IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC(I) 18

Originating Application No 18 of 2026

Between

DWJ

… *Claimant*

And

DWK

… *Defendant*

JUDGMENT

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

TABLE OF CONTENTS

DWJ
v
DWK

[2026] SGHC(I) 18

Singapore International Commercial Court — Originating Application No 18 of 2026
Sir Nigel Teare IJ
3 September 2026

15 September 2026 Judgment reserved.

Sir Nigel Teare IJ:

Introduction

1 In SIC/OA 18/2026 ("OA 18"), the Claimant has applied to set aside an arbitration award dated 16 December 2025 ("Award"). The Claimant has based OA 18 on the grounds for setting aside an arbitration award in the International Arbitration Act 1994 ("IAA") and the UNCITRAL Model Law on International Commercial Arbitration, as enacted in the First Schedule of the IAA. In the arbitration, the Claimant was the respondent, and the Defendant was the successful claimant.

2 The thrust of the Claimant's case is that it believed that it was not required to participate in the arbitration. It was therefore deprived of the opportunity to present its case. The Claimant also submits that there was serious

impropriety arising out of the Defendant's failure to inform the Tribunal of certain facts. I dismiss OA 18. These are my reasons.

Background

The contract between the parties

3 The Claimant is engaged in the business of providing financial advisory services for capital raising. The Defendant is engaged in the business of providing comprehensive carbon reduction solutions, focusing on carbon capture, utilisation and storage technologies.[1]

4 By an agreement dated 16 February 2022 (the "Agreement") the Claimant agreed to provide financial advisory services to the Defendant's parent company ("ParentCo").[2] The Agreement was signed by the Claimant's CEO on behalf of the Claimant and by the then-CEO of ParentCo. I shall refer to these individuals as "CCEO" and "PCEO" respectively.

5 On 18 July 2022, the Agreement was amended to provide that the Defendant's parent company would pay the Claimant a monthly retainer equivalent to $43,000 per month from July 2022 onwards ("Addendum No. 1").[3] Addendum No.1 was signed by the Claimant's Head of Korea ("CHK") and by an executive of ParentCo.[4]

---

1 Award at paras 68–69.

2 Award at para 71.

3 In the course of this judgment, I have converted all currencies into Singapore dollars at the rate prevailing at the time of this judgment, and rounded them off to the nearest thousand. Amounts above $1,000,000 have been rounded off to the nearest hundred thousand.

4 CCEO's First Affidavit dated 13 March 2026 ("C–1") at para 13.

6 On 1 September 2022, the Defendant entered into a Novation Agreement by which it agreed to assume all responsibilities and obligations of ParentCo under the Agreement, and to be bound by the Agreement *vis à vis* the Claimant. The Novation Agreement was signed by CCEO, by a director of the Defendant, and by ParentCo's Chief Executive (a different individual to PCEO).[5]

7 On 20 February 2023, the Agreement was amended again ("Addendum No. 2") pursuant to which the Defendant would pay the Claimant a non-refundable monthly retainer fee of $43,000 *per* month starting in July 2022 (that is, the sum under Addendum No. 1) and a separate refundable monthly payment of $194,000 *per* month from February 2023 onwards ("Refundable Payments"). Addendum No. 2 was signed by CCEO, and a director of the Defendant.[6]

8 If a transaction was successfully executed during the term of the Agreement, the Refundable Payments would be credited towards a transaction fee that would be payable to the Claimant. However, if no transaction was successfully executed, the Refundable Payments were to be paid back to the Defendant.

9 On 16 November 2023, the Agreement was further amended ("Addendum No. 3") pursuant to which it was agreed that the Agreement would be automatically terminated on 30 April 2024, unless the parties agreed to extend the termination date in writing. Addendum No. 3 was signed by CCEO, and by the Defendant's CEO ("DCEO").

10 By 30 April 2024, the Defendant had paid the Claimant about $2,700,000 in Refundable Payments.

---

5 Second Affidavit filed by DTL dated 23 April 2026 ("DTL–2") at p 74–76.

6 DTL–2 at p 78–79.

11 No transaction was successfully executed by 30 April 2024. The Agreement was not extended in writing and accordingly was terminated on 30 April 2024.[7]

The arbitration

12 The Agreement contained an arbitration clause which provided for arbitration under the auspices of the Singapore International Arbitration Centre ("SIAC"), with the seat of the arbitration being Singapore.[8]

13 Between April and December 2024, the Defendant made seven demands for repayment of the Refundable Payments, failing which arbitration would be commenced.[9]

14 On 8 January 2025, the Defendant commenced arbitration[10] and SIAC invited the Claimant to submit a response to the request for arbitration.

