or even to prepare to terminate -- the Singapore Agreements.*** …
>
> [emphasis added in italics and bold italics]

68 Finally, as the SICC points out, the findings of the Tribunal were contrary to the Critical Argument (see Judgment at [183]). In assessing damages, the Tribunal concluded that it was "unable to find on the evidence presented that GNC would have altered its longstanding strategy and operated through corporate stores in Singapore". This was inconsistent with the Critical Argument. We therefore agree with the SICC that there is no basis for concluding that the Tribunal wholly failed to consider the Critical Argument.

Issue 3(a): Whether ONI's conduct amounted to impermissible hedging

69 We turn to the question of impermissible hedging. By way of recap, ONI alleges that GNC advanced a new and unpleaded damages claim for Post-Termination Damages in its Post-Hearing Brief (namely, GNC's Quantum Case), which was eventually accepted by the Tribunal. ONI asserts that the award for Post-Termination Damages should be refused enforcement on the

basis that it was outside the scope of the parties' submission to arbitration and/or that the Tribunal committed breaches of natural justice.

70 During the arbitration, ONI applied to strike out GNC's Quantum Case. At the same time, it made substantive submissions on the merits of GNC's Quantum Case. This raises the preliminary question of whether in doing so, ONI's conduct amounted to impermissible hedging which was cautioned against in *China Machine*.

The applicable law

71 In *China Machine*, this court set out the law on impermissible hedging in the context of challenges to arbitral awards (at [170]):

> … if a party intends to contend that there has been a fatal failure in the process of the arbitration, then there *must* be fair intimation to the tribunal that the complaining party intends to take that point at the appropriate time if the tribunal insists on proceeding. This would ordinarily require that the complaining party, at the very least, seek to suspend the proceedings until the breach has been satisfactorily remedied (if indeed the breach is capable of remedy) so that the tribunal and the non-complaining party has the opportunity to consider the position. …
>
> [emphasis in original]

72 In *China Machine*, the appellant argued that the tribunal had mismanaged the document production process in various aspects, with the cumulative effect being that "the arbitral proceedings were in fact irretrievably lost" (at [161]–[163]). However, the appellant did not intimate to the tribunal that the "prospects of a fair arbitration had been irretrievably lost as a result of the Tribunal's mismanagement of its procedure". Instead, it consistently expressed an intention to see the arbitration through to its conclusion (at [165]). In those circumstances, the court found that the appellant had impermissibly hedged against an adverse result. The court observed (at [170]):

> … it is a contradiction in terms for a party to claim, as CMNC now does, that the proceedings had been irretrievably tainted by a breach of natural justice, when at the material time it presented itself as a party ready, able and willing to carry on to the award. If a party chooses to carry on in such circumstances, it does so at its own peril. The courts must not allow parties to hedge against an adverse result in the arbitration in this way.

73 The scope of the duty to give fair intimation was subsequently considered by this court in *CAJ v CAI* [2022] 1 SLR 505 ("*CAJ v CAI (CA)*"). In *CAJ v CAI (CA)*, the appellant raised a new defence for the first time in its written closing submissions in the arbitration ("EOT Defence"). In its closing submissions in the arbitration, the respondent objected to the EOT Defence being raised at such a late stage and submitted that it should be disregarded. At the same time, the respondent also pointed to "three insurmountable flaws" in the EOT Defence. The court found that the respondent had raised an "unequivocal and fair intimation" of its objections to the tribunal. Further, it could not be faulted for raising "threshold arguments" (*CAJ v CAI (CA)* at [65]):

> 65 The EOT Defence was undoubtedly foisted upon the respondent at the eleventh hour in the Arbitration. There can be no dispute that the respondent had seriously opposed the raising of this new defence. In its written closing submissions, the respondent highlighted that: (a) the EOT Defence "was never pleaded, nor raised at any point during the 8-day hearing, until it appeared in the Written Closing"; (b) no application had been made by the appellants to amend their pleadings; and (c) the EOT Defence had not been the "subject of pleadings, focused document production, witness evidence or cross-examination" (see [9] above). In our view, this was an unequivocal and fair intimation to the Tribunal of the respondent's objections to the EOT Defence. Saddled with this unpleaded defence which had been belatedly raised by the appellants, the respondent did its best to meet the new defence by objecting to it and raising several threshold arguments. It would be manifestly unfair to treat the respondent's reaction as equivalent to a fair opportunity to address the EOT Defence, or as an attempt to hedge its position.

