IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA(I) 4

Court of Appeal / Civil Appeal from the Singapore International Commercial Court No 8 of 2025

Between

(1) DPT
(2) DPU

… *Appellants*

And

(1) DPV
(2) DPW
(3) DPX

… *Respondents*

In the matter of Originating Application No 10 of 2025

Between

(1) DPT
(2) DPU

… *Applicants*

And

(1) DPV
(2) DPW
(3) DPX

… *Respondents*

JUDGMENT

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

[Arbitration — Award — Recourse against award — Breach of natural justice]

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DPT and another
v
DPV and others

[2026] SGCA(I) 4

Court of Appeal — Civil Appeal from the Singapore International Commercial Court No 8 of 2025
Ang Cheng Hock JCA, Kannan Ramesh JAD and Robert French IJ
8 July 2026

15 September 2026 Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 CA/CAS 8/2025 ("CAS 8") is the appeal of the first and second appellants, DPT and DPU respectively ("Appellants"), against the Singapore International Commercial Court's ("SICC") decision to dismiss Appellants' application in SIC/OA 10/2025 ("OA 10"). OA 10 was an application to set aside the Partial Award dated [redacted] ("Partial Award") in an arbitration ("Arbitration") administered by the Singapore International Arbitration Centre under its rules by a three-member arbitral panel ("Tribunal"). The SICC's judgment may be found in *DPT v DPV* [2025] SGHC(I) 29 ("Judgment") and we will adopt the abbreviations and redactions used in the Judgment to the extent necessary.

2 Having considered the parties' submissions, we dismiss CAS 8. At its core, this appeal represents the Appellants' attempt to present what is fundamentally an impermissible merits-review of the Partial Award as grievances about breaches of natural justice by the Tribunal. This court has previously cautioned against such attempts, stating clearly that "nitpick[ing] at the awards in order to launch backdoor appeals against the merits of the arbitral proceedings" or trawling through the materials before the tribunal with a fine-tooth comb to contend that something was raised (however tangentially) and not dealt with would not be permitted (*Palm Grove Beach Hotels Pvt Ltd v Hilton Worldwide Manage Ltd* [2025] 1 SLR 526 ("*Palm Grove*") at [2]). This case presents an opportunity to reinforce that message because the Appellants' challenge was precisely of that character.

Background facts

3 The detailed background facts have been canvassed in the Judgment. For present purposes, we set out the salient facts.

4 The Appellants are sister companies, and are both incorporated in [Country A]. Their parent company is [Company A], who was not a party to the Arbitration. The third respondent, DPX, is a joint venture company with its core business in financial technology. The first and second respondents, DPV and DPW respectively, are individuals (collectively "Respondents"). At the material time, DPV was the Group Chief Executive Officer ("CEO") of DPX, while DPW was its Head of Business Planning & Intelligence / Group Chief Strategy Officer, though he was employed by a wholly owned subsidiary of DPX based in [Country A] (referred to as "DPXA"). The Respondents were the claimants and the Appellants and DPX were the respondents in the Arbitration.

Background to the dispute

5 Sometime in 2016, the CEO of [Company A] entered into discussions with the Respondents to explore the possibility of developing a financial technology business. The discussions culminated in the presentation of a proposal to DPU's board of directors ("Board") for the incorporation of a joint venture company to pursue the business opportunity. That joint-venture company was incorporated in Singapore as DPX on [date redacted], and 900 shares in DPX were allotted as follows:

Shareholder	**Number of Shares**	**Ownership Percentage**
DPU	750	83.33%
DPV	100	11.11%
DPW	50	5.56%

6 On 9 March 2017, DPV and DPW transferred their respective shareholdings in DPX to DPU in anticipation of DPU making further investment in DPX. This brought DPU's shareholding in DPX to 900 shares. On 17 March 2017, DPU, the Respondents, and DPX entered into a shareholders' agreement ("SHA") and an investment agreement ("IA") (collectively, "Agreements"), to develop a pan-regional financial technology business. The IA provided for, amongst other things, investments by DPU to take place in tranches, and shares to be issued to the Respondents in two tranches subject to vesting conditions to be subsequently agreed. On 5 April 2017, DPU's Board approved the vesting conditions. On 17 April 2017, DPX issued 2,850 shares to DPU, bringing DPU's total shareholding to 3,750 shares. On 27 February 2018, DPX issued an additional 3,178 shares to DPU, bringing DPU's total shareholding to 6,928 shares.

7 On 14 August 2018, DPX's Board passed a resolution for 572 shares to be issued to DPU, 600 shares to DPV, and 300 shares to DPW. As a result, the shareholdings in DPX as at 15 August 2018 were as follows:

Shareholder	**Number of Shares**	**Ownership Percentage**
DPU	7,500	89.29%
DPV	600	7.14%
DPW	300	3.57%

8 On 15 August 2018 and 4 September 2018, DPX issued two convertible loan notes ("CLNs") for US$6,188,155 and US$8,474,576 respectively to DPU. On 28 March 2019, DPU transferred its shareholding in DPX as well as the two CLNs to DPT. Between May 2019 and August 2020, DPX issued a further 10 CLNs, this time to DPT. The 12 CLNs and the total debt thereunder shall be respectively collectively referred to as the "DPT CLNs" and the "CLN Debt". Each of the DPT CLNs was structured in broadly identical terms and provided for conversion of debt to equity in certain situations.

9 The relationship between the Appellants and the Respondents began to deteriorate sometime in early 2020. DPW's and DPV's employment were subsequently terminated in December 2020. Between December 2020 and January 2021, DPT sent notices purporting to terminate the Agreements. On 10 February 2021, the Respondents were removed as directors of DPX by an ordinary resolution of DPX's Board. The Respondents remained shareholders of DPX. On 12 May 2021, Mr [X], the then-CEO of DPX, submitted a board paper seeking approval to convert the DPT CLNs to ordinary shares in DPX. The Respondents did not receive advance notice of the Board meeting and Mr [X]'s proposed resolution that was tabled for that meeting. They were only

informed of the resolution by email on 12 May 2021, on the day of the Board meeting. The Respondents did not attend the Board meeting, and the resolution was passed by DPX's Board. On 21 May 2021, pursuant to the resolution that was passed on 12 May 2021, the DPT CLNs were converted to equity, with 197,309,509 ordinary shares in DPX issued to DPT. The Respondents were not given due notice of this. As a result, the Respondents' shareholding in DPX was significantly diluted from 10.71% to 0.4% with a corresponding increase in DPT's shareholding from 89.29% to 99.6%.

The Arbitration

Procedural history

10 On 18 November 2021, the Respondents commenced arbitration against the Appellants and DPX by lodging the Notice of Arbitration. Two claims were made: (a) as against the Appellants and DPX, for breaches of the Agreements; and (b) as against the Appellants for minority oppression under s 216(1) of the Companies Act 1967 (2020 Rev Ed) ("Companies Act"). In the amended Statement of Claim ("SOC"), the Respondents sought, among other things, for:

> (a) an order for the 197,309,509 shares in DPX that were issued to DPT on 21 May 2021 to be struck down and invalidated; and/or
>
> (b) DPT to buy out the Respondents' shares in DPX pursuant to s 216(2)(*d*) of the Companies Act on such terms to be determined by the Tribunal.

11 The Appellants submitted their first round of witness statements on 14 June 2023. Over 14 and 15 August 2023, the Appellants and the Respondents exchanged their second round of witness statements. On 31 August 2023, the

Respondents' counsel informed the Tribunal that subpoenas granted by the General Division of the High Court had been served on: (a) Mr [X] on 29 August 2023 for production of documents; and (b) Mr [X] and Ms [Y] (who was the former Head of Finance of DPXA) on 21 and 30 August 2023 respectively requiring them to testify at the evidentiary hearing of the Arbitration. On 14 September 2023, the Tribunal directed, among other things, that:

(a) Mr [X] and Ms [Y] were to provide their answers to questions provided by the Respondents in writing;

(b) the Appellants / DPX were at liberty to file responsive evidence to those answers; and

(c) the Appellants / DPX would be permitted to cross-examine Mr [X] and Ms [Y], and the Respondents would be permitted to re-examine them.

