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

[2026] SGHC 215

Originating Application No 586 of 2026

Between

Essar Exploration and
Production India Ltd

… *Applicant*

And

Nayara Energy Ltd

… *Respondent*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside — Tribunal failing to consider essential issues and not relying on chain of reasoning with nexus to parties' arguments — Whether breach of natural justice occasioned — Section 24(*b*) International Arbitration Act (2020 Rev Ed)]
[Arbitration — Award — Remission — Multiple errors and disregard of errors — Whether matter should be remitted to tribunal — Article 34(4) UNCITRAL Model Law on International Commercial Arbitration]

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Essar Exploration and Production India Ltd
v
Nayara Energy Ltd

[2026] SGHC 215

General Division of the High Court — Originating Application No 586 of 2026
Wong Li Kok, Alex J
3 September 2026

15 October 2026 Judgment reserved.

Wong Li Kok, Alex J:

Introduction

1 HC/OA 586/20256 ("OA 586") is an application by Essar Exploration and Production India Limited ("Essar") for a partial setting aside of the Final Award dated 25 February 2026 ("Award") made by the arbitral tribunal ("Tribunal") in the arbitration ("Arbitration") between Essar and Nayara Energy Limited ("Nayara"), the respondent.

2 Essar brings its application on four main grounds pursuant to s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") and/or Art 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") that there were material breaches of natural justice.

3 Having considered the arguments, I dismiss Essar's application, and I set out my reasons below.

Facts

The parties

4 Essar is a company incorporated in India and in the business of buying and selling natural gas.[1]

5 Nayara is a company incorporated in India and is in the business of refining and marketing various petroleum products.[2] Nayara was formerly part of the Essar group of companies and operated under the name Essar Oil Limited.[3]

Background to the dispute

6 The dispute underlying the arbitration arose out of the Agreement for Sale ("AFS") between Essar, Nayara and a third party, Abhinand Ventures Private Limited dated 28 September 2022,[4] which was entered into for the implementation of an earlier arbitration award dated 23 March 2022 ("IOCL Award") and the sale and assignment of a quantity of gas under the IOCL Award.[5]

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1 Affidavit of Pushkar Popat dated 8 June 2026 ("PP") at para 9.

2 PP at para 10.

3 PP at para 11(a)(i).

4 Affidavit of Pankaj Kumar Tripathi dated 15 July 2026 ("PKT") at para 18.

5 PP at para 11(a); PKT at para 16.

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7 The dispute between the parties related to whether Nayara made payments pursuant to the IOCL Award in accordance with the terms of the AFS, particularly, whether Nayara was obligated to challenge the Indian Oil Corporation Limited's ("IOCL") entitlement to these payments and whether Essar could recover these payments from Nayara, among other issues.[6] As the present application is only for a partial setting aside of the Award, I only set out the facts relevant to determine the issues related to the application.

The IOCL Award

8 The IOCL Award arose out of an arbitration between Nayara and IOCL (the "IOCL Arbitration").[7] Under the IOCL Award, Nayara was directed to pay IOCL a take-or-pay amount of about INR 288.61 crores, together with interest ("Award Amount"), against which IOCL was to make available a quantity of gas referred to as "Make Up Gas" ("MUG").[8] IOCL then quantified the amount it claimed under the IOCL Award based on the principal sum of INR 416.69 crores,[9] instead of the awarded principal sum of INR 288.61 crores which resulted in excess interest of INR 125,30,92,825 as compared to the interest properly payable under the IOCL Award (the "Excess Interest Amount").[10] It was agreed between Essar and Nayara that IOCL's claim for the Excess Interest Amount was wrongful.[11]

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6 Award at [28].

7 PP at para 11(a)(ii).

8 PP at para 11(a)(iii).

9 Award at [206].

10 PP at para 11(a)(iii).

11 PP at para 11(a)(iv).

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The AFS

9 Essar, Nayara and a third party, Abhinand Ventures Private Limited entered into the AFS on 28 September 2022,[12] to implement the IOCL Award.[13] Essar and Nayara were to request for the assignment of Nayara's rights and obligations under the IOCL Award to Essar, failing which Nayara's rights in the MUG would be assigned to Essar.[14]

10 Under Clause 2.1 of the AFS, Nayara was to make payment of the Award Amount to IOCL latest by 17 November 2022.[15]

The dispute

11 Essar requested that Nayara engage with IOCL on the claims for the Excess Interest Amount prior to 17 November 2022.[16] On 14 November 2022, IOCL wrote to Nayara to reiterate its position that the Award Amount including the Excess Interest Amount was payable.[17] Nayara then forwarded IOCL's letter to Essar on 15 November 2022 and sought Essar's instructions.[18] No payment under the award was made on 17 November 2022.[19]

12 On 22 November 2022, Essar shared a draft letter to IOCL with Nayara. This draft was purported to be on Nayara's letterhead and included a proposal

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12 PP at para 11(a).

13 Award at [209].

14 Award at [210].

15 Award at [210]; PKT at para 19(b).

16 Award at [221]; PP at para 11(c); PKT at para 20.

17 PKT at para 21.

18 PKT at para 22.

19 PKT at para 23.

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for the undisputed amount be paid forthwith by Nayara to IOCL and that the disputed Excess Interest Amount be placed in an escrow account pending resolution of that dispute with IOCL.[20]

13 Senior representatives of Essar and Nayara then met on 24 November 2022 ("24 November 2022 Meeting").[21] Essar claims that this meeting resulted in a subsequent agreement ("Subsequent Agreement"). The alleged Subsequent Agreement was that the IOCL Award would be split into an undisputed part and a disputed part, with the latter comprising the Excess Interest Amount. The undisputed amount was to be paid to IOCL forthwith and the Excess Interest Amount would be subject to resolution through an agreed dispute resolution process. Essar further claims that parties agreed that if IOCL did not agree to the proposed resolution, Nayara agreed to proceed to the execution court of competent jurisdiction.[22]

14 On 25 November 2022 Essar sent Nayara a draft letter to be issued to IOCL on Nayara's letterhead ("25 November 2022 Letter").[23] This stated that:

(a) Nayara would pay IOCL the undisputed amount.

(b) Nayara would place the Excess Interest Amount in an interest-bearing escrow account.

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20 PKT at para 25.

21 PP at para 11(d).

22 PP at para 20.

23 PKT at para 27.

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(c) Nayara and IOCL would jointly approach the arbitral tribunal under s 33 of the Arbitration and Conciliation Act 1996 (India), or refer the two legal issues to a senior law officer.

(d) In the event the arbitral tribunal declined jurisdiction or IOCL did not opt to refer the legal issues to a senior law officer, Nayara would be agreeable to the issues being determined by an execution court of competent jurisdiction.[24]

15 Pursuant to the 25 November 2022 Letter, Nayara issued a letter to IOCL on 28 November 2022 ("28 November 2022 Letter").[25]

16 On 21 December 2022, Essar sent Nayara a legal notice to pay the undisputed amount to IOCL immediately.[26] The undisputed amount excluding the Excess Interest Amount was paid by Nayara to IOCL on 26 December 2022.[27]

17 On 3 January 2023, IOCL rejected the proposal in the 28 November 2022 Letter and sought payment of the Excess Interest Amount,[28] which was subsequently paid by Nayara on 25 January 2023.[29] The payment cover letter (the "25 January 2023 Letter") included the following reservation language that stated:

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24 PKT at para 28; Award at [224].

25 PKT at para 27.

26 Award at [225].

27 Award at [225].

28 PKT at para 30.

29 PKT at para 36; PP at para 11(f); Award at [226].

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> "…payment of the [Excess Interest Amount] has been made with the understanding that the underlying issues we have raised in our earlier letters including on the [Excess Interest Amount], is resolved in a fair, bonafide and speedy manner."[30]

18 Essar, Nayara and IOCL then attempted to conclude an assignment agreement which would allow Essar to have privity *vis-à-vis* IOCL, but they were not able to arrive at any agreement.[31]

19 In July 2024, Nayara issued a letter to Essar stating that it was under no obligation to commence any proceedings against IOCL to recover the Excess Interest Amount.[32] To Essar, this was the breaking point that led it to commence the Arbitration.[33]

The Arbitration proceedings

20 I set out the aspects of the Arbitration proceedings that are relevant to the present application. Essar filed its notice of arbitration with the Singapore International Arbitration Centre ("SIAC") on 18 March 2024.[34] The Arbitration was deemed to have commenced on 21 March 2024.[35]

21 At the first case management conference between parties, the Tribunal directed that parties adopt a memorial style approach and that parties circulate

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30 Award at [226]; PP at para 11(f); PKT at para 36.

31 Award at [227].

32 PP at para 11(h).

33 PP at para 11(h).

34 Award at [41].

35 Award at [41].

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a joint list of issues by 15 July 2024.[36] The first issues list was circulated on 20 July 2024.[37] The issues relevant to the present proceedings are:

> (a) What was the nature of the AFS?…
>
> > (i) Was the AFS varied by subsequent conduct, and if so, which terms were varied?
> >
> > (ii) Was the Respondent under an obligation to pursue the matter against IOCL, and if so, did this obligation apply only on a demand being made by the Claimant?
> >
> > …
>
> (b) Was the Respondent right to make payment of the sum of INR 125,30,92,845.00 to ICL, and if not, can the Claimant recover it?[38]

22 Parties submitted their pre-hearing memorials on 25 June 2025 and Essar requested the Tribunal's directions for submissions in Nayara's pre-hearing memorial to be struck off as they allegedly did not form part of its previous submission.[39] Essar's contention was that in Nayara's reply memorial it had accepted that an "alternative arrangement" was made on the terms of paying the Award Amount and the Excess Interest Amount, but argued that it did not have an obligation to initiate proceedings against IOCL in respect of the Excess Interest Amount.[40]

23 The evidentiary hearing took place between 30 June 2025 and 4 July 2025.[41]

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36 Award at [55]; PP at para 19.

37 Award at [64]–[70], [141], [145], [152]; PP at para 19.

38 Award at [242].

39 Award at [147]; PP at paras 22–24.

40 PP at para 22.

41 Award at [155].

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24 On the second day of the evidentiary hearing, Essar alleged that Nayara presented a new argument. Essar noted that, while Nayara allegedly accepted that the agreement to make a reservation of rights in the 25 January 2023 Letter gave rise to an obligation on Nayara to bring IOCL to an execution court to resolve the issues regarding the Excess Interest Amount, such an obligation would only be triggered by receipt of instructions from Essar and that Essar gave no such instructions.[42]

25 In response to the allegedly new argument presented by Nayara on the second day, Essar then made an oral application for permission to admit an email from Essar to Nayara into evidence to show that Essar did instruct Nayara to bring IOCL to the execution court for resolution of the outstanding issues.[43] The Tribunal rejected the application for Essar to adduce additional evidence.[44]

The Award

26 The Award was delivered by the Tribunal on 25 February 2026. The Tribunal found that:

(a) The AFS was a bespoke, arm's length implementation of an agreement that allocates defined, contractually bound tasks between sophisticated, legally advised counterparties.[45]

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42 PP at para 27.

