

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

[2026] SGHC 141

Originating Application No 175 of 2026

Between

- (1) Lee Boon Khim
- (2) Lee Mui Tiang
- (3) Lee Mui Giau

... Applicants

And

Entech Global Solutions Pte
Ltd

... Respondent

JUDGMENT

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

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Lee Boon Khim and others
v
Entech Global Solutions Pte Ltd

[2026] SGHC 141

General Division of the High Court — Originating Application No 175 of 2026

Aidan Xu J
18 May 2026

8 July 2026

Judgment reserved.

Aidan Xu J:

Introduction

1 This is an application under s 48(1)(a)(vii) of the Arbitration Act 2001 (2020 Rev Ed) (the “Act”) to set aside three parts of an arbitral award dated 13 January 2026 (the “Award”) relating to a sale and purchase agreement for shares. The applicants before me, who were the sellers, say that in arriving at each of the three findings, the arbitral tribunal (the “Tribunal”) breached the rules of natural justice, and in particular the fair hearing rule, largely by failing to address arguments made by them and by considering matters not pleaded.

2 Having considered the arguments, I find that it has not been shown that there was any breach of natural justice. The application is thus dismissed.

3 In the arbitration, the buyer was the claimant, and the sellers were the respondents. In the application before me, those positions are reversed, the sellers being applicants, as they seek to set aside the Award. The buyer is the respondent. To avoid confusion, I refer to them as the sellers and the buyer.

Background

4 In October 2023, the buyer and the sellers entered into a sale and purchase agreement (the “SPA”) for a total price of S\$12m for the shares of the applicants in a group of companies in the pest control business. The price was payable as an initial sum of S\$8m, less S\$1,326,907.15 referable to temporary bridging loans (the “Temporary Bridging Loans”), and four annual tranches of S\$1m each subject to adjustments.¹

5 After taking control of the companies, the buyer said it had discovered pre-completion liabilities of S\$506,967.55 that the sellers ought to have paid, settled or resolved before the completion date. The buyer sought payment of these sums under the SPA.² As the matter could not be resolved, arbitration was commenced by way of notice of arbitration, for that sum of money. The arbitration was constituted under the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the “SIAC Rules”), with a single arbitrator.³

6 In the Award, the Tribunal found for the buyer. It awarded S\$506,967.55 for the pre-completion liabilities,⁴ dismissed the sellers’ counterclaims totalling

¹ 1st Affidavit of Lee Boon Khim and Lee Mui Tiang dated 9 February 2026 (“LBK-1”) at paras 6–14.

² 1st Affidavit of Walden Chu dated 13 January 2025 (“WC-1”) at paras 10–11.

³ WC at paras 11–15.

⁴ Award at para 117.

over S\$2.8m,⁵ and awarded costs on an indemnity basis and interest at 5.33% per annum on all sums awarded (including legal costs and disbursements), bringing the total to over S\$900,000.⁶ Only three of the Tribunal's findings are challenged in this application:⁷

- (a) the vehicle lease award of S\$10,681;
- (b) the JTC lease termination costs of S\$55,309.21; and
- (c) the dismissal of the sellers' counterclaim for the first S\$1m tranche payment.

The vehicle lease award of \$10,681

7 A vehicle had been leased by one of the companies in the group, from a third party. The Tribunal awarded S\$10,681 for outstanding lease invoices, covering December 2022 to August 2023, for the vehicle, finding breaches of clauses 5.3(b)(iv) and 5.1(f).⁸ It found little or no evidence that the sellers had challenged the invoices while the company was under their management, and held that the buyer could not be faulted for failing to take steps after completion that the sellers had not taken themselves when the company was under their management.⁹ The Tribunal rejected as speculative the suggestion that the lease could have been terminated following the accident, there being no evidence that it had in fact been terminated.¹⁰

⁵ Award at para 134.

⁶ Award at paras 143–154.

⁷ Originating Application for HC/OA 175/2026 dated 17 March 2026 at para 1.

⁸ Award at paras 100 and 102(c)–(d).

⁹ Award at para 102(b)(ii).

¹⁰ Award at para 102(b)(iii).