74 The court held that it was sufficient that the respondent had set out the *substance* of its objection, and it was not necessary for the respondent to

have specifically intimated that it intended to commence setting-aside proceedings if its objections were ignored, as there was no indication by the Tribunal that it was willing to permit the EOT Defence to be raised at the time the arbitration was declared closed (*CAJ v CAI (CA)* at [66]–[68]).

Our decision

75 ONI relies on *CAJ v CAI* and points to the apparent similarities between *CAJ v CAI* and the present case. Notably, however, unlike the applicant in *CAJ v CAI*, ONI went a step further and made *substantial* submissions on the merits of GNC's Quantum Case. This raises the question: What happens if a party raises due process objections in respect of a new argument, but nonetheless goes on to address the argument on the *merits*? Is it sufficient that the party "maintains" its reservations while addressing the argument on the merits?

ONI's conduct amounted to impermissible hedging

76 In our judgment, ONI's conduct amounted to impermissible hedging. In summary, the mischief comes down to two aspects of ONI's conduct: (a) the failure to seek the rectification of the due process complaints it now seeks to raise before the court ("Due Process Complaints"); and (b) the fact that ONI chose to address GNC's Quantum Case on its merits. In the ensuing discussion, we assume, without deciding, that contrary to the SICC's finding, GNC's Quantum Case *was* a new and unpleaded damages claim that was first raised in GNC's Post-Hearing Brief.

(1) The significance of ONI's failure to seek the rectification of the Due Process Complaints

77 The question of whether a party had impermissibly hedged its position turns on an assessment of the factual matrix in each case, *with reference to* the

particular procedural objection which it subsequently seeks to raise before the court (see *China Machine* at [165]). Where a party raises a procedural objection before the tribunal, contending that the failure to remedy the breach would result in a fatal failure in the process of the arbitration, it must make clear to the tribunal *the course of action it deems necessary to remedy the breach* (see *China Machine* at [170]–[171]).

78 Before us, ONI submits that GNC's raising of a new and unpleaded claim, and the Tribunal's rejection of the Striking Out Application, prejudiced it in the following ways (these being the Due Process Complaints):

> … Even if such an application [for leave to introduce GNC's Quantum Case] was made and the [Tribunal] had allowed it, at the very minimum, [ONI] would have been entitled to reopen document production to obtain what they had been earlier denied. [ONI] would, after obtaining the documents (the existence of which GNC did not deny) have conducted their case at the hearing very differently. They would have instructed an expert on market share analysis, put forward its own alternative damages figure based on its own models and challenged Mr Brophy's and Ms Feygenson's figures with inputs from the [ONI's] own market share expert. …

79 It is undisputed that, as GNC points out, ONI did not expressly seek to rectify any of the Due Process Complaints before the Tribunal. We consider that this precludes ONI from raising the same complaints before this court.

80 Of course, it remains open to ONI to argue, as it appears to have done before the Tribunal, that the breach was *incapable of remedy* save by striking out GNC's Quantum Case. However, we reject this argument for two reasons.

81 First, ONI has not shown *how* the breach in question was incapable of remedy beyond striking out. In fact, in making the submission at [78] above, ONI appears to accept that the breach *was* capable of remedy by way of reopening document production, adducing additional expert evidence, and/or

reopening cross-examination. But these options were not placed before the Tribunal.

82 The consequences of ONI's failure to seek a reasonable opportunity to address GNC's Quantum Case must fall on ONI itself. As Vinodh Coomaraswamy J held in *CDX v CDZ* [2021] 5 SLR 405 (at [127]):

> … even if there was a breach of natural justice in some technical sense, it was not connected to the making of the award within the meaning of s 24(*b*) of the International Arbitration Act. The root cause of the arbitrator's holding in the award that it was open to him to award damages to the defendants in lieu of rescission was not his failure to hear from the plaintiffs on this point but *the plaintiffs' own failure to ask for the evidential hearing to be postponed or bifurcated in order for them to have a reasonable opportunity to present their case on the defendants' response to the plaintiffs' remedial defence*.
>
> [emphasis added]

83 Second, and related to this, as we next explain, ONI's conduct in addressing GNC's Quantum Case on the merits was fundamentally inconsistent with the position that the breach was incapable of remedy save by striking it out.

(2) The significance of ONI's conduct in addressing GNC's Quantum Case on the merits

84 The significance of a party addressing the merits of a case that it contends has been brought in breach of its due process rights, turns on *whether and how doing so undermines or invalidates the procedural objection*. As was held in *China Machine* at [170], "it is a contradiction in terms for a party to claim that the proceedings had been irretrievably tainted by a breach of natural justice, when at the material time it presented itself as a party ready, able and willing to carry on to the award"; a party who chooses to carry on in such circumstances "does so at its own peril".