43 PP at para 28.

44 PP at para 29(e); Transcript for 2 July 2025 p 103 at lines 22–30, p 104 at lines 1–6.

45 Award at [272].

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(i) There was insufficient evidence to support Essar's submissions that there was a Subsequent Agreement between parties that amounted to a variation of the AFS.[46]

(ii) Therefore, there was no obligation on Nayara under the AFS or alleged Subsequent Agreement to approach the execution court for a resolution of the Excess Interest Amount.[47]

(b) That Essar is not entitled to recover the Excess Interest Amount as the record disclosed neither express or implied obligations on Nayara to commence legal proceedings, nor any contemporaneous instructions from Essar directing recovery from IOCL.[48]

No Subsequent Agreement or variation of the AFS

27 The Tribunal's reasoning was set out in Part X of the Award. The Tribunal found that there was insufficient evidence to support Essar's submissions that there was a Subsequent Agreement between Essar and Nayara that if IOCL did not agree to resolve the issues regarding the Excess Interest Amount through clarification with the arbitral tribunal or a senior law officer, then Nayara was obligated to take IOCL to the execution court.

28 The Tribunal found that, based on the evidence, there was no oral agreement between parties arising from the 24 November 2022 Meeting and that there was no agreement to vary the AFS in the 28 November 2022 Letter. This was on the basis that the Tribunal found that there were no agreed minutes of what was agreed at the 24 November 2022 Meeting and that Essar's position

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46 Award at [281].

47 Award at [281].

48 Award at [315].

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that the 28 November 2022 Letter set out the terms of the Subsequent Agreement was not consistent across its pleadings and oral submissions. Further, there was no evidence that the parties considered that the AFS had been varied by either an oral agreement in the 24 November 2022 Meeting or the 28 November 2022 Letter.[49]

29 The Tribunal found that Essar was attempting to maintain inconsistent positions that:

(a) The 28 November 2022 Letter contained the repository of the alleged variation;[50] or that

(b) The 28 November 2022 Letter only contained a partial record of broader terms agreed on 24 November 2022.

The Tribunal identified that the inconsistency was compounded by the documentary record. It therefore found that at best, the 28 November 2022 Letter could be characterised as a proposal to IOCL setting out the options contingent on IOCL's concurrence, rather than a bilateral amendment of the AFS that created unilateral obligations for Nayara.[51]

30 The Tribunal cited the instances of inconsistencies in Essar's case:

(a) Counsel for Essar had submitted that the 28 November 2022 Letter only partially captures the oral agreement reached on

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49 Award at [280].

50 Award at [284].

51 Award at [284].

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24 November 2022. At the meeting, parties agreed that if IOCL did not cooperate, that Nayara would go to the execution court.[52]

(b) However, Essar's counsel's submission was not supported by Essar's factual witness, Mr Popat's statement, Essar's written memorial or rejoinder memorial, Essar's pre-hearing submissions and correspondence at the material time.[53]

31 Ten inconsistencies were then laid out by the Tribunal at [281(i)]–[281(x)] of the Award, including:

(a) There was no evidence of commitment from Nayara that it would be obliged to approach the execution court in Mr Popat's witness statement or in any contemporaneous demand from Essar.[54]

(b) There was no reference to an obligation or a breach of such an obligation under the Subsequent Agreement in any of the four legal notices Essar issued to Nayara to notify Nayara of its breach of the AFS.[55]

(c) Essar's references to when the alleged Subsequent Agreement was concluded were inconsistent:

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52 Award at [281].

53 Award at [281].

54 Award at [281(i)], [281(x)], [240].

55 Award at [281(x)], [240].

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(i) Essar referred on the one hand to the whole of the Subsequent Agreement being captured in the 28 November 2022 Letter,[56] and

(ii) on the other, that the Subsequent Agreement was reached in the prior meeting, then recorded in the 28 November 2022 Letter.[57]

32 Further, Essar relied on an alleged "promise to proceed to the Execution Court" which lacked evidentiary basis.[58] The Tribunal found that on the totality of the record, it was not satisfied that there was consensus *ad idem*, whether on the basis of the 24 November 2022 Meeting or by the 28 November 2022 Letter, that there had been a Subsequent Agreement that varied the terms of the AFS between the parties.[59]

33 The Tribunal then determined the effect of the non-payment of the Award Amount on 17 November 2022 and held that s 63 of the (Indian) Contracts Act 1872 ("ICA") was *prima facie* applicable.[60] Therefore, the Tribunal found that there was:[61]

> "merely a subsequent understanding to treat the Award Amount as comprising two components, but these payments were to be made either upon IOCL's acceptance of the proposal of 28 November 2022, or on the directions of the Claimant."

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56 Award at [281(iii)–(iv), (vii)].

57 Award at [281(ii), (viii)].

58 Award at [281(v)–(vi), (ix)].

59 Award at [284].

60 Award at [286].

61 Award at [287].

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Further, if the proposal was accepted by IOCL, Nayara would then be entitled to act upon it.[62]

Essar was not entitled to recover the Excess Interest Amount

34 The Tribunal's reasoning was set out in Part XI of the Award. First, the Tribunal acknowledged that Essar accepted that there was no obligation under the AFS in its original form for Nayara to resolve the Excess Interest Amount issue through legal means and that Essar's entire claim relied on the purported Subsequent Agreement.[63] Therefore, as the Tribunal had found that there was no Subsequent Agreement based on the evidence before it, Essar's case relied on the existence of an implied term of the AFS which the Tribunal found to be untenable.[64]

35 The Tribunal made this finding on the basis that the implied term was not supported by Essar's third or fourth legal notices to Nayara nor its s 9 of the Arbitration and Conciliation Act 1996 (India) proceedings in which Essar sought interim measures against Nayara before the Delhi High Court, and Essar's memorial.[65] The Tribunal also found that there was no instruction given by Essar to Nayara for resolution of the Excess Interest Amount at the material time.[66]

36 Therefore, the Tribunal found that Essar was not entitled to recover the Excess Interest Amount as there was no evidence of an express or implied

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62 Award at [287].

63 Award at [307].

64 Award at [311].

65 Award at [312]–[313].

66 Award at [314].

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obligation for Nayara to commence legal proceedings, nor any instructions at the material time from Essar to Nayara to direct recovery of such amount from IOCL.[67]

Parties' cases

Essar's case

37 Essar's case is that the Tribunal's rejection of Essar's Excess Interest Amount claim followed material breaches of natural justice that are demonstratable and clear on the face of the record.[68] Essar relies on the following four grounds:

(a) The Tribunal denied Essar a reasonable opportunity to respond to Nayara's allegedly new factual defence of having received "no instructions" at the "material time",[69] (which I will refer to as the "No Instructions" defence) and the Tribunal failed to give Essar reasonable opportunity to respond with factual evidence to the "No Instructions" defence ("No Instructions Ground").[70]

(b) The Tribunal proceeded on a mistaken belief when it ascribed an incorrect position to Essar's counsel's submissions that Essar's position was not supported by its pleadings, written submissions or evidence ("Mistaken Belief Ground").[71]

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67 Award at [315].

68 AWS at para 4.

69 AWS at para 4(a)(i).

70 AWS at para 4(a)(ii).

71 AWS at para 4(b).

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(c) The Tribunal unfairly and unexpectedly adopted a chain of reasoning based on s 63 of the ICA to the "subsequent understanding" without giving parties an opportunity to address the Tribunal on the provision which had no nexus to the parties' arguments ("Section 63 Ground").[72]

(d) The Tribunal failed to decide an essential issue brought before the Tribunal by Essar which was raised in Essar's letter to Nayara dated 25 January 2023. This concerned whether Nayara had the obligation to initiate recovery proceedings against IOCL, which was an alleged condition imposed on by Essar for consent to pay the Excess Interest Amount ("January Condition Ground").[73]

38 These breaches were causally connected to the Tribunal's dismissal of Essar's claim for the Excess Interest Amount.[74] They also prejudiced Essar as the Tribunal could have found in favour of Essar if the rules of natural justice were complied with.[75] Therefore, each of the grounds raised by Essar warrants a partial setting aside of the Award to the extent of the Tribunal's rejection of the Excess Interest Amount claim.[76]

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72 AWS at para 4(c).

73 AWS at para 4(d).

74 AWS at para 5.

75 AWS at para 5.

76 AWS at para 5.

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Nayara's case

39 Nayara's case is that Essar's application to partially set aside the Award on the grounds of breaches of natural justice by the Tribunal is without merit. According to Nayara:

(a) Essar was not denied a reasonable opportunity to present its case on the alleged "No Instructions" defence as:

(i) Essar failed to give the Tribunal fair intimation of its due process complaints.[77]

(ii) Essar had addressed the merits of the alleged new case in its post-hearing submissions without complaint or protest that it did not have reasonable opportunity to respond.[78]

(iii) Nayara did not in fact put forward a new case and that it had been Nayara's case from the beginning that it disputed that Essar gave Nayara instructions to commence proceedings against IOCL.[79]

(iv) The Tribunal's decision to refuse Essar's application to adduce further evidence was a reasonable procedural ruling that falls short of the threshold for curial intervention.[80]

(v) Further, Essar should be precluded from relying on a new ground of setting aside not set out in its affidavit. The Tribunal's reasoning that there was no evidence of instructions from Essar

77 RWS at para 29.

78 RWS at para 31.

79 RWS at para 34.

80 RWS at para 35.

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to Nayara at the "material time" does not have sufficient nexus to the cases advanced by parties.[81]

(b) The Tribunal's chain of reasoning that Essar's counsel's oral submissions were unsupported by its witness statements, pleadings and documentary evidence arose from parties' arguments.[82]

(c) Essar had every opportunity to address the Tribunal's chain of reasoning with respect to s 63 of the ICA:[83]

(i) First, Nayara submits that there was no contradiction in the Tribunal's finding that there could be a subsequent understanding despite no Subsequent Agreement being found.[84] Essar had also responded to Nayara's argument on s 63 of the ICA.[85]

(ii) Second, as the Tribunal found a subsequent understanding, it was clear that s 63 of the ICA was not part of the chain of reasoning by which the Tribunal rejected Essar's Excess Interest Amount claim. Instead, s 63 of the ICA was only referred to by the Tribunal in its determination of the legal effect of non-payment.[86]

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81 RWS at para 73.