The lease termination costs

8 Leases were to be terminated. Under clause 6.6, the parties were to use commercially reasonable endeavours to terminate the leases. The Tribunal awarded the full sum under clause 6.6,¹¹ holding that the clause did not require the buyer to consult the sellers before terminating.¹² Even if consultation were required, the obligation to indemnify was not contingent on it¹³ and, on the evidence, the sellers was not likely to have cooperated in any event.¹⁴

The first tranche payment

9 This concerned a payment of S\$1m that was part of tranches of payments going towards the total payment due under the SPA. The Tribunal dismissed the sellers’ counterclaim, finding the sum was fully set off against the “First Seller Receivable” (“Receivable”) under the SPA,¹⁵ connected to the primary operating company of the group of companies (“POC”). The Tribunal found that the parties intended for the Receivable to be deducted from the tranche payments.¹⁶

Summary of the sellers’ case

10 The sellers seek to set aside the three findings under s 48(1)(a)(vii) of the Act, on the ground that the Tribunal breached the fair hearing rule by failing to consider or meaningfully engage with essential submissions and material

¹¹ Award at paras 114–115.

¹² Award at para 114(a).

¹³ Award at para 114(b).

¹⁴ Award at para 114(c).

¹⁵ Award at para 128(b).

¹⁶ Award at para 128(c).

issues they had advanced.¹⁷ This is not an appeal on the merits of the Award, but a challenge to the absence of an active process of engagement with their actual case.¹⁸

11 The sellers say that in respect of the vehicle lease award of S\$10,681, the Tribunal did not address the question of whether any liability arose under clause 4 of the lease agreement, given that the vehicle had been declared a total loss and no replacement had been provided.¹⁹ On the JTC lease termination costs of S\$55,309.21, the Tribunal failed to engage with the sellers' construction of clause 6.6 as requiring joint and coordinated action, and relied on unpleaded evidence, raised for the first time in cross-examination, on the sellers being non-cooperative.²⁰ As for the counterclaim in respect of the first tranche of S\$1m, the Tribunal failed to engage with the evidence that the bank loans of S\$1,397,778.94 formed part of the Receivable of S\$1,455,072.14, such that treating the two amounts separately resulted in double counting.²¹

12 Following cases such as *AMZ v AXX* [2016] 1 SLR 549 ("*AMZ v AXX*") and *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 ("*Glaziers Engineering*"), curial intervention is justified where a tribunal fails to consider an essential issue or material submission with a real prospect of affecting the outcome. The sellers say that each breach was causally connected to the Award and caused them actual prejudice or a real, non-fanciful prospect of affecting the outcome in the arbitration.²²

¹⁷ Sellers' Submissions at para 14.

¹⁸ Sellers' Submissions at paras 17 and 19.

¹⁹ Sellers' Submissions at paras 20–22 and 28–29.

²⁰ Sellers' Submissions at paras 45–46.

²¹ Sellers' Submissions at paras 57 and 59–61.

²² Sellers' Submissions at paras 18, 33–34, 51–53 and 75–76.

Summary of the buyer's case

13 The buyer firstly took the preliminary objection that the sellers had failed to identify, in their supporting affidavit, which rule of natural justice was said to have been breached, and that this omission is fatal to the application.²³ The buyer says the sellers only tried to remedy this very late in the day by way of the non-agreed list of issues filed before the hearing. This prevented the buyer from being able to respond fully.²⁴

14 For each of the contested findings, the buyer says that there was no breach of natural justice, as the Tribunal did engage with the sellers' arguments. For the vehicle lease, the final award at para 101 summarised the sellers' position. The Tribunal analysed the evidence and found that the sellers had failed to challenge the invoices when the company was under their management, and that the buyer could not be faulted for not doing so after completion.²⁵ The Tribunal rejected the sellers' arguments. There was no breach of natural justice.²⁶

15 As for the JTC lease termination, the buyer argues that the Tribunal had thoroughly examined, and then rejected, the sellers' arguments on clause 6.6 of the SPA, including the contention that the buyer had acted unilaterally in terminating the JTC leases without consultation.²⁷ The Tribunal found that clause 6.6 did not require the buyer to consult or obtain the sellers' consent

²³ Buyer's Submissions at paras 19–20.