15 In May 2025, the Tribunal was constituted by SIAC and on 16 May 2025, SIAC informed the Claimant of the constitution of the Tribunal. This email was sent to CCEO.[11]

16 On 2 June 2025, the Tribunal encouraged the Claimant to participate in the arbitration and advised it that the SIAC Rules allowed the Tribunal to proceed with the arbitration notwithstanding the Claimant's non-participation.

---

7 Award at para 82; DTL–2 at para 20.

8 Award at para 13; C–1 at p 541.

9 DTL–2 at para 23 and 27, and at p 84–89 and 107–108.

10 Award at para 18.

11 Award at para 22; DTL–2 at p 261–269.

The Claimant was invited to confirm its participation in the arbitration by 4 June 2025.[12] This email was copied to CCEO.[13]

17 On 27 June 2025, the Tribunal issued Procedural Order No. 1 ("PO1"), which required the Defendant to file its witness statement and exhibits by 11 July 2025 and the Claimant to file its Statement of Defence by 8 August 2025. It also provided for a hearing on 22 September 2025 by Zoom.[14] This email was copied to CCEO, as well as two other email addresses affiliated with the Claimant.[15]

18 On 11 July 2025, the Defendant filed its witness statement and exhibits.[16] The Claimant did not serve a Statement of Defence.

19 On 4 September 2025, the Tribunal issued Procedural Order No. 2 which confirmed that the hearing would take place on 22 September 2025 by Zoom.[17] This email was copied to CCEO.[18] The Claimant did not appear at the hearing.

20 I note at this juncture that there has been no suggestion by the Claimant that it was not given proper notice of the arbitration. I note also that several updates on the arbitration were successfully delivered to the Claimant's address by registered mail.[19]

---

12 Award at para 27.

13 DTL–2 at p 275–276.

14 Award at para 37.

15 DTL–2 at p 282–283.

16 Award at para 38.

17 Award at para 46.

18 DTL–2 at p 316–317.

19 Award at para 113; DTL–2 at p 312.

21 The Tribunal issued the Award on 16 December 2025. In the Award, the Tribunal found that the parties did not agree to extend the Agreement in writing and therefore the Agreement was terminated on 30 April 2024. Since no transaction was successfully executed by then, the Claimant was obliged to return to the Defendant the Refundable Payments that the Defendant had paid up to that date. As the Claimant failed to do so, the Claimant was in breach of the Agreement and liable to pay $2,700,000 to the Defendant as damages.[20]

Procedural history of OA 18

22 On 13 March 2026, the Claimant applied to set aside the Award. The case was originally filed in the General Division of the High Court but was transferred to this court on 24 April 2026.

23 The Defendant sought security for costs in HC/SUM 1193/2026 ("SUM 1193"). I ordered that the Claimant furnish security for costs to the amount of $100,000 in *DWJ v DWK* [2026] SGHC(I) 10. The Claimant furnished security by way of a solicitor's undertaking.[21] The Claimant twice requested permission to submit further arguments following my judgment.[22] I rejected these requests on the basis that the Claimant's counsel had been given a full opportunity to make the appropriate submissions at the hearing of the Defendant's application for security for costs, but chose not to take that opportunity. The Claimant also failed to explain why it had not taken up the opportunity to make the relevant submissions at the hearing.

---

20 Award at para 137–142.

21 Defendant's Letter to Court dated 13 August 2026.

22 Claimant's Letter to Court dated 17 July 2026; Claimant's Letter to Court dated 28 July 2026.

The challenge to the Award

The Claimant's grounds for setting aside in OA 18

24 The initial affidavit filed in support of OA 18 alleged that there was non-disclosure of certain facts, on the Defendant's part, and that this was "fraudulent", "detrimental", and "prejudicial" to the Claimant.[23] It was said that the Award should be set aside "in all fairness and in the interests of justice and public policy",[24] and that there was a breach of natural justice (that being the Claimant's right to be heard).[25]

25 The grounds advanced by the Claimant in OA 18 were then summarised on affidavit in SUM 1193 as follows:[26]

(a) The Claimant did not participate in the arbitration because it did not have the benefit of legal advice, and was under the impression that the dispute between the parties could be resolved amicably and/or in Hong Kong, and that the Defendant would withdraw the arbitration if the Claimant could assist it to achieve its financial objectives;

