IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 12

Court of Appeal / Civil Appeal No 51 of 2022

Between

Voltas Limited

… *Appellant*

And

York International Pte Ltd

… *Respondent*

In the matter of Originating Summons No 952 of 2021

Between

York International Pte Ltd

… *Plaintiff*

And

Voltas Limited

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Arbitral tribunal — Jurisdiction — Whether a tribunal may impliedly reserve its jurisdiction]

[Arbitration — Award — Final Award — Whether a conditional award can be a final award]

Voltas Ltd
v
York International Pte Ltd

[2024] SGCA 12

Court of Appeal — Civil Appeal No 51 of 2022
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and Judith Prakash SJ
22 February 2024

2 May 2024

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 On 25 August 2014, an arbitrator (the "Arbitrator") rendered a conditional award (the "2014 Award"). He decided, amongst other things, that York International Pte Ltd ("York") was liable to Voltas Limited ("Voltas") for sums amounting to $1,132,439.46. However, the 2014 Award conditioned this liability on Voltas showing that it had paid these sums to a third party, which would have caused Voltas to suffer the loss of $1,132,439.46 which it claimed against York. Following disagreements between the parties on whether this sum was payable, Voltas sought a further award from the Arbitrator. On 23 August 2021, the Arbitrator issued a ruling (the "2021 Ruling") holding that he was not *functus officio* and that he could determine whether the conditions set out in the 2014 Award had been satisfied.

2 York applied to the General Division of the High Court pursuant to s 21(9) of the Arbitration Act 2001 (2020 Rev Ed) (the "AA") seeking, amongst other reliefs, an order that the Arbitrator did not have jurisdiction to make the further award. The court allowed the application and Voltas appealed against its decision. At the heart of this dispute lie the questions of whether a conditional award can be a final award, and whether, if an arbitral tribunal has not made an express reservation of jurisdiction, it may yet be found that it has done so by implication. For the reasons that follow, we dismissed the appeal after hearing the parties.

Facts

Background to the dispute

3 The appellant, Voltas, is a foreign company registered in Singapore. The respondent, York, is a company incorporated in Singapore.[1]

4 On 3 March 2008, Voltas was engaged by Resorts World Sentosa Pte Ltd ("RWS") to carry out the design, supply, construction, completion and maintenance of a District Cooling Plant ("DCP") on Sentosa Island, Singapore (the "Project"). As part of the Project, Voltas was to supply chilled water to the Resorts World at Sentosa as well as to some other developments on Sentosa Island. A contract between Voltas and RWS was entered into pursuant to this engagement (the "Main Contract").[2] The Main Contract was novated on 27 May

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1 ROA Vol III (Part A) at p 182 (SIAC Arbitration No. 61 of 2012 (ARB061/12/VN) – Tribunal's Final Award dated 25 August 2014 at [1]–[2]).

2 ROA Vol III (Part D) at pp 96–113 (Affidavit of Shyam M Sidhwani dated 30 April 2013 ("SMS Affidavit") at Exhibit SS-3).

2008 by RWS to DCP (Sentosa) Pte Ltd ("DCP Sentosa").[3] We will refer to RWS and DCP (Sentosa) collectively as the "Project Owners".

5 On 3 April 2008, Voltas entered into an agreement with York, under which York was to provide Voltas with five water-cooled dual centrifugal chillers (the "Chillers") for a lump sum price of $5,230,000 (the "Purchase Agreement").[4] The Chillers were components of the DCP and were each powered by two motors. York delivered the Chillers to Voltas sometime between December 2008 and November 2009.[5]

The Arbitration

6 In 2011, a dispute arose between the parties with respect to the quality of the Chillers supplied under the Purchase Agreement. In particular, between March 2011 and May 2011, seven of the Chillers' motors had failed during operation. On 17 November 2011, York commenced S 821/2011 in the High Court against Voltas. On 29 November 2011, Voltas made an application in SUM 5415/2011 for a stay of all further proceedings in S 821/2011 pending arbitration pursuant to the Purchase Agreement.[6]

7 On 13 January 2012, the parties entered into an agreement for *ad hoc* arbitration (the "Arbitration Agreement") to settle their disputes by way of arbitration. Clause 1 of the Arbitration Agreement stated as follows:[7]

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3 ROA Vol III (Part A) at pp 6–7 (1st Affidavit of Buay Kee Seng, Christopher dated 21 September 2021 ("BKSC 1st Affidavit") at para 7).

4 ROA Vol III (Part A) at pp 48–155.

5 ROA Vol III (Part A) at p 7 (BKSC 1st Affidavit at paras 8–9).

6 ROA Vol III (Part A) at pp 7 and 10 (BKSC 1st Affidavit at paras 9 and 14).

7 ROA Vol III (Part A) at pp 157–158 (BKSC 1st Affidavit, Exhibit BKS-1).

> All the claims or matters in the Suit and/or any dispute arising under or in connection with the Purchase Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration and the final decision of a single arbitrator in accordance with and subject to the provisions of the prevailing laws on arbitration or ay statutory modification thereof for the time being in force in Singapore and that any such reference shall be deemed to be submission to arbitration within the meaning of such laws. The single arbitrator shall be mutually agreed within twenty-one (21) days of any notice of arbitration, failing which he or she shall be appointed by the Chairman of the Singapore International Arbitration Centre.