82 RWS at para 40.

83 RWS at para 50.

84 RWS at para 51(a)–(b).

85 RWS at para 51(c).

86 RWS at para 53.

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(iii) Third, where s 63 of the ICA was relevant to the issues in dispute, Essar was given an adequate opportunity to address it in additional submissions.[87]

(iv) Finally, Essar has not proven that it has suffered actual prejudice as s 63 of the ICA was not the basis on which the Tribunal rejected Essar's Excess Interest Amount claim.[88]

(d) The Tribunal did not fail to adjudicate an essential issue pertaining to Essar's case that consent to payment of the Excess Interest Amount was conditional on Nayara agreeing to approach the execution court.[89]

40 For the reasons above, Nayara submits that the setting aside application should be dismissed in its entirety. However, in the alternative, where the court finds that the grounds for setting aside are made out, the Award be remitted to the Tribunal.[90]

Issues before this court

41 The issues to be decided are whether the Tribunal breached the fair hearing rule by:

(a) Permitting Nayara to introduce an allegedly new factual defence of "No Instructions" and failing to give Essar a reasonable opportunity to respond with factual evidence to address the allegedly new factual

87 RWS at para 54.

88 RWS at para 55.

89 RWS at para 57.

90 RWS at para 79.

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case. Additionally, whether Essar is relying on an alleged new ground that it did not raise its affidavit,[91] that further or in the alternative, that the Tribunal's reasoning that there was no evidence of instructions being issued at the "material time" by Essar to Nayara had sufficient nexus to the case advanced by parties (*ie*, No Instructions Ground).[92]

(b) Proceeding on an alleged mistaken belief that Essar's oral submission was not supported by its witness statement, pleadings, pre-hearing submissions and correspondence during the relevant period. Further whether the Tribunal's chain of reasoning had sufficient nexus to the case advanced by parties (*ie*, Mistaken Belief Ground).[93]

(c) Unfairly adopting a chain of reasoning that s 63 of the ICA was *prima facie* applicable to the subsequent understanding between the parties as to how the Award Amount should be dealt with after the contractual payment date of 17 November 2022 passed without giving the parties a reasonable opportunity to address the Tribunal on the issue (*ie*, Section 63 Ground).[94]

(d) Failing to adjudicate an essential issue pertaining to Essar's case that its consent to Nayara's payment of the Excess Interest Amount to IOCL was conditional on Nayara agreeing to approach the execution court (*ie*, January Condition Ground).[95]

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91 RWS at para 73.

92 JBOD Vol I at p 891, List of Issues at (1) and (7).

93 JBOD Vol I at p 891, List of Issues at (2).

94 JBOD Vol I at p 891, List of Issues at (3).

95 JBOD Vol I at p 892, List of Issues at (4).

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42 If any of the above are found to be breaches of the fair hearing rule, whether any or all of the breaches were connected to the making of the Award and whether compliance with the fair hearing rule would have reasonably made a difference to the Tribunal's decision.[96]

43 Finally, if the breaches are found to be connected to the making of the Award and compliance with the fair hearing rule would have reasonably made a difference to the Tribunal's decision, whether it would be appropriate to remit the decision back to the Tribunal or whether the Tribunal's findings on the Excess Interest claim should be set aside.[97]

The law

44 The present application is brought under s 24(*b*) of the IAA and Art 34(2)(*a*)(ii) of the Model Law, as given effect in Singapore by the IAA. The law on setting aside an arbitral award on the basis of a breach of natural justice or the fair hearing rule is well established. As recently restated by Kristy Tan J in *Bangladesh Rural Electrification Board v KSE Electricals Pte Ltd (India)* [2026] SGHC 163 at [63]–[64], an applicant that seeks to set aside an arbitral award on the grounds of breach of natural justice must establish: (a) the rule of natural justice breach; (b) how it was breached; (c) how the breach was connected to the award and (d) how the breach prejudiced its rights (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (*"Soh Beng Tee*") at [29]). One of the rules of natural justice is the fair hearing rule, which can arise from the tribunal not considering or determining an essential issue (*BZW v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(a)].

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96 JBOD Vol I at p 892, List of Issues at (5).

97 JBOD Vol I at p 892, List of Issues at (6).

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45 Judicial intervention in international arbitration is narrowly circumscribed. In a setting aside application, courts read the arbitral award in a reasonable and commercial way rather than carrying out a "hypercritical or excessively syntactical analysis of what the arbitrator has written" (*DIB v* DIC [2024] SGHC 194 at [18]).

46 There is a high threshold for a finding of a breach of natural justice, which is only crossed in exceptional cases and there is "no room for equivocality" in that a party cannot present itself as being "ready, able and willing" to carry on to the award, and only after losing, recast the process as being a breach of natural justice (*China Machine New Energy Corp v Jaguar Energy Guatemala LLP* [2020] 1 SLR 695 ("*China Machine*") at [170]). Further, any allegation of a breach of natural justice must be preceded by "fair intimation" to the tribunal that the party alleging the breach was continuing to participate under protest (*ONI Global Pte Ltd v GNC Holdings LLC* [2026] SGCA(I) 3 ("*ONI Global*") at [73]).

47 The court guards against challenges that are in substance attacks on the merits dressed up as natural justice complaints (*DKT v DKU* [2025] 1 SLR 806 ("*DKT*") at [12]), and even contradictory rulings or manifest incoherence in an award would not be grounds for setting aside. An error of law or fact in the award will not amount to a breach of natural justice (*CJA v CIZ* [2022] 2 SLR 557 ("*CJA*") at [68]).

48 The Court of Appeal in *Soh Beng Tee* established the analytical framework for a s 24(*b*) of the IAA challenge. An applicant must establish that (a) a rule of natural justice was breached; (b) how it was breached; (c) how the breach was connected to the making of an award; and (d) how the breach

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prejudiced its rights (*Soh Beng Tee* at [29]). Here, the application concerns the fair hearing rule.

49 The fair hearing rule requires that each party be given a reasonable opportunity to present its case and to respond to the case against it. A tribunal would be in breach of the fair hearing rule if it fails to consider an important issue that has been pleaded in the arbitration as it would mean that the tribunal did not bring its mind to bear on an important aspect of a party's case (*AKN v ALC* [2015] 3 SLR 488 ("*AKN*") at [46]).

50 Importantly, *Soh Beng Tee* at [65(e)] sets out that a tribunal may reach its own conclusions or inferences from the primary facts placed before it and is not required to accept the conclusions urged upon them by the parties or required to consult the parties before finalising the award so long as it does not dramatically depart from what has been presented. Therefore, a tribunal would not have breached the fair hearing rule by failing to consider an issue just because it made its own inferences from the facts before it.

51 Having set out the general legal principles, I now discuss each of the issues in turn.

No Instructions Ground: Whether Essar had a reasonable opportunity to respond to Nayara's allegedly new "No Instructions" defence

Essar's case

52 Essar submits that based on the cases pleaded in the parties' memorials, which were to set out a comprehensive statement of facts and legal arguments

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on which they rely,[98] it was not disputed between parties that Essar had repeatedly asked Nayara to initiate recovery proceedings against IOCL.[99]

53 However, at the end of day two of the evidentiary hearing, Nayara raised a completely new factual defence for the first time. This engaged the issue of whether Nayara would have been obliged to proceed against IOCL for recovery of the Excess Interest Amount "*if Nayara received such instruction from Essar, but Essar gave no instruction for Nayara to proceed against IOCL*". Particularly, Essar relies on the following statement from Nayara's counsel:

> "**SUDIPTO SARKAR**: …Kindly see now. IOCL demands for 125 crores have been going on. We have not paid. We could easily have paid. Money was with us. With Nayara. We did not pay. Waiting for instructions. Dialogue was going on. Correspondent drafts exchange. **Once they give an instruction on the draft, which I showed you. Then we went ahead and paid the amount along with the rider which they had given, made with the understanding that the underlying issues we have raised in earlier letters that is shown to resolve in fair, bonafide and speedy manner. Now the question is no direction from Essar after this to proceed in any manner in line with the rider, because obviously the rider must be with some purpose**. **The understanding you resolve in a so and so in a fair, bonafide and speedy manner**."[100]
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> [emphasis in original]

54 Further, Essar relies on arguments made by Nayara on day three of the evidentiary hearing when Nayara asserted that:

> "Essar **did not ask Nayara to proceed to any adjudicatory forum of any kind, despite this reservation that Nayara had made on…** making the payment to IOCL"[101]

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98 JBOD Vol II at p 799 at para 11.1: Procedural Order No 2; JBOD Vol II at p 795 at para 9.4.

99 AWS at para 15.

100 AWS at para 16; Transcript Day 02 p 101 lines 13–21, JBOD Vol II at p 239.

101 AWS at para 17; Transcript Day 03 p 6 lines 1–2, JBOD Vol II at p 269.

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> [emphasis in original]

and that

> "Nayara did not go to the Execution Court **because they could have, at the point in time, Essar could have said, you have paid now, please claim the refund from IOCL because it is a payment made with some reservation**…"[102]
>
> [emphasis in original]

55 Essar argues that these were contrary to Nayara's pleaded position that Nayara would only have an obligation to go to the execution court if IOCL, rather than Essar, requested or confirmed in writing that Nayara should do so.[103] Essar then raised its objection to the Tribunal that this constituted a new factual case,[104] which was not raised in Nayara's pleadings or submissions.[105] Nayara also sought to delete a line from the first respondent witness' ("RW-1") witness statement, which Essar argues supports its position that Nayara was raising a new factual case.[106] Essar contends that this allegedly new factual defence amounted to an "unfair ambush" and that this new factual defence ultimately was dispositive of whether there was a Subsequent Agreement between the parties.[107]

56 In response to this alleged ambush and on day three of the evidentiary hearing, Essar sought leave to adduce further evidence to show that Essar had instructed Nayara to initiate proceedings in execution court

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102 AWS at para 17; Transcript Day 03 p 6 lines 22–31, JBOD Vol II p 269.

103 AWS at para 18.

104 AWS at para 19.

105 AWS at para 19.

106 AWS at para 19.

107 AWS at para 20.

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("Further Evidence"). Essar's case was that the allegedly new factual defence was relied on against procedural rules set out by the Tribunal and that Essar would be disadvantaged if it was not given the opportunity to produce responsive factual evidence.[108] However, the Tribunal rejected Essar's Further Evidence application and justified its dismissal on the basis that "admitting the document [at that stage] … would [require] … rebuttal evidence and" a "reopen[ing] of the record" and that "at the end of the day, it may be that while both of you think this is of significance, it may fade into the background".[109] Essar further submitted that there had been a lack of procedural transparency on two fronts.[110] First, that the Tribunal failed to capture any of these objections in the Award,[111] and second, that the Tribunal had not listed Essar's third witness on the witness list.[112] Therefore, Essar submits that the Tribunal failed to bring to Essar's attention that this allegedly new factual defence would be the dispositive basis for rejecting the Excess Interest Amount claim.[113]

57 Essar also relies on a related complaint under the No Instructions Ground. Essar argues that the Tribunal's findings that Essar had given no instructions during the "material time"[114] and also no "contemporaneous instructions"[115] introduced a temporal dimension to the No Instructions Ground that neither party had pleaded or argued and that became dispositive of whether

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108 AWS at paras 21 and 24.