(b) PCEO gave verbal assurances to the Claimant between January 2023 and February 2023 that the Defendant would not enforce Addendum No. 2 against the Claimant and that Addendum No. 2 was only being signed "as a matter of formality"; and

---

23 C–1 at para 22.

24 C–1 at para 24.

25 C–1 at para 25.

26 CCEO's Second Affidavit dated 30 April 2026 ("C–2") at para 15.

(c) The Defendant had a duty to make full and frank disclosure of all material facts to the Tribunal and breached this duty by failing to disclose to the Tribunal the alleged assurances given by PCEO. This constituted bad faith and fraud on the Defendant's part, and the Award should therefore be set aside "in all fairness and in the interests of justice and public policy".

26 However, the grounds of challenge have been reformulated by counsel for the Claimant in his submissions as follows:[27]

> (a) The first ground is that the Claimant was **unable to present its case** to the arbitral tribunal… pursuant to **Article 34(2)(a)(ii)** of the FIRST SCHEDULE UNCITRAL Model Law on International Commercial Arbitration of the International Arbitration Act 1994; (the "**First Ground**") and
>
> (b) The second to fourth grounds stem from (1) the Defendant's **non-disclosure of material facts** to the arbitral tribunal… and (2) the **Defendant's representation** to the Claimant that led the Claimant to believe that there was **no need** to participate in the arbitration. This resulted in:
>
> > (i) the award being induced or affected by fraud pursuant to section **24(a)** International Arbitration Act 1994 (the "**Second Ground**") or
> >
> > (ii) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of the Claimant have been prejudiced, pursuant to **section 24(b)** International Arbitration Act 1994 (the "**Third Ground**"); or
> >
> > (iii) the award conflicting with public policy pursuant to **Article 34(2)(b)(ii)** of the FIRST SCHEDULE UNCITRAL Model Law on International Commercial Arbitration of the International Arbitration Act 1994 (the "**Fourth Ground**")."
>
> (emphasis original)

[27] Claimant's Written Submissions ("CWS") at para 1.

27 Notwithstanding the different formulation of the grounds for challenge in the submissions, I shall address the four grounds as set out by counsel in turn. No objection has been taken by the Defendant, and (as shall be discussed), the Defendant's submissions adequately respond to the four grounds.

The evidence adduced in support of OA 18

28 CCEO gave evidence by means of an affidavit dated 13 March 2026. He said that the Claimant had not participated in the arbitration, and had not submitted to the jurisdiction of the Tribunal.[28] The first statement is true. The second statement cannot be correct because in the Agreement the Claimant had agreed to refer disputes to arbitration in accordance with the SIAC Rules.[29]

29 CCEO further said that the Claimant did not have the benefit of legal advice and did not know the consequences of failing to participate in the arbitration.[30]

30 CCEO also said that the Claimant and he had laboured under the impression that:[31]

(a) the disputes with ParentCo and/or the Defendant could be resolved amicably and directly without the need to resort to arbitration;

(b) the disputes with ParentCo and/or the Defendant could be resolved in Hong Kong (where the Claimant is based); and

[28] C–1 at para 7.

[29] Award at para 13; C–1 at p 541.

[30] C–1 at para 8.

[31] C–1 at para 10.

(c) the Defendant would withdraw the arbitration if the Claimant could procure funding for them after the "intense efforts" that were expended, by the Claimant, "to assist them on achieving their financial objectives".

31 CCEO further said that there were certain representations made to the Claimant by PCEO that Addendum No. 2 would not be enforced, and that the Refundable Payments were not in fact refundable (*ie*, notwithstanding the terms of Addendum No. 2). In his words:[32]

> On multiple occasions between January 2023 and February 2023 leading up to the signing of Addendum No. 2 that introduced a "refundable" portion of the interim payments, [PCEO] gave verbal assurances to both myself and [CHK] that Addendum No. 2 need only be signed as a matter of formality, and that [the Defendant] will not enforce Addendum No. 2 against [the Claimant] as far it related to the "refundable" nature of interim fees, and as [the Defendant] is committed to consummate the capital raise with [the Claimant]. In reliance of the above representation, I signed Addendum No. 2 and on behalf of [the Claimant].

32 CCEO further said that from commencement of the Agreement in February 2022 through to April 2024, the Claimant dedicated time and effort to realise the fruits of the Agreement with the Defendant, and presented a proposed transaction to the Defendant in the range of $190,300,000 to $253,800,000. The Defendant had appeared willing to pursue this transaction, until PCEO's position was abruptly terminated in March 2024.