²⁴ Buyer's Submissions at paras 21–22.

²⁵ Buyer's Submissions at paras 30–32.

²⁶ Buyer's Submissions at para 35.

²⁷ Buyer's Submissions at para 39–40.

before terminating the JTC leases.²⁸ Even if the Tribunal's interpretation of clause 6.6 was incorrect, that would amount to an error of law at most and not a breach of natural justice.²⁹

16 As for the first tranche payment counterclaim, the buyer argues that the Tribunal had engaged with the sellers' arguments and dismissed it on clear and well-reasoned grounds, finding that the Receivable and the Temporary Bridging Loans were distinct items under the SPA,³⁰ The sellers are only repeating the same arguments made in the arbitration and attempting to use the present application as a backdoor to appeal on the merits.³¹

The decision

17 I find that there has been no breach of natural justice, specifically the fair hearing rule. That determination turns on the following issues:

- (a) Whether the preliminary objection by the buyer is made out, such that the application is dismissed by virtue of this reason alone; and
- (b) Whether, in respect of each of the three challenged findings, there has been breach of the fair hearing rule and prejudice has been suffered by the sellers.

18 I find that the buyer's preliminary objection should not bar this application, but that in respect of each of the three findings that form the subject of this application, a breach of the fair hearing rule is not made out, as the

²⁸ Buyer's Submissions at para 40.

²⁹ Buyer's Submissions at para 41.

³⁰ Buyer's Submissions at paras 49 and 55.

³¹ Buyer's Submissions at para 35.

complaints made by the sellers are really on the merits, and the Tribunal has mostly addressed its mind.

The applicable law

19 Section 48(1)(a)(vii) of the Act permits the court to set aside an award where a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of a party have been prejudiced. The guidance in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (“*Soh Beng Tee*”) at [29] specifies four questions to be answered: (i) which rule of natural justice was breached; (ii) how it was breached; (iii) the connection of the breach to the making of the award; and (iv) what prejudice was caused by the breach. As explained in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 (“*L W Infrastructure*”) at [50]–[54], prejudice requires actual or real prejudice – that is, the question is whether the breach could reasonably have made a difference to the arbitrator, rather than whether it would necessarily have done so.

20 The relevant rule here is the fair hearing rule. There is no allegation or assertion of bias. The governing principles are well settled and are not in dispute. A breach of the fair hearing rule may arise in one of two ways: from the Tribunal’s failure to apply its mind to an essential issue arising from the arguments, or from a chain of reasoning that the complaining party had no reasonable opportunity to address (*BZW v BZV* [2022] 1 SLR 1080 (“*BZW v BZV*”) at [60]–[61]).

21 In *Soh Beng Tee*, the Court of Appeal set out a summary of the applicable principles at [65], and they can be further summarised as follows:

- (a) Parties should be heard, and have reasonable opportunities to present their cases as well as to respond. An arbitrator should not base his decision(s) on matters not submitted or argued before him.
- (b) Fairness, however, is a multidimensional concept. It would equally be unfair to the successful party if it were deprived of the fruits of its labour by a dissatisfied party raising arid technical challenges after an award has been made. The courts are not a stage where a dissatisfied party can have a second bite of the cherry.
- (c) There should be minimal curial intervention, recognising the autonomy of the arbitral process, and parties must have in opting for arbitration accepted the risk of limited recourse to the courts.
- (d) In respect of the right to be heard, it is not necessary for the arbitrator to refer to every ground. Only if there is a dramatic departure from the submissions, or if there is extraneous evidence, or a view at odds with the established evidence, or a conclusion unequivocally rejected by the parties as irrelevant, would the court possibly intervene. There must be a real basis for the allegation that the arbitral process has been conducted irrationally or capriciously. The applicant must show that a reasonable litigant in his shoes could not have foreseen the type of reasoning in the award.
- (e) The arbitrator may adopt a path in between the positions of the parties, and to come to his own conclusions or inferences from the facts before him.
- (f) The court will not be overly assiduous in trying to find fault with an award.

