IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 43

Civil Appeal No 67 of 2021

Between

CSY

… *Appellant*

And

CSZ

… *Respondent*

JUDGMENT

[Arbitration — Stay of court proceedings — Court's discretion under Arbitration Act]

CSY
v
CSZ

[2022] SGCA 43

Court of Appeal — Civil Appeal No 67 of 2021
Sundaresh Menon CJ and Andrew Phang Boon Leong JCA
11 April 2022

19 May 2022

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 There is an important difference in the legislative schemes governing domestic and international arbitration with regard to a stay of court proceedings brought in breach of an arbitration agreement. In the case of international arbitration, the court is *mandated* to stay court proceedings in favour of an international arbitration unless the arbitration agreement is "null and void, inoperative or incapable of being performed" under s 6(2) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"). But in the case of domestic arbitration, the court retains some discretion to refuse to stay court proceedings in favour of a domestic arbitration under s 6(2) of the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA"). Specifically, it may do so when it is satisfied that there is *sufficient reason* why the matter should not be referred to arbitration in accordance with the arbitration agreement or if the applicant seeking a stay was

not ready and willing to do all things necessary for the proper conduct of the arbitration.

2 CA/CA 67/2021 ("CA 67") is an appeal by the appellant, CSY, against the decision of the High Court judge ("the Judge") granting the application of the respondent, CSZ, in HC/SUM 2888/2021 ("SUM 2888") to stay part of HC/S 237/2021 ("S 237") in favour of a domestic arbitration and to stay the remaining part of S 237 on case management grounds pending the resolution of the putative arbitration.

3 We heard the parties on 11 April 2022 and reserved judgment. As we explain below, this is an exceptional case and we are satisfied that there is sufficient reason ***not*** to stay the court proceeding and refer the matter to arbitration in accordance with the arbitration agreement. We therefore allow CA 67. We also take this opportunity to set out some guidance for the court's exercise of discretion to refuse a stay of proceedings in favour of a domestic arbitration under s 6 of the AA.

Facts

4 The appellant is an exempt private company limited by shares. It was placed first under *interim* judicial management and then under judicial management in 2020 and a winding up order was made against it in 2021. It is presently in compulsory liquidation. The interim judicial managers, judicial managers and the liquidators of the appellant will be referred to as the JMs hereafter.

5 The respondent is a limited liability partnership incorporated in Singapore and was engaged as the appellant's external auditor since at least 2003 until it resigned on 17 September 2020. The respondent audited the

appellant's financial statements and issued opinions for each of the financial years ("FYs") ending 31 October 2014 through to 31 October 2019. After the former managing director of the appellant admitted in April 2020 that there were various irregularities in the appellant's affairs, including material misstatements in its financial statements, the respondent withdrew its audit report for FY2019.

6 The investigations conducted by the JMs revealed several serious irregularities in the appellant's affairs since at least 2010. These appeared not to have been reflected or captured in the appellant's audited financial statements and consequently also in the respondent's audit opinions. As a result of these irregularities, the appellant's audited financial statements from FY2014 to FY2019 were materially misstated and/or did not give a true and fair view of the financial position and/or performance of the appellant. It also appeared in the audited financial statements that the value of the appellant's total assets had been overstated from as early as FY2010 and as a result, the audited financial statements grossly misrepresented the financial position and performance of the appellant. The JMs set out their findings in two reports dated 22 June 2020 (predominantly on FY2019) ("JMs' First Report") and 6 November 2020 (predominantly on FY2018 and FY2017) ("JMs' Second Report").

7 On 5 March 2021, the appellant filed its Statement of Claim (later amended on 13 October 2021) in S 237 claiming that the respondent had failed to detect material misstatements in its audited financial statements for FY2014 to FY2019 and that this was in breach of the respondent's contractual duties to audit the financial statements with reasonable care and skill; and further and alternatively, that the respondent had breached its tortious duty of care.

8 The respondent's engagement with the appellant was set out in separate engagement letters. An engagement letter was issued for each FY and executed

at the beginning of the audit for each FY. The engagement letters varied in its provision for dispute resolution as follows:

(a) The engagement letters for FY2008 to FY2015 did not contain any dispute resolution clause.

(b) The engagement letters for FY2016 and FY2017 contained an exclusive jurisdiction clause in favour of the Singapore courts which states "This letter agreement shall be governed by and construed in accordance with Singapore law and under the exclusive jurisdiction of the Singapore courts" ("the Exclusive Jurisdiction Clause").