8 On 21 February 2012, York commenced arbitration against Voltas in Singapore claiming, amongst other things, outstanding payments of $523,000 allegedly owed by Voltas under the Purchase Agreement (the "Arbitration").[8] Voltas responded with a counterclaim for $6.6m arising from loss, damage, costs and expenses suffered by Voltas as a result of York's breach of the Purchase Agreement in supplying allegedly defective Chillers.[9] These counterclaims included:

(a) a sum of $1,099,162.46 which the Project Owners had incurred in introducing nitrogen into the thermal storage tanks and installing air-cooled chillers downstream of the chiller water system networks (the "Nitrogen Claim");[10] and

(b) a sum of $33,277 which the Project Owners had incurred in removing the failed motors and installing temporary motors (the "Removal Claim").[11]

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8 ROA Vol III (Part G) at pp 218–221 (Notice of Arbitration dated 21 February 2012 at paras 3–6 and 16(a)).

9 ROA Vol III (Part G) at pp 222–224 (Response to Notice of Arbitration at paras 13–14).

10 ROA Vol III (Part D) at pp 71–72 (SMS Affidavit at para 181).

11 ROA Vol III (Part G) at pp 199–201 (SMS Affidavit at Exhibit SS-52).

9 Voltas thus sought to recover a total of $1,132,439.46 (being the sum of the Nitrogen and Removal Claims) from York in the Arbitration as part of its counterclaim.

The 2014 Award

10 The Arbitration took place between June 2013 and April 2014. On 25 August 2014, the Arbitrator issued the 2014 Award allowing York's claim for outstanding payments due under the Purchase Agreement, but also allowing Voltas's counterclaims in part. In particular, the Arbitrator found York liable for supplying defective motors for the Chillers,[12] and thus allowed the Nitrogen and Removal Claims.

11 However, the Arbitrator also ordered that any sums that York was liable to pay Voltas: (a) would accrue only upon Voltas making payment of the same to the Project Owners; and (b) that the amount that York would be liable to pay Voltas would be "up to a maximum of" $1,099,162.46 in respect of the Nitrogen Claim and $33,277 in respect of the Removal Claim:[13]

> [**The Nitrogen Claim**]
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> h. In the premises, I will make an order for [York] to make payment to [Voltas] for this head of damage as itemised at page 988 of Mr Sidhwani's affidavit, *up to a maximum of $1,099,162.46, upon [Voltas] making payment to [the Project Owners] in respect of such items set out under this head of damage.*
>
> [**The Removal Claim**]
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> 239. In respect of the sub-claim of S$33,277.00 for the removal of the failed motors and installation of temporary motors, I am satisfied that this sum is related to the motor failures which I find to have been caused

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12 ROA Vol III (Part A) at p 283 (2014 Award at para 235).

13 ROA Vol III (Part A) at p 286 (2014 Award at paras 238(h) and 239).

> by the fundamental flaw. I also note that this sum had not been challenged by [York] in cross-examination, and similarly make an order for [York] to pay [Voltas] for this head of damage, *up to a maximum of S$33,277.00, when the [Voltas] pays [the Project Owners] in respect of this head of damage*.
>
> [emphasis added]

12 The Arbitrator reasoned that while it was not necessary for Voltas to have made payment to the Project Owners first before York could be said to be liable for the Nitrogen and Removal Claims,[14] there was a "need for some degree of caution" because Voltas had not yet paid the Project Owners for the sums due under the Nitrogen and Removal Claims and hence there was a danger of a windfall in favour of Voltas if York was required to pay the amount in question at once.[15] The Arbitrator considered various options to address this concern before deciding that York's liability to pay Voltas in respect of these claims be made conditional on Voltas's payment of the same to the Project Owners.

Voltas's settlement with the Project Owners

13 On 12 August 2015, Voltas entered into a settlement agreement with the Project Owners (the "Settlement Agreement"), under which the Project Owners agreed to pay Voltas $1,000,000 (excluding GST) in full and final settlement of all claims each party may have against the other under the Main Contract.[16] In arriving at that sum, Voltas and the Project Owners agreed to set off the sums in respect of the Nitrogen and Removal Claims from the sums that the Project

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14 ROA Vol III (Part A) at pp 282–283 (Final Award at para 238(b)).

15 ROA Vol III (Part A) at p 285 (Final Award at para 238(f)).

16 ROA Vol III (Part L) at pp 221–223 (Offer to Settle from DCP to Voltas dated 12 August 2015 at para 3).

Owners were supposed to pay Voltas for work done pursuant to the Project.[17] Voltas considered on this basis that the sums comprising the Nitrogen and Removal Claims had been paid by it to the Project Owners by way of the set-off pursuant to the Settlement Agreement.

The 2020 Arbitration

14 From 2015 to 2018, Voltas demanded payment of the sum of $1,132,439.46 from York pursuant to the 2014 Award. York refused to make payment, contending that Voltas had not provided sufficient evidence that it had paid the Project Owners for the Nitrogen and Removal Claims.[18]

15 On 24 August 2020, Voltas applied to the Arbitrator for a determination of: (a) whether Voltas had, in substance, paid the Project Owners in respect of the Nitrogen and Removal Claims; (b) if so, what sums Voltas had paid in respect of these claims; and (c) what sums were to be paid by York to Voltas (the "Further Award Application").[19]

16 On the same date, and without prejudice to its Further Award Application, Voltas also issued a notice of arbitration (the "NOA") seeking to commence fresh arbitration proceedings against York under the Arbitration Agreement claiming payment for the Nitrogen and Removal Claims.[20]

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17 ROA Vol III (Part L) at pp 258–259 (Statement of Final Account dated 18 January 2016).