109 AWS at paras 25 and 26.

110 NE at p 10.

111 Award at [45]–[199].

112 Award at [199].

113 AWS at para 26.

114 AWS at para 43.

115 AWS at para 43.

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there had been a Subsequent Agreement concluded.[116] Essar submits that if it had known that the Tribunal would reason in terms of a specific "material time", within which instructions had to be given, it would have argued that timing was irrelevant to whether the obligations arose. It was, after all, common ground that once the right had been reserved, recovery action could be pursued at any time.[117]

58 Essar argues that the allegedly new "No Instructions" defence was dispositive of the Excess Interest Amount claim as the Tribunal stated that:[118]

> 314. There is *no evidence on record of instructions being issued* by the Claimant to the Respondent for resolution of the underlying issues during the *material time*. As regards Mr. Yim's submission that IOCL's entitlement to the Excess Interest Amount could have been challenged after the delivery of Make Up Gas, this is not supported by the Fourth Legal Notice which faults the Respondent for not having taken action for recovery of the Excess Interest Amount.
>
> 315. Accordingly, the Claimant is not entitled to recover the Excess Interest Amount: the record discloses neither any express or implied obligation on the Respondent to commence legal proceedings, nor any contemporaneous instruction from the Claimant directing recovery from IOCL.
>
> …
>
> 463. A summary of the findings is set out below:
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> …
>
> (e) The Excess Interest Amount was paid by the Respondent to the Claimant in accordance with the Claimant's instructions (which included issuing a cover letter reserving the Respondent's rights against IOCL in respect of such payment). There was no express or implied obligation on the Respondent, nor any contemporaneous instruction from the Claimant, to commence legal proceedings against IOCL (including before an execution court) for recovery of the Excess Interest Amount

116 AWS at paras 44 and 47.

117 AWS at para 50.

118 AWS at para 29.

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> from IOCL. The Claimant is not entitled to recover the Excess Interest Amount from the Respondent;
>
> …
>
> [emphasis added]

59 Essar relies on *CAJ v CAI* [2022] 1 SLR 505 ("*CAJ*") and *AKN* for the proposition that if a new case arises in the evidentiary hearing, natural justice requires that: (a) the party relying on the new case must apply to amend pleadings with reasons provided for why the application was delayed; (b) that the opposing party be given the opportunity to reply with submissions and (c) the opposing party to be given the opportunity to introduce new evidence.[119]

60 Essar also relies on *AKN* where the tribunal awarded damages to the purchasers for the loss of opportunity to earn profits. However, the possibility of the claim resting on a loss of chance or opportunity to earn profits was only raised at the eleventh hour by the tribunal and parties were never directed by the tribunal to address the point. No submissions had been sought or made on the quantum of loss of chance lost.[120]

Nayara's case

61 Nayara raises four responses to the No Instructions Ground.

62 First, it submits that Essar's compliant is barred by the doctrine against impermissible hedging.[121] Nayara's case is that Essar did not give the Tribunal fair intimation of its complaints against due process.[122] Nayara relies on

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119 AWS at para 39.

120 AWS at para 38.

121 RWS at para 29.

122 RWS at para 29.

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China Machine and *ONI Global* for the proposition that continuing to engage with the arbitration without stating that prospects of a fair arbitration had been irretrievably lost amounted to a consistent intention to continue with the proceedings. Raising a due process objection after the award whilst having evinced a consistent intention to continue with proceedings amounts to impermissible hedging.[123] Essar's non-objection during the evidentiary hearing therefore bars it from now pursuing a due process objection.

63 Nayara alleges that Essar made no objections to Nayara's statements on day two of the evidentiary hearing where Nayara noted that Essar gave no instructions to Nayara to proceed to the execution court.[124] Essar confirmed that it did not object to the deletion of the sentence in RW-1's witness statement.[125] Essar did not object when the Tribunal found that the amendments to RW-1 did not make material changes to the witness statement. Finally, Essar engaged directly with the deletion in the statement and further impugned the relevance and weight of evidence given by RW-1.[126] Further, on Essar's application to adduce further evidence, the Tribunal had allowed Essar to make the application, and the application was duly considered by the Tribunal.[127]

64 Second, Nayara contends that the allegedly new factual defence is, in fact, not new. It maintains that it has always disputed that Essar had given Nayara instructions to commence proceedings against IOCL.[128] Nayara refers to

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123 RWS at para 32(a).

124 RWS at para 30.

125 RWS at para 30.

126 RWS at para 31.

127 RWS at para 33.

128 RWS at para 34.

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its pre-hearing written submissions,[129] where it made clear its position that Essar gave no instructions for Nayara to proceed to the execution court.[130] The Tribunal recognised that such a dispute was implicit in its reply memorial. Essar also did not object to Nayara's statement that Essar made an admission based on Essar's 24 June 2023 email that Essar has not asked Nayara to commence proceedings against IOCL.[131] Finally, the case could not have proceeded on the basis that Essar had given instructions to Nayara as Essar had admitted that it did not.[132]

65 Third, Nayara submits that the Tribunal's decision not to allow Essar to adduce further evidence was a reasonable procedural ruling that falls short of the threshold for curial intervention.[133] Nayara relies on *CPU v CPX* [2022] 4 SLR 314*, Year Sun Chemitanks Terminal Corp v Gunvor Singapore Pte Ltd* [2022] 3 SLR 1271 and *Republic of Korea v Mason Capital LP* [2025] 4 SLR 308 for the proposition that so long as the Tribunal's decision falls within what a reasonable, fair-minded tribunal might have arrived at, the tribunal has discretion to conduct the arbitration in a manner that it considers appropriate.[134]

66 Fourth, Nayara submits that Essar suffered no prejudice as the further evidence Essar sought to have adduced in the evidentiary hearing would not have reasonably made a difference to the Tribunal's finding given that the

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129 RWS at para 34(a),

130 RWS at para 34(a).

131 RWS at para 34(a)(ii).

132 RWS at para 34(b).

133 RWS at para 35.

134 RWS at para 37.

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Tribunal made its decision based on a finding that there was no express or implied obligation for Nayara to approach the execution court.[135]

There was no breach of the fair hearing rule based on the No Instructions Ground

There was no impermissible hedging on Essar's part

67 Preliminarily, I consider whether Essar's argument is barred by impermissible hedging based on the principles set out above at [62]. The doctrine requires that a party who regards the arbitral process as fatally flawed must give the tribunal fair intimation of this and cannot continue to participate as though nothing is wrong, only to raise the complaint after an adverse award: *China Machine* at [170]; *ONI Global* at [71]–[72]. The rationale is that the tribunal must be given an opportunity to cure the defect, and a party that fails to raise the alarm deprives the tribunal of that opportunity. However, the doctrine must be applied with care and should not be used to shut out legitimate complaints where the party did in fact raise objections.

68 Here, the facts are materially different from *China Machine* and *ONI Global*. First, Essar did raise an objection during the evidentiary hearing before the Tribunal. On day three of the evidentiary hearing, Essar expressly raised its objection to the Tribunal that Nayara's counsel's statements constituted a new factual case.[136] This is not a case where Essar sat silently through the hearing and only complained after the award. The objection was made contemporaneously which is precisely what the doctrine requires. Much was said about the way the objection was made by Essar at the evidentiary

135 RWS at para 38.

136 JBOD Vol II at p 365, Transcript Day 03 at lines 15–24.

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hearing, but I agree that in the context of the heat of the arbitration proceedings, the objection, even if politely raised, was sufficient.

69 Second, Essar then made a formal application to adduce further evidence to respond to the new defence.[137] This application was considered and rejected by the Tribunal. The fact that Essar made this application demonstrates that it was not acquiescing in the alleged new defence. Instead, it was actively seeking to address it.

70 Third, the cases Nayara relies on are distinguishable. In *ONI Global* at [76], the party made submissions on the merits of the new defence without expressly seeking to rectify its due process complaints. In *China Machine* at [165], the party continued to engage without any indication that it regarded the process as irretrievably compromised.

71 In *ONI Global,* the court found that ONI's conduct amounted to impermissible hedging as it failed to seek rectification of its due process complaints and instead chose to address GNC's new case on its merits: at [76]. It was undisputed that ONI did not expressly seek rectification before the tribunal and could not show how the breach would have been incapable of remedy: at [79]–[83]. Further, the Court of Appeal also found that ONI could not identify any point at which ONI indicated that it was responding to GNC's new case under protest and that ONI's failure to reserve its rights was inexplicable considering the case it was running: at [85]–[90].

72 In *China Machine*, the appellant CMNC contended the arbitration was irretrievably lost and doomed due to the tribunal's management of procedure

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137 JBOD Vol II at p 265, Transcript Day 03 at lines 15–19.

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for document production on three cumulative grounds. Although CMNC had raised various objections prior to the evidentiary hearing, it never intimated that it wished to adjourn or postpone the evidentiary hearing dates. Instead, CMNC merely sought a one-week extension of time which was denied by the tribunal. Therefore, the Court of Appeal found that CMNC's conduct at the material time was at odds with its contention in the appeal, and instead that it was at all times "ready, able, and willing" to proceed with the evidentiary hearing: at [165]–[166].

73 Here, Essar did both: it objected and it sought leave to adduce evidence. The fact that it also engaged with the substance of the new defence in its post-hearing submissions does not negate the prior objection. A party is not required to walk out of the arbitration to preserve its rights.

74 On balance, the impermissible hedging objection does not succeed given that Essar raised a contemporaneous objection and made a formal application to adduce the Further Evidence.

The "No Instructions" defence was not new

75 Next, I consider the threshold question of whether the "No Instructions" defence was a new factual defence that first emerged at the evidentiary hearing, or whether it had always formed part of Nayara's pleaded position.

76 Essar's case is that Nayara's pleaded defence tied Nayara's obligation to proceed to the execution court to IOCL's written request or confirmation and not to the receipt of instructions from Essar. The shift from a condition tied to IOCL's conduct, to a condition tied to Essar's instructions is, on Essar's case, a substantive change in the factual matrix of the defence that first emerged at the evidentiary hearing.

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77 Nayara's response is that the dispute about whether Essar had given instructions was never new. It points to its pre-hearing written submissions, its reply memorial, and Essar's own admission in its 24 June 2023 email that it had not asked Nayara to commence proceedings against IOCL. On this view, the issue was always a live one, and Essar cannot claim to have been ambushed.

78 Read narrowly, the "No Instructions" defence appears to raise a novel point as Nayara has not pointed directly to any occasion when it had raised the "defence" prior to the evidentiary hearing. Essar relies particularly on the fact that Nayara's counsel had admitted that it was new, as when asked by the Tribunal for evidence that it had been pleaded, Nayara could not produce any direct evidence.[138]

79 However, on a wider and more generous reading of materials placed before the Tribunal and in line with *Soh Beng Tee* at [65(f)] and *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM*") at [45], I find that the "No Instructions" defence is not new. As noted above at [78], it appears that the absence of instructions from Essar was not introduced as a freestanding defence at the evidentiary hearing. Instead, it was a factual matter that had been in play throughout the proceedings and was supported by Essar's own admissions. Nayara's pre-hearing written submissions made clear that Essar had given no instructions for Nayara to proceed to the execution court,[139] and the Tribunal recognised that such a dispute was implicit in Nayara's reply memorial. Most significantly, it was undisputed before me and the Tribunal that Essar's own 24 June 2023 email constituted an admission that

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138 NE at p 45.