85 As a preliminary point, we had asked parties to confirm whether ONI had made it clear during the February 2024 Hearing that it was addressing the case on the merits *while reserving its position on its due process objections*. In its further submissions, ONI appears to argue that it *had* done so; it asserts that in addressing the merits of GNC's Quantum Case, ONI's counsel "started by making clear that its primary position remained that the new quantum case should be struck out because of ONI's due process objections". In particular, ONI relies on the following comment made by its counsel in the arbitration, Mr Born, on the third day of the February 2024 Hearing:

> MR BORN: Ok thank you. ***I'll leave aside how none of this is relevant****, which is my first slide. I'm going to take this, if I may, in two parts. I'm going to address their old case, in part because of what you just said but in part because it's in my script. And then I'm going to address their new case.*
>
> [emphasis in original of ONI's Further Submissions]

86 We make three related observations. First, it is clear that ONI was unable to point to any explicit indication made to the Tribunal that it was going to address the merits of GNC's Quantum Case under protest, while maintaining that its due process rights had been irremediably breached.

87 Second, it is self-evident that ONI's submissions on the merits of GNC's Quantum Case would only be material to the Tribunal if the Striking Out Application failed. The fact that ONI was maintaining that its Striking Out Application should succeed, while it also addressed the merits of GNC's Quantum Case, says nothing about whether it had made it clear to the Tribunal that in proceeding to the merits of the latter, this would necessarily be on the basis of a continuing and unfairly prejudicial or irremediable breach of its due process rights. Were it the case that that was how ONI was proceeding, it is inexplicable that there was no specific reservation of the sort and in the terms set out in the previous paragraph.

88 This leads to the third point that is arguably decisive in itself. As we have just observed, in the way ONI approached the issue, the Tribunal would only get to consider the merits if it disagreed with ONI on the Striking Out Application. But ONI never intimated to the Tribunal that it should *never* get to consider the merits *because there was no situation in which the merits could fairly be entertained*. Yet that is precisely what it now contends before the court. In truth, ONI's conduct before the Tribunal was inconsistent and incompatible with its current position that the breach in question was incapable of remedy. If ONI believed that to be the case, it should have made that clear to the Tribunal, instead of dedicating time and resources to addressing the case on the merits.

89 Although ONI did apply to strike out GNC's Quantum Case, its *alternative* position in the event that that failed was not that the conduct of the arbitration was then irretrievably flawed and prejudiced, but rather that it would then address the case on its merits. ONI never intimated to the Tribunal that its position was that if GNC's Quantum Case was *not* struck out, the arbitration would be *fatally flawed* and, in any case, could not proceed. Instead, by making submissions on the merits of GNC's Quantum Case, ONI led the Tribunal to proceed on the basis that *either* course of action (striking out or deciding the claim on the merits) was open to it.

90 At the end of the hearing, ONI's position was that the claim for damages should be disallowed either because it was a new case and should be struck out, or on the merits. There was no hint of a *third* position which is that if its Striking Out Application failed, it wanted to have the opportunity to raise further arguments and evidence before the merits were considered, these being the matters now raised by way of the Due Process Complaints; nor that if it failed on the merits, it would then seek to persuade a court to set aside any unfavourable award on the ground that the Tribunal *could not* fairly have

considered the very merits that ONI had addressed without success. This is fatal to its present claim:

(a) On one hand, if ONI is correct that it was not possible for the merits of GNC's Quantum Case to be dealt with at that stage without ONI having the chance to raise new evidence, get more documents, or recall witnesses, *it never said that*.

(b) Alternatively, if ONI's position is that the new claim *could not be dealt with at all* because too much water had flowed under the bridge with evidence having been led and tested on a certain basis, it equally never intimated that, and instead, it *did* go on to address the merits. By doing so, it made it impossible for it to contend that too much water had already flowed.

(c) And finally, if ONI's position is that the new claim could be dealt with in the event the Striking Out Application was dismissed, but only if the Tribunal agreed with ONI, and if it did not, then ONI would reopen its procedural objection, then that is precisely what amounts to impermissible hedging.

91 Seen in light of the following paragraph in *China Machine* (at [168]), it is clear that ONI's conduct amounted to impermissible hedging:

> … An assertion that the tribunal has acted in material breach of natural justice is a very serious charge, not just for the imputation that such an allegation makes as to the *bona fides* and professionalism of the tribunal, but also for the grave consequence it might have for the validity of the award. For this reason, *there can be no room for equivocality in such matters*. ***An aggrieved party cannot complain after the fact that its hopes for a fair trial had been irretrievably dashed by the acts of the tribunal, and yet conduct itself before that tribunal "in real time" on the footing that it remains content to proceed with the arbitration and obtain an***

> ***award, only to then challenge it after realising that the award has been made against it.*** In our judgment, such tactics simply cannot be countenanced.
>
> [emphasis in original in italics, emphasis added in bold italics]

Observations on CAJ v CAI

92 In its submissions, ONI sought to analogise the facts of the present case with that in *CAJ v CAI*. We make a few observations in this respect.