33 CHK gave evidence to the same effect as CCEO by means of his affidavit dated 16 March 2026. PCEO has not given evidence in OA 18 (and did not do so the arbitration).

32 C–1 at para 17.

34 The Defendant adduced evidence by way of affidavits from a Team Lead ("DTL"), with the primary affidavit being dated 23 April 2026. DTL gives a full account of the Agreement, the dealings between the parties, the events leading up to the arbitration, and the arbitration itself.

35 DTL stated in his affidavit that contact had been made with PCEO but that he was "not agreeable to file a witness statement".[33] DTL makes certain comments about the evidence of CCEO and CHK. That is not strictly evidence. I shall therefore consider these points in so far as they are made in submissions by counsel on behalf of the Defendant with regard to that evidence.

36 Finally, DTL, who gave evidence for the Defendant at the arbitration hearing, stated that the first time he or the Defendant knew of the statements alleged to have been made by PCEO was when the statements were referred to in OA 18. DTL said that PCEO was not part of the Defendant's management team, but only that of ParentCo.[34]

37 There is no directly responsive evidence from CCEO to DTL's affidavit dated 23 April 2026, although he did swear a second affidavit dated 30 April 2026 in reply to an earlier affidavit of DTL filed in SUM 1193. Exhibited to that second affidavit are certain messages on a messaging platform known as "KakaoTalk" on which the Claimant relies and to which I later refer in this judgment. CCEO also refers to the relationship between ParentCo and its subsidiary, the Defendant. I have had regard to that evidence.

---

33 DTL–2 at para 64.

34 DTL–2 at para 56.

Whether the Claimant was unable to present its case

38 The Claimant submits that it was unable to present its case. There are three elements which are said to support this submission. First, it is said that the Claimant did not have the benefit of legal advice and did not know the consequences of non-participation in the arbitration.[35] Second, it is said that the parties were working to fulfil the terms of the Agreement.[36] Third, it is said that certain messages constituted representations by DCEO to CHK that the Defendant was committed to the Agreement and was willing to work together to seek a temporary suspension of the arbitration, which led the Claimant to believe that there was no necessity to participate in the arbitration.[37] For these reasons, the Claimant was unable to present its case to the Tribunal.

39 It is further said, relying upon the points above and the principles of estoppel by representation and promissory estoppel, that the Defendant is estopped from relying upon the Claimant's non-participation in the arbitration in OA 18.[38]

40 It is necessary to examine what the Claimant relies upon in advancing this ground of challenge to the Award. Any alleged representation can only be based upon what was said by the Defendant in the KakaoTalk messages to which reference has been made. I shall first review the evidence, and then set out my conclusions.

35 CWS at para 3.

36 CWS at para 4–6.

37 CWS at para 7–8.

38 CWS at para 9–11.

41 On 4 October 2024, DCEO informed CHK as follows:[39]

> [CHK], would you have a day next week or the week after when you would be available for lunch? *We are in a situation where we need to receive an additional capital injection from [ParentCo] by year-end, so I wanted to discuss it with you.* I am available except for Wednesday, 16 October.
>
> (emphasis added)

42 On 5 October 2024, DCEO and CHK agreed to meet on 8 October 2024.

43 Whilst this exchange supports the suggestion that the Defendant was willing on 4 October 2024 to discuss its need for additional capital it goes no further than that. I note also that the Defendant sought a return of the Refundable Payments from the Claimant on 6 December 2024. This was the seventh time that the Defendant did so (see [13] above).

44 On 15 January 2025, (by which time the arbitration had been commenced by the Defendant on 8 January 2025) DCEO informed CHK as follows ("15 January 2025 Message"):

> As for [the Defendant], with respect to the advance costs that SIAC requested [the Claimant] to pay by 27 January, [the Claimant] should request a deferral of payment until 14 February. They say a deferral until 14 February is possible. As for [the Claimant], if you request that the response brief to be submitted until the end of February, [counsel's] view is that 14 February would also be acceptable. *That way, we buy time until 14 February, and during that period the idea is that we work together to seek a temporary suspension of the arbitration.*
>
> (emphasis added)

45 On 23 January 2025, the Claimant sent details of a potential transaction via KakaoTalk. The Defendant replied that it was not acceptable as it was

39 C–2 at p 33.

conditional on certain reinvestments which did not align with the Defendant's strategic investment objectives.