12 Mr [X] and Ms [Y] furnished their answers on 23 September 2023. Subsequently, on 2 October 2023, the Appellants submitted responsive witness statements to the answers furnished by Mr [X] and Ms [Y] ("Responsive Evidence"). The Responsive Evidence comprised ten witness statements.

13 The evidentiary hearing of the Arbitration was held over ten days from 2 to 6 and 9 to 13 October 2023. Closing and reply closing submissions were subsequently exchanged in November 2023.

The Partial Award

14 On [redacted], the Tribunal issued the Partial Award. Among other things, the Tribunal unanimously determined that:

(a) the purported termination of the Agreements by DPT was in breach of the Agreements and not valid;

(b) DPT and/or DPX had variously breached the SHA and/or IA;

(c) the following acts and breaches were found to be oppressive both individually and cumulatively:

(i) invalidly terminating the Agreements;

(ii) denying the Respondents the right to remain as directors;

(iii) dilution of the Respondents' shareholding in DPX as a result of the conversion of the DPT CLNs; and

(iv) DPT launching its e-wallet for digital payments.

15 In the round, the Tribunal found that DPT had acted in a manner oppressive to the Respondents as the minority shareholders of DPX, in contravention of s 216(1) of the Companies Act. The Tribunal also declared the issuance of shares to DPT on 21 May 2021 (pursuant to the conversion of the DPT CLNs) "null and void". The Tribunal further ordered the Appellants to buy out the Respondents' shares. However, a dissenting member of the Tribunal ("Minority") disagreed with a majority of the Tribunal ("Majority") on the price to be paid pursuant to the buy-out order. The Majority ordered the Appellants to buy out the Respondents' shares for the sum of US$14,736,000, while the Minority was of the view that the total buyout price should be US$7,003,500. This difference of views was centred around the relevance of the CLN Debt to the valuation of the Respondents' shares in DPX, which had a knock-on effect on the determination of the price to be paid under the buy-out order.

16 Briefly, the Majority found that the Respondents were entitled to 12.28% of the issued share capital of DPX pre-dilution following the conversion of the DPT CLNs and it was not necessary for the Respondents to make a notional top-up to prevent the improper dilution of their shares as the issue of a top-up arose solely because of the Appellants' wrongful and oppressive dilution of the Respondents' shareholdings. The Majority further found that the DPT CLNs were "worthless as debt" and therefore did not have to be taken into account in the valuation of the shares for the purpose of determining the price to be paid under the buy-out order. On the other hand, the Minority was of the view that the CLN Debt should be taken into account in the valuation of the shares and therefore the buy-out price for the Respondents' shares, or if that debt was not to be taken into account, it should be assumed that the Respondents had contributed such amount as was required to maintain their percentage interest in DPX enhanced by disregarding the CLN Debt. The Minority further disagreed that the CLN Debt should be treated as being worthless.

The proceedings below

The parties' cases

The Appellants' case

17 In OA 10, the Appellants claimed that the Tribunal committed a breach of natural justice. Two grounds were raised in support.

18 First, the Appellants contended that the Majority adopted a chain of reasoning on the buy-out price which the Appellants did not have reasonable notice of ("Buy-out Issue") for the following reasons:

(a) The parties' agreed position was that the buy-out order would be made on the basis that the DPT CLNs were converted and the

Respondents would be allowed to subscribe *pari passu* to maintain their percentage shareholding in DPX. This was described by the parties as the "Second Scenario", a term which we adopt to describe this scenario for the purpose of this judgment. It was alleged that the Second Scenario was stated in the Respondents' Opening Statement to be their case, and this was confirmed by counsel for the Respondents, Mr Calvin Liang ("Mr Liang"), in his responses to questions posed by the Tribunal. It was only in their closing submissions that the Respondents raised for the first time that the Tribunal ought to order a buy-out based on a post-conversion valuation without a notional top-up. The parties described this as the "Third Scenario", a term which we adopt to describe this scenario for the purpose of this judgment. In breach of natural justice, the Majority ordered a buy-out on the basis of the Third Scenario, despite the Second Scenario being the parties' agreed position and the Respondents' confirmation to this effect.

(b) By doing so, the Majority adopted a chain of reasoning which was not reasonably foreseeable and which the parties did not have reasonable notice of, namely that: (i) the DPT CLNs were "worthless as debt"; and consequently (ii) DPX's pre-conversion and post-conversion values would be the same.

(c) The breaches of natural justice were connected to the making of the Partial Award and had thereby prejudiced the Appellants.

19 Second, the Appellants argued that the Tribunal had accepted the evidence of Mr [X] without considering the Responsive Evidence ("Responsive Evidence Issue"). The Appellants made the following arguments:

(a) The Tribunal made a series of comments which suggested that the Responsive Evidence was not relevant, despite not fully considering the Responsive Evidence.

(b) The Tribunal failed to refer to the Responsive Evidence in the Partial Award leading to the inference that the Tribunal had failed to consider the Responsive Evidence.

(c) If the Responsive Evidence had been considered, there was a real prospect of the Tribunal assessing Mr [X]'s evidence with greater circumspection which in turn could impact the Tribunal's view of the credibility of Mr [X]'s evidence. As a result of the Tribunal's failure, the Appellants suffered prejudice.

The Respondents' case

20 On the Buy-out Issue, the Respondents made the following main submissions:

(a) The Appellants' argument based on the Third Scenario was time-barred under O 23 r 7(3)(*a*) of the Singapore International Commercial Court Rules 2021 because it was raised for the first time in their written submissions.

(b) In any event, the Third Scenario had always been the Respondents' primary case, and it was open to the Tribunal to adopt it in its discretion.

(c) Finally, the Appellants did not suffer any prejudice because they failed to give "fair intimation" to the Tribunal of the alleged breach in accordance with the guidance by this court in *China Machine New*

Energy Corp v Jaguar Energy Guatemala LLC [2020] 1 SLR 695 ("*China Machine*").

21 As for the Responsive Evidence Issue, the Respondents advanced the following arguments:

(a) Various comments made by the Tribunal in the course of the evidentiary hearing suggested that it had considered the Responsive Evidence.

(b) In any event, no prejudice was caused to the Appellants because in addition to Mr [X]'s evidence, there was other contemporaneous evidence which independently demonstrated DPT's motive to dilute the Respondents' shareholdings by converting the DPT CLNs.

The SICC's decision

22 The SICC dismissed OA 10 for the following reasons.

Buy-out Issue

23 On the Buy-out Issue, the SICC made the following points:

(a) The Appellants' arguments on the Buy-out Issue based on the Third Scenario were made out of time.

(b) In any event, while the Respondents did not specifically plead the Third Scenario in the Arbitration, their pleadings were wide enough to encompass a buy-out based on a post-conversion valuation without a notional top-up, *ie*, the Third Scenario.

(c) The Third Scenario remained a live issue in the Arbitration and there was no agreement and/or understanding that it would not be part of the Respondents' case.

(d) Even if the Respondents had raised a new argument in contravention of the parties' agreement, the Appellants failed to expressly object to this and/or request to adduce further evidence to address it. In fact, the Appellants confirmed to the Tribunal that they were prepared for the Tribunal to adjudicate the dispute based on the evidence on record. They should not be allowed to resile from this position.

(e) The Majority did not adopt an unforeseeable defective chain of reasoning when it found that the DPT CLNs were "worthless as debt" and DPX's pre-conversion and post-conversion values were the same. These findings were not "wholly at odds with the established evidence".