(1) *CAJ v CAI* is distinguishable from the present case

93 When it comes to impermissible hedging, a key concern is *whether what is now complained of was specifically placed before the tribunal*. In our opinion, two key distinctions can be drawn between *CAJ v CAI* and the present case.

94 First, in *CAJ v CAI*, there was *no question* that the respondent had objected to the introduction of the EOT Defence. Unlike ONI, the respondent in *CAJ v CAI* never suggested or gave the impression that it was willing and able to address the EOT Defence on the substantive merits.

95 Second, it is also important that the respondent in *CAJ v CAI* had engaged with the merits of the EOT Defence *in a* "*cursory manner*" and therefore was not, and *could not have been*, taken to have actually engaged the EOT Defence on the merits. This was clearly a crucial point of consideration in *CAJ v CAI*, both by the courts at first instance and on appeal:

> (a) In *CAI v CAJ* [2021] 5 SLR 1031 ("*CAJ v CAI (HC)*") at [133], the High Court found that the "*brief* observations in [the respondent's closing submissions] do not constitute a 'fair and reasonable opportunity' to respond to the EOT Defence" [emphasis added]. The court held there was "nothing inherently inconsistent with *briefly*

pointing out obvious flaws with the EOT Defence while simultaneously objecting in principle to its late introduction" [emphasis added].

(b) On appeal, the Court of Appeal upheld the High Court's decision, and held that it would be manifestly unfair to treat the respondent's reaction in raising "threshold arguments" as equivalent "to a fair opportunity to address the EOT Defence, or as an attempt to hedge its position" (*CAJ v CAI (CA)* at [65]).

96 The authors of *The Law and Theory of International Commercial Arbitration in Singapore* (Academy Publishing, 2022) made the following observation, in respect of the decision in *CAJ v CAI (CA)* (at para 8.62):

> … Presumably, had the objection been *dealt with extensively* by the plaintiff in its submissions and on the evidence, *without any preliminary objection to the effect that further evidence was required to properly evaluate the merits*, the court might have concluded that the plaintiff still had every reasonable opportunity to address the relevant issues, notwithstanding the late introduction of the defence.
>
> [emphasis added]

(2) The burden of seeking rectification of a procedural breach falls on the complaining party

97 In *CAJ v CAI*, an argument was advanced at first instance to the effect that the respondent should have "proactively sought leave to adduce further evidence, test the evidence adduced by the defendants or tender further legal submissions" (see *CAJ v CAI (HC)* at [134]). The High Court held that the burden of seeking leave to introduce a new defence fell on the applicant, which was the party seeking to do so, and it was *only if the applicant succeeded in introducing the new evidence* that the respondent would "then have the burden of objecting to the EOT Defence and/or to seek further directions from the Tribunal in respect of it" (*CAJ v CAI (HC)* at [135]). In the present case, ONI

makes a similar argument that the SICC "should not have imposed the burden on [ONI] to seek to reopen the hearing, to renew the application for disclosure, to apply to lead further evidence, or to apply to resume cross-examination".

98 We disagree. That GNC bore the burden of seeking leave to introduce a new argument, which it ostensibly failed to discharge, forms *the very substance* of the procedural unfairness complained of. Faced with this, ONI could have waived the point or given fair intimation to the Tribunal that it objected to this course. That is what ONI did by making the Striking Out Application. But the difficulty for ONI is that it did not stop there. It then went on to address the merits without raising the possibility of redressing the grounds for objecting by seeking the remedial options it now says it lost by having the merits ruled on.

(3) The duty to provide fair intimation can arise even before the tribunal makes an adverse ruling on the procedural objection

99 In *CAJ v CAI (HC)*, the High Court held that the respondent's duty to provide fair intimation and/or to seek to suspend proceedings arose "only if and when the Tribunal had made a ruling on the EOT Defence". As the ruling was made as part of the final award, the respondent had "no opportunity to give any unequivocal intimation to the Tribunal to object to the manner in which the Tribunal proceeded" (*CAJ v CAI (HC)* at [142]–[150]). On appeal, the Court of Appeal held that "until an adverse ruling was made by the Tribunal in relation to the EOT Defence, it would be premature for the respondent to alert the Tribunal of any potential challenge to its decision" (*CAJ v CAI (CA)* at [168]).