(c) The engagement letter for FY2018 contained the Exclusive Jurisdiction Clause and a revised dispute resolution clause containing a tiered dispute resolution procedure which culminates in arbitration in Singapore in accordance with the arbitration rules of the Singapore International Arbitration Centre ("the Tiered Arbitration Agreement").

(d) The engagement letter for FY2019 contained only the Tiered Arbitration Agreement.

9 The Tiered Arbitration Agreement states as follows:

> **Dispute Resolution**
>
> In the event of any difference or dispute arising between the parties relating to the validity, interpretation, construction or performance of this engagement letter, the parties shall use their best endeavours to settle amicably such difference or dispute by consultation and negotiation.
>
> If the matter is not resolved through negotiation, then the parties shall refer the matter to mediation in accordance with the rules and procedures of the Singapore Mediation Centre.
>
> If, and to the extent that, any dispute has not been settled through negotiation and mediation, then the dispute shall be referred to and finally resolved by arbitration in Singapore in

> accordance with the Arbitration Rules of the Singapore International Arbitration Centre ('SIAC') for the time being in force, which rules are deemed to be incorporated herein. The Tribunal shall consist of three (3) arbitrators. The seat and venue of the arbitration shall be Singapore and the language of the arbitration shall be English. Any award made hereunder shall be final and binding upon the parties hereto and judgment on such award may be entered into any court or tribunal having jurisdiction thereof.

10 Before the filing of S 237, the respondent proposed that all the claims relating to the audits for FY2014 to FY2019 be referred to arbitration. However, the appellant did not agree to this.

11 On 18 June 2021, the respondent filed SUM 2888 seeking an order to stay the dispute pertaining to the audits for FY2018 and FY2019 ("FY2018 and FY2019 Dispute") in favour of arbitration pursuant to s 6 of the AA and/or the court's inherent jurisdiction and an order that the dispute pertaining to the audits for FY2014 to FY2017 ("FY2014 to FY2017 Dispute") be stayed pending the completion of the steps in the Tiered Arbitration Agreement. On 3 November 2021, the Judge allowed SUM 2888.

12 On 30 November 2021, the appellant appealed against the decision of the Judge staying that part of S 237 concerning the FY2018 and FY2019 Dispute in favour of arbitration, imposing a case management stay on the remainder of S 237, specifically concerning the FY2014 to FY2017 Dispute and ordering costs of $15,000 plus reasonable disbursements in favour of respondent.

Decision below

13 In her brief grounds of decision given on 3 November 2021 ("GD"), the Judge considered that where some of the matters in S 237 fell within the Tiered Arbitration Agreement, the burden was on the party who wished to proceed in

court to show sufficient reason why those matters should not be referred to arbitration: GD at [4].

14 The Judge was satisfied that the FY2018 and FY2019 Dispute should be stayed in favour of arbitration and the FY2014 to FY2017 Dispute should also be stayed but on case management grounds pending the resolution of the putative arbitration: GD at [5].

15 In relation to the FY2018 and FY2019 Dispute, the Judge ordered a stay in favour of arbitration for the following reasons:

(a) Parties should respect their arbitration agreement and the policy of upholding arbitration agreements should ordinarily be upheld and applied: GD at [6].

(b) The fact that the parties included the Tiered Arbitration Agreement from FY2018 onwards pointed to a *deliberate intent* to move away from the previous arrangement that was in place for disputes to be resolved in court, to a tiered dispute resolution framework that culminated in arbitration if they were unable to resolve the disputes amicably: GD at [7].

(c) The appellant should not be allowed to circumvent the Tiered Arbitration Agreement, which encapsulates the latest agreement of the parties, by choosing to commence a single court action that also encompassed matters that fell outside the scope of the Tiered Arbitration Agreement. The fact that there are related actions, some governed by arbitration agreements and others not, was not in itself sufficient reason to sanction a breach of an arbitration clause and depart from the policy in favour of arbitration: GD at [8].

(d) The appellant had not shown evidence of any impediment to the liquidators obtaining authorisation to commence arbitration nor that the respondent would object to such an application if it was made: GD at [9].