Responsive Evidence Issue

24 On the Responsive Evidence Issue, the SICC held that the Appellants failed to establish a "clear and virtually inescapable inference" that the Tribunal failed to consider the Responsive Evidence and that a breach of natural justice had thereby been occasioned. The following observations were made:

(a) It was well-established that a tribunal did not have to deal with every argument that was made in relation to each essential issue. The apparent failures of the Tribunal to refer to the Responsive Evidence were not, on their own, relevant (much less definitive) considerations. Where the allegation was that the decision-maker had failed to consider an important issue, such silence could equally mean that the decision-maker had considered the submission and had chosen to disregard or reject it without explaining. Therefore, the mere fact that the Tribunal omitted to specifically refer to the Responsive Evidence in the Partial Award was not material to the assessment. In any event, the Tribunal did refer to the Responsive Evidence.

(b) The Tribunal had requested parties to refrain from conducting cross-examination on the matters raised in the Responsive Evidence as the evidence went to credibility and was not material on the substantive issues. A tribunal is entitled to direct the flow of cross-examination away from non-essential issues for efficiency. Importantly, the Tribunal's comments that the Responsive Evidence was not material to the substantive issues were not objected to – the Appellants' counsel did not raise any concerns at that time and was content to proceed in the proposed manner. It was thus uncharitable for the Appellants to impugn the Tribunal's attempts at effective case management.

25 In any case, the SICC was of the view that there was no prejudice caused to the Appellants as a result of the Tribunal's purported breaches of natural justice on the Buy-out Issue and the Responsive Evidence Issue.

The parties' cases on appeal

The Appellants' case

26 On the Buy-out Issue, the Appellants make three submissions.

27 First, the Appellants are not precluded by reasons of time-bar from challenging the Partial Award on the basis of the Third Scenario. The Appellants' complaint in their supporting affidavit was broad enough to cover

the Third Scenario. In any event, the Respondents were not taken by surprise by the Appellants' arguments.

28 Second, the Appellants did not have reasonable notice of the basis on which the Majority ordered the buy-out of the Respondents' shares, *ie,* the Third Scenario. The parties had agreed that the buy-out should be ordered on the basis of the Second Scenario. However, despite this, the Majority ordered the buy-out based on the Third Scenario. The Majority had departed from the parties' agreed position and thus adopted a chain of reasoning which bore no reasonable nexus to the parties' arguments, namely that: (a) the DPT CLNs were "worthless as debt"; and (b) DPX's pre-conversion value was the same as its post-conversion value.

29 Finally, the Appellants suffered prejudice as a result of the Tribunal's breaches of natural justice.

30 On the Responsive Evidence Issue, the Appellants make three broad points.

31 First, in a dispute involving heavily contested facts, the expectation is that the tribunal will analyse and form a view of the evidence given by every material witness. However, in this case, the Responsive Evidence was not discussed and analysed in the Partial Award, despite the evidence being directly responsive to Mr [X]'s evidence.

32 Second, the indications in the Partial Award that the SICC relied on were insufficient to establish that the Tribunal had considered the Responsive Evidence.

33 Finally, the SICC erred in rejecting the Appellants' submission that it was prejudiced by the Tribunal's failure to consider the Responsive Evidence. Had such evidence – which showed that Mr [X] had a vested interest in testifying against the Appellants – been considered, there was a real chance that the Tribunal might have disbelieved Mr [X]'s evidence.

The Respondents' case

34 In gist, the Respondents submit that CAS 8 is bereft of merit and is a rehash of the Appellants' "baseless complaints" in OA 10. The Respondents make the following main points.

(a) The Buy-out Issue is time-barred. In any event, the parties had reasonable notice that the Tribunal could value the Respondents' shares based on the Third Scenario.

(b) The Tribunal clearly considered the Responsive Evidence. A tribunal is not required to navigate all the arguments and evidence in its award.

(c) The rule in *China Machine* (*ie*, that the court will not accept a complaint of breach of natural justice unless fair intimation was given to the tribunal) bars both the grounds raised by the Appellants to set aside the Partial Award.

(d) In any event, the Appellants suffered no real prejudice in relation to the grounds they have raised to set aside the Partial Award.

Issues to be determined

35 Three main issues arise for determination in this appeal:

(a) First, whether the Appellants had reasonable notice of the basis upon which the Majority ordered the buy-out *ie*, the Buy-out Issue ("Issue 1"). Issue 1 raises the following four sub-issues:

(i) whether the Respondents pleaded the Third Scenario in the Arbitration;

(ii) whether the Respondents had agreed not to pursue the Third Scenario or had confirmed to the Tribunal that they would not;

(iii) whether the Appellants engaged in impermissible hedging; and

(iv) whether the Majority's findings that the DPT CLNs were "worthless as debt" and DPX's pre-conversion and post-conversion values were the same constituted a chain of reasoning that was not reasonably foreseeable and therefore one that the parties did not have reasonable notice of.

(b) Second, whether the Tribunal sufficiently considered the Responsive Evidence ("Issue 2").

(c) Third, whether the Appellants suffered prejudice as a result of the Tribunal's purported breaches of natural justice ("Issue 3").

We will address each issue sequentially below.

The applicable law

36 The applicable law has been set out in the Judgment (at [83]–[92]), which we summarise. To set aside an award for a breach of natural justice, an applicant needs to: (a) identify the rule of natural justice which was breached;

(b) establish how the rule was breached; (c) establish the way the breach was connected to the making of the award; and (d) show that the breach prejudiced the rights of the party (*BTN v BTP* [2021] 1 SLR 276 at [43]).

37 In respect of the Buy-out Issue, there may be a breach of the fair hearing rule if there is a defect in the tribunal's chain of reasoning. The applicable principles were summarised in *BZW v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(b)]:

> …
>
> (b) Two, a breach of the fair hearing rule can also arise from the chain of reasoning which the tribunal adopts in its award. To comply with the fair hearing rule, the tribunal's chain of reasoning must be: (i) one which the parties had reasonable notice that the tribunal could adopt; and (ii) one which has a sufficient nexus to the parties' arguments (*JVL Agro Industries* ([29] supra) at [149]). A party has reasonable notice of a particular chain of reasoning (and of the issues forming the links in that chain) if: (i) it arose from the parties' pleadings; (ii) it arose by reasonable implication from their pleadings; (iii) it is unpleaded but arose in some other way in the arbitration and was reasonably brought to the party's actual notice; or (iv) it flows reasonably from the arguments actually advanced by either party or is related to those arguments (*JVL Agro Industries* at [150], [152], [154] and [156]). To set aside an award on the basis of a defect in the chain of reasoning, a party must establish that the tribunal conducted itself either irrationally or capriciously such that "a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award" (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [65(d)]). [emphasis in original]

38 In respect of the Responsive Evidence Issue, the breach alleged is of the *infra petita* variety, meaning that "the essential complaint [is] that the tribunal had not carried out its mandate by considering all the material issues that were raised in the arbitral proceedings" (*DKT v DKU* [2025] 1 SLR 806 ("*DKT*") at [7]). An *infra petita* challenge will only succeed if the following four conditions are satisfied:

(a) First, the point must have been properly brought before the tribunal for its determination; a party is not entitled to raise an *infra petita* challenge in respect of points it could have raised but failed to do so (*DKT* at [8(a)]).

(b) Second, the point must have been essential to the resolution of the dispute. A tribunal is only under a duty to address essential issues; it does not have the duty to deal with every issue raised, particularly where the issue is rendered moot due to certain findings of the tribunal (*DKT* at [8(b)]).

(c) Third, the tribunal must have completely failed to consider the point. This is a matter of inference, which if it is to be drawn, requires showing that the inference is "clear and virtually inescapable". A generous approach in favour of the tribunal is adopted, avoiding a hypercritical or excessively syntactical analysis of the award, with any doubt resolved in favour of upholding the award. The court's focus is not directed at the adequacy of the tribunal's analysis, but with the existence and fact of such analysis, and it would only be in the truly exceptional circumstance where the tribunal's purported analysis is so woefully incomplete and cursory that it leads to the clear and virtually inescapable inference that the tribunal had in fact completely failed to consider the issue (*DKT* at [8(c)]).