22 Subsequent cases show that the failure must be a clear and virtually inescapable inference from the award. The fact that an award does not address an argument expressly does not, without more, show that the Tribunal failed to apply its mind to it, because there may be a valid alternative explanation for the omission. A decision to reject an argument, whether implicitly or expressly, and whether rightly or wrongly, is not a breach (*AKN v ALC* [2015] 3 SLR 488 (“*AKN v ALC*”) at [47]). The point was also reiterated in *DKT v DKU* [2025] 1 SLR 806 (“*DKT v DKU*”) at [8(c)], which, while in the specific context of *infra petita* challenges, is a compendium of the relevant principles in this area:

Third, the tribunal must have completely failed to consider the point. Assessing whether the tribunal completely overlooked an essential point will typically be a matter of inference, and if such an inference is to be drawn at all, it must be shown to be clear and virtually inescapable (see *AKN and another v ALC and another and other appeals* [2015] 3 SLR 488 (“*AKN*”) at [46] and *BZW and another v BZV* [2022] 1 SLR 1080 (“*BZW*”) at [60(a)]). In making such inferences, our courts adopt a “generous approach”, avoiding a hypercritical or excessively syntactical analysis of the award (see *BLC and others v BLB and another* [2014] 4 SLR 79 at [86]). Any doubt in this regard will be resolved in favour of upholding the award in accordance with the principle of minimal curial intervention (see *Palm Grove* at [71]). We emphasise again that the focus here is not on how well or accurately the tribunal understood, analysed and dealt with the point; but with whether it did in fact consider the point *at all* (however incompetently or incorrectly it may be said to have done so). Earlier suggestions that a tribunal’s failure to understand an argument may amount to a breach of natural justice (see *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 at [31] and [37]), were doubted and clarified in *AKN* at [47], where we made clear that a tribunal’s “failure to comprehend [an] argument and so to appreciate its merits” is not a breach of natural justice. Otherwise, the courts will be inundated with challenges seeking to relitigate matters already decided in arbitration on the ground that the tribunal did not fully appreciate its argument or the evidence. It is not enough for the applicant to demonstrate that the tribunal’s consideration of the matter was somehow lacking; it will have to show that the tribunal completely failed to even consider an essential issue. The inquiry is not directed at the *adequacy* of the tribunal’s analysis, but with the *existence and fact* of

such analysis. The only qualification to this would 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 (*AKN* at [44]–[46]). However, for the avoidance of doubt, the threshold for such a finding will be a *high* one, for, if it were otherwise, errors of law or fact would impermissibly be made a ground for setting aside an arbitral award under the guise of a “natural justice” challenge (see *Palm Grove* at [24] and [48]; see also *India Glycols Ltd and another v Texan Minerals and Chemicals LLC* [2025] SGHC 28 at [34]).

Thus, it is only where a tribunal has completely failed to consider the issue that a breach of natural justice will be found. It may also be emphasised that the requirement of natural justice secures the right to be heard, not the right to have one's submissions accepted or comprehended correctly (*TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 (“*TMM Division*”) at [94]–[96]).

23 A tribunal is entitled to adopt a chain of reasoning provided it flows reasonably from, or is connected to, the parties' arguments. A point taken by the tribunal will have a sufficient nexus with the parties' arguments where it is covered by the pleadings, arises by reasonable implication from them, or arises in the course of the arbitration such that the affected party had notice of it and an opportunity to address it (*JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 at [150], [152], [154], [156] and [159]).

24 Even where a breach is shown, an award will be set aside only if the breach caused the applicant prejudice, in the sense that it denied the tribunal evidence or arguments with a real, as opposed to a fanciful, prospect of making a difference to the outcome (*L W Infrastructure* at [54]). Only meaningful breaches that have actually caused prejudice would attract a remedy; a merely technical or inadvertent denial of some aspect of a fair hearing will almost

invariably be insufficient (*DHZ v DHY* [2024] SGHC 236 at [17], citing *Soh Beng Tee* at [91]).