16 In relation to the FY2014 to FY2017 Dispute, the Judge ordered a case management stay for the following reasons:

(a) It was at best a neutral fact that the auditors' alleged failures started from FY2014 (or even earlier) and that the figures in question in the FY2018 and FY2019 Dispute built upon the audited but allegedly incorrect figures from earlier years. The JMs had approached their investigations by looking first at the FY2019 transactions (according to the JMs' First Report), followed by the FY2018 and FY2017 transactions (according to the JMs' Second Report) and did not prepare a report for the years from FY2016 and before. While the JMs' reports were made for the purposes of restructuring, it nonetheless showed that it was not necessary to determine the matters pertaining to the earlier years before determining the matters pertaining to the later years in order to find out whether the respondent had breached its duties or obligations or was liable for any tortious acts: GD at [10].

(b) There was nothing to suggest that if the FY2018 and FY2019 Dispute was dealt with in arbitration, evidence could not be led to show the appellant's purported wrongdoings or breaches without leading evidence on the earlier FYs. Much depended on how the appellant chose to plead its case in the arbitration and nothing precluded evidence being led pertaining to the earlier FYs in order to prove its case of auditors'

misconduct in relation to the FY2018 and FY2019 Dispute: GD at [10(d)].

(c) The appellant itself also stated that the cause of action and factual circumstances behind the audit for each FY were distinct: GD at [10(e)].

(d) It was true that the parties in relation to all FYs were the same and there would be an overlap of witnesses to be called. There would also be a substantial overlap of factual and legal issues pertaining to all the six FYs. These included questions as to how the audits were done, the duties which were owed (and purportedly breached) by the auditors and the similar nature of the transactions spanning over all the FYs. Further, findings made in relation to the FY2018 and FY2019 Dispute might impact findings that would be made in respect of the FY2014 to FY2017 Dispute: GD at [11].

(e) However, the appellant was a willing party to the FY2018 and FY2019 letters of engagement and there was no evidence it did not understand the contents of the engagement letters when it agreed to the terms therein: GD at [13].

(f) There was no prejudice to the appellant in staying S 237 given the relative early stage of the proceedings and the respondent's willingness to arbitrate the FY2018 and FY2019 Dispute: GD at [14].

(g) Any issue concerning costs would be limited to the extent that the case management stay was granted pending the resolution of the FY2018 and FY2019 Dispute because any findings made in the arbitration may well assist to crystallise the issues pertaining to the FY2014 to FY2017 Dispute: GD at [15].

The parties' arguments on appeal

Appellant's case

17 The appellant's case is that there is sufficient reason to decline to stay the FY2018 and FY2019 Dispute in favour of arbitration. The appellant contends that the multiplicity of proceedings that would result from staying the FY2018 and FY2019 Dispute is a strong and important factor against ordering a stay. The parties' longstanding intention to resolve disputes pertaining to the appellant's conduct in court as envisaged by the majority of engagement letters ought to have been given greater weight by the Judge. Further, the additional costs associated with resolving the dispute in multiple forums, the potentially limited scope of discovery in arbitration and the advantage of having the court manage this dispute are all advanced as amounting to sufficient reason to decline to stay the FY2018 and FY2019 Dispute in favour of arbitration.

18 If the court were to *refuse* to stay S 237 in respect of the FY2018 and FY2019 Dispute in favour of arbitration, there would in any event, be no basis to stay the FY2014 to FY2017 Dispute on case management grounds. On the other hand, if the FY2018 and FY2019 Dispute were to proceed in arbitration, the appellant contends that the FY2014 to FY2017 Dispute ought to be allowed to proceed concurrently in court. The appellant contends that it does not follow that the FY2018 and FY2019 Dispute should be determined *before* the FY2014 to FY2017 Dispute just because the JMs' investigation started with FY2019. Further, any findings made by an arbitrator on the FY2018 and FY2019 Dispute would not affect or resolve the examination of the audits performed in FY2014 to FY2017. Thus, there was no basis to hold the resolution of the FY2014 to FY2017 Dispute in abeyance pending the resolution of the FY2018 and FY2019 Dispute. Finally, serious prejudice would result to the appellant because the

resolution of the entire dispute may well be delayed by a matter of years and there would be resulting inefficiency, higher costs and duplication.