46 DTL referred in his evidence to a further statement on KakaoTalk on 20 March 2025 by DCEO. On 19 March 2025, CHK had advised DCEO that a global fund may invest in the Defendant but that the Claimant would not proceed with the investment unless the arbitration was withdrawn. DCEO replied in the following terms ("20 March 2025 Message"):[40]

> Our position is that we would be willing to discuss withdrawal of the arbitration if we receive a concrete proposal for the project and the terms are reasonable.
>
> Please provide a detailed term sheet, and we will review and discuss accordingly.

47 DTL gave evidence that no such term sheet was provided and that there were no further discussions. Thus, the 20 March 2025 Message did not lead to any withdrawal of the arbitration, and could not have created any impression that the arbitration would be withdrawn (since the Claimant did not fulfil the conditions for withdrawal). Indeed, no reliance was placed on it by counsel for the Claimant in his written submissions. In his oral submissions he referred to this exchange as reinforcing the point that the Claimant was seeking to perform the Agreement.

48 In my view, the above exchanges do not indicate that the Claimant was unable to present its case. Whatever commercial discussions may have taken place, they did not cause the Claimant to be unable to present its case to the Tribunal, and the Claimant has not advanced any argument to this effect. At the most, this evidence shows that that *if* a transaction was entered into, the Claimant would not *need* to present its case (since the Defendant would be

---

40 DTL–2 at p 377.

willing to withdraw the arbitration). That is distinct from the Claimant being *unable* to present its case, and in any event no term sheet was in fact provided and no transaction was in fact entered into.

49 The above exchanges do not amount to an unqualified representation that the Defendant was willing to suspend the arbitration. For the reasons that follow, there is also no basis for the Claimant to say that it believed there was no need to participate in the arbitration.

50 The 15 January 2025 Message is, at most, a statement by the Defendant that it was willing to work together with the Claimant to seek a temporary suspension of the arbitration until 14 February. If there was a temporary suspension it was, as counsel for the Defendant submitted orally, for no more than one month. There is no basis for the Claimant to interpret the 15 January 2025 Message as a promise or representation to suspend the arbitration *in toto*.

51 Equally, the 20 March 2025 Message cannot be used to found a belief that the Claimant would not need to participate in the arbitration, or that the Defendant would withdraw the arbitration. As I have said above, any withdrawal was clearly conditional on there being a "concrete proposal" and "detailed term sheet", and this did not come to pass.

52 It should have been clear to the Claimant that the arbitration was not suspended, for the Tribunal was constituted in May 2025 and in June 2025 PO1 was issued requiring the Claimant to submit its Defence by 8 August 2025. DTL also exhibits the correspondence from SIAC to the Claimant in May 2025 and June 2025 in which the Claimant is informed of the constitution of the Tribunal,

invited to comment on the draft PO1, and is sent a copy of PO1.[41] If the Claimant thought in the early part of the year that there was no need to participate in the arbitration, it cannot have thought that there was no such need once it had been informed that the Tribunal had been appointed and that it was required to submit its Defence. I note that CCEO does not refer to the communications from the Tribunal in May and June 2025 in his affidavit evidence.

53 CCEO's evidence also sits unhappily with the statement by CHK on 20 March 2025, also exhibited by the Defendant but apparently not by the Claimant, that the Claimant "intend(ed) to respond to the arbitration."[42]

54 Thus, what was said by DCEO in October 2024, January 2025, and March 2025 cannot justify or explain the failure of the Claimant to submit its Defence and to participate in the arbitration. If there had been any representation in January and March 2025 that the arbitration would be temporarily suspended or that the Defendant would consider withdrawal of the arbitration, by May and June 2025 there was no such continuing representation and there was certainly no representation that there was no necessity to participate in the arbitration. It follows that there is no basis for the submission that the Claimant was unable to present its case to the Tribunal. The Claimant was always able to present its case. It chose not to do so.