139 JBOD Vol I at p 762.

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it had not asked Nayara to commence proceedings against IOCL,[140] although I note that this email is not presently before me. Further, counsel for Essar conceded at the hearing before the Tribunal that the first time this failure to initiate proceedings was raised to Nayara was in September 2023.[141] This issue was additionally traversed in the evidentiary hearing, where a member of the Tribunal stated that the point on whether instructions were given was implicit in the wider issue of whether there was an obligation on Nayara to initiate proceedings.[142] The Tribunal had even asked why Essar had not searched for documentation of such instructions having had knowledge of the issue. Therefore, it is difficult for a party to claim ambush by a factual position it had itself acknowledged in its own correspondence.

80 The same analysis applies to Essar's related complaint about the Tribunal's reference to instructions being absent "during the material time" and the absence of “contemporaneous instructions”. I find that Essar’s reading of the Award (above at [57]) is not persuasive. The reference to "material time", (above at [58] where I had also referenced [314] of the Award) is most naturally read not as the introduction of a novel temporal condition but as a reference to the period during which proceedings ought to have been commenced, which was always in issue given the nature of the Excess Interest Amount claim. The Tribunal was not imposing a new requirement that instructions had to be given within a specific window. It was assessing whether, at the relevant time when action could and should have been taken, there was any evidence of instructions. That was a straightforward application of the factual dispute that was already in play. The "material time" language was an extension of the same factual matrix

140 Award at [352]; C-0221.

141 JBOD Vol II at pp 48 and 52.

142 JBOD Vol II at p 360.

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rather than a departure from it, and it falls comfortably within the range of reasoning that was reasonably foreseeable from the parties' cases, as clarified in *CJA* at [68].

The proper reading of the Tribunal's Award

81 The reading of the Award has significant consequences for Essar's case under the No Instructions Ground. The natural justice complaint requires Essar to establish both a breach of the fair hearing rule and prejudice flowing from that breach. Both elements are difficult to sustain.

82 Even if the court accepts that the No Instructions Ground emerged more sharply at the evidentiary hearing than it had in the pleadings, the critical question is what role it actually played in the Tribunal's reasoning. This requires a careful reading of [314], [315] and [463] of the Award.

83 The Tribunal's primary finding was that there was no Subsequent Agreement that gave rise to an express or implied obligation on Nayara to commence legal proceedings against IOCL. This finding was squarely within the pleaded issues and was the central dispute between the parties throughout the Arbitration. The reference to the absence of instructions must be read in this context.

84 On a fair reading of the Award, the absence of instructions was not an independent and freestanding basis for dismissing the Excess Interest Amount claim. Rather, it reads as functioning to corroborate evidence in support of the primary finding. Essentially, this corroboration is that even Essar's own conduct was consistent with there being no obligation on Nayara to proceed, since Essar itself had never given instructions to Nayara to do so. The Tribunal was drawing an inference from Essar's conduct that was supportive of, and coherent with, its

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primary conclusion on the Subsequent Agreement. Further, it is Essar's own case that it had not given instructions to Nayara to proceed with instituting legal proceedings as it did not want to jeopardise the supply of MUG from IOCL to Nayara, which Essar required.[143] This is a form of reasoning that flows naturally and logically from the primary dispute and does not constitute a new or independent basis for the decision.

85 This reading is reinforced by the structure of [315] of the Award, which states that:

> Accordingly, the Claimant is not entitled to recover the Excess Interest Amount: the record discloses neither any express or implied obligation on the Respondent to commence legal proceedings, nor any contemporaneous instruction from the Claimant directing recovery from IOCL.

The use of "neither... nor" at [315] of the Award, suggests that the two elements are presented together as mutually reinforcing observations about the state of the record, rather than as two independently sufficient grounds for dismissal. The absence of instructions is presented as part of the same evidential picture that led the Tribunal to conclude that no obligation existed, not as a separate route to the same conclusion.

86 The fair hearing rule is engaged where a party is denied a reasonable opportunity to address a case that is advanced against it. But if the absence of instructions was not a new case advanced by Nayara but rather an inference drawn by the Tribunal from the overall evidential record, including Essar's own admissions, then it would be harder to characterise the "No Instructions" defence as one that Essar ought to have been given a specific opportunity to address. The Tribunal was entitled to draw inferences from the evidence before

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143 NE at p 16.

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it. The inference that Essar's failure to give instructions was consistent with there being no obligation is one that flows naturally from the primary dispute concerning the Subsequent Agreement. A tribunal is not required to flag every inferential step in its reasoning before arriving at its conclusion (*Soh Beng Tee* at [65(e)].

The Tribunal's rejection of Essar's application to adduce Further Evidence was not a breach of natural justice

87 The rejection of Essar's application to adduce Further Evidence, while a relevant procedural fact, would not materially advance Essar's case as an independent ground of complaint before me. The application was made precisely because Essar contended that the "No Instructions" defence was new and therefore, it was a consequence of that primary complaint rather than a freestanding basis for a natural justice challenge. If the defence was not in fact new, the need to adduce further evidence was of Essar's own making, and the Tribunal's refusal to accommodate it falls squarely within the broad procedural discretion that tribunals enjoy in managing the conduct of proceedings: *China Machine* at [103].

88 In this case, the Tribunal heard parties on Essar's application to adduce its Further Evidence and ultimately dismissed it on the basis that the Further Evidence Essar sought to adduce was covered by without prejudice privilege.[144] Further, it was clear from Essar's counsel's submissions at the hearing before me that it was not seeking to challenge the Tribunal's decision on whether the evidence should have been adduced.[145] Courts in setting aside applications should be generally reluctant to interfere with case management decisions of

144 PP-1 at p 1255; Transcript of Day 03 p 103 at lines 22–28.

145 NE at p 45.

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this kind, and a refusal to admit further evidence is not in itself a breach of the fair hearing rule. Therefore, this argument does not assist Essar in its setting aside application.

Even if there was a breach Essar was not prejudiced

89 Additionally, Essar is unable to show how it has been prejudiced. The test, as established in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 ("*LW Infrastructure*") at [54], is whether the breach could reasonably have made a difference to the outcome. Here, even if Essar had been given every opportunity to adduce Further Evidence on the "No Instructions" defence and had succeeded in demonstrating that it did give instructions to Nayara, this would not have disturbed the primary finding that no Subsequent Agreement existed and therefore no obligation arose on Nayara's part. The instructions finding was corroborative of the primary finding, not independently dispositive of it. Evidence of instructions would have been relevant only to the secondary observation (see [85]), and its presence or absence would not reasonably have made a difference to the outcome of the claim.

90 This also undermines Essar's reliance on *CAJ*. In *CAJ*, the court found (at [54]) that there was a breach of natural justice as the respondent had not been given a fair and reasonable opportunity to respond to a completely new factual defence of an extension of time, which was raised by the applicants for the first time in their closing submissions in the arbitration. The tribunal accepted that the extension of time defence which reduced the respondent's quantum of liquidated damages (*CAJ* at [10]). The court found that the defence was a completely new defence which ought to have been pleaded. The appellant ought to have applied to amend its defence (*CAJ* at [61]). If allowed, consequential

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orders should have been made for the respondent to respond to the amendments. The fact that the respondents responded to the new defence in its closing submissions was not sufficient to constitute a reasonable opportunity to respond (*CAJ* at [65]). This was because, the defence pleaded was a fact-sensitive one (*CAJ* at [29]). As no evidence was led by the appellant in the course of the arbitration, the appellant had not satisfied its burden to address it as a defence.

91 In *CAJ* (at [54]), the new defence was the sole and dispositive basis on which the tribunal reduced the quantum of liquidated damages. Without it, the outcome would have been different. Here, the primary basis for dismissing the Excess Interest claim was the absence of a Subsequent Agreement, a finding that was entirely within the pleaded issues and which Essar had a full opportunity to address. The instructions point did not carry the same dispositive weight, and the analogy with *CAJ* therefore does not hold.

92 For the above reasons, the No Instructions Ground fails. The "No Instructions" defence was not a new factual defence. It was a factual matter that had been in play throughout the proceedings and was supported by Essar's own admissions. The Tribunal's primary and sufficient basis for dismissing that claim was its finding that no Subsequent Agreement existed, a finding that was squarely within the pleaded issues and which Essar had a full and fair opportunity to address. The instructions finding was corroborative of that primary conclusion, and the Tribunal was entitled to draw that inference from the evidential record without being required to flag it as a separate issue requiring further submissions. In these circumstances, Essar cannot establish either that there was a breach of the fair hearing rule or that any such breach made a difference to the outcome. The high threshold for curial intervention in arbitral awards on natural justice grounds is not met, and I decline to set aside the Award on this basis.

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Mistaken Belief Ground: Whether the Tribunal's chain of reasoning having proceeded on an alleged mistaken belief had sufficient nexus to the case

Essar's case

93 Essar claims that the Tribunal came to a mistaken belief (the "Mistaken Belief") at [281] of the Award when it found that Essar's counsel's oral submissions that "it was agreed at the meeting on 24 November 2022 that if IOCL did not cooperate, the Respondent would go to execution court" (the "24 November 2022 Submission") was not supported by Essar's witness statement, pleadings, submissions and correspondence during the relevant period.[146]

94 Essar argued that its pleaded case and evidence presented in the Arbitration demonstrated that Essar consistently addressed the 24 November 2022 Submission in its memorial, rejoinder memorial, pre-hearing written submissions, post-hearing written submissions, in Mr Popat's witness statement, Mr Popat's testimony under cross examination and in contemporaneous correspondence,[147] and therefore the Tribunal had come to a Mistaken Belief.

95 Further, Essar argues that Nayara had admitted that an "alternative arrangement" for the Excess Interest Amount had been "accepted and deemed the way forward,"[148] and that Nayara expressly accepted that the parties discussed the execution court option at the 24 November 2022 Meeting. It also relies on the fact that Nayara did not argue that Essar's 24 November 2022

146 AWS at para 52.

147 AWS at para 54.

148 AWS at para 57; Respondent's Reply Memorial at para 5.38, JBOD Vol I at p 480.

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Submission was unsupported or inconsistent with Essar's memorials, written submission or evidence. Therefore, the Tribunal reached this conclusion on its own.