(d) Finally, even if the tribunal failed to consider an essential issue that is before it, there must be real or actual prejudice occasioned by this breach of natural justice. The test is whether the breach was merely technical and inconsequential or whether as a result, the arbitrator was denied the benefit of arguments or evidence that had a real as opposed to a fanciful chance of making a difference to his deliberations, such that the material could reasonably have made a difference to the arbitrator (*DKT* at [8(d)] citing *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54]).

39 We accept that the need for a "clear and virtually inescapable inference" also applies in relation to a failure to consider material evidence (as opposed to merely material issues) (see Judgment at [90]).

Our decision

Issue 1: Whether the Appellants did not have reasonable notice of the basis upon which the Majority ordered the buy-out

40 In our judgment, the Appellants' contentions in relation to the Buy-out Issue are unmeritorious. They represent a paradigmatic example of precisely the kind of conduct this court cautioned against in *Palm Grove* – an attempt to nitpick at the Partial Award in order to, in substance, mount a backdoor appeal against the merits of the Partial Award, which is plainly beyond the remit of the supervisory court (*Palm Grove* at [2]). The court's approach is one of minimal curial intervention in the arbitral process and not to trawl through the materials before the tribunal with a fine-tooth comb, not least because any doubts that arise in the course of such an exercise are likely to be resolved in favour of upholding the award (*Palm Grove* at [21]–[24]). In any case, the Appellants' submission fails entirely on its own terms and is devoid of merit. We explain.

Whether the Respondents pleaded the Third Scenario

41 Before we address the Appellants' submission that the Respondents had failed to plead the Third Scenario, it is necessary to properly understand and characterise the Respondents' case. The Respondents' pleaded position was that the conversion of the DPT CLNs was in breach of the Agreements and also was

an act of oppression. These were two separate but inter-related bases in that the allegation of breach of the Agreements might support the assertion of oppression. On these bases, the Respondents sought an order to strike down and invalidate the conversion of the DPT CLNs and a buy-out order of their shares in DPX as a result (see [10] above). It would follow that if the conversion was declared null and void – as the Tribunal did – the company would be in the pre-conversion position. To put it another way, as we observed at the hearing of the appeal, the question of whether there should be a notional top-up falls away in a pre-conversion scenario, as there would simply be no new shares for the Respondents to subscribe to given that no shares would be issued to the Appellants from a conversion of the DPT CLNs in the first place. Thus, the question of whether the Respondents pleaded the Third Scenario is beside the point. The Third Scenario envisages a post-conversion situation with no top-up, which proceeds on the assumption that the conversion itself was valid and subsisting – an assumption that is fundamentally inconsistent with the Respondents' case that the conversion was null and void.

42 In any event, counsel for the Appellants, Mr Kelvin Poon SC ("Mr Poon"), accepted at the hearing of the appeal that the Respondents' case was wide enough to encapsulate the Third Scenario. Mr Poon's contention was instead that Mr Liang had "never advanced" the Third Scenario in the Arbitration or, in the alternative, had "abandoned" the Third Scenario when responding to questions from the Tribunal on valuation issues that pertained to the buy-out price, purportedly accepting that the Respondents' case was based on the Second Scenario. Mr Poon pointed out that the Third Scenario was only resurrected by the Respondents in their closing submissions.

43 In our view, this point does not carry the Appellants very far. As this court has held, a party has reasonable notice of a particular chain of reasoning

if, amongst other things, it arose from the parties' pleadings or by reasonable implication from their pleadings (*BZW* at [60(b)]). Thus, in view of Mr Poon's concession that the Respondents' pleaded case was wide enough to encapsulate the Third Scenario, that is itself sufficient to dispose of the Appellants' submission that the Third Scenario was not pleaded, and to the extent the Majority made the buy-out order on that basis, the Majority's determination had a reasonable nexus to the parties' arguments in the Arbitration. However, this is subject to one qualification. If it can be shown that the Respondents had abandoned the Third Scenario and had accepted the Second Scenario in the Arbitration as the Appellants contend, the Majority's determination may have no reasonable nexus to the parties' arguments. Again, this must be qualified if the Appellants are found to have engaged in impermissible hedging.

There was no evidence that the Respondents had agreed not to pursue the Third Scenario

44 We first consider whether the Respondents had indeed abandoned the Third Scenario and accepted the Second Scenario in the Arbitration. This is the central plank of the Appellants' case on the Buy-out Issue. For the reasons that follow, we are satisfied that the SICC was entitled to find that there was no such agreement.

45 First, as we alluded to at [19(a)] above, the Appellants have relied on, amongst other things, Mr Liang's responses to questions posed by Tribunal on several occasions to show that there was an agreement. We do not accept the submission. The exchanges do not evidence any concession that the Respondents were pursuing only the Second Scenario, let alone any agreement to that effect. Indeed, the Appellants take Mr Liang's responses out of context. We illustrate this with reference to several examples the Appellants have relied on.

46 On the sixth day of the evidentiary hearing, the Tribunal invited the parties to tender a "short paper" to let the Tribunal know their preferred valuation dates with reasons:

> [TRIBUNAL]: … you should let us know your preferred valuation dates and why. If you could give us a short paper, no more than a page or so, so that the three of us can mull over it before the experts testify. Is that okay with both of you?
>
> MR LIANG: Yes. I think my position has already been set out in my pleadings but I will cross refer.
>
> …
>
> [TRIBUNAL]: I think it would be also of assistance, to me anyway, if you clearly identify the basis of the valuation for which you contend, because the expert reports have a number of different alternatives. In particular, the question is whether you –– do you assume the conversion of the [DPT] CLNs and, if so, if the claimants were to maintain parity in relation to their proportionate shareholding, do you assume that they contributed a pro rata amount to maintain their shareholding?
>
> …
>
> MR LIANG: Yes, certainly.

The excerpt clearly demonstrates that Mr Liang did not actually concede that a buy-out order would be based on the Second Scenario – he was merely agreeing to revert to the Tribunal on the Respondents' preferred date and manner of valuation.

47 On the eighth day of the evidentiary hearing, the Tribunal invited the parties to clarify their respective positions on, among other things, whether it was to be assumed that the Respondents contributed a *pari passu* amount to maintain their percentage shareholding, or that the Respondents did not do so and were diluted:

> [TRIBUNAL]: … Then the question is: upon what basis, assuming conversion had taken place with due regard to the claimants ' rights, how would it have taken place? … [T]hen you have to ask yourself a further question of whether the claimants

> –– you should proceed on the assumption claimants contributed pari passu the amount to maintain their percentage shareholding or alternatively didn't contribute and were diluted …
>
> …
>
> MR LIANG: Yes, sir. You will see in [Expert B's] second report there are two calculations for the top–up provided. My opening statement at paragraphs 60 to 64 sets out our primary position on the top–up. There are alternative scenarios in his second report which explain other ways of calculating the top–up.

48 In this connection, Mr Poon highlighted that paragraphs 60 to 64 in the Respondents' Opening Statement contained references to the Respondents making a notional top-up. However, these references ought to be read in their proper context. While paragraphs 60 to 64 of the Respondents' Opening Statement did allude to the Respondents making a notional top-up, that was for the purpose of specifically addressing an alternative scenario postulated by the Respondents' expert witness, [Expert B]. [Expert B] had been instructed by the Respondents to prepare an expert opinion on the "100% equity value of [DPX] … and, in turn, [the] pro rata value of the [Respondents'] stake in [DPX]". In his expert report submitted to the Tribunal on 14 June 2023, [Expert B] had valued DPX's equity value on the assumption that "the anti-dilution safeguards in the SHA, IA and Constitution were honoured" and the Respondents – in order to "retain their rightful 16.67% shareholding" – had subscribed to the additional shares at a valuation of DPX that had been prepared on 9 May 2021 by an expert retained by the Appellants for this purpose. Thus, when the Respondents subsequently filed their Opening Statement on 26 September 2023, the references they had made to a notional top-up were to respond to this alternative scenario advanced by [Expert B], and were not a concession that a notional top-up was necessary.