The preliminary objection

25 The objection taken by the buyer is that the sellers failed to identify, in the supporting affidavit as is required, the rule of natural justice which was alleged to have been breached. It is argued, applying the requirement laid down in cases such as *Fisher, Stephen J v Sunho Construction Pte Ltd* [2018] SGHC 76 (“*Fisher*”) at [30], that the applicant must identify the rule of natural justice that was breached. The requirement that an applicant state the alleged breach can be traced back to *Soh Beng Tee* at [29], which cites *John Holland Pty Ltd v Toyo Engineering Corp (Japan)* [2001] 1 SLR(R) 443 (“*John Holland*”) at [18] in what appears to be the first reference to the requirement.

26 The buyer here says that the sellers failed to meet this requirement as they had not identified the breach in their supporting affidavit. That affidavit did not contain any details as to why there was such breach. The complaint was only made clear in the non-agreed list of issues, indicating the sellers’ intended arguments. This, the buyer contends, was a late attempt to plug the gap, and they have been robbed of the opportunity to respond through their own evidence.

27 However, in my determination, the need to identify the breach does not actually require any specific form of identification, and it does not require the breach to be set out expressly. What must be present are factual allegations indicating a breach of natural justice, allowing for the identification of the rule of natural justice sought to be relied upon. That I understand to be the purpose of the stipulation in *Soh Beng Tee*. The document that would be expected to contain these identifying allegations would be the supporting affidavit; hence,

in *Fisher* at [35], the Judge there declined to consider three issues which were not in the affidavit.

28 At the hearing, the factual allegations sufficed for the buyer to be able to discern from the draft list of issues that the fair hearing rule was in play, and it has been able to meet the substance of each complaint in its submissions.

29 As mentioned above at [25], it would appear that the first reference to the requirements was in *John Holland*, examining the International Arbitration Act 1994 (2020 Rev Ed) (“IAA”), where the court stated at [18]:

To succeed under s 24(b) of the IAA, one has to consider whether “a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced”. It is incumbent upon the applicant to first, establish which rule of natural justice was breached; secondly, how it was breached; thirdly, in what way was the breach connected with the making of the award; and fourthly, how the breach had prejudiced the rights of the party concerned.

I would note that there is no question that the same approach would be taken whether under the IAA or the Act. What is important for present purposes is that the court was laying out, based on the wording of s 24(b) IAA, what the requirements are. The court did not stipulate, nor did it intend to stipulate, the form and manner in which an applicant is to establish those requirements.

30 The list of requirements in *John Holland* was carried through to *Soh Beng Tee*, and agreed with by the Court of Appeal. Again, there was nothing defining the form or manner by which the breach is identified. In *AKN v ALC* at [48], the Court of Appeal again adopted the approach in *Soh Beng Tee* and *John Holland*, without specifying form or manner.

31 In my determination, therefore, it is sufficient for these natural justice requirements to be established by way of arguments and evidence in the affidavits. It is not necessary for them to be laid out in express terms, or to cite these requirements in some way. This, I find, the sellers have done sufficiently here, given that they have laid out in their affidavit the facts that they say show deficiencies in the determination by the Tribunal. In the affidavit in support, para 22 lays out the grounds relied upon, namely, that the Tribunal had disregarded submissions made by the sellers, or the evidence, or had considered them only superficially. I would note, as an aside, that para 23 then goes on to raise various alleged errors in law and misapprehensions of evidence, but these are irrelevant to a breach of natural justice application. Returning to para 22, while it does not expressly refer to the fair hearing rule, I do not find that such an express reference is required under the law.

32 In *Fisher*, the court declined to consider some issues raised by the applicant, as they were not covered by the affidavit (see [27] above). I would not read this as laying down a requirement that the natural justice rule must be specifically invoked in the affidavit. Rather, the court ruled as it did because the factual basis for these discarded issues was not even properly raised. That is different from the situation in the case here before me.

33 On a separate note, aside from the fulfilment of the *John Holland* requirements, there could also be no complaint as to sufficient notice of the arguments or of the position of the sellers, at least around the time of the hearing before me. Even if there was a little bit of doubt about where the sellers were going with their arguments, and I would say that such doubt would have been very small, it was clear beyond peradventure by then what the sellers were saying. I do not understand the buyer to be alleging otherwise.