100 Relying on this, ONI submits as follows:

> At the time the February 2024 Hearing concluded, there was no indication by the Tribunal that it agreed to allow GNC's new quantum case. The first time that ONI was made aware of that was when the Award itself was delivered. In those

> circumstances, as the CA held in *CAJ*, it would have been premature for ONI to alert the Tribunal of any potential challenge to its Award on the grounds that it exceeded the scope of the parties' submission to arbitration and/or had been made in breach of natural justice, and it was more than sufficient and appropriate for ONI to have clearly set out its due process objections to the Tribunal's consideration of the GNC's new quantum case.

101 In our judgment, *CAJ v CAI* must be understood in its context – the Court of Appeal had found that the EOT Defence was "foisted upon the respondent at the eleventh hour in the Arbitration", and "the respondent did its best to meet the new defence by objecting to it and raising several threshold arguments" (*CAJ v CAI (CA)* at [165]). The holding in *CAJ v CAI* does not stand for the proposition that it is generally open to a party to argue that its duty to give fair intimation *had not arisen* in situations where the tribunal delivers its decision on the procedural objection as part of the final award. That happened to be so in *CAJ v CAI* because, as a matter of fact, the party seeking to set aside the award never substantively engaged with the merits of the new defence, beyond raising some threshold objections, that if anything, would have supported the argument for striking it out.

102 By contrast, in the present case, ONI's difficulty is that it did go on to address the merits as its alternative to having GNC's Quantum Case struck out. ONI knew that these were being dealt with at the same time and its failure to take the explicit stance that the merits could not fairly be considered either at all or subject to the remedial measures it now points to in its Due Process Complaints, is fatal to its present contention to this effect for the reasons set out at [90] above. And unlike the position in *CAJ v CAI,* ONI was fully aware that the Tribunal would go on and consider the merits if it rejected the striking out application. In those circumstances, it was incumbent on ONI to give clear

intimation of its position that the merits could not be entertained, if it considered that to be so. Instead, it did the opposite by addressing the merits.

Issue 3(b): Whether the award for Post-Termination Damages was made outside the scope of submission to arbitration and/or in breach of the rules of natural justice

103 Having found that ONI's conduct in respect of GNC's Quantum Case amounted to impermissible hedging such that it could not validly maintain an objection to that claim being ruled upon by the Tribunal, it is not necessary for us to make a finding on whether GNC's Quantum Case was in fact a new and unpleaded claim, and whether the award for Post-Termination Damages was made outside the scope of submission to arbitration and/or in breach of the rules of natural justice.

104 We make a brief observation, however, that ONI's argument in respect of the scope of submission to arbitration must fail. The court ascertains the matters within the scope of the parties' submission to arbitration by reference to, among others, the closing submissions in the arbitration (*CJA v CIZ* [2022] 2 SLR 557 ("*CJA v CIZ*") at [38]). ONI having addressed GNC's Quantum Case on the merits during the February 2024 Hearing, we consider that the claim was brought within the scope of the parties' submission to arbitration.

Issue 4: Whether Order 3 was made outside the scope of submission to arbitration and/or in breach of the rules of natural justice

105 In the arbitration, GNC sought specific performance of the post-termination covenant in the Franchise Agreement (see [9] above). The Tribunal granted that relief; its order for specific performance was set out in comprehensive terms in Order 3, which comprises several orders (see [25]

above). It is undisputed that the Tribunal did not seek the assistance of parties in crafting Order 3 (Judgment at [102]).

106 ONI claims that the terms of Order 3 fell outside the scope of the parties' submission to arbitration, and/or that the Tribunal breached the rules of natural justice in crafting Order 3 on its own. In its cross-appeal in CAS 6, GNC argues that orders 3(d)(ii), 3(d)(iii) and 3(f) (these being the three orders which were denied enforcement by the SICC) were not made in breach of natural justice and ought to be enforced.

Whether Order 3 was made within the scope of submission to arbitration

The applicable law

107 Section 31(2)(*d*) of the IAA provides that the court may refuse the enforcement of a foreign arbitral award where the award "contains a decision on the matter beyond the scope of the submission to arbitration".

108 In determining whether an award falls outside the scope of the submission to arbitration, the court adopts a two-stage enquiry: (a) first, it determines what matters were within the scope of submission to the arbitral tribunal; (b) second, it determines whether the award involved matters that were outside the scope of the submission to arbitration and were, accordingly, irrelevant to the issues requiring determination (*CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 at [30]). The court ascertains the matters within the scope of the parties' submission to arbitration by reference to: (a) the parties' pleadings; (b) lists of issues; (c) the opening statements; (d) the evidence adduced; and (e) the closing submissions in the arbitration (*CJA v CIZ* at [38]).