18 ROA Vol III (Part B) at pp 8–11, 19–20, 30–31, 39–40; ROA Vol III (Part H) at pp 72–83; ROA Vol III (Part L) at pp 261–264, 273, 275–276; ROA Vol III (Part M) at pp 51–52, 60–61.

19 ROA Vol III (Part H) at pp 72–83 (Voltas's Application for a Further Award dated 24 August 2020).

20 ROA Vol III (Part M) at pp 7–37.

17 On 16 September 2020, York wrote to Voltas contending that the disputes referred to in the NOA did not fall within the scope of the Arbitration Agreement.[21] On 19 October 2020, York sent a letter to the Arbitrator and Voltas raising a jurisdictional objection in respect of the Further Award Application and contending that the Arbitrator was *functus officio* in relation to the Arbitration and did not retain any jurisdiction following the issuance of the 2014 Award.[22]

The 2021 Ruling

18 The Arbitrator issued the 2021 Ruling on jurisdiction on 23 August 2021.[23] The Arbitrator concluded, amongst other things, that he was not *functus officio* and thus retained jurisdiction to make the Further Award. According to the Arbitrator, the issues in the Further Award Application (the "Disputed Issues") were issues falling within the scope of reference to the Arbitration. Further, the Arbitrator explained that he was not *functus officio* in respect of these matters as he had only ordered York to pay Voltas a maximum amount, without determining the precise quantum due from York to Voltas. This was so, given that the precise quantum was unknown at the point of the 2014 Award and depended on Voltas making payment to the Project Owners.[24] The relevant portion of the 2021 Ruling stated as follows:

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21 ROA Vol III (Part M) at pp 39–40.

22 ROA Vol III (Part M) at pp 42–48 (York's Response to Voltas's Application for a Further Award dated 19 October 2020).

23 ROA Vol III (Part A) at pp 33–46 (SIAC Arbitration No. 1016 of 2020 – Decision dated 23 August 2021 in relation to Voltas Limited's Application for a Further Award ("2021 Ruling")).

24 ROA Vol III (Part A) at pp 35 and 46 (Decision on the Respondent's Application for a Further Award dated 23 August 2021 at paras 2 and 62–64).

> **(D) THE ISSUE OF THE AMOUNT DUE FROM THE CLAIMANT TO THE RESPONDENT HAS YET TO BE DETERMINED**
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> 62. The Final Award is expressly conscious of the need to avoid [Voltas] enjoying a windfall in the event that [the Project Owners] did not proceed against [Voltas] for the [Nitrogen and Removal Claims]. As the authorities of *Randall v Raper*, and *Total Liban* establish, in circumstances where a windfall might accrue to a party, it could be appropriate to decide on the liability of that party, but reserve the question of damages for future assessment where it is difficult to assess future loss.
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> 63. In the present case, my orders in the [2014] Award] on both [the Nitrogen and Removal Claims] was for [York] to pay [Voltas] a maximum amount, but the precise amounts that [York] was due to [Voltas] were not determined. This is an issue falling within the scope of reference to arbitration – to determine the reliefs that accrue to the Parties pursuant to breaches of their respective obligations under the Purchase Agreement.
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> 64. Therefore I find that the issue of the quantum of damages that [York] is liable to [Voltas] for, is within my jurisdiction to decide, but was not decided in the [2014 Award] because at that point, [the Project Owners] had not pursued the [Nitrogen and Removal Claims] against [Voltas]. To the limited extent of this specific issue, I am not *functus officio* and retain the jurisdiction to make a Further Award on this matter.

Decision below

19 Dissatisfied with the Arbitrator's decision in the 2021 Ruling, York filed HC/OS 952/2021 ("OS 952") pursuant to s 21(9) of the AA on 21 September 2021 seeking a ruling that the Arbitrator did not have jurisdiction to make the Further Award.

20 The matter came before a judge of the General Division of the High Court (the "Judge") who allowed York's application: *York International Pte Ltd v Voltas Ltd* [2022] SGHC 153 (the "Judgment"). The Judge found that the 2014 Award did deal with all the issues that formed the subject of the Arbitration, such that the Arbitrator was *functus officio*. Accordingly, the Judge held that the

Arbitrator did not have the jurisdiction to issue the Further Award: see the Judgment at [90].

21 First, the Arbitrator had chosen to render a conditional award on quantum, as opposed to adjourning his decision on the same. This indicated that the Arbitrator had intended to fully resolve the parties' dispute over the Nitrogen and Removal Claims in the 2014 Award and had not reserved his jurisdiction to make a future assessment on this issue: the Judgment at [56] and [58]–[60]. To that end, the Judge disagreed with the Arbitrator's 2021 Ruling in which he held that the 2014 Award reserved the question of damages for the Nitrogen and Removal Claims for a future assessment: the Judgment at [61].

22 Second, the Arbitrator had, in the 2021 Ruling, indicated that any reservation of jurisdiction would have been made "in clear and categorical language". This clearly showed that the Arbitrator was aware that any reservation of jurisdiction had to be unequivocal. Yet, the Arbitrator did not explain in the 2021 Ruling how the 2014 Award contained a reservation of jurisdiction, nor was there language to such effect in the 2014 Award. This showed that the Arbitrator had not intended to reserve his jurisdiction in the 2014 Award: the Judgment at [62]–[64] and [66].