Respondent's case

19 As against this, the respondent's case is that there is no sufficient reason for the FY2018 and FY2019 Dispute to be stayed in favour of arbitration. Given the undisputed position that the FY2018 and FY2019 Dispute fell squarely within the Tiered Arbitration Agreement and the respondent has been and remains willing to arbitrate, the burden is on the appellant to establish sufficient reason that would *exceptionally* allow it to disregard the parties' express agreement to arbitrate. Any multiplicity of proceedings would not itself amount to such an exceptional circumstance. The ancillary reasons of additional costs, less extensive discovery in arbitration and court oversight are at best neutral factors.

20 Further, if the FY2018 and FY2019 Dispute is stayed in favour of arbitration, the FY2014 to FY2017 Dispute ought to be stayed on case management grounds. It is sensible for the FY2018 and FY2019 Dispute to be resolved prior to the FY2014 to FY2017 Dispute in order to allow the proper ventilation of the issues in the latter dispute. There are significant and substantial overlaps between the FY2018 and FY2019 Dispute, on the one hand, and the FY2014 to FY2017 Dispute on the other, and this raises the real prospect of a wasteful duplication of resources and of inconsistent findings being reached if both proceedings were to run in parallel. The appellant's claims are brought based on the investigations by the JMs in respect of the FY2019 and FY2018 audits with such findings extrapolated to the earlier FYs. Any failure by the appellant to prove its claim in respect of the FY2018 and FY2019 audits would seriously undermine its claim concerning the prior FYs.

Issues on appeal

21 From the parties' submissions, two principal issues arise for our consideration:

(a) whether the FY2018 and FY2019 Dispute should be stayed in favour of arbitration under s 6 of the AA; and

(b) if so, whether the FY2014 to FY2017 Dispute should be subject to a case management stay.

The latter issue only arises if we agree with the Judge and the respondent on the first issue.

Our decision

Whether the FY2018 and FY2019 Dispute should be stayed in favour of arbitration

22 In the context of the management of overlapping court and arbitral proceedings, we recognised in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*") at [186]–[188] that the court, as the final arbiter, should take the lead in ensuring the efficient and fair resolution of the dispute as a whole. In doing so, the court aims to strike a balance between three higher-order concerns that may pull in different considerations: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes. The balance that is struck must ultimately serve the ends of justice.

23 Sections 6(1) and 6(2) of the AA set out the discretion of the court to refuse a stay of court proceedings in favour of a domestic arbitration:

> **Stay of legal proceedings**
>
> **6.**—(1) Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.
>
> (2) The court to which an application has been made in accordance with subsection (1) may, if the court is satisfied that —
>
> > (*a*) there is no *sufficient reason* why the matter should not be referred in accordance with the arbitration agreement; and
> >
> > (*b*) the applicant was, at the time when the proceedings were commenced, and still remains, *ready and willing to do all things necessary to the proper conduct of the arbitration*,
>
> make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.
>
> [emphasis added]

In essence, the court may exercise its discretion to allow *all* the claims, including those governed by the arbitration agreement, to proceed in the courts (*Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431("*Maybank*") at [22]). This discretion, however, is to be exercised in a guarded manner even though the courts have a somewhat wider role and broader latitude in domestic arbitration (*Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*") at [31]).

24 In our judgment, the three higher-order concerns we identified in *Tomolugen* (at [22] above) are equally applicable to guide the court's exercise

of discretion under s 6 of the AA. Where there is an applicable arbitration agreement that parties had freely entered into, the court will naturally seek to respect party autonomy and hold parties to their agreement, at least as a starting position. This is consistent with upholding Singapore's strong judicial policy of promoting and facilitating arbitration (see *Tjong Very Sumito* at [28]). To this extent, the plaintiff's right to choose the forum in which he brings proceedings is curtailed by his own prior agreement to submit certain disputes to arbitration. For this reason, the party seeking to persuade the court to exercise its discretion by overriding the arbitration agreement that it has entered into, is required to "show sufficient reason why the matter should not be referred to arbitration" and assuming that the counterparty is ready and willing to arbitrate, the court will only refuse a stay in *exceptional* circumstances. The court should thus be slow to exercise its discretion in favour of allowing all the claims to proceed in court, including those governed by the arbitration agreement (*Maybank* at [22]–[23]). It is thus unsurprising that the High Court has not often found "sufficient reason" to refuse to stay the court proceedings in favour of arbitration as seen in several recent cases that have come before our courts (see for example, *Ling Kong Henry v Tanglin Club* [2018] 5 SLR 871 at [42]–[61] and *Takenaka Corp v Tam Chee Chong and another* [2018] SGHC 51 at [20]–[26]).