Our decision

(1) The Tribunal was not confined to granting specific performance relief in specific terms

109 ONI's main argument is that under Pennsylvanian law, the Tribunal was confined to granting specific performance relief in the *specific terms* sought by GNC in its Statement of Claim. For context, in its Statement of Claim in the arbitration, GNC asked that the Tribunal:

> (b) Declare that the Post-Termination Covenants are valid and enforceable against ONI, and Order ONI to strictly comply with all post-termination covenants, as follows:
>
> > (i) Order ONI to assign the Singapore Leases to GNC;
> >
> > (ii) Order ONI to transfer all copies of its customer lists to GNC; and
> >
> > (iii) Enjoin ONI from competing with GNC in Singapore until January 1, 2026.

110 In essence, ONI submits that by imposing additional terms on its grant of the order for specific performance, the Tribunal had *added* to the terms of the Singapore Agreements and in so doing, acted beyond the scope of the parties' submission to arbitration. We reject this argument for three reasons.

111 First, as GNC points out, its claim for specific performance in the Statement of Claim was accompanied with a prayer for "such other relief as the Tribunal deems necessary, fair and just".

112 We also agree with the SICC's observations that the parties' exchange of arguments in the arbitration "introduced into the pleadings an aspect of the balancing of the equities between the parties and third parties in how any order was to be framed". For present purposes, it suffices to reproduce the SICC's summary of this exchange (Judgment at [80]):

> … the Franchisees' response to the claim for orders for the assignment of the leases was to set up competing equities. In its Response to the Franchisor's Application for Interim Measures the Franchisees set up the hardship of the destruction of their business, and the [effect on] third parties, in particular the retrenchment of over 300 employees. In its Statement of Defense and Counterclaims in the arbitration these matters were repeated. The Franchisor engaged with these propositions by responding in its Reply and Defence to Counterclaim that these consequences were of the Franchisees' own making. The Franchisees repeated their position in their Rejoinder and Reply on Counterclaim and also submitted that damages would be an adequate remedy. At this point, the Franchisor filed a Rejoinder to the Reply on Counterclaim in which it reiterated that the only way to remedy the conduct of the Franchisees and fairly restore the Franchisor's business was to transfer the leases. However, the Franchisor offered to employ current non-executive employees of the Franchisees if it were to run the stores. This involved and was directed to dealing with the third-party hardship of employees. This introduced into the pleadings an aspect of the balancing of the equities between the parties and third parties in how any order was to be framed.

113 In our view, the parties having both expressly and impliedly invoked the *equitable* jurisdiction of the Tribunal, it was open to the Tribunal to subject the order for specific performance that it decided to make to terms that it considered just.

114 Second, ONI's reliance on Pennsylvanian authorities must be viewed in context. Even if the Tribunal had misapprehended the extent of its powers in granting equitable relief under Pennsylvanian law, this is an *error of law* distinct from the present analysis of whether the Tribunal had acted within the scope of submission to arbitration; the former cannot constitute grounds for setting aside or resisting the enforcement of the Award.

115 Third, and in any event, a distinction must be drawn between the enforcement of an *uncertain* clause in an agreement, and the enforcement of a certain clause *with the imposition of additional terms*. ONI cites a number of

Pennsylvanian authorities for the proposition that the court may only compel performance of the contract where there is "agreement as to the nature of the performance", and where the performance required is uncertain, the court cannot "write the contract for them". In the present case, however, there is no allegation of *uncertainty* as to the nature of the performance required under the post-termination covenant in cl 13.4 of the Franchise Agreement. Instead, what the Tribunal did was to grant the order for specific performance *with the imposition of additional terms*.

(2) The terms of Order 3 were relevant to matters within the scope of the parties' submission to arbitration

116 Having found that the Tribunal was not confined to granting specific performance relief in specific terms, the question is whether the specific terms in Order 3 were relevant to matters within the scope of the parties' submission to arbitration. As to this, we agree with the SICC that the terms of Order 3 were "part of or connected to the enforcement of [the post-termination covenant] whether directly or in fashioning an appropriate order in equity which justly resolves the competing considerations put forward by the [parties] during the arbitration" (Judgment at [99]):

(a) First, as the SICC pointed out (see Judgment at [92] and [94]), orders 3(a) and 3(c) simply give effect to the primary obligation in cl 13.4 of the Franchise Agreement (the post-termination covenant). Order 3(a) requires ONI to provide a copy of the lease to GNC, while order 3(c) contains the "fundamental obligation" to assign the leases.