49 Indeed, paragraph 59 of the Opening Statement immediately preceding the discussion in paragraphs 60 to 64 made the Respondents' position plain. In that paragraph, the Respondents stated that, "as a matter of law, a buy-out order should be fixed at a price that *excludes* the illegitimate dilution by assuming that the new conversion shares issued to [DPT] were not issued" [emphasis in original]. The Respondents were reiterating their pleaded position in the SOC that the conversion of the DPT CLNs was null and void. Indeed, it is difficult to understand on what basis it may be said that the Respondents had abandoned the Third Scenario and agreed to the Second Scenario in their Opening Statement when the Second Scenario was not pleaded in the SOC and the Arbitration proceedings were nascent. In these circumstances, the Opening Statement plainly does not evidence any agreement to abandon the Third Scenario and proceed on the Second Scenario.

50 Finally, it is asserted by the Appellants that on the ninth day of the evidentiary hearing, counsel for the Appellants, Mr Avinash Vinayak Pradhan ("Mr Pradhan"), had obtained confirmation from Mr Liang that the notional top-up was to be assumed, pursuant to a document which the Tribunal had previously circulated to seek clarification from the parties on their respective positions on the valuation in the event a buy-out order was made ("Valuation Document"):

> [TRIBUNAL]: … [O]n the assumption that the claimants have succeeded, and it will follow that the conversion was probably one of the instruments of oppression … There are two scenarios that one could assume. One is that the claimants don't take up the opportunity to acquire the number of shares necessary to maintain their percentage shareholding … and the other hypothetical discussion is that they do take up the opportunity to acquire additional shares to maintain their percentage shareholding and, if so, what is the amount they would have had to contribute to do that? …
>
> …

> MR PRADHAN: … I think the second point is a question for the claimants. My understanding of the claimants' position is that their case is to assume the top−up.
>
> [TRIBUNAL]: Assume the top-up. Is that right, Mr Liang?
>
> MR LIANG: Just so I understand, this is the top−up pursuant to the conversion of the [DPT] CLNs as a distinct event from an automatic conversion?
>
> [TRIBUNAL]: Yes
>
> MR LIANG: That's correct

51 Mr Liang's response should not be taken out of context. The Tribunal was posing questions to explore various counterfactuals (including those stated in the Valuation Document) on how the issues pertaining to the valuation might play out. Mr Liang's responses to these questions were no more than a clarification of the Respondents' position in relation to one of the counterfactuals that was being explored. To read into his response a clear and unequivocal agreement as the Appellants allege would be to ignore the Respondents' pleaded case and to place far more weight on those exchanges than they can reasonably bear.

52 We observe parenthetically that neither the Majority nor the Minority mentioned in the Partial Award any agreement or undertaking between the parties that the valuation should proceed on the basis of the Second Scenario, or that the Respondents had agreed to abandon the Third Scenario. If there was any such agreement, it would have been brought to the attention of the Tribunal and expressly stated in the Partial Award, given its importance. The absence of any reference to any such agreement is telling. This is further underscored by the Minority's dissent, which centred largely on the proper valuation methodology to be adopted for the determination of the buy-out price, and which did not state that the Majority's reliance on the Third Scenario was not consistent with an agreement between the parties and that only the Second Scenario was before the

Tribunal. Instead, the Minority's dissent was specifically that the pre-conversion value of DPX should be taken as the starting point, with an adjustment to be made to account for the liabilities represented by the DPT CLNs in the books.

53 It is also pertinent that when the Appellants objected to the Respondents raising the Third Scenario in their Closing Submissions, they did not do so on the basis that it was impermissible for the Respondents to raise the point because the parties had agreed that only the Second Scenario was relevant. If there was such an agreement, one would have expected the Appellants to make the point forcefully.

54 Finally, if there was indeed an agreement as alleged by the Appellants, we would expect it to have been properly documented particularly given its importance and the Respondents' pleaded position. However, as noted above, the Appellants have largely relied on exchanges between Mr Liang and the Tribunal and references in the Respondents' Opening Statement, to piece together the existence of the agreement. There is also no clear account of when, where or how this agreement was reached.

55 For the reasons above, the Appellants have failed to demonstrate that there was any agreement between the parties that they would proceed with the valuation on the basis of the Second Scenario only. There is also no evidence of any concession by Mr Liang or the Respondents to this effect, or that the Third Scenario was abandoned. This conclusion is further reinforced by the fact that the Second Scenario was never pleaded by the Respondents. Indeed, the Appellants did not contend otherwise in this regard. As we have explained above, the Respondents' pleaded case was that the conversion of the DPT CLNs was invalid to begin with, and the width of their pleading was broad enough to

encapsulate the Third Scenario, as Mr Poon accepts. That being the case, there was simply no logical or coherent reason why they would have agreed to abandon that position and instead proceed on a scenario that they did not even plead. With that, we turn to the question of whether the Appellants have engaged in impermissible hedging.

The Appellants engaged in impermissible hedging

56 In any event, the Appellants' argument on the Third Scenario must fail for a further reason which is fundamental: the Appellants clearly breached the rule in *China Machine* by failing to give fair intimation to the Tribunal of their due process objections at the material time. This constitutes impermissible hedging.

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

> … **[I]f 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. This must be so because **if indeed there has been such a fatal failure against a party, then it cannot simply "reserve" its position until after the award and if the result turns out to be palatable to it, not pursue the point, or if it were otherwise to then take the point** …
>
> In the final analysis, 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**.

[emphasis in original in italics; emphasis added in bold]

58 The recent decision of this court *in ONI Global Pte Ltd v GNC Holdings LLC* [2026] 1 SLR 825 ("*ONI Global*") illustrates the application of the rule. In *ONI Global*, the appellant, ONI Global ("ONI"), alleged that the respondent, GNC Holdings ("GNC"), had committed a repudiatory breach of certain agreements. Both parties commenced arbitration in relation to the dispute. ONI alleged in the arbitration that GNC had advanced in its Post-Hearing Brief a new and unpleaded claim for post-termination damages ("Quantum Case"), which was eventually accepted by the tribunal. Subsequently, in the application to enforce the arbitral award, ONI argued that the award for post-termination damages should be refused enforcement on the basis that, among other things, the tribunal breached natural justice in awarding the same. However, the difficulty for ONI was that during the arbitration, it made substantive submissions on the merits of this Quantum Case while concurrently applying to strike out GNC's Quantum Case. This raised the question of whether ONI's conduct amounted to impermissible hedging, which *China Machine* cautioned against (*ONI Global* at [69]–[70]).

59 This court in *ONI Global* observed that at the end of the evidentiary hearing, ONI's position was that the claim for damages should be disallowed either because it was a new case that should be struck out, or that it had failed on the merits. It was further observed that there was no hint of a third position – namely, that if the striking out application failed, ONI would require the opportunity to raise further arguments and adduce further evidence before the merits of the claim were considered. Instead, by making submissions on the merits of GNC's Quantum Case, ONI's conduct led the tribunal to believe that either course of action (*ie*, striking out or deciding the claim on the merits) was open to the tribunal (*ONI Global* at [89]–[90]). In such circumstances, ONI's

conduct amounted to impermissible hedging for two related reasons: ONI's failure to seek rectification in the arbitration of the due process complaints that it subsequently raised in the enforcement application brought by GNC; and ONI's choice to address GNC's Quantum Case on the merits in the arbitration (*ONI Global* at [76]).