96 Essar relies on *Vietnam Oil and Gas Group v Joint Stock Company* [2025] 2 SLR 273 ("*Vietnam Oil*") at [36]. The court in *Vietnam Oil* states that if a chain of reasoning does not arise from a party's express pleadings or a reasonable implication of the same and it does not flow reasonably from the argument actually advanced by the parties, and was not brought to the parties' notice, the chain of reasoning would not be open to the Tribunal to take. If so taken, it would be a breach of natural justice.[149] Essar further relies on *Front Row Investment Holdings (Singapore) Pte Ltd v Daimer South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*") for the proposition that where a tribunal fails to consider the merits of a submission and arguments made by the party, the court would find that there was a breach of natural justice.[150] Therefore, as the Tribunal decided the issue of whether there had been a Subsequent Agreement on the basis of a Mistaken Belief, the Tribunal failed to consider the merits of the 24 November 2022 Submission made by Essar and consequently the decision had been made in breach of natural justice.[151]

97 In the alternative, Essar argues that the Tribunal's decision on the 24 November 2022 Submission under a Mistaken Belief had no nexus to the case advanced by the parties. Essar submits that Nayara did not challenge what took place at the 24 November 2022 Meeting, and that an agreement was

149 AWS at para 59.

150 AWS at para 63.

151 AWS at para 63.

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reached at the meeting.[152] Nayara's counsel expressly accepted that the execution court option was discussed,[153] and that during the cross examination of Mr Popat, Nayara's counsel did not challenge Mr Popat's evidence that the Subsequent Agreement was made.[154] Therefore, Essar says that a reasonable party in Essar's shoes would not have foreseen the possibility that the Tribunal would reject the 24 November 2022 Submission on the basis that it was not supported by Essar's memorials, submissions and evidence.[155]

98 Finally, Essar contends that this breach of the fair hearing rule was connected to the making of the Award as the foundation upon which the Tribunal made its decision was that the 24 November 2022 Submission was not supported by Essar's pleadings and evidence.[156] Essar submits that it was prejudiced by the breach. If the Tribunal had considered Essar's memorials, submissions and evidence, it could have found in Essar's favour that there was a Subsequent Agreement between the parties that gave rise to an obligation on Nayara's part to approach the execution court.[157]

Nayara's case

99 Nayara submits that the Tribunal's chain of reasoning at [281] and [310] of the Award arose squarely from the parties' pleadings. Preliminarily, Nayara argues that Essar's case that the Tribunal's finding on the Subsequent Agreement was decided on the sole basis that Essar's oral submissions (that the

152 AWS at para 68.

153 AWS at para 68.

154 AWS at para 69.

155 AWS at para 70.

156 AWS at para 74.

157 AWS at para 75.

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28 November 2022 Letter only partially captures the parties' agreement) was inconsistent with its pleaded case is untrue.[158] Instead, although the Award at [280] did note that Essar's position was not consistent with Essar's position with respect to the 28 November 2022 Letter, the Tribunal's holistic finding was that Essar's 24 November 2022 Submission was not supported by Essar's witness statement, pleadings, submissions and evidence.

100 Second, the Award at [310] refers directly to Nayara's pleaded case that Essar could not prove any Subsequent Agreement or variation existed in evidence.[159] More importantly, Nayara points out that the very transcript and pleadings relied on by Essar to make its case were referred to by the Tribunal at Section X of the Award. This set out the nature of the AFS and whether it gave rise to a variation.[160] Therefore, there is no reason why the Tribunal's chain of reasoning did not have a sufficient nexus with the parties' arguments or that the Tribunal misunderstood or misapplied Essar's submissions.[161]

101 Even if the Tribunal misunderstood Essar's submissions, as the Tribunal had applied its mind to the parties' submissions regarding the alleged Subsequent Agreement, it would not be a basis for setting aside.[162] In any event, Nayara submits that Essar suffered no prejudice as the Tribunal's decision that there was no Subsequent Agreement or variation of the AFS was not founded on the alleged inconsistency with Essar's oral submissions.[163]

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158 RWS at para 45.

159 RWS at para

160 RWS at para 47.

161 RWS at para 47.

162 RWS at para 48.

163 RWS at para 49.

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There was no breach of the fair hearing rule on the Mistaken Belief Ground

102 In my judgment, this is not a case where the Tribunal has made a decision that was tangentially different to the parties' cases. It is also not the case that the Tribunal's decision was manifestly incoherent with the parties' cases and arose from a faulty chain of reasoning. The Tribunal had also not failed to consider an essential point that was determinative of the issues.

103 The court in *JVL Agro Industries Ltd v Agritrade International Pte* Ltd [2016] 4 SLR 768 set out at [159] that a particular chain of reasoning is open to a tribunal where:

(a) it arose from parties' express pleadings;

(b) it arose by reasonable implication by a party's pleadings;

(c) if it is unpleaded but in some way brought to the opposing party's actual notice;

(d) if links in the chain flow reasonably from arguments actually advanced by either party or are related to those arguments.

104 Further, an award will only be liable to be set aside where the tribunal's chain of reasoning reveals a "dramatic departure" from the submissions and where the tribunal adopts a view that is "wholly at odds with the established evidence adduced" (*Soh Beng Tee* at [65(d)]). A party seeking to prove a breach must show 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* at [55(i)]).

105 I first set out the two impugned paragraphs from the Award in full:

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281. During the Hearing, Mr. Yim submitted that the 28 November Letter only partially captures the oral agreement reached on 24 November 2022. It was agreed at the meeting on 24 November 2022 that if IOCL did not cooperate, the Respondent would go to execution court. This submission is not supported by Mr. Popat's witness statement, the pleadings vide the Claimant's Memorial and Rejoinder Memorial, the Claimant's Pre-Hearing Submissions and the correspondence during the relevant period:

(i) Mr. Popat's witness statement does not refer to any obligation on the part of the Respondent to commence execution proceedings, nor does it suggest that only part of the oral agreement was recorded in the 28 November Letter. It states as follows:

> …At a meeting on 24.11.2022 between the Claimant's and Respondent's representatives, after detailed negotiations, the Respondent agreed that the Wrongful Claims would be determined by the execution court of competent jurisdiction. I issued the contemporaneous correspondence to the Respondent stating that "*Pursuant to meeting yesterday, we are revising the letter to incorporate the execution court option as well and sending the same to you in a few minutes*". … the Respondent and the Claimant agreed on the draft letter which captured the terms of the subsequent agreement in relation to working of the AFS. … This subsequent agreement between the Parties was recorded, and reflected, in the agreed form letter dated 28.11.2022.
>
> (emphasis added and footnotes omitted)

(ii) Paragraph 43 of the Claimant's Memorial which describes the "*new terms*" does not refer to Mr. Popat's testimony; it only relies on the correspondence between 23–28 November 2022 in describing the terms of the Subsequent Agreement;

(iii) Paragraph 44 of the Claimant's Memorial states as follows: "*The subsequent agreement between the Parties was recorded, and reflected, in the agreed form letter dated 28.11.2022…*";

(iv) Paragraph 144 of the Claimant's Memorial states as follows:

> …on 24.11.2022, the Respondent agreed with the Claimant to proceed with the execution court. Thereafter, the Respondent issued the agreed form letter dated 28.11.2022 to IOCL with the express representation that "*Nayara is agreeable to the issues to be determined by execution court of competent jurisdiction*"…

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(v) Paragraphs 146–147 of the Claimant's Memorial, which claim that the Respondent breached its obligations under the AFS and the Subsequent Agreement by not taking any action for recovery of the Excess Interest Amount, do not expressly refer to any obligation on the Respondent to commence execution proceedings;

(vi) Paragraph 154 of the Claimant's Memorial refers to a "*promise to proceed to the Execution Court*" but does not identify the evidentiary basis for this;

(vii) Paragraph 37 of the Rejoinder Memorial states that the "*contemporaneous correspondence* [i.e., the 28 November Letter] *is unequivocal evidence of the Respondent's agreement to proceed to execution court…*". In paragraph 46 of the Rejoinder Memorial, the Claimant submits that:

> The use of the phrase: "*Nayara is agreeable to the issues to be determined by execution court of competent jurisdiction*" in the letter dated 28.11.2022 is a clear confirmation that the Respondent had agreed with the Claimant that this was the way forward. …

(viii) The Claimant's Pre-Hearing Submissions state as follows:

> …Evidence of this understanding or agreement [i.e. that the Respondent would commence execution proceedings] is found by way of contemporaneous written correspondence between Mr Popat and Nayara in confirming "*the execution court*" option and the subsequent revised draft letter which Essar provided Nayara to be issued to IOCL on 25.11.2022…. Following this express correspondence, Nayara issued to IOCL, the letter dated 28.11.2022 which set out the varied terms on payments to IOCLas agreed between the Parties.
>
> (ix) The Claimant's Additional Submissions state that the "*terms of the Subsequent Agreement*" were "*recorded in writing in the agreed form letter that was executed on 28.11.2022 by Nayara*".
>
> (x) There is no reference to any Subsequent Agreement, or breach of an obligation on the part of the Respondent to approach the execution court on the basis of the purported agreement of 24 November 2022, in any of the four legal notices issued by the Claimant to the Respondent (which are referred to in Section VII (Factual Matrix) above).
>
> [emphasis in original]

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And further at [310] of the Award that:

> 310. As noted in Section X (Nature of the AFS and its Variation) above, Mr. Yim's submission that the 28 November Letter only partially captures the agreement reached on 24 November 2022, and that the agreement to approach the execution court was reached on 24 November 2022, is not supported by Mr. Popat's witness statement, the pleadings vide the Claimant's Memorial and Rejoinder Memorial, the Claimant's Pre-Hearing Submissions, the Claimant's Post-Hearing Submissions and the correspondence during the relevant period. The Tribunal has determined that there is insufficient evidence of a Subsequent Agreement of 24 November 2022 requiring the Respondent to commence execution proceedings. There is also insufficient basis for making a finding of fiduciary obligation on the part of the Respondent.

106 On a fair reading of [281] and [310] of the Award, the Tribunal's chain of reasoning had sufficient nexus to the parties' cases and does not disclose a breach of natural justice. Although I note that the Tribunal had used the words "no evidence" at [280] of the Award, "submission not supported" in [281] of the Award and finally, "insufficient evidence" in [310] of the Award which may have caused confusion as to whether there was absolutely no evidence or that the evidence before it was present but insufficient. This lack of precision is not determinative as I explain below.

107 The Tribunal's finding at [281] of the Award was a substantive finding that the specific submission made by Essar's counsel, that the 28 November 2022 Letter only partially captured the oral agreement reached at the 24 November 2022 Meeting. The argument that a separate obligation to proceed to the execution court had been agreed at that meeting was not supported by the evidence and materials that Essar itself had placed before the Tribunal. The Tribunal went through Essar's witness statement, memorials, pre-hearing submissions and contemporaneous correspondence in considerable detail at [281] of the Award in which the Tribunal cited ten inconsistencies. It

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concluded at [287] of the Award that these materials consistently treated the 28 November 2022 Letter as the full record of the parties' agreement, of the subsequent understanding, rather than as a partial record of a broader oral Subsequent Agreement. This was a finding about the weight and consistency of Essar's own evidence and not a finding made on a basis that neither party had addressed. The Tribunal had also debated with Essar's counsel at the evidentiary hearing about the fact that it was not absolutely clear that the 28 November 2022 Letter says that there is an obligation to proceed to the execution court.[164] In this regard, Essar's counsel ultimately conceded that the 28 November 2022 Letter was "hardly a perfect fit into a jigsaw" but went on to state his case.[165]

108 In my judgment, it is clear that the Tribunal's reasoning arose directly from Nayara's pleaded case that Essar could not prove any Subsequent Agreement or variation in evidence (at [287] of the Award). The Tribunal was appropriately assessing whether the evidence adduced by Essar supported the submission made by its counsel. The fact that Nayara did not itself make the specific point that Essar's oral submissions were inconsistent with its documentary evidence and submissions does not mean the Tribunal was precluded from making that observation. A tribunal is entitled to assess the internal consistency of a party's case when determining whether that party has discharged its burden of proof, and it is not required to flag every inferential step in that assessment before arriving at its conclusion (*BZW* at [60(b)]).