34 I am thus not persuaded of the preliminary objection, and it thus fails.

The challenged findings

35 I find that none of the alleged breaches has been made out. In each instance I am satisfied that the Tribunal sufficiently applied its mind to the matters raised, as the buyer submitted. The sellers' complaints, on analysis, are directed at the correctness and merits of the Tribunal's conclusions and at its assessment of the evidence, and not at whether it heard and considered their case. Therefore, no basis for intervention under s 48(1)(a)(vii) has been made out.

The vehicle lease award

36 The sellers argue that the Tribunal, at para 102(b)(ii) of the Award, only considered the question of whether the invoices had been challenged by the sellers while the company was under their management and after completion. The Tribunal did not examine what was described as the anterior question, namely whether any liability arises under clause 4 of the lease agreement. As the vehicle in question was a total loss, with no replacement provided, no hire charges were in fact payable under clause 4. The vehicle company had no entitlement to levy hire charges in the first place. There was nothing in the Award addressing clause 4, or the absence of a replacement vehicle, or the rental company's contractual entitlement to levy hire.

37 The buyer argues that the Tribunal did in fact engage with the sellers' submissions, so there was no breach of natural justice. Paragraph 101 of the final award summarised the sellers' arguments – that the lease agreement could have been terminated, that as no replacement was provided, no rental fees were payable and that the buyer should have challenged the invoices under clause 9

and clause 14(a) of the lease agreement. The Award analysed the submissions and evidence of both parties fully at paras 102(b) to (d), reasoning that the invoices had been issued while the company was under the sellers' management, that there was no or little evidence of any challenge by them when they could have done so, and that the buyer could not have been expected to challenge the invoices afterwards as it had no personal knowledge of the events, and finally that the buyer could not be faulted for not doing things which the sellers had also not done. Following *AKN v ALC*, there is only breach if there is failure by an arbitral tribunal to consider an argument, but not if the tribunal rejected the argument. Such failure to consider can only be inferred if it is clear and virtually inescapable, and especially in the absence of such inference, it is in my view more likely that the sellers are trying to have a review on the merits. As stated above at [22], *DKT v DKU* further adds that the Tribunal must have completely failed to decide the matter.

38 This is not such a case where the inference is clear and virtually inescapable, nor one where the Tribunal has completely failed to decide. I do find, having examined the Award, that the Tribunal had indeed considered and engaged with the arguments of the sellers. As noted by the buyer, the Tribunal did lay out the sellers' arguments at para 101 of the Award. Paragraph 102 then addressed these arguments, finding that the buyer had been reasonable in paying the leasing company, as the sums had accrued before completion and that the sellers' failure breached clause 5(3)(b)(iv), clause 5(1)(f) of the sale and purchase agreement, and clause 3.1 of Schedule 5. The Tribunal found that it was immaterial that it could have been terminated, as there was in fact no termination, and it would be speculative otherwise.

39 The sellers are correct that the Award does not address clause 4 expressly, and that the Tribunal made no clear finding on whether the leasing

company could charge hire on a vehicle that was a total loss. The buyer tried to rely on para 64 of the Award, in refuting the absence of consideration of arguments, but I find this paragraph does not assist. Paragraph 64 reads:

For the purposes of clarity and economy, the Tribunal will address all the issues identified in the Agreed List of Issues, but not in the precise order listed by the parties in the Agreed List of Issues. The Tribunal will organise its findings in a logical sequence that best reflects the Tribunal's analysis of the issues and the nature of this dispute. For the avoidance of doubt, the Tribunal has taken into consideration each issue and all submissions raised by the parties, whether expressly addressed in a discrete section or subsumed within the Tribunal's reasoning on another issue.

I understand the motivation to insert such boilerplate paragraphs. I do not think they would generally be helpful in the court's assessment. The court would look to the substance of the issue, and the actual treatment and consideration of arguments, bearing in mind that it would not be overly strict, as noted above. I therefore do not think much weight would be placed on these paragraphs, except in somewhat rare circumstances.