(b) Second, order 3(b) (and by extension, order 3(f)) is concerned with preventing harm to third-party employees. It is undisputed that one

of ONI's key arguments against the grant of specific performance was the possibility of "third party harms" (see [112] above).

(c) Third, order 3(d) deals with landlord consent. As noted by GNC, ONI had at numerous junctures raised the obstacle presented by the requirement to obtain landlord consent – such as, for instance, the "catastrophic effects" of, among other things, "early termination costs".

(d) Fourth, as the SICC points out, order 3(e) addresses "the reality of the situation made clear in the evidence that [GNC] may not want all the store sites" (Judgment at [96]).

(e) Finally, order 3(g), in enjoining ONI from taking any actions that would "impede, interfere with, or obstruct in any way the full implementation of [Order 3]" (see [25] above) is clearly concerned with the protection and enforcement of the other orders in Order 3 (see Judgment at [98]).

117 Insofar as ONI takes issue with the *lack of discussion* on the terms of Order 3, we agree with GNC that this is in essence an argument relating to natural justice, which we turn to next.

Whether Order 3 was made in breach of natural justice

The applicable law

118 Section 31(2)(*c*) of the IAA provides that the court may refuse the enforcement of a foreign arbitral award on the basis that the party against whom enforcement is sought was "otherwise unable to present [its] case in the arbitration proceedings".

119 A party seeking to assert a breach of natural justice must establish: (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 its rights (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29]). These are cumulative requirements (see *Soh Beng Tee* at [94]–[95]).

120 The present case concerns the second of the two pillars of natural justice, namely the fair hearing rule, which requires that parties be afforded a fair hearing and a fair opportunity to present their case (*Soh Beng Tee* at [43]). The fair hearing rule requires that each party be afforded a reasonable opportunity to present its case; this includes a responsive aspect (meaning that a party must be afforded an opportunity to respond to the case made against it). In *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 at [147], the High Court held that it would be wrong for a tribunal to deny a party a reasonable opportunity to present its responsive case by adopting a chain of reasoning in its award which it has not given the complaining party a reasonable opportunity to address. But this would not be the case if the tribunal adopts a chain of reasoning with sufficient nexus to the case advanced by the parties, of which the parties had reasonable notice that the tribunal could or might adopt (*Vietnam Oil and Gas Group v Joint Stock Company (Power Machines - ZTL, LMZ, Electrosila Energomachexport)* [2025] 2 SLR 273 at [36]). A particular chain of reasoning is open to the tribunal if it: (a) arose from the party's express pleadings; (b) arose by reasonable implication from a party's pleadings; (c) is unpleaded but arose in some other way in the arbitration and was reasonably brought to the opposing party's actual notice; or (d) flowed reasonably from the arguments actually advanced by either party or was related to those arguments (*BZW v BZV* at [60(b)]). The essence of ONI's complaint is that because the

Tribunal did not consult the parties on the specific terms of Order 3, it had no opportunity to address the Tribunal on how Order 3 should be framed.

Our decision

(1) It was reasonably foreseeable that the Tribunal would grant Order 3 on specific terms

121 In *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 ("*Glaziers*"), the Court of Appeal held that "where the outcome of a dispute is surprising to the parties because they have omitted to address a particular issue *even though* they could reasonably have foreseen that the issue would form part of the court's decision" [emphasis in original], they cannot seek to set aside the decision on the basis that they were deprived of a fair hearing (at [60]).

122 The court in *Glaziers* identified a "category of cases where the parties are precluded from complaining of a breach of the fair hearing rule because they ought reasonably to have foreseen that the issue in question … would arise" (*Glaziers* at [63]). One such case was *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM*"), where it was alleged that the arbitrator, faced with a question of whether a contractual term was a condition or an innominate term, concluded that the term was a collateral warranty. Although it was eventually held that the case before the arbitrator was that the term was a warranty, the High Court held that in any event, there would have been no breach of the fair hearing rule, because the decision was not only reasonably connected to the arguments raised by both parties, but was also a "reasonable follow-through" from the arbitrator's finding that the term was not a condition (*TMM* at [70]). The court observed (*TMM* at [65]):

> … 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 straitjacketed 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 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]

123 In *Glaziers*, the respondent argued that an adjudicator had breached the principles of natural justice by failing to afford it an opportunity to address him on the standard of persuasion. The court rejected this argument, finding that the standard of persuasion was "*so integral and crucial to the adjudicator's very task of determining the dispute* that there was no way he could have decided the dispute without coming to a position on the standard to be applied" [emphasis added] (*Glaziers* at [63]). The court went on to observe (*Glaziers* at [64]):