23 Third, the 2014 Award had fully resolved all the disputes that formed the subject of the Arbitration. Although the 2014 Award did not fix a specific sum to be paid by York to Voltas in respect of the Nitrogen and Removal Claims, it nevertheless did set out the method for deriving this sum. In particular, the quantum that York was liable to pay Voltas was to be determined by reference to whatever sum Voltas ultimately paid the Project Owners, up to a maximum amount of $1,099,162.46 in respect of the Nitrogen Claim and $33,277 in respect of the Removal Claim: the Judgment at [72]–[73].

24 Fourth, the mere fact that there might be difficulties in enforcement did not mean that the award was not complete, final and binding on the parties, nor did it mean that the Arbitrator had reserved his jurisdiction in the 2014 Award: the Judgment at [75]–[76].

25 Finally, the 2014 Award possessed the *indicia* of a final award. Specifically, the 2014 Award was titled "Final Award" and also contained a final order on costs which dealt with all the costs of the Arbitration, which was "reasonably common in the last award in an arbitration": the Judgment at [78]–[84].

The parties' cases on appeal

26 On 18 August 2022, Voltas applied to this Court in CA/OA 9/2022 ("OA 9") for permission to appeal against the Judge's decision in OS 952, and on 28 November 2022, Voltas was granted permission to appeal on the following four questions of law:[25]

(a) Whether an arbitrator must reserve his jurisdiction to issue a further award in order to retain jurisdiction to issue such further award in relation to issues and/or disputes arising from conditions contained in orders in the original award and/or which have not yet been determined by the arbitrator?

(b) If an arbitrator must reserve his jurisdiction, whether such reservation of jurisdiction must be made expressly by the arbitrator in the original award or whether the reservation of jurisdiction can also be implied?

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[25] ROA Vol II at pp 15–16 (Order of Court in CA/OA 9/2022 dated 29 November 2022).

(c) If the arbitrator's reservation of jurisdiction can also be implied, what factors should a court consider in deciding whether there is such an implied reservation of the arbitrator's jurisdiction – and should it be implied that an arbitrator reserves jurisdiction to make further determination in relation to issues and/or disputes arising from conditions contained in orders in the original award and/or which have not yet been determined by the arbitrator?

(d) Whether an arbitrator who issues an award containing orders for party B to pay party A a sum of money (without specifying the precise sum) upon party A having made payment of that sum to a third party (in satisfaction of specific claims against party A by that third party) retains jurisdiction to issue a further order/ award to determine whether party B's obligation to pay party A has accrued and the sum payable by party B to party A?

Appellant's Case

27 In essence, Voltas's submissions in respect of the four questions were as follows:

(a) It is not necessary for an arbitrator to reserve his jurisdiction to issue a further award in relation to undetermined issues in order to retain the jurisdiction to do that.[26]

(b) If it is necessary for an arbitrator to reserve his jurisdiction for this purpose, such a reservation of jurisdiction may be express or implied.[27]

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26 Appellant's Case dated 18 April 2023 ("AC") at paras 27–61.

27 AC at paras 62–69.

(c) A reservation of the arbitrator's jurisdiction to issue a further award should be implied where there remain undetermined issues and/or disputes arising from conditions contained in orders in the original award and/or which have not yet been determined by the arbitrator.[28]

(d) Further, and in any case, where an arbitrator issues an award containing orders for party B to pay party A a sum of money (without specifying the precise sum) upon party A having made payment of that sum to a third party (in satisfaction of specific claims against party A by that third party), the arbitrator retains jurisdiction to issue a further order/ award to determine: (i) whether party B's obligation to pay party A has accrued, and (ii) the sum payable by party B to party A. In effect, this was simply a submission that on the particular facts of this case, the arbitrator retained jurisdiction to issue the further award, whether or not he had reserved his jurisdiction to do so in his original award.[29]

28 During the hearing of the appeal on 22 February 2024, counsel for Voltas, Mr Karnan s/o Thirupathy, submitted that, in essence, the 2014 Award was not a final award because it was a conditional award and such an award does not decide all the substantive issues in a dispute.[30]

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28 AC at paras 71–95.

29 AC at paras 96–104.

30 Transcript for CA 51 dated 22 February 2024 at 7:7–26.

Respondent's Case

29 York contended as follows in relation to the four questions of law:

(a) An arbitrator can only issue a further award in relation to issues and/or disputes arising from conditions contained in the original award, if either of the following conditions are met: (i) the arbitrator has expressly reserved his jurisdiction to do so, or (ii) a party has applied to the arbitrator for an additional award within 30 days of receipt of the original award pursuant to s 43(4) of the AA.[31]

(b) When issuing what otherwise appears to be a final award, an arbitrator must *expressly* reserve jurisdiction in order to issue a further award. Any suggestion that such jurisdiction may be impliedly reserved is contrary to ss 43 and 44 of the AA.[32]

(c) If an arbitrator's reservation of jurisdiction cannot be implied then it follows that the third question of law is moot.[33] Notably, York submits that an enforcement court can deal with the question of whether the conditions stipulated in a conditional award have been complied with.[34]

(d) Where the arbitrator has made a conditional order for party B to pay party A a sum of money (without specifying the precise sum) upon party A having paid that sum to a third party (in satisfaction of specific claims against party A by that third party), the

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31 Respondent's Case dated 16 May 2023 ("RC") at paras 17–28 and 40–44.