60 In our view, the observations in *China Machine* and *ONI Global* apply squarely to the present case. Even assuming the Third Scenario was a new argument raised belatedly by the Respondents and/or in breach of the parties' agreement, the Appellants' conduct thereafter was wholly inconsistent with a party that considered itself taken by surprise and the subject of a prejudicial failure in the arbitral process. Instead of seeking to adduce further evidence and submissions, or requesting the Tribunal to rule that it was impermissible for the Respondents to rely on the Third Scenario, on the bases that are advanced before us, the Appellants substantively engaged with the Respondents' argument in their Reply Closing Submissions, characterising it as "commercially absurd" and "avaricious", and explaining in considerable detail why it ought to be rejected on the merits. It is significant that the Appellants made no effort to place squarely before the Tribunal the main thrust of the argument below and before us on the Buy-out Issue, *ie,* that there was an agreement between the parties to proceed on the Second Scenario or at least that the Third Scenario had been abandoned. This would have been the minimum we would have expected from the Appellants given how fundamental this was to the Appellants' argument on the Tribunal's failure to accord them due process. Before us, the only explanation Mr Poon offered for the omission was that the Appellants did not expect the Majority to take the course that it did. Needless to say, this was not at all an explanation for the failure. We found it neither persuasive nor satisfactory, particularly in light of the views expressed in *China Machine*.

61 In fact, the Appellants' position is, if anything, more tenuous than that of ONI. ONI had raised its objections in respect of GNC's Quantum Case by way of the parties' joint e-mail to the tribunal stating that ONI should, at the minimum, be granted additional time during the closing oral arguments to address GNC's new Quantum Case "in order to mitigate the prejudice to ONI's due process rights". ONI had also applied to strike out GNC's Quantum Case (*ONI Global* at [14]–[15]). In contrast, the Appellants raised no procedural objection whatsoever. In fact, after the Appellants' Reply Closing Submissions were filed on 24 November 2023, on 16 February 2024, the Tribunal had invited the parties to share any observations they had on its proposed approach to "draw a line on admissible evidence to be taken into consideration ie evidence that was on record on or before 13 October 2023". In response, the Appellants stated that they had "no objections to the Tribunal's proposed approach". As this court emphasised, a party that addresses a new argument on the merits while reserving the right to raise or reopen its procedural objection only if the tribunal accepts that new argument engages in precisely what *China Machine* states is impermissible hedging (*ONI Global* at [90(c)]). The Appellants did exactly that.

62 The Appellants resist this conclusion by relying on *CAJ v CAI* [2022] 1 SLR 505 ("*CAJ*") contending that their conduct in the Arbitration did not amount to a breach of the rule in *China Machine*. In our view, the Appellants' reliance on *CAJ* is misconceived.

63 In *CAJ*, the respondent commenced arbitration seeking liquidated damages from the appellants, alleging that the latter had caused a 144-day delay in the completion of the contractual scope of works. The appellants' defence was primarily that they had completed the work on time, or, alternatively, that the respondent was estopped from claiming damages. However, the appellants subsequently raised a defence in their written closing submissions, claiming that

they were contractually entitled to an extension of time (*CAJ* at [5]–[8]). In response, the respondent raised a procedural objection in its case in the following terms (*CAJ* at [9]):

> 94. [The appellants] assert several new arguments for the first time in their Written Closing. On the basis of procedural fairness alone, when each of these points would turn on detailed issues of fact that were not addressed at the hearing, and in particular where [the appellants] have made no application to amend, each of these new arguments should be dismissed by the Tribunal.
>
> …
>
> 97. [The appellants'] <u>third</u> new argument … was never pleaded, nor raised at any point during the 8-day hearing, until it appeared in the Written Closing. For that reason alone, it should not be considered by the Tribunal …
>
> [emphasis in original]

64 The contrast with the present case is stark. Unlike the respondent in *CAJ*, the Appellants did not raise *any* procedural objection before the Tribunal on the Respondents' introduction of the Third Scenario or request the Tribunal to take steps to remedy any breach of natural justice. They chose to engage substantively with the merits of the Third Scenario and had even confirmed to the Tribunal that they were prepared for the Tribunal to decide based on the evidence on the record. In these circumstances, *CAJ* is clearly distinguishable from the present case.

65 For the reasons above, we are of the view that the Appellants engaged in impermissible hedging on the Buy-out Issue and accordingly, their argument on breach of natural justice fails for this reason as well.

The Majority's findings did not constitute a chain of reasoning that the parties did not have reasonable notice of

66 The Appellants also submit that the Majority breached the fair hearing rule in finding that the DPT CLNs were "worthless as debt" and therefore the pre-conversion and post-conversion values of DPX were the same. It is contended that this constituted a chain of reasoning that was not reasonably foreseeable and therefore one that the Appellants did not have reasonable notice of. We consider this submission unpersuasive for two related reasons.

67 First, this argument is inextricably tied to the Appellants' contention that there was an agreement to proceed on the Second Scenario, or at least that the Third Scenario had been abandoned. Once that contention is rejected, it follows that the relevance of the DPT CLNs to the buy-out price was a live issue. Mr Poon's acceptance that the Respondents' pleaded case was wide enough to cover the Third Scenario means that the debt under the DPT CLNs (*ie,* the CLN Debt) was relevant to the valuation of the Respondents' shares and therefore to the determination of the buy-out price. If the conversion of the DPT CLNs was declared null and void, the DPT CLNs would constitute a debt owed by DPX. That necessarily raises the question of how, if at all, that debt bears on the valuation of the purchase price for the Respondents' shares in DPX. The Appellants ought to have addressed this in the Arbitration. Having failed to do so, they cannot now complain that the Majority's conclusion that the CLN Debt was worthless fell outside the chain of reasoning. That was squarely before the Tribunal. We note, for completeness, that while the Minority disagreed with the Majority and found that the CLN Debt was "real" and repayable to DPT if there was no conversion of the DPT CLNs to equity, that was a disagreement on the merits and cannot therefore be a basis for intervention by the supervisory court.

68 Second, and in any event, for a chain of reasoning to be defective due to a poor evidential basis, the Tribunal's decision must be "wholly at odds with the established evidence" (*BZV v BZW* [2022] 3 SLR 447 at [52(I)]). In making the finding that the DPT CLNs were "expended and irrecoverable", the Majority cited the following evidence:

> See Transcript Day 4 [5 October 2023], 33:16-21 where Mr [X] agrees that [DPX] was running out of cash and investment was necessary; Transcript Day 4 [5 October 2023], 61:23 - 62:16 where Mr [X] referred to the debt as "arbitrary debt" [sic]; [Witness 2] 1st [Witness Statement], [38] where he states that at the time of making a call on the CLNs, it was clear that the debt could not be repaid.

69 We agree with the SICC that this suffices to insulate the Partial Award from challenge on this point. The evidence on record cited by the Majority contains statements from key witnesses going directly to the nature (and value) of the CLN Debt. Seen in this light, it cannot be said that the Majority's finding was "wholly at odds with the established evidence".

70 We therefore reject the contention that the Majority's finding that the DPT CLNs were "worthless as debt" bore no reasonable nexus to the parties' cases.

71 In view of this conclusion, it would follow that the Appellants' consequential argument – that the parties did not have reasonable notice that the Majority would, as part of its chain of reasoning, find that DPX's pre-conversion value was the same as its post-conversion value and the Appellants were denied the opportunity to address that point – must also fail.

72 The Majority's equation of DPX's pre-conversion and post-conversion values flowed directly and logically from its prior finding that the DPT CLNs were "worthless as debt". As we have explained at [67]–[69] above: (a) the issue

of whether and if so, how the DPT CLNs would have an impact on the valuation of the shares of DPX and therefore the buy-out price was before the Tribunal; and (b) the Majority's finding was substantiated by the evidence before the Tribunal.

73 Furthermore, while the Appellants also claim that they were denied the opportunity to lead expert evidence on DPX's pre-conversion value, the Appellants concede that there was "historical evidence" of DPX's pre-conversion value on record. The Respondents had pleaded and adduced evidence of DPX's pre-conversion value, which the Appellants engaged with directly – explaining why those valuations had "limited credibility", and their own expert, [Expert A], characterised these valuations as "speculative", "aspirational" and "optimistic". The Appellants were therefore far from silent on this issue. It is difficult to see how the Appellants can now claim that they were denied the opportunity to lead evidence on DPX's pre-conversion value.