55 For the same reasons there is no basis for the suggestion that the Defendant is estopped from relying upon the Claimant's non-participation in the arbitration in defence of the Claimant's application to set aside the Award. Promissory estoppel requires that (i) the promisor made a clear and unequivocal

---

41 DTL–2 at p 261–309.

42 DTL–2 at p 258.

promise or representation; (ii) the promisee acted in reliance on that promise or representation; and (iii) the promisee suffered detriment as a result of that reliance; *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 at [37]; *Oriental Investments (SH) Pte Ltd v Catalla Investments Pte Ltd* [2013] 1 SLR 1182 at [83]. The communications by the Defendant were in no way unequivocal. The 15 January 2025 Message was to the effect that the arbitration would be suspended *if* the Claimant requested for a deferral (as to which there is no evidence that it did), and the 20 March 2025 Message was to the effect that the Defendant was willing to withdraw the arbitration *if* the Claimant presented a proposal and detailed term sheet (which it did not do). The Claimant's failure in this regard means that it cannot be said to have acted in reliance on the promises or representations. The Claimant therefore cannot rely on promissory estoppel, and much the same reasons apply for why the Claimant cannot rely on estoppel by representation.

56 The Claimant has also stated that it did not have the benefit of legal advice and did not know the consequences of failing to participate in the arbitration.[43] This is supported by the evidence of CCEO. However, it cannot, in my judgment, advance the Claimant's case in these proceedings. The Claimant is engaged in the business of providing financial advisory services for capital raising. There is no suggestion that the Claimant could not have obtained legal advice and thereby learn (if it did not already appreciate) that by not participating in the arbitration its case in defence to the claim brought against it would not be heard and that the Tribunal may make an award against it. It has not been explained why legal advice was not sought. Once it was clear that the arbitration was proceeding (and the Tribunal had advised the Claimant that it could proceed with the arbitration notwithstanding non-participation by the

[43] CWS at para 3.

Claimant) the Claimant must have decided to ignore the arbitration and not to seek legal advice. As has been submitted by counsel for the Defendant, ignorance of the law is not a ground to set aside an arbitral award.[44] The Claimant cannot rely upon its own decision not to seek legal advice, when faced with a claim against it in arbitration, as a reason for saying that it was unable to present its case to the Tribunal. As counsel for the Defendant submitted orally, the Claimant was given every opportunity to present its case but chose not do so.

57 At the hearing, counsel for the Claimant raised the case of *BOM v BOK* [2019] 1 SLR 349 ("*BOM*"), for the proposition that the lack of independent legal advice is one of the factors that the court can take into consideration in deciding whether equity should intervene. Because the case was mentioned for the first time at the hearing, I directed that each party file short submissions with regard to the case.

58 Counsel for the Claimant points to the fact that CCEO and CHK were laypersons who did not have the benefit of legal advice and did not appreciate the consequences of the Claimant's non-participation in the arbitration. Rather, they had dedicated years of effort to fulfil the Agreement. Counsel also points to the alleged misrepresentations by the Defendant that led the Claimant to believe that it was unnecessary to participate in the arbitration. Counsel submits that these factors warrant equity's intervention via estoppel by representation or promissory estoppel.[45]

---

44 Defendant's Written Submissions at para 17.

45 Claimant's Supplementary Written Submissions at para 1–3.

59 Counsel for the Defendant has reviewed the facts of *BOM* and submits that they were very different from the facts of the instant case. They had nothing to do with the circumstances in which an arbitration award may properly be set aside. The observation in the case about the relevance of a lack of legal advice was limited to the facts of *BOM*.

60 I agree with the submission of counsel for the Defendant that *BOM* is of no assistance in resolving the present application.

(a) The facts of *BOM* were very different. In *BOM*, the respondent husband had placed his assets on trust for the sole benefit of his infant son. The declaration of trust had been prepared by the appellant wife and signed at a time when the husband was grieving for his recently-deceased mother, the husband and wife had recently argued, and the wife had threatened to chase the husband out of the property which they were staying in: *BOM* at [6] and [74].

(b) The absence of legal advice was relevant in *BOM* because of the impairment to the husband's decision-making ability which rendered him susceptible to influence. It was in that context that the absence of legal advice was relevant.

(c) By contrast, there is nothing in the present case which impaired the Claimant's decision-making ability. The Claimant was always able to seek legal advice. Moreover, the Claimant was encouraged to participate in the arbitration by the Tribunal and received repeated updates on the progress of the arbitration.

(d) In any event the Claimant has not established the representation relied upon.