40 This omission does not however show a failure by the Tribunal to apply its mind to the sellers' argument. The Tribunal was focused on the effect of the contractual indemnity in clause 5.8, which in the Tribunal's assessment allowed recovery even if the buyer ought to have disputed the leasing company's claim (at para 102(a)). Clause 5.8 reads:

Without prejudice to any other rights, claims and remedies available to the Purchaser, the Group or their Affiliates, the Vendors irrevocably undertake to fully indemnify the Purchaser, the Group and their Affiliates on demand against any and all Losses which the Purchaser, the Group Companies and/or their Affiliates may incur or be liable for, in connection with or arising from any breach of a Transaction Document, Applicable Law, Business Contract or Warranty, any Pre-Closing Payroll Liabilities, or any event, fact or matter occurring on or prior to Completion Date. For the avoidance of doubt, the

rules of remoteness and mitigation do not apply to this Clause 5.8.

The Tribunal noted that there could be grounds for disputing liability, without specifying what these might be. On the Tribunal's reasoning then clause 5.8 governed regardless of clause 4. That is, clause 4 was irrelevant on this reasoning. It was therefore not necessary for the Tribunal to separately consider the clause 4 argument. Given all of the above, it cannot be said that there is a clear and inevitable inference that there was a failure by the Tribunal to consider the point within the ambit of what was laid down in *AKN v ALC*.

41 I do note that the sellers' arguments about clause 4 being a condition precedent to the operation of clause 5.8 may be reasoning that would be attractive to some tribunals. But that is not the argument that goes to a breach of the fair hearing rule. Whether or not clause 5.8 should properly be interpreted in the way that the Tribunal found, or whether the Tribunal erred on this score, is immaterial. Any misinterpretation is an error of law, if at all, and not breach of natural justice: *TMM Division*. The Tribunal did also find it was speculation to argue on the basis of termination of the lease agreement: para 102(b)(iii) of the Award. It may be that this may run up against the clause 4 argument. But again, the correctness or sufficiency of the reasoning of the Tribunal is irrelevant to a breach of natural justice claim.

42 The sellers do not make a complaint in this regard on the basis of a chain of reasoning that it was not raised to their notice. I would have rejected any such argument since clause 5.8 was indeed raised by the buyer in its claim, and as is the test in *BZW v BZV* at [60(b)], citing *Soh Beng Tee*, it could not be said that a reasonable litigant in the shoes of the sellers could not have foreseen the possibility of that type of reasoning.

The JTC lease termination costs

43 The sellers argue firstly that the Tribunal did not consider the arguments made in respect of clause 6.6, namely that the use of reasonable endeavours to obtain the termination of the leases contemplated joint and coordinated action between the parties rather than unilateral termination. There was no evidence that the buyer had sought to engage the sellers in the termination. Furthermore, the Tribunal concluded as it did on the basis of unpleaded evidence of non-cooperation, which were raised for the first time in the cross-examination of a witness.

44 The buyer argues that the Tribunal had thoroughly considered the arguments and evidence. The buyer contends that the sellers failed to identify the specific submission or evidence that the Tribunal disregarded or insufficiently considered, and had not explained what was supposed to be irrational in the Tribunal's interpretation of clause 6.6. In any event, para 11 of the Award referred to the sellers' argument that there was no consultation as required under clause 6.6. Paragraph 114 of the Award addressed matters relating to clause 6.6, which the sellers did not dispute required indemnification of the buyer for all costs under the JTC leases, including reinstatement costs. The 1st seller had conceded this in cross-examination. The quantum was also not disputed and was accepted by the 1st seller under cross-examination. On a plain reading, clause 6.6 did not require consultation, but only required commercially reasonable endeavours. Even if consultation was required, the indemnity was not dependent on such consultation. The evidence also showed there was little indication that the sellers would have cooperated anyway. Even if clause 6.6 was misinterpreted, that would only be an error of law, which would not be a basis for intervention.

45 I do not accept the sellers' arguments. The Tribunal found at para 114(a) of the Award that on a plain reading, clause 6.6 did not *require* consultation by the buyer before termination – the buyer only needed to embark on commercially reasonable endeavours. This was a clear rejection on the merits of the sellers' position, which cannot be characterised as a breach of natural justice: *AKN v ALC*; *TMM Division*

46 That finding by the Tribunal renders moot the other arguments made by the sellers on this issue. The foundation of the Tribunal's position is this finding of law, on the merits. The decision was rendered against the sellers there and then. The other matters complained of, namely that pertaining to the evidence of non-cooperation, and that such evidence arose only in cross-examination, were secondary and were actually moot anyway. This is sufficient to dispose of the sellers' contention that there was a breach of natural justice. There was none; the sellers are impermissibly complaining of a finding of the Tribunal that was on the merits: *AMZ v AXX*.