74 In any event, any gap in the Appellants' evidence on this point was entirely of their own making. The Appellants' objection ultimately rests on the premise that the Respondents had agreed to seek a buy-out order on the Second Scenario and DPX's pre-conversion value was therefore not put in issue (see Judgment at [172]). However, as we have determined at [55] above, there was no such agreement. The Appellants should thus have anticipated that DPX's pre-conversion value was a live issue and led evidence accordingly if they felt it necessary to engage the issue.

75 For all the reasons above, we do not accept any of the Appellants' submissions on the Buy-out Issue. It is therefore not necessary to consider whether the Buy-out Issue is time-barred.

Issue 2: Whether the Tribunal sufficiently referred to the Responsive Evidence

76 We turn to address the Responsive Evidence Issue. The Appellants contend that the Tribunal breached natural justice by failing to consider the Responsive Evidence, and that the SICC erred in finding otherwise. We do not accept the argument.

77 The Appellants were of the view that the introduction of Mr [X] and Ms [Y] as witnesses by subpoenas was a "planned ambush". Accordingly, they applied for and had obtained the Tribunal's permission to respond to the evidence of both Mr [X] and Ms [Y]. The result was the Responsive Evidence.

78 In these circumstances, as the Appellants themselves highlight, the Responsive Evidence was introduced for a specific and limited purpose: to contradict Mr [X]'s and Ms [Y]'s account of the key events relevant to the Arbitration, and to undermine their credibility. This much was apparent to the Tribunal from the outset, as its remarks over the course of the Arbitration show:

(a) On 3 October 2023 (Second day of the Arbitration hearing):

> [TRIBUNAL]: It is unclear to us where the admission, if allowed, would take us, *because this really goes to credibility* and there is already a substantial body of evidence that deals with this …
>
> Can I just add again … a lot of the responsive evidentiary material deals with the circumstances in which Mr [X] and Ms [Y] left the company. Now, that is arguably a distraction from the real issues in this case. We are concerned that a lot of time is going to be spent on those issues, which are very peripheral indeed … the dealings between Mr [X] and [the Appellants'] employers in relation to his evidence, *it all just goes to credit*. We could spend days *arguing about credit* and it is just a distraction …
>
> [emphasis added]

(b) On 3 October 2023, the Tribunal directed via e-mail:

> Further, for purposes of cross examination, Parties should note that any references to any statements made or exchanges that have taken place after the commencement of these proceedings may only be made if absolutely necessary to establish facts.

(c) On 5 October 2023 (Fourth day of the Arbitration hearing):

> Obviously there is a lot of material about the circumstances in which Mr [X] and Ms [Y] left the employment of [the Appellants]. For my own part, I don't need to know who was right and who was wrong about that. It is sufficient for me to know that there was a dispute at the time they departed and *that provides context for their testimony*. But I'm not going to get bogged down into who was right and who was wrong. [emphasis added]

(d) On 7 October 2023, the Tribunal further directed via e-mail:

> … many of the recordings record comments and observations in respect of matters which occurred sometime earlier, and therefore do not provide direct evidence of those matters. The evidentiary value of those comments and observations is *likely limited to possibly impugning the credit* of those who give direct testimony in respect of those matters. In the circumstances of this case the Tribunal considers that lengthy and complex investigations into matters that *go only to credit* may be disproportionate to the evidential value to be derived from such investigations. This observation applies with equal force to evidence of matters which occurred after the commencement of the arbitration proceedings. [emphasis added]

79 It is clear from the above that the Tribunal's view was that the Responsive Evidence was largely relevant to credibility and was not particularly material to the substantive issues. It was for this reason that the Tribunal requested parties to refrain from conducting cross-examination on the Responsive Evidence in so far as such evidence concerned matters that arose subsequent to the commencement of the Arbitration.

80 The Appellants' contentions should therefore be assessed in this context. As Mr Pradhan accepted at the hearing of the appeal, the Tribunal's directions to limit cross-examination based on the Responsive Evidence did not deprive the Appellants of the opportunity to rely on the Responsive Evidence in their submissions, or demonstrate that the Tribunal had shut its mind to the same. Indeed, the Appellants were able to address the Responsive Evidence in their closing submissions, which they did when they relied on the Responsive Evidence of [Witness 1], [Witness 2] and [Witness 3] to challenge the evidence of Mr [X]. As the Appellants have not suggested that the Tribunal failed to review the parties' closing submissions, the inference to be drawn is that in preferring Mr [X]'s evidence on the substantive issues on breach of the Agreements and oppression, the Tribunal did not regard the Responsive Evidence as undermining the credibility of Mr [X]'s evidence. Thus, it is untenable for the Appellants to now contend that the Tribunal was not aware of or did not pay sufficient heed to the Responsive Evidence.

81 Furthermore, as the SICC observed, the Tribunal had, in its Partial Award, referred to a paragraph in the Appellants' closing submissions where the Appellants had (albeit in a footnote to the aforesaid paragraph) referred to some of the Responsive Evidence, specifically, the third witness statements of [Witness 1], [Witness 2], [Witness 3] and [Witness 5]. We agree that this reference, while somewhat tangential, also points away from a clear and virtually inescapable inference that the Tribunal completely failed to consider any of the Responsive Evidence.

82 Nonetheless, the Appellants argue that the Tribunal's failure to discuss the Responsive Evidence in the Partial Award is itself proof that it was not considered at all. In support of this assertion, they rely on the observation in *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] 5 SLR 706 ("*Swire*

Shipping") that a tribunal "is invariably required to synthesise and form a view of the evidence given by every witness" (*Swire Shipping* at [110]). In our view, this reliance is plainly misconceived. In *Swire Shipping*, the court made the following remarks (at [110]):

> 110 It is axiomatic that an arbitrator is under no general obligation to disclose what he is minded to decide so that the parties may have a further opportunity of criticising his mental processes before he finally commits himself (see *Soh Beng Tee* at [55(h)], citing the New Zealand High Court decision of *Trustees of Rotoaira Forest Trust v Attorney-General* [1999] 2 NZLR 452 at 463). The reason for this is particularly clear in the present context where one is concerned with an arbitrator's evaluation of a witness's evidence. ***A tribunal is invariably required to synthesise and form a view of the evidence given by every witness, and it often does so unconsciously without thinking it necessary to spell out in minute detail what it has understood each witness as saying***. But, on Swire's submission, a tribunal would be necessarily obliged to put its views on what to make of each witness's evidence to the parties for comment before committing to a view. It is self-evident that no system of dispute resolution can sensibly operate in such a way. The untenability of Swire's submission on the Agrawal Evidence Finding was thus clear if one took it to its logical conclusion. [emphasis added in bold italics]

83 Clearly, this passage does not stand for the proposition that a tribunal must explicitly address every facet of the evidence in the award. The court's remarks above were made in the context of rejecting the submission that a tribunal must first put its views on the evidence given by each witness to the parties before committing to a final position. If anything, the observations made in *Swire Shipping* cut against the Appellants' own case: the court emphasised that a tribunal often forms a view of the evidence given by every witness *unconsciously and without spelling it out in minute detail*.

84 It is apposite at this juncture to turn to *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532 ("*Bintai*") – which the Appellants rely on for the proposition that where a decision-maker expresses certain thoughts

in the course of an oral hearing, and such observations “are then wholly omitted from [his decision], [then] far from inviting an inference that the adjudicator has implicitly rejected those submissions, such an omission only reflects a gaping lacuna in the reasoning presented” (*Bintai* at [54]). In our view, *Bintai* is not relevant. The facts were fundamentally different, and the observations made cannot be transplanted here without having regard to those differences. We explain.