25 In each case, however, the court must scrutinise the myriad factual circumstances to determine how best to manage its processes and ensure the efficient and fair resolution of the entire dispute. The term "sufficient reason" captures a broad range of factors (*Fasi Paul Frank v Speciality Laboratories Asia Pte Ltd* [1999] 1 SLR(R) 1138 at [18]). Ultimately, the factors invoked will be weighed against and will have to be found to outweigh the significant consideration that the parties had voluntarily bound themselves to arbitrate and ought therefore to be held to their agreement (*Sim Chay Koon v NTUC Income*

Insurance Co-operative Ltd [2016] 2 SLR 871 at [8]–[10]). Amongst others, we consider the following factors instructive in the inquiry:

(a) the existence of related actions and disputes, some of which are governed by an arbitration agreement and others which are not;

(b) the overlap between the issues in dispute such that there is a real prospect of inconsistent findings;

(c) the likely shape of the process for the resolution of the entire dispute;

(d) the likelihood of injustice in having the same witnesses deal with the same factual issues before two different fora;

(e) the likelihood of disrepute to the administration of justice ensuing from the fact that overlapping issues may be differently determined in different actions;

(f) the relative prejudice to the parties; and

(g) the possibility of an abuse of process.

26 In our judgment, having regard to the considerations above, we respectfully find that the Judge erred in staying the FY2018 and FY2019 Dispute in favour of arbitration.

27 We begin with the defining feature of this case which is the significant overlap between the disputed issues in the FY2014 to FY2017 Dispute and the FY2018 and FY2019 Dispute. This was ultimately not disputed by the parties. Nonetheless, the respondent principally relies on *Maybank* in support of its contention that multiplicity of actions is not, in itself, sufficient reason for the

court to refuse a stay of the FY2018 and FY2019 Dispute in favour of arbitration. In *Maybank*, Chong J (as he then was) stated at [23] as follows:

> … Certainly, the fact that there are *related actions, some governed by arbitration agreements and some not*, ***is not in itself a sufficient reason*** to sanction a breach of an arbitration clause and depart from the policy in favour of arbitration.
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

28 And in *Car & Cars Pte Ltd v Volkswagen AG and another* [2010] 1 SLR 625 ("*Cars & Cars*"), Andrew Ang J (as he then was) at [48]–[49] observed to similar effect that while the fact of a multiplicity of proceedings is an important factor, it will not necessarily be a decisive ground upon which the court will refuse a stay of proceedings. He further stated that a risk of multiplicity of proceedings alone will not *automatically* mean that a stay of the court action must be denied, given that in this situation, the parties will by their contractual agreement have deliberately arranged their dispute resolution procedures in such a fashion that such risks were likely to materialise.

29 As regards the *Maybank* decision, it should be noted that the appellant elected to abandon its ground of appeal against the grant of the stay of court proceedings in favour of arbitration (at [3] and [4]). Thus, Chong J did not have to consider whether there was sufficient reason to refuse the stay of court proceedings despite his observation that the main issues in the arbitration and court proceedings "not only overlap[ped] but [were] practically identical" (at [38]). In any case, while we agree with the general proposition that the mere fact that there are related actions (some which are governed by arbitration agreements and others not) does not in itself amount to sufficient reason to refuse a stay of court proceedings in favour of arbitration, the present case goes beyond that.

30 Here, the significant overlap between the factual issues in dispute is such that the FY2014 to FY2017 Dispute and the FY2018 and FY2019 Dispute can be described in broad terms as nearly identical. They are certainly likely to be very similar and in at least some respects, the same questions will arise. The appellant's claim in S 237 is that the respondent had allegedly failed to detect material misstatements in the appellant's audited financial statements for FY2014 to FY2019 and that this amounted to a breach of the respondent's duties to audit the financial statements with reasonable care and skill; and further and alternatively, the respondent allegedly breached its duties of care to the appellant in tort (see [6]–[7] above). The overlapping issues would include how each of the audits were planned and carried out, the duties which were owed (and allegedly breached) by the respondent, the extent to which knowledge acquired by the auditors in the earlier years was or ought to have been carried forward into subsequent years, the extent to which any breaches from one period were carried forward into the next, and the similar nature of the transactions that spanned all the FYs. We agree with the appellant that, in essence, S 237 is a singular dispute concerning a continuous relationship between the parties that spanned the period covering FY2014 to FY2019. The inquiry into whether the respondent had breached its duties in each FY would likely be similar notwithstanding that there may be some differences from year to year. Given the nature of audit practice, it can be reasonably inferred that the respondent would have conducted the audit in each FY in a broadly similar fashion, as counsel for the appellant, Mr Cavinder Bull *SC*, contended would be the case. Thus, the evidence to be considered would tend to be factually sequential and more importantly, it would likely be interconnected running across the various audits. The witnesses who are to give evidence are also likely to cover the same ground for the FY2014 to FY2017 Dispute and the FY2018 and FY2019 Dispute.