47 In any event, aside from the above determination on the merits, the fact that the evidence of non-cooperation arose in cross-examination does not assist the sellers at all; the point arose in the course of the arbitration, with the opportunity to respond and to argue on it, including to argue for its exclusion. This the sellers should have done at the time, and they failed to do so. Had the matter not been moot in any event, given that there was sufficient notice of this point (even if it arose in cross-examination), and in contrast to situations such as that in *AKN v ALC* at [32] where the tribunal was in breach of natural justice by raising a point on loss of opportunity at the eleventh hour without hearing the parties, particularly the respondents in that case, the Tribunal would have been well within the bounds of the arbitration to consider it.

The dismissal of the first tranche payment claim

48 The sellers say on this issue that the Tribunal did not address the evidence of the accountant that the loans of S\$1,397,778.94 formed part of the Receivable of S\$1,455,072.14, so that the Temporary Bridging Loans and the Receivable were to be taken together, as treating them separately produced double counting and unjust enrichment. The Tribunal failed to engage with these arguments in any substantive or meaningful way, instead accepting the evidence of the buyer’s representative, first given during cross-examination, that the Receivable was not to be deducted from the initial consideration because the 1st seller wanted more money upfront.

49 The buyer argues that the sellers are really just repeating arguments made in the arbitration, which had been considered by the Tribunal and rejected. No particulars or specifics were given again as to why such determination was a breach of natural justice. The Tribunal had in any event addressed, at paras 123 to 128 of the Award, issues relating to the balance sheets of the POC showing that the 1st seller owed money to the POC, with the 2nd seller testifying that she had no basis to dispute the accounts. The Tribunal also found that the plain reading of para 1(a), Schedule 9, read with the definition in clause 11.1 of the “Outstanding [1st Seller] Receivable” pointed to no payment being due to the 1st seller under the first tranche payment. The Receivable and the Temporary Bridging Loans were found to be distinct, as the Receivable was an asset of TPPL, while the Temporary Bridging Loans were a liability owed to third parties. Such a distinction was supported by the evidence of the accountant, and that of the buyer’s representative that the Receivable was deferred as the 1st seller wanted more money upfront, which the Tribunal was entitled to accept. No evidence was put forward by the sellers to the contrary. It was reasonable for a tribunal to form the view that the case has not been

meaningfully advanced and to dismiss it without further elaboration: *AKN v ALC*. The Tribunal was entitled to reject what was an absurd and untenable approach to the SPA provisions. And the Tribunal did try to engage with the arguments canvassed.

50 In my determination, the sellers' essential complaint is again that the Tribunal did not accept their arguments on this issue. This again is not enough. This was a determination by the Tribunal on the merits of the matter. The Tribunal assessed the evidence, having set out the structure of the payments, what the Receivable was, what was on the balance sheet position of the companies, and the available oral evidence. The Tribunal concluded on the basis of this, at para 128(b), that the tranches were set off against the Receivable. The sellers thus really take issue about the assessment and weighing of the evidence and the correctness of the decision. This is not about a breach of natural justice. A complaint about the treatment of evidence or argument is not one about natural justice: *Glaziers Engineering* at [42].

51 Given this, the fact that the evidence of the buyer's representative only arose in cross-examination did not help. The Tribunal reached its conclusion on various other grounds aside from this evidence. In any event, again, the sellers were able to address the cross-examination. There was no breach of natural justice.

Conclusion

52 For the reasons above, the sellers have not made out their case under s 48(1)(a)(vii) of the Act.

53 I find that the Tribunal did not breach the fair hearing rule, and that in any event the sellers have not demonstrated that any alleged breach could reasonably have made a difference to the Award. The application is dismissed.

54 Costs were sought. I will give directions for any further arguments on costs having regard to my findings above.

Aidan Xu
Judge of the High Court

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