32 RC at paras 28–29 and 45–51.

33 RC at para 57.

34 RC at paras 69–70.

> arbitrator would not have reserved jurisdiction to issue a further order/award to determine (i) whether party B's obligation to pay party A has accrued, and (ii) the sum payable by party B to party A.[35]

30 At the hearing of the appeal, counsel for York, Mr Ng Kim Beng ("Mr Ng"), submitted that the question of whether the conditions in the 2014 Award were fulfilled was one that fell within the remit of the enforcement court, not the tribunal.[36]

Issues that had to be determined

31 There were two issues that came to the fore. The first pertained to whether the 2014 Award constituted a final award. Specifically, the question was whether a *conditional award* may constitute a final award. If the 2014 Award was not a final award, there was no need to consider the questions of law pertaining to the reservation of a tribunal's jurisdiction.

32 However, if the 2014 Award did constitute a final award, then we had to consider the question of whether the Arbitrator had reserved his jurisdiction. This, in turn, entailed an analysis of how an Arbitrator may reserve his jurisdiction. This would have required us to engage with the four questions of law that were specified in the Order of Court for OA 9 (see [26] above).

33 To summarise, the two issues that arose for our determination were as follows:

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35 RC at paras 72–77.

36 Transcript for CA 51 dated 22 February 2024 at 48:6–22.

(a) whether the 2014 Award, being a conditional award, constituted a final award; ("Issue 1") and

(b) if so, whether the Arbitrator had reserved his jurisdiction to issue a further award. ("Issue 2").

Issue 1: Whether the 2014 Award constituted a final award.

34 We were satisfied that the 2014 Award constituted a final award. In so finding, we addressed two questions: (a) whether a conditional award may constitute a final award; and (b) whether the 2014 Award was a final award in that it dispensed with all the substantive issues before the tribunal.

Whether a conditional award may constitute a final award

35 Contrary to Voltas's submission, a conditional award may constitute a final award (see [28] above). Section 2(1) of the AA defines an "award" as "a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any order or direction made under section 28" [emphasis added]. A *final* award has been described as follows (*Arbitration in Singapore: A Practical Guide* (Sundaresh Menon CJ ed-in-chief) (Sweet & Maxwell, 2nd Ed, 2018)):

> [13.029] ***A final award refers to an award which the tribunal issues at the conclusion of the arbitral proceedings and which deals with all the remaining issues in dispute***.
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> [13.030] If it is the tribunal's only award, it will deal comprehensively with all the substantive issues in dispute and costs. If partial awards had been rendered earlier in the course of proceedings, the final award will address all remaining issues, including costs.
>
> [13.031] After issuing the final award, the tribunal's mandate comes to an end and arbitral proceedings are terminated.
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> [emphasis added in bold italics]

36 In *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* ("*PT Perusahaan*") [2015] 4 SLR 364, we observed as follows:

> 51 The term "final" award can be understood in a number of ways. First, it can refer to an award which resolves a claim or matter in an arbitration with preclusive effect (*ie*, the same claim or matter cannot be re-litigated). Even provisional awards are "final" in this sense. As Born states ([45] *supra* at pp 3013–3014):
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> > … Even awards granting provisional relief can be considered to be 'final', notwithstanding the fact that they will be superseded by subsequent relief, because they finally dispose of a particular request for relief. … [E]very award rendered during the course of an arbitration, before its final conclusion, is 'final' because of the preclusive effect it enjoys.
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> 52 Second, it can refer to awards that have achieved a sufficient degree of finality in the arbitral seat. Born states that this would most obviously be so in cases where the award is granted "confirmation or *exequatur*", or is no longer susceptible to being appealed against or being subject to annulment proceedings in the arbitral seat (at p 3014).
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> 53 Third, it can refer to the last award made in an arbitration which disposes of all remaining claims. This is a "final" award in the sense used in Art 32(1) of the Model Law.

37 Notably, a final award, as used in Art 32(1) of the UNCITRAL Model Law on International Commercial Arbitration 1985, is one that disposes of all remaining claims. In *Konkola Copper Mines v U&M Mining Zambia* [2014] EWHC 2374 (Comm) ("*U&M Mining*"), the award (termed the "Second Award") issued by the tribunal included an order that the applicant, Konkola Copper Mines Plc ("KCM"), pay certain invoices to the respondent unless KCM "shows cause, supported by evidence, within 14 days of the [Second Award], why such an order should not be made": *U&M Mining* at [83(ii)]. Counsel for KCM argued that the Second Award was "legally defective and not truly an award because of the form that it took" and that the tribunal "had either to make an outright award which left nothing in abeyance at all and was final and conclusive … so it could immediately be enforced or to make a provisional

order only which had to be the subject of reconsideration at a later stage leading to a 'final' Award": *U&M Mining* at [85].

38 Cooke J rejected KCM's argument and held that the award in *U&M Mining* was a final and binding award. In particular, he found as follows (*U&M Mining* at [97]):

> I do not see why, as a matter of principle, … an award cannot be final and conclusive in its terms where it clearly provides for specific relief, including payments of money, which only bites at a point in the future, in the absence of submission and evidence from an absent party to the contrary. The tribunal has made decisions which are final and complete and are not subject to further decisions on its part or of any other person or body unless a specified contingency occurs. Such an award is complete and final on its own terms, albeit conditional. Whilst this might present difficulties for enforcement purposes, that is nothing to the point and does not prevent it from being an award which binds the parties. …

39 We agreed with Cooke J's finding that a conditional award may constitute a final award, though, as we explain below, we do not think that the award in that case was necessarily a final award. However, we do agree that so long as there is sufficient clarity in both the award and any conditions stipulated therein, a conditional award may be a final award.