61 For these reasons the first ground for setting aside the Award must be dismissed.

Whether the Award was induced by fraud

62 As developed in counsel's written submissions, this ground is based upon an allegation that the Defendant knew that the Claimant would rely upon the aforesaid representations and so would not participate in the arbitration.[46] This was said to have prevented the Claimant from raising its defence that the former chairman of ParentCo had given verbal assurances to the Claimant that it would not seek to enforce Addendum No.2 against the Claimant, which the Claimant said constituted promissory estoppel or estoppel by representation.[47] It is further said that the Defendant knew of that defence and deliberately failed to disclose those assurances to the Tribunal. It is said that in those circumstances the Award was induced by fraud.[48]

63 However, since there was no representation in May and June 2025 or thereafter that the Claimant need not participate in the arbitration, there was no reason for the Defendant to know that the Claimant would not participate in the arbitration, and no reason why the Claimant was prevented from raising such defences as it had to the claim made in the arbitration.

64 It is also clear that the Award was not induced by fraud. Where non-disclosure or suppression of evidence is relied upon as fraud, for the purposes of setting aside an arbitration award it is necessary to show deliberate (as opposed to innocent or negligent) concealment aimed at deceiving the arbitral

46 CWS at para 13.

47 CWS at para 14.

48 CWS at para 13–17.

tribunal and a "convincing case must be shown": *BVU v BVX* [2019] SGHC 69 ("*BVU*") at [46].

65 In the present case the Claimant has alleged a deliberate failure to disclose the representations said to have been made by PCEO.[49] But there is no evidence to support this very serious allegation, let alone a "convincing case".

66 Even if PCEO made such a representation, the Claimant has not shown there was deliberate concealment aimed at deceiving the Tribunal. CCEO has averred that because PCEO had authority to deal on behalf of the Defendant in relation to the Agreement, the Defendant would have been aware of the oral representations made by PCEO in January and February 2023.[50] However, there is no evidence that the Defendant knew of the assurances said to have been given by PCEO. On the contrary, DTL has given clear evidence that the Defendant had no knowledge of those assurances until evidence was filed in these proceedings. I accept the evidence of DTL, which does not appear to be challenged by CCEO. The fact that PCEO had the authority to sign the Agreement does not indicate that DTL must have known of the suggested assurances. PCEO was part of ParentCo's management, not of the Defendant's management.[51]

67 The Claimant also says that the Defendant failed to disclose (i) the key role that PCEO played and (ii) that PCEO's role as CEO of ParentCo was terminated in or around March 2024. However, in circumstances where the Defendant was unaware of the assurances said to have been given by PCEO,

---

49 CWS at para 15.

50 C–2 at para 24.

51 DTL–2 at para 56.

there was no reason why such matters should have been disclosed by the Defendant to the Tribunal and no basis at all for suggesting that such non-disclosure was aimed at deceiving the Tribunal.

68 For these reasons the second ground for setting aside the award must be dismissed.

Whether there was a breach of natural justice

69 This ground is based upon the same matters which are alleged to support the second ground.[52]

70 To succeed in setting aside the Award based on a breach of natural justice, the Claimant must show (i) which rule of natural justice has been breached, (ii) how it was breached, (iii) how the breach was connected to the making of the Award, and (iv) how the breach prejudiced it. Only meaningful breaches of the rules of natural justice which have actually caused prejudice should be remedied by the court: *Soh Beng Tee & Co. Pte Ltd. v Fairmount Development Pte Ltd.* [2007] 3 SLR(R) 86 at [29] and [65].

71 In the present case the complaint is that "material facts relating to the Claimant's defence were not made known to the Arbitral Tribunal".[53] It was not however explained why it is a rule of natural justice that the Defendant was obliged to make known material facts relating to the Claimant's defence to the Tribunal. Neither did the Claimant point to any precedent supporting the existence of such a rule of natural justice.

[52] CWS at para 13–17.

[53] CWS at para 17.

72 Even if one assumes that there is such a rule it cannot have been broken in the present case because the Defendant was unaware of such facts (see the previous section of this judgment) and had no reason to know of such facts. A party to an arbitration cannot be obliged to disclose that which it does not know and has no reason to know.

73 It is therefore unnecessary to decide whether there are or can be circumstances in which a party to an arbitration can be obliged to disclose to the tribunal matters which are relevant to a defence that it is aware of, but which have not been advanced by the other party because it has not participated in the arbitration. All that can be said at this point is that such situations would be extremely rare. In *ex parte* or without notice proceedings there is a duty to disclose relevant matters (*ie*, a duty of full and frank disclosure) but arbitration proceedings where one party *chooses* not to attend the hearing are not *ex parte* or without notice. In the present case the suggested defence based upon the assurances said to have been given by PCEO had not been made known to the Defendant before the hearing of the arbitration.