109 Essar's reliance on *Front Row* is misplaced. *Front Row* concerned a tribunal that simply failed to consider a submission at all. Here, the Tribunal plainly did consider Essar's submissions, it engaged with Essar at length and in

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164 JBOD Vol II at pp 511–512.

165 JBOD Vol II at pp 510–512.

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detail as demonstrated by [281] and [310] of the Award. Essar's complaint is not that the Tribunal ignored Essar's case but that it assessed it adversely, which is an entirely different matter and not a ground for setting aside.

110 The test in *Soh Beng Tee* (at [55(i)]) requires Essar to show that a reasonable litigant in its position could not have foreseen the possibility of reasoning of the type revealed in the Award. In my judgment, that threshold is not met here. Nayara's pleaded case was that there was no Subsequent Agreement and that Essar could not prove one in evidence. A reasonable litigant in Essar's position ought to have anticipated that the Tribunal would scrutinise whether Essar's oral submissions at the hearing were consistent with and supported by its written materials and evidence. The Tribunal's reasoning was therefore not a "dramatic departure" (above at [104]) from the issues in play and instead it was a natural and foreseeable consequence of the way the dispute was framed.

111 In my judgment, the Mistaken Belief Ground fails. The Tribunal's chain of reasoning at [281] and [310] of the Award arose from Nayara's pleaded case and flowed reasonably from the arguments advanced by the parties. The Tribunal ultimately did not agree with Essar's argument that the evidence pointed to there being a Subsequent Agreement that Nayara had to proceed to the execution court. Even if the Tribunal's assessment of the consistency of Essar's submissions was wrong as a matter of fact, that would be an error of fact or appreciation, not a breach of natural justice, and it is not open to the court to intervene on that basis. Essar has also not established that the Tribunal's reasoning either lacked sufficient nexus to the parties' cases or that it suffered prejudice of the kind required to mount a challenge as the alleged Mistaken Belief was only one in a series of inconsistencies the Tribunal found and any

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such breach could therefore not have reasonably made a difference to the outcome (*LW Infrastructure* at [54]).

Section 63 Ground: Whether Essar had reasonable opportunity to address the Tribunal on the application of s 63 of the ICA

Essar's case

112 Essar argued that the Tribunal had unfairly adopted s 63 of the ICA ("s 63") in its reasoning. Essar submits that the Tribunal, having found that there was no Subsequent Agreement, came to the conclusion that there was instead a "subsequent understanding" between the parties on how Nayara was to use the amount that Essar had advanced to Nayara to satisfy the IOCL Award ("Advance Amount") to pay the disputed Excess Interest Amount to IOCL.[166] Further and based on the application of s 63, the Tribunal found that Nayara's utilisation of the Advance Amount to pay the disputed Excess Interest Amount to IOCL was permitted pursuant to a "subsequent understanding".[167] Therefore, the Tribunal's decision on s 63 was intrinsic to its reasoning as to what constituted the subsequent understanding.[168]

113 Section 63 sets out the contractual principle of waiver in respect of the unilateral act of a promisee discharging, at his will, the obligation of another.[169] Pertinently, the operation of s 63 was raised by Nayara in relation to a separate issue under the Award which is not before me.[170] However, Essar contends that the application of s 63 to the rights under the "subsequent understanding" was

166 AWS at para 77.

167 AWS at para 77.

168 NE at p 23.

169 AWS at para 77.

170 NE at p 23.

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not raised by either party, nor addressed, argued or pleaded.[171] Neither does a s 63 defence of waiver arise by reasonable implication from Nayara's pleaded case.[172] In choosing to apply s 63 to determine Nayara's obligations under the Subsequent Agreement without undertaking any factual or legal analysis on whether Essar had indeed waived its rights intentionally, the Tribunal misapplied Essar's passing response on s 63 in answer to a wholly different case.[173]

114 Essar relies on *CEF v CEH* [2022] 2 SLR 918 (*"CEF"*) at [116]–[118] for the proposition that a tribunal's chain of reasoning cannot be said to have sufficient nexus to the parties' arguments when it justifies its reasoning with reference to a principle in a case when parties cited that case for a different proposition.[174] Therefore, as the Tribunal's chain of reasoning had insufficient nexus to the parties' arguments, it breached the fair hearing rule.[175]

115 Essar alleges that the Tribunal applied s 63 to dispositively find that the "subsequent understanding" did not constitute the Subsequent Agreement and justified the use of the Advance Amount to pay the disputed Excess Interest Amount to IOCL.[176] Essar states that both parties maintained that s 63 had no application to the Excess Interest claim.[177] Essar submits that the Tribunal's breach prejudiced Essar. If Essar was given reasonable notice to address the

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171 AWS at paras 78–81.

172 AWS at para 82.

173 AWS at para 83.

174 AWS at para 84.

175 AWS at para 85.

176 AWS at para 87.

177 AWS at para 88.

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Tribunal on the scope of s 63, it would have brought relevant facts and law to show that s 63 did not apply to the Excess Interest claim.[178]

116 In the alternative, Essar argues that if the court accepts Nayara's submission that s 63 was not the basis by which the Tribunal rejected the Excess Interest Amount claim, then there would not be a justification for finding that the "subsequent understanding" was not the Subsequent Agreement and that the Award would be manifestly incoherent.[179]

Nayara's case

117 Nayara points out that Essar's contention that the "subsequent understanding" finding made by the Tribunal at [287] of the Award was in the nature of a waiver or dispensation contemplated under s 63 is erroneous.[180] Instead, Nayara argues that as the Tribunal had already determined that there was no Subsequent Agreement, the "subsequent understanding" that the Tribunal found did not pertain to whether there was a variation of the AFS. Instead, it was that after the contractual payment date of 17 November 2022 had passed, parties treated the IOCL Award amount as comprising two parts: the disputed and undisputed parts.[181] Therefore, s 63 was not part of the Tribunal's chain of reasoning in rejecting Essar's claim for the Excess Interest Amount.[182] All the Tribunal did was to refer to s 63 when considering the separate issue of the legal effect of non-payment of the Award amount on 17 November 2022

178 AWS at para 90.

179 AWS at para 89.

180 RWS at para 50.

181 RWS at para 51.

182 RWS at para 53.

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and the related delay claims.[183] As s 63 was not dispositive of the decision made by the Tribunal to reject Essar's Excess Interest Amount claim, Essar has not shown how it was prejudiced by the Tribunal's chain of reasoning.

There was no breach of the fair hearing rule under the Section 63 Ground

118 I first set out the relevant parts of the Award in full.

> **(c) Effect of non-payment of the Award Amount on the Payment Date**
>
> 285. After the Respondent's failure to pay the Award Amount by 17 November 2022, there was no contractual mechanism for payment of the Award Amount.
>
> 286. The Tribunal considers that Section 63 of Contract Act is *prima facie* applicable. The Claimant has failed to satisfactorily explain why this provision should not be applied. The Claimant's response to the Respondent's submissions on Section 63 of the Contract Act was as follows:
>
> > Nayara admits that the parties entered into alternate payment arrangements following Nayara having failed to make payment on 17.11.2022. Essar's case is that Nayara breached its obligations under the "alternate payment arrangements" (i.e. the Subsequent Agreement) and the losses suffered by Essar as a result. Accordingly, Nayara's reliance on Section 63 (dispensation or remission of performance) is wrong in both fact and law.
> >
> > (footnotes omitted)
>
> 287. The Tribunal has already concluded that there is insufficient evidence of a Subsequent Agreement. There was merely a subsequent understanding to treat the Award Amount as comprising of two components, but these payments were to be made either upon IOCL's acceptance of the proposal of 28 November 2022, or on the directions of the Claimant. This is evident from the language of the 28 November Letter, as well as the letter of 26 December 2022 (which was sent to IOCL at the time of payment of INR 651 crores and again included a proposal regarding the "*Differential Interest*" amount). Since these letters contained proposals to IOCL (made on the Claimant's instructions), if IOCL had accepted them, the

183 RWS at para 53.

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> Respondent would have been entitled to act on them. If IOCL did not accept them, the Respondent would have had no right to release these monies to IOCL.

119 Although I agree that s 63 has not been pleaded by either party in respect of whether a Subsequent Agreement arose, the threshold question is whether the Tribunal's reference to s 63 was part of its chain of reasoning for rejecting the finding of a Subsequent Agreement or whether it was directed at a separate and distinct issue, namely, the legal effect of Nayara's non-payment of the Award Amount on 17 November 2022.

120 On a fair reading of [285] to [287] of the Award, Nayara's characterisation is preferred. The Tribunal's reference to s 63 appears under the sub-heading "Effect of non-payment of the Award Amount on the Payment Date" and is directed at the question of what legal consequences flowed from Nayara's failure to pay by 17 November 2022. The Tribunal's conclusion at [287] of the Award, that there was merely a "subsequent understanding" to treat the Award Amount as comprising two components, was not a finding made on the basis of s 63. It was a factual finding about the nature of the parties' post-17 November 2022 arrangements, which the Tribunal derived from the language of the 28 November 2022 Letter and the 26 December 2022 letter. Section 63 was merely referenced in the preceding paragraph as a provision that was *prima facie* applicable to the question of the legal effect of non-payment, not as the basis for rejecting the Excess Interest Amount claim.

121 The Tribunal's rejection of the Excess Interest Amount claim therefore rested on its earlier and independently sufficient finding that there was no Subsequent Agreement giving rise to any obligation on Nayara's part to commence execution proceedings. That finding was made at [281] and [310] of the Award and is addressed under the Mistaken Belief Ground (above at [107]).

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The s 63 analysis was clearly directed at a different question and did not carry dispositive weight in relation to the Excess Interest Amount claim.

122 Essar's reliance on *CEF* does not advance its case. That case is concerned with a tribunal that used a legal principle or authority dispositively in a way that the parties had no opportunity to address (*CEF* at [116]). Particularly, the Court of Appeal found that the tribunal's chain of reasoning was deficient on three grounds. First, despite the tribunal intimating that the respondent had not provided sufficient evidence to prove its point, it adopted the respondent's reasoning, which a reasonable litigant in the appellant's shoes could not have foreseen (*CEF* at [117]). Second, the tribunal based its reasoning on a legal proposition that neither party relied on (*CEF* at [119]). Third, the breach was connected with the making of the award (*CEF* at [121]).

123 Therefore, the threshold question is whether s 63 formed part of the Tribunal's chain of reasoning for rejecting the Excess Interest claim. For the reasons set out above, it did not. *CEF* has no application where the impugned provision was not part of the reasoning that led to the adverse finding complained of.