40 Voltas referred to *U&M Mining* at [100], where Cooke J held that: "If it be the case that a further Award is needed, consequent upon the Second Award, which states that no representations were made or cause shown within the 14 day time limit, no doubt an application could be made to the tribunal for it." Voltas submitted that a tribunal retained the jurisdiction to issue a further award on undetermined issues arising from the conditions contained in the original award.[37] We disagreed with this contention.

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[37] AC at paras 36–37.

41 *U&M Mining* could be distinguished because the condition in the Second Award was for KCM to show cause, within 14 days, why certain orders should not have been made. Such a condition went to the substance of the dispute. It was clear that the merits of the dispute had not been finally dealt with, and the Second Award which, by definition, had not decided on all the issues before the tribunal, would only take effect and become a final award if nothing was done within the specified period that might prevent that outcome. *U&M Mining* was not a case where the liability was to be incurred upon a particular condition being satisfied. Rather, the award in that case allowed the parties to revisit and reopen the tribunal's orders if KCM appeared to show cause. It follows that *U&M Mining* did not support Voltas's submission that a conditional award allows a tribunal to retain its jurisdiction over undetermined issues. Indeed, as we explain below, once a final award is issued, the arbitrator's mandate comes to an end.

42 We see no reason for thinking that a conditional award may not constitute a final award in the third sense as laid down in *PT Perusahaan*. The key inquiry is whether the conditions in such an award make it necessary for the tribunal to reopen or reconsider the matter. A conditional award may constitute a final award if it disposes of all outstanding claims and if an enforcement court will be able to assess whether the conditions in the award have been satisfied. In *Flender Corporation v Techna-Quip Company and another* 953 F.2d 273 (7th Cir. 1992) ("*Flender Corporation*"), the appellant entered into a sales agency agreement with the first respondent in 1984. Under the agreement, the first respondent was appointed as the appellant's sales agent in a specified territory. The agreement was valid for a three-year term, which could be extended, and provided for the first respondent to be compensated by way of commissions. The agreement also contained an arbitration clause. On 1 February 1987, the agreement was renewed for three additional years till 31

January 1990. However, the appellant terminated the contract on 4 June 1987: *Flender Corporation* at 275. The arbitrator, in his award dated 4 November 1988, found that the appellant breached the agreement and ordered the appellant to pay the second respondent commissions on all sales within the specified territory through 31 January 1990, and to supply the necessary documentation to verify the accuracy of the payments made: *Flender Corporation* at 276. The arbitrator could not compute the entire sum due under the award because the term of the contract had not yet ended at the date of the award: *Flender Corporation* at 280, n (11).

43 Amongst other submissions, the appellant contended that the award should be set aside because it was not final and definite in that the arbitrator had not fixed or specified the quantum of the commissions payable: *Flender Corporation* at 279. The court held, at 280, as follows:

> Although the arbitrator did not quantify the amount payable to McGuire, the arbitrator definitively determined that Flender was required to pay McGuire commissions on sales that occurred during that part of the contract period which Flender prevented him from acting as its sales representative. … In short, the arbitrator resolved all claims before him, leaving to the district court only the ministerial computation of the amount owed to McGuire. Because this computation was easily ascertainable from the documents that the arbitration required Flender to produce, the arbitrator's award was final and definite.

44 The court in *Flender Corporation* held that the arbitrator's award was final and definite despite some potential uncertainty as to the appellant's liability because the enforcement court could readily answer that question. This must be correct. In such cases, the arbitral tribunal would have disposed of all the outstanding claims such that the award can be considered as "final". All that remains is an assessment of the extent to which any liability has accrued; this would fall within the remit of the enforcement court.

Whether the 2014 Award was a final award

45 We next explain why we considered that the 2014 Award was a final award. The 2014 Award disposed of the substantive issues in the dispute between Voltas and York. The Arbitrator did not contemplate that there were any other issues left to be decided following the 2014 Award. There are three indicators of this.

46 First, the substance of the dispute was already decided. The only condition left to crystallise York's liability for the Nitrogen and Removal Claims was for Voltas to show that it had paid the specified sums to the Project Owners that were claimed under the two Claims.

47 Second, the Arbitrator had also decided on the costs of the Arbitration. In doing so, the Arbitrator found that Voltas had substantially succeeded in the arbitration and was entitled to 70% of its costs plus 70% reasonable disbursements.[38] This too suggests that the Arbitrator had intended to finally decide on all the issues in the dispute between York and Voltas in the 2014 Award.

48 Third, the 2021 Ruling confirmed our finding that the 2014 Award was a final award. The Arbitrator accepted that the 2014 Award was *res judicata* and the Arbitrator himself was *functus officio* in respect of the matters decided in the 2014 Award.[39] Although the Arbitrator went on to consider whether there were undetermined issues that preserved his jurisdiction over the dispute, we agreed with the Judge that this was a "change in tack": the Judgment at [61]. In the 2014 Award, the Arbitrator had considered *Biffa Waste Services Ltd v*

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38 ROA Vol III (Part A) at p 290 (2014 Award at paras 246–247).