74 I accept that where a party who chooses not to participate in an arbitration informs the other party of a defence and that other party is aware of facts material to that defence which have not been made known to the tribunal, a failure to disclose such matters, if deliberate and with a view to *deceiving* the tribunal, may give grounds for setting aside the award on the grounds that it was induced by fraud. However, it does not follow that, absent deceit, a party to an arbitration is obliged to present arguments on behalf of an absent party. Where a party has been given every opportunity to present its defence but chooses not to take that opportunity, a court will often regard the party as having little right to criticise the conduct of the arbitration; *Re an Arbitration between Hainan Machinery Import and Export Corp and Donald & McArthy Pte Ltd*. [1995] 3

SLR(R) 354 at [25]. This is consistent with the position that a party cannot raise an *infra petita* challenge against an award where it chose not to participate in an arbitration, did not file any pleadings, and failed to raise key issues, especially where those issues were the subject of the *infra petita* challenge: *DEM v DEL* [2025] 1 SLR 29 at [63]–[66].

75 Even if there was a breach of natural justice, it would be necessary for the Claimant to show that it has been or would be prejudiced. The alleged defence is based on promissory estoppel or estoppel by representation arising out of oral representations.[54] The Claimant would therefore have to overcome the fact that the Agreement contains a "no oral modification" clause,[55] and that this was unchanged by Addendum No. 2.[56] The Claimant made no submissions on this point.

76 For these reasons the third ground for setting aside the Award must be dismissed.

Whether the Award is against public policy

77 This ground is based upon the same matters which are alleged to support the second and third grounds.[57]

78 The threshold for setting aside an award on the grounds that it is against public policy is high. It must be shown that upholding the award would "shock the conscience", be "clearly injurious to the public good", be "wholly offensive

54 C–1 at para 17; CWS at para 14.

55 C–1 at p 546.

56 C–1 at p 553.

57 CWS at para 13–17.

to the ordinary reasonable and fully informed member of the public" or would "violate the forum's most basic notion of morality and justice": *Navayo International AG v Ministry of Defence, Government of Indonesia* [2024] 6 SLR 1 at [210].

79 In circumstances where (i) the Claimant was given every opportunity to participate in the arbitration, chose not to do so and therefore chose not to put before the Tribunal its defence based on the assurances said to have been given by PCEO and (ii) the Defendant was unaware of those assurances, this test is clearly not satisfied.

80 For these reasons the fourth ground for setting aside the Award must be dismissed.

The Claimant's alternative argument

81 Counsel for the claimant submits that the second to fourth grounds could succeed even if the Defendant did not know of the assurances said to have been given by PCEO. Counsel submits that, based upon the representations alleged to have been made by the Defendant (set out at [41]–[46] above), the Defendant led the Claimant to believe that that there was no necessity to participate in the arbitration, thereby gaining an unfair advantage and allowing the Defendant to have a walkover victory in the arbitration. In those circumstances it was said that the Award was induced by fraud, that there was a breach of natural justice in that the Claimant was deprived of a fair hearing, and that the Award was against public policy.[58]

[58] CWS at para 18–20.

82 This alternative argument must also be dismissed because it is based upon there having been a representation that there was no need to participate in the arbitration. For the reasons already given there was no such representation. As I have said above, there were at best representations that the arbitration might be suspended or withdrawn if certain conditions were fulfilled. In the case of the 15 January 2025 Message, the condition was that the Claimant seek a deferral of payments. There is no evidence that it did so. In the case of the 20 March 2025 Message, the condition was the presentation of a proposal and term sheet. This was not done. The Defendant may have had an advantage in the arbitration because the Claimant did not participate, but that advantage cannot be described as unfair. It resulted from the Claimant's own decision not to participate in the arbitration.

83 There was therefore no fraud by the Defendant, there was no breach of natural justice, and the arbitration was not contrary to public policy.

Conclusion

84 I dismiss the application to set aside the Award. The Defendant is therefore entitled to its costs. If the parties are unable to agree on the quantum of costs, they are to file written submissions within 14 days of this judgment, of no more than five pages each. Unless requested to hear parties orally, I will

proceed thereafter to decide on the quantum of costs on the basis of their submissions.

Sir Nigel Teare
International Judge

Tien De Ming, Grismond (Infinitus Law Corporation) for the claimant;
Mahesh Rai s/o Vedprakash Rai, Yong Wei Jun Jonathan, and Lai Yi Qian (Drew & Napier LLC) for the defendant.