85 In *Bintai*, the appellant was engaged by the respondent as a subcontractor in a construction project. A dispute between the parties over payment claims subsequently arose. The appellant commenced adjudication proceedings against the respondent under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) seeking payment of certain moneys that were asserted to be due and payable. The appellant submitted that there were three issues in dispute. The respondent addressed the same three issues and also raised an additional preliminary objection to the validity of the adjudication application. The adjudicator found in favour of the appellant. However, the adjudication determination addressed only the preliminary issue raised by the respondent and one of the three issues raised by both parties. The two other issues were not addressed in the adjudication determination. The respondent commenced proceedings to set aside the adjudication determination on the ground that the adjudicator failed to consider the two unaddressed issues, and this amounted to a breach of natural justice (*Bintai* at [7]–[20] and [23]). The High Court allowed the setting aside application. On appeal, this court upheld the High Court’s decision, observing that the two issues that the adjudicator had failed to consider were essential to the resolution of the adjudication application, and it was clear from the adjudication determination that the adjudicator had shut his mind to those issues. This was a breach of natural justice (*Bintai* at [48]–[51]).

86 In our view, *Bintai* is distinguishable from the present case on at least three grounds.

87 First, the issues that the adjudicator in *Bintai* failed to consider were substantive and essential to the resolution of the dispute. In contrast, the Responsive Evidence went largely towards credibility and to the circumstances in which Mr [X] and Ms [Y] left the company – matters which the Tribunal characterised as a distraction from the real issues in the case. Second, unlike the adjudicator who made no reference whatsoever to the two essential issues in the adjudication determination, the Tribunal did refer to the Appellants' closing submissions in which the Responsive Evidence was advanced. Third, and perhaps most tellingly, the Tribunal remarked repeatedly during the evidentiary hearing that it *did* have regard to the Responsive Evidence but was of the view that it went towards credibility rather than the substantive issues. This is therefore not a case of a tribunal failing to consider the evidence – it is a case of a tribunal that considered the evidence, assessed its materiality, and was satisfied that it did not impact the evidence which it relied on to make its finding. That is, at its highest, an implicit rejection of the Responsive Evidence, and as this court held in *AKN v ALC* [2015] 3 SLR 488 at [47], an implicit rejection of an argument (or, in this case, evidence), even if such implicit rejection was made erroneously, does not amount to a breach of natural justice.

88 In the circumstances, the Appellants' reliance on *Swire Shipping* and *Bintai* is misplaced. The Appellants' submission is contrary to the well-established principle that a tribunal "should not have to deal with every argument canvassed under each of the essential issues" (*CZT v CZU* [2024] 3 SLR 169 at [35]). As this court previously observed, a decision-maker's silence is inherently ambiguous and does not necessarily mean that the decision-maker failed to consider the submission (or, in this case, the Responsive Evidence)

entirely (*Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 at [36]).

89 In any event, this was not a case where the Tribunal failed to have regard to the Responsive Evidence. As mentioned earlier, the Tribunal did consider the Responsive Evidence and regarded it as going towards the credibility of Mr [X] (see [87] above). Accordingly, the inference that the Appellants wish this court to draw – that the Tribunal completely failed to consider the Responsive Evidence – is neither clear nor virtually inescapable. Indeed, the totality of the evidence as canvassed by the SICC suggests otherwise (see Judgment at [199]–[215]).

Conclusion

90 For the reasons set out above, the Appellants have failed to establish that there was a breach of natural justice in respect of the Buy-out Issue and the Responsive Evidence Issue. Having disposed of both issues against the Appellants, it is unnecessary for Issue 3 (*ie*, whether the Appellants suffered prejudice as a result of the Tribunal's purported breaches of natural justice) to be considered. Accordingly, CAS 8 is dismissed.

Costs

91 We turn to costs.

Whether [Company A] should be liable for the costs of CAS 8

92 The Respondents submit that [Company A], as DPT's parent company and third-party funder, should be liable for the costs of CAS 8 on an indemnity basis fixed at $130,000 (all-in). The Respondents claim that [Company A] is funding DPT's litigation, and it should not be allowed to finance and launch

litigation using the Appellants as a "shield" and then "simply walk away" leaving the Respondents saddled with unpaid costs. The Appellants resist this, submitting that the requirements for this court to make a non-party costs order have not been satisfied. They emphasise that such orders are "exceptional" and would usually be ordered "where there is fraud or highly unconscionable conduct".

93 The applicable principles on non-party costs orders were summarised in *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah* [2016] 2 SLR 118 at [89]–[93] citing *DB Trustees (Hong Kong) Ltd v Consult Asia Pte Ltd* [2010] 3 SLR 542:

(a) Non-party costs orders are exceptional. The ultimate question is whether in all circumstances it is just to make the order.

(b) Amongst others, there are two factors that ought to almost always be present to make it just to award costs against a non-party:

(i) There must be a close connection between the non-party and the proceedings – it is sufficient that the non-party either funds or controls legal proceedings with the intention of ultimately deriving a benefit from them; and whether there is a close connection depends on the facts of the case.

(ii) The non-party must have caused the incurring of the costs – it would not be fair to order costs against the non-party if the litigant would have incurred the costs regardless.

(c) Ordering costs against a non-party and shareholder of an impecunious litigant company is to pierce the corporate veil. The corporate veil is usually only lifted where there is fraud or highly unconscionable conduct.

(d) Impropriety or bad faith on the directors' or shareholders' part in causing the company to bring proceedings is an important factor in deciding whether they should be made personally liable for costs.

94 With the foregoing principles in mind, we are not satisfied that the threshold for a non-party costs order has been met in this case, for two main reasons.

95 First, the Respondents have not furnished actual evidence that [Company A] is funding the Appellants' litigation in CAS 8. The evidence they rely on relates primarily to [Company A] having paid the costs of OA 10 and its related enforcement proceedings on behalf of DPT. Even if this were true, it certainly does not establish that [Company A] is funding the present appeal. Significantly, the Respondents themselves acknowledge that the Appellants have "refused to … provide any details of its litigation funding arrangements, including the provenance of the funding and when the funding commenced. Neither has [Company A] offered to pay any adverse costs ordered in CAS 8…". The mere fact that [Company A] is the parent company of DPT and has stated in the latter's financial statements that it will provide financial support to meet DPT's obligations as and when they fall due does not, without more, establish a litigation funding arrangement in respect of CAS 8.

96 Second, even assuming that [Company A] is funding this appeal, the Respondents have not alleged – much less proven – that the Appellants would not have brought CAS 8 but for that funding. More pertinently, the Respondents have also not alleged any impropriety or bad faith on [Company A]'s part in

causing the Appellants to bring this appeal, which is an important factor in the analysis (see [93(d)] above). In the absence of these elements, there is simply no basis for making the exceptional third-party costs order sought.

Whether indemnity costs should be ordered against the Appellants

97 We turn to whether costs should be ordered on an indemnity basis against the Appellants.

98 There is no default or presumptive position that an unsuccessful application to set aside an arbitral award will attract indemnity costs (*CDM v CDP* [2021] 2 SLR 235 ("*CDM*") at [52]). In deciding whether to order indemnity costs, the court "should have regard to all the circumstances of the case, and whether a party has behaved *unreasonably*" [emphasis in original] (*CDM* at [56]). Critically, indemnity costs "should only be ordered in a special case or where there are exceptional circumstances" (*CDM* at [56] citing *Raffles Town Club Pte Ltd v Lim Eng Hock Peter* [2011] 1 SLR 582 at [29]).

99 While this appeal represents an impermissible attempt to dress up a merits-review of the arbitral proceedings as a complaint concerning breaches of natural justice, the threshold to order indemnity costs remains whether the Appellants have behaved *unreasonably* in the conduct of these proceedings, and whether there are *exceptional circumstances* justifying a departure from the starting position of ordering costs on the standard basis. The Respondents have not advanced submissions directed at either of these questions, and in the absence of any such reason, we do not consider it appropriate to order indemnity costs here. Costs are accordingly awarded on the standard basis.

100 Having regard to the volume and nature of the work involved, we fix the costs of CAS 8 at $90,000 (all-in) payable by the Appellants to the Respondents.

Conclusion

101 For the reasons above, we dismiss CAS 8 and order the Appellants to pay the Respondents costs fixed at $90,000 (all-in). The usual consequential orders apply.

Ang Cheng Hock
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Robert French
International Judge

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Sim Chong (Sim Chong LLC) for the third respondent.