> … it could not have been a breach for the adjudicator to have omitted to invite submissions from the parties as to the applicable standard of persuasion. *The applicable standard was a question so obviously crucial to his determination that he was not obliged to highlight to the parties that it would be a live issue.* If the parties decided not to address it, knowingly or otherwise, they cannot complain that they had no fair or reasonable opportunity to be heard. …
>
> [emphasis added]

124 In *CZT v CZU* [2024] 2 SLR 216 ("*CZT v CZU*") at [19], the Court of Appeal held that it was not necessarily unfair for a court or tribunal to reach a conclusion on the meaning of a contractual provision "by drawing upon … relevant surrounding circumstances that may have been left unaddressed by the parties in what they chose to put to the court or tribunal to persuade the court or

tribunal towards their asserted preferred meaning". Crucially, the court observed (*CZT v CZU* at [19]):

> … *The possibility of such inheres in the nature of the task or mandate to come to a view about meaning.* Whether the parties have been treated unfairly will be evaluated by reference to all the circumstances and the principles attending the obligation to afford natural justice or as it is sometimes called, procedural fairness.
>
> [emphasis added]

125 In our judgment, it was reasonably foreseeable that the Tribunal would craft Order 3 in a manner that was different from what the parties had each sought by imposing terms that it considered would fairly address the various concerns that were expressed and objections that were raised. Indeed, it might even be said to have been *inherent* in the nature of its task of "balancing equities", that the Tribunal would craft Order 3 on detailed terms. This is notwithstanding that the parties had pursued binary positions – as this court observed in *Soh Beng Tee*, it is "almost invariably the case that parties propose diametrically opposite solutions to resolve a dispute", expecting the arbitrator to "select one of these alternative positions". However, the arbitrator is "perfectly entitled to embrace a middle path (even without apprising the parties of his provisional thinking or analysis) so long as it is based on evidence that is before him" (*Soh Beng Tee* at [65(e)]).

(2) The terms of Order 3 flowed reasonably from arguments actually advanced in the arbitration

126 As earlier observed, ONI's argument before the Tribunal was that specific performance ought not to be granted in light of various difficulties including potential hardship caused to ONI and its employees (see [112] above). It flowed reasonably from ONI's argument that specific performance *could* be granted, if such potential hardship was mitigated. In crafting the terms of

Order 3, the Tribunal was clearly seeking to mitigate any such hardship. The Tribunal cannot be said to have "conducted itself either irrationally or capriciously such that 'a reasonable litigant … could not have foreseen the possibility of reasoning of the type revealed in the award'" (*Soh Beng Tee* at [65(d)]). It follows that there was no breach of natural justice.

127 This finding extends also to the three orders that were found by the SICC to have been made in breach of natural justice (the subject of GNC's appeal in CAS 6) – namely orders 3(d)(ii), 3(d)(iii) and 3(f). We note that the SICC accepted that ONI was deprived of an opportunity to make submissions *which had a real chance of resulting in an adjustment to the three orders*, and therefore, saw it fit to refuse enforcement of the said orders. However, this, with respect, overlooked the fact that the requirements for breach of natural justice, as set out in *Soh Beng Tee*, are cumulative (see [119] above). It is necessary *first* to establish that there *was* a breach of a rule of natural justice which led to prejudice. If there was no obligation on the Tribunal in the circumstances of this case, to have specifically raised the possibility of Order 3 taking the form it did because this possibility was a reasonably foreseeable outcome of the way the evidence was led at the arbitration, the question of prejudice becomes irrelevant. For this reason, we find that the SICC erred in denying the enforcement of the three orders.

Conclusion

128 For these reasons, we dismiss ONI's appeal in CAS 5 and allow GNC's appeal in CAS 6. We will hear the parties on costs. Unless they are able to come to an agreement on costs within 14 days of the date of this judgment, or such extended period as they may agree and inform us of, they are to file within ten days of the expiry of the aforesaid period of 14 days or any agreed extension

thereof, written submissions limited to ten pages on the orders of costs they contend should be made.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

David Edmond Neuberger
International Judge

Davinder Singh s/o Amar Singh SC, Vishi Sundar, Sambhavi Rajangam and Michelle Leong Wai Ching (Davinder Singh Chambers LLC) for the appellants in CA/CAS 5/2025 and respondents in CA/CAS 6/2025;
Siraj Omar SC, Cheng Hiu Lam Larisa and Kim Bum Soo (Siraj Omar LLC) (instructed), Aw Hon Wei Adrian and Choi Yee Hang Ian (Resource Law LLC) for the respondent in CA/CAS 5/2025 and appellant in CA/CAS 6/2025.