39 ROA Vol III (Part A) at p 43 (2021 Ruling at para 49).

Maschinenfabrik Ernest Hese GMBH and another [2008] EWHC 2210 (TCC) ("*Biffa*"), where the court held that in certain circumstances where a windfall might occur, it is appropriate for the court to either: (a) adjourn the decision on quantum; or (b) make a quantum award on condition that the money is paid to a third party or that it is held on trust for that purpose.[40] Having set out the two options in *Biffa*, the Arbitrator went on to issue the conditional award, thus opting for the latter course.[41] In particular, the Arbitrator decided against adjourning the matter till after Voltas had paid the specified sums to the Project Owners. Instead, the Arbitrator found York liable "up to a maximum" of the sums of $1,099,162.46 and $33,277.00. This could only mean that the Arbitrator did not intend to keep the question of York's liability open, but rather meant to and did finally dispose of the matter by rendering the 2014 Award, leaving it to Voltas to show, at the appropriate time, that the requisite condition for payment had been fulfilled.

49 For these reasons, we found that the 2014 Award was a final award in the third sense of *PT Perusahaan*. There was no substantive matter that was left undecided. This then raised the question of whether the Arbitrator had reserved his jurisdiction.

Issue 2: Whether the Arbitrator had reserved his jurisdiction to issue a further award.

50 In his 2021 Ruling, the Arbitrator accepted that he had not expressly reserved his jurisdiction.[42] This was not challenged by parties on appeal. The only question left, on Voltas's case, was whether there could have been an

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40 ROA Vol III (Part A) at p 285 (2014 Award at para 238(f)).

41 ROA Vol III (Part A) at p 286 (2014 Award at paras 238(h) and 239).

42 ROA Vol III (Part A) at p 39 (2021 Ruling at para 26).

implied reservation of jurisdiction by the Arbitrator.[43] We rejected this submission on the basis that it is not possible for a tribunal to impliedly reserve its jurisdiction in the first place.

Overview on tribunal's jurisdiction

51 The starting point is that a tribunal is *functus officio* once it renders an award – that is, the tribunal has "completed its mandate by making an award with *res judicata* effect". The tribunal is thus said to have lost its jurisdiction to reconsider the merits of the parties' dispute, once it renders an award determining the issues: see *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2014] 1 SLR 1221 ("*L W Infrastructure*") at [28]–[29].

52 In the context of a domestic arbitration proceeding, this rule is contained in s 44 of the AA: see *L W Infrastructure* at [31]. Section 44 provides as follows:

> **Effect of award**
>
> **44.**—…
>
> (2) Except as provided in section 43, upon an award being made, including an award made in accordance with section 33, the arbitral tribunal must not vary, amend, correct, review, add to or revoke the award.

53 There are, however, limited exceptions to the termination of the tribunal's mandate. In the context of domestic arbitrations, these exceptions, which are often referred to in court proceedings as the "slip rule" (*BRS v BRQ and another and another appeal* [2021] 1 SLR 390 at [70]), are prescribed under s 43 of the AA:

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[43] Transcript for CA 51 dated 22 February 2024 at 6:3–17 and 43:27–44:5. See also, AC at paras 62–66.

> **Correction or interpretation of award and additional award**
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> **43.**—(1) A party may, within 30 days of the receipt of the award, unless another period of time has been agreed upon by the parties —
>
> (*a*) upon notice to the other parties, request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or other error of similar nature; and
>
> (*b*) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if the request is also agreed to by the other parties.
>
> (2) If the arbitral tribunal considers the request in subsection (1) to be justified, the tribunal must make the correction or give the interpretation within 30 days of the receipt of the request and the interpretation forms part of the award.
>
> (3) The arbitral tribunal may correct any error of the type mentioned in subsection (1)(a) or give an interpretation as mentioned in subsection (1)(b), on its own initiative, within 30 days of the date of the award.
>
> (4) Unless otherwise agreed by the parties, a party may, within 30 days of receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented during the arbitral proceedings but omitted from the award.
>
> (5) If the arbitral tribunal considers the request in subsection (4) to be justified, the tribunal must make the additional award within 60 days of the receipt of the request.
>
> (6) The arbitral tribunal may, if necessary, extend the period of time within which it is to make a correction, interpretation or an additional award under this section.
>
> …

54 Section 43 of the AA thus prescribes three situations in which a tribunal may revisit a published final award, namely: (a) to correct arithmetical mistakes in calculation or typographical errors in the award (see s 44(1)(*a*) of the AA); (b) to provide interpretation on a specific point or portion of an award so as to provide greater clarity (see s 44(1)(*b*) of the AA); or (c) to make an additional award dealing with claims which were presented during the arbitral

proceedings, but which were omitted for some reason from the actual award (see ss 43(4) to 43(6) of the AA).

55 The tribunal, however, is not entitled to "re-visit issues canvassed and decided or to re-consider any part of the decisions consciously made" when it revisits an award that was earlier issued, in the aforementioned situations: see *Econ Piling Pte Ltd and another (both formerly trading as Econ-NCC Joint Venture) v Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246 at [116], citing *The Review of Arbitration Laws – Final Report* (Law Reform and Revision Division, Attorney-General's Chambers, 2001) at paras 2.32.2).