124 Essar's alternative argument is that even if s 63 was not dispositive, the Award is nonetheless manifestly incoherent. The coherence of the Award is to be assessed by reading it as a whole and, on that reading, the Tribunal's reasoning is intelligible. The "subsequent understanding" finding at [287] of the Award explains why Nayara's release of the disputed portion of the Award Amount to IOCL was not a unilateral act taken without authority, which is a separate question from whether the Subsequent Agreement existed. I find that there is no incoherence in the Award that would support the inference that s 63

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was determinative of the Tribunal's finding that there was a subsequent understanding.

125 The Section 63 Ground therefore fails. The Tribunal's reference to s 63 was not part of its chain of reasoning for rejecting the Excess Interest Amount claim and was not dispositive of any issue that was adverse to Essar. Essar has not established that the Tribunal's reasoning lacked sufficient nexus to the parties' cases.

126 Essar has also not demonstrated that it suffered prejudice of the kind required under *L W Infrastructure*. This is because even if Essar had been given a further opportunity to address the Tribunal on the scope and application of s 63, there is no reasonable basis to conclude that the outcome would have been different. The Tribunal's rejection of the Excess Interest Amount claim ultimately rested on findings that were entirely independent of the Tribunal's analysis of s 63.

January Condition Ground: Whether the Tribunal failed to adjudicate on the essential issue of Essar's consent being conditional

Essar's case

127 Essar's final ground is an *infra petita* challenge that the Tribunal completely failed to consider a point which is an essential issue for adjudication in the Arbitration.[184] The point Essar alleges that the Tribunal failed to consider was based on the finding that there was a "subsequent understanding", and the conditions (if any) that Essar attached to its directions when it permitted Nayara to utilise the Advance Amount for the payment of the Excess Interest Amount

[184] AWS at para 94.

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to IOCL. Essar argues that "the payment was conditional upon [Nayara] seeking a resolution" of IOCL's wrongful claims for the Excess Amount Interest which it termed the "January Condition". [185]

128 Essar submits that determination of the January Condition was essential as:

(a) Nayara relied on Essar's consent in January 2023 as a central defence to assert that it acted under instructions and thus did not misuse the Advance Amount.[186]

(b) Nayara in its opening and closing submissions in the Evidentiary Hearing accepted that Nayara understood the January Condition to be a "rider … with [a] purpose ... that you resolve [the Excess Interest claim] … in a fair, bonafide and speedy manner".[187]

(c) That parties were *ad idem* that it was disputed whether Essar's consent to pay the Excess Interest Amount to IOCL came with the January Condition, and if so, what was the effect of the January Condition.[188]

129 Essar alleges that Parts X and XI of the Award do not deal with the January Condition. At [309] of the Award, as the Tribunal specifically set out that the "Claimant's entire case rests on the putative variation agreement. Its

185 AWS at para 96.

186 AWS at para 97; JBOD Vol I at p 749.

187 AWS at para 97.

188 AWS at para 97

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pleaded case also rests on this foundation", the Tribunal thus did not consider the issue of the January Condition.[189]

130 Essar rejects Nayara's contention that the Tribunal was alive to the issue of the legal consequences that flowed from Essar's conditional direction and that the Tribunal could frame the issues to answer as it saw fit.[190] Essar contends that the issue answered by the Tribunal is different from the one it should have answered.[191] The Tribunal answered "whether Nayara was under an obligation to pursue the matter against IOCL and whether any such argument depended on a demand by Essar". This was in substance different from Essar's issue which concerned the effect or consequence of the January Condition.[192] Further, Nayara's counsel had admitted that the January Condition was a "rider" and therefore, Nayara itself appreciated that it was an issue to be decided by the Tribunal.[193]

131 Essar argues that it was prejudiced by such breach as the Tribunal determined the issue of whether Essar could claim the Excess Interest Amount without first determining a material basis for the claim. Essar submits that if the Tribunal had determined the scope of the January Condition, it would have decided in line with the Tribunal's decision on Essar's separate claim in the Arbitration, in which Essar prevailed.[194]

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189 AWS at para 100.

190 AWS at para 103.

191 AWS at para 103.

192 AWS at para 103.

193 NE at p 26; JBOD Vol II at p 239, Day 2 Transcript at lines 15–22.

194 AWS at para 107.

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Nayara's case

132 Nayara relies on *DKT* at [8] for the proposition that for an *infra petita* challenge the following conditions must be met:

> (a) First, the point must have been properly brought before the tribunal for its determination, and it must be the case the party pursued rather than the case it wished it pursued.
>
> (b) Second, the point must be essential to the resolution of the dispute, and that tribunals should be given fair latitude to select issues that are essential.
>
> (c) Third, the Tribunal must have completely failed to consider the point.

133 Nayara submits that the Tribunal had dealt with the alleged January Condition issue implicitly, when it reached its conclusion on whether Nayara had an obligation to commence legal proceedings.[195] In coming to such a conclusion, the Tribunal addressed Essar's alleged condition, considered if it gave rise to the obligation asserted by Essar and found that there was no express obligation. The Tribunal found that there was no Subsequent Agreement or variation of the AFS. It then concluded that the record did not show any express or implied obligation to recover the amount from IOCL.[196]

134 To support its contention that the Tribunal was alive to the alleged January Condition, Nayara relies on the fact that on day one of the evidentiary hearing, the Tribunal asked Essar's counsel when Essar first requested or

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195 RWS at para 64.

196 RWS at para 61.

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demanded that Nayara refer the matter to the execution court. Essar accepted that the specific request came later and that the 25 January 2023 Letter did not specify the words "execution court."[197] As the Tribunal asked a specific question on the issue, it could not have been said that the Tribunal completely failed to consider the legal effect of the alleged January Condition.[198]

135 Second, Nayara submits that the alleged January Condition was not a distinct essential issue that required separate adjudication. The issue was not retained in the Tribunal's list of issues to which Essar did not object. It was then subsumed under a broader issue of whether Nayara was under any obligation to pursue the matter against IOCL.[199] Further, Essar had also suffered no prejudice. As the Tribunal found no express or implied obligation arose on the evidence, even if the alleged January Condition was analysed separately, it would not have established an agreement to approach the execution court.[200]

The Tribunal did not fail to consider the January Condition

136 The *infra petita* challenge under the January Condition Ground requires Essar to fulfil the test in *DKU* at [8] as set out at [132] above. On the facts, Essar's challenge flounders primarily on the third limb.

137 On the first limb, there is some force in Essar's position. The January Condition was a point that Essar did advance in the Arbitration. Nayara itself accepted in its opening and closing submissions that it understood the consent

197 RWS at para 62(b).

198 RWS at paras 62–64.

199 RWS at para 65.

200 RWS at para 66.

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to come with a rider.[201] It is therefore difficult to say that the January Condition was not properly before the Tribunal.

138 On the second limb, however, the position is less clear. The Tribunal's list of issues, which Essar did not object to, did not retain the January Condition as a distinct issue. Instead, it was subsumed within the broader question of whether Nayara was under any obligation to pursue the matter against IOCL and whether any such obligation depended on a demand by Essar.[202] Tribunals are entitled to fair latitude in framing and selecting the issues they consider essential to the resolution of the dispute: *BZW* at [60(a)] citing *TMM* at [72] and [74]. The fact that the January Condition was not separately listed is a relevant consideration.

139 However, the challenge ultimately fails on the third limb. The Tribunal cannot be said to have completely failed to consider the January Condition. The Award at [287] reflects the Tribunal's finding that under the "subsequent understanding", payments were to be made either upon IOCL's acceptance of the proposal in the 28 November 2022 Letter or on the directions of Essar. This finding necessarily engaged with the question of what role Essar's directions played in the payment arrangement. Further, the Tribunal's question to Essar's counsel on day one of the evidentiary hearing, asking when Essar first requested or demanded that Nayara refer the matter to the execution court,[203] demonstrates that the Tribunal was alive to the significance of Essar's conditional consent and the timing and nature of any demand made pursuant to it. The standard for an *infra petita* challenge is that the Tribunal must have completely failed to

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201 JBOD Vol II at pp 724–731.

202 Award at [241].

203 JBOD Vol II at pp 49–50, Transcript of Day 01 at pp 45–46.

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consider the point, not merely that it dealt with it briefly, implicitly, or in a way that Essar considers inadequate. The threshold is a high one, and the materials before the court do not support the conclusion that the Tribunal was wholly oblivious to the January Condition.

140 Essar's argument that the Tribunal answered a different question from the one it should have answered does not establish a complete failure to consider the point. Essar contends the Tribunal addressed whether Nayara was under an obligation to pursue the matter against IOCL rather than the effect or consequence of the January Condition. In my judgment, the two questions are closely related. The Tribunal's conclusion that no express or implied obligation at [315] of the Award arose on the evidence is a conclusion that necessarily encompasses the question of whether the January Condition, even if established, gave rise to the obligation Essar asserted. A tribunal is not required to address every sub-issue in a separate and dedicated section of its award (*ASG v ASH* [2016] 5 SLR 54 at [59(a)], [59(c)] and [59(d)]). The absence of an express treatment of the January Condition in Parts X and XI of the Award does not, without more, demonstrate that the Tribunal failed to consider it.

141 On prejudice, even if I find that the Tribunal had failed to give adequate consideration to the January Condition, Essar has not established that the outcome would have been different. As set out by the Court of Appeal in *BZW* at [63], a party would have been found to have suffered from actual or real prejudice if complying with the rules of natural justice "could reasonably have made a difference to the outcome of the arbitration". The Court of Appeal found that if the tribunal had applied its mind to the parties' cases and essential issues, it could have found in favour of the respondent. This was because there were only two possibilities that flowed from a proper consideration of the essential

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issues, and both would have led to the dismissal of the appellant's claim: at [62]–[63].

142 In the present case, the Tribunal's finding that there was no express or implied obligation on Nayara to recover the Excess Interest Amount from IOCL was a finding that was not dependent on the existence or otherwise of the Subsequent Agreement alone. Instead, the Tribunal considered (at [315] of the Award) whether there was any variation to the AFS or additional express or implied obligation for Nayara to approach the execution court and found that there was none. Essar's submission that the outcome of the January Condition analysis could reasonably have followed the same logic as the Tribunal's finding on the balance price claim is speculative and does not meet the prejudice threshold required under *L W Infrastructure*.

143 In my judgment, the January Condition Ground therefore fails.

No remission required

144 Having dismissed all four grounds advanced by the applicant to partially set aside the Award, there is no necessity for me to consider whether the matter should be remitted to the tribunal. The question of remission arises only where a ground for setting aside has been established, and since none of the grounds has succeeded in the present case, the issue does not arise for determination.

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Conclusion

145 As Essar is not able to establish its case on any of the four grounds above, the setting aside application is dismissed.

146 Unless agreed, parties are to provide written submissions on costs and disbursements for this application limited to five pages.

Wong Li Kok, Alex
Judge of the High Court

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