56 To overcome this, it is necessary for the tribunal to reserve its jurisdiction when it purports to issue a final award. As the authors of Nigel Blackaby *et al*, *Redfern and Hunter on International Arbitration* (Oxford University Press, 7th Edn, 2023) note, it is necessary for the tribunal to take steps to indicate that the award is not a final award, such as by designating the award as a partial award, to avoid a situation where the tribunal is rendered *functus officio* following the publication of the award (at para 9.19):

> … An arbitral tribunal should not issue a final award until it is satisfied that its mission has actually been completed. If there are outstanding matters to be determined, such as questions relating to costs (including the arbitral tribunal's own costs), *the arbitral tribunal should issue an award expressly designated as a partial award.*
>
> [emphasis added]

57 A similar observation regarding the need for an express reservation of a tribunal's jurisdiction was made in Ray Turner, *Arbitration Awards: A Practical Approach* (Blackwell Publishing, 2005) (at p 80):

> **4.3.5 Reserved matters**
>
> This relates to matters to be left over to be resolved by a subsequent award. Unless such reservation has been agreed between the parties, the arbitrator needs at some stage to decide what, if any, matters should be so reserved. There could be, for instance, remaining issues, interest, or costs; or less apparent matters such as the consequences of subsequent failure to comply with a performance award. He should specifically reserve those elements, commonly by an item following the operative part of the award and prior to his signature. He should also maintain a further checklist so as to ensure that no reserved matters are subsequently overlooked.

58 In our judgment, this is correct. The termination of the tribunal's mandate following the issuance of a final award takes effect immediately and is absolute. A tribunal may revisit the final award only in the limited circumstances prescribed under s 43 of the AA (see [54] above). It is thus necessary for a tribunal to reserve its jurisdiction to deal with any contingency that may arise in order to preserve its jurisdiction to do so.[44]

Implied reservations

59 Where a tribunal issues a final award in the third sense of *PT Perusahaan*, the tribunal would be *functus officio* and would no longer have the jurisdiction to determine any further issues in the arbitration. Absent an express reservation, there is simply no room to imply such a reservation where a tribunal has delivered what appears to be a final award.

60 The notion of implying such a reservation is inconsistent with s 43(4) of the AA. As stated at [54] above, s 43(4) of the AA sets out a limited statutory exception to the termination of the tribunal's mandate following the issuance of a final award. It is clear that if nothing is done within the 30-day time limit set out in s 43(4) of the Act, that avenue cannot be used to seek a further award

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[44] RC at para 28.

dealing with any issue that may have been omitted by the tribunal. The reason for this was, likely, the desire for finality and expedition in arbitration proceedings. It would be inconsistent with s 43(4) and its underlying rationale to recognise the possibility of an *implied* reservation of jurisdiction to deal with issues arising from the implementation of an award, or to deal with unresolved issues, even where the conditional award is a final award.[45]

61 We were therefore satisfied that a tribunal cannot reserve its jurisdiction to revisit an otherwise final award, other than expressly. The Arbitrator held in the 2021 ruling that he had not expressly reserved his jurisdiction,[46] and we held that he could not impliedly do so.

Final observations

62 We dismissed this appeal on the basis of the holdings set out above. We close with some observations.

63 A conditional award can be a final award. Issues pertaining to whether the conditions in the award have been met would fall within the remit of the enforcement court. Mr Ng accepted, and in our judgment correctly, that the question of whether Voltas had met the conditions in the 2014 Award such that York's liability thereunder had accrued, was a question that could be answered by the enforcement court.[47]

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45 RC at paras 46–52.

46 ROA Vol III (Part A) at p 39 (2021 Ruling at para 26)

47 Transcript for CA 51 dated 22 February 2024 at 48:5–22.

64 In establishing that the conditions in the 2014 Award have been satisfied, Voltas may face the task of showing that the Settlement Agreement with the Project Owners included the specific sums claimed in the Nitrogen and Removal Claims. The Settlement Agreement itself was a global settlement under which Voltas agreed to pay $1,000,000 to the Project Owners in exchange for the settlement of all of the latter's claims against Voltas.[48] On the face of the Settlement Agreement, it may be unclear what sums were paid as consideration for the settlement of the relevant claims, but this is a matter on which evidence can be led. If difficulties arise, these would just be a result of the way the Settlement Agreement was drafted. But that does not justify a finding that Arbitrator's jurisdiction could be resuscitated after a final award had been delivered and he had been rendered *functus officio*.

65 Lastly, on a procedural note, Voltas did not apply for an *ex parte* order for leave to enforce the 2014 Award as it had envisaged difficulty identifying the precise quantum to be enforced in the same manner as if the 2014 Award was a judgment of the court. We did not see force in this because Voltas always maintained that it was due payment of the sum of $1,099,162.46 and $33,277 that were the respective maximum sums stated on the face of the 2014 Award. Hence, this is the amount in respect of which it could have sought permission to enforce the 2014 Award. However, as we have just noted, whether the conditions for such payment to be made had been fulfilled would be a matter for the enforcement court to determine based on the evidence led.

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48 ROA Vol III (Part L) at pp 221–223 (Offer to Settle from DCP to Voltas dated 12 August 2015.

Conclusion

66 For these reasons, we dismissed this appeal. We ordered Voltas to pay costs in the aggregate sum of $80,000 with the usual consequential orders.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Judith Prakash
Senior Judge

Karnan s/o Thirupathy, Charlene Sim Yan and Tan Yu Qing (Legal Solutions LLC) for the appellant;
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