31 The significant overlap in the factual issues in dispute also gives rise to a real prospect of inconsistent findings between the two fora. Since the factual basis of the appellant's claim against the respondent is borne out of the irregularities discovered by the JMs' investigations that allegedly cover the period beginning from 2010 and the financial position of the appellant was thereafter misstated in the subsequent FYs, it seems unrealistic to imagine that the analysis of the respondent's conduct in the subsequent years could take place in isolation from what it had done in the previous years or *vice versa*. Simply put, it would be extremely difficult to analyse the conduct of an audit in any given year without regard to what had happened in previous or even conceivably in subsequent years unless the issue was unique to a given year. In other words, the arbitral tribunal hearing the putative arbitration of the FY2018 and FY2019 Dispute would almost certainly be required to trawl through the factual evidence relating to at least the audits for FY2014 to FY2017 (if not even before that from the start of the parties' relationship in 2003). In this respect, we respectfully disagree with the Judge's exclusion of the possibility that it would be necessary to determine matters pertaining to the earlier years before determining matters pertaining to the later years in order to find out whether the respondent had breached its duties or obligations or was liable for any tortious acts (GD at [10(c)]).

32 In our view, it may well prove to be necessary for the arbitral tribunal to consider and express its views on the evidence of what had happened throughout the course of the parties' audit relationship even before FY2018 notwithstanding that it does not have jurisdiction to determine the FY2014 to FY2017 Dispute. This is so because its findings in relation to evidence that pertained to the period before FY2018 might well impact its decision on the FY2018 and FY2019 Dispute. Equally, the court determining the FY2014 to FY2017 Dispute would likely have to trawl through the same evidence and

come to its own views which could well be different from those of the arbitral tribunal. It may even find it necessary to consider and express its views on the evidence of what had happened in the following years. And perhaps more significantly, it would be difficult for the court to come to a conclusion on such issues as damages without looking into precisely what transpired in the subsequent years.

33 In this regard, we disagree with the submission made by counsel for the respondent, Ms Wendy Lin, that the feature of overlapping issues in dispute and the risk of inconsistent findings may be addressed by a case management stay. While granting a case management stay for the FY2014 to FY2017 Dispute pending the resolution of the FY2018 and FY2019 Dispute would mean that the court would have the benefit of the arbitral tribunal's findings, those findings are not binding on the court. It therefore would not address the material risk of inconsistent findings in that the two fora would be assessing the same evidence and may well come to different conclusions on that evidence. Further, the question of damages flowing from the FY2014 to FY2017 Dispute would, as we have noted, very likely depend on how matters transpire in the FY2018 and FY2019 audits and what the company did at that time. Yet those matters would either fall outside the purview of the court or have to be tried a second time. The suggestion of a case management stay of the FY2014 to FY2017 Dispute therefore does not, in the unique circumstances of this case, assist the respondent in its efforts to persuade us that S 237, as far as it concerns the FY2018 and FY2019 Dispute, should be stayed in favour of arbitration.

34 We are also cognisant that the risk of inconsistent findings between the arbitral tribunal and the court raises the attendant risk of bringing disrepute to the administration of justice. This would be so if, the same question despite having been disposed of in one case, were liable to be reopened or be susceptible

to a collateral attack in a different proceeding. The law discourages the relitigation of the same issues except by means of an appeal. This is grounded upon the interest of the defendant not to be troubled twice for the same reason and the interest of the state in not having the same issue litigated again (see in a different context, our decision in *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 at [69] and [82(d)]).

35 Whether it is the putative arbitration or the action in court that is heard first, the factual disputes over the respondent's conduct in FY2014 to FY2017 and conceivably even in the subsequent years, would likely be litigated twice before two different fora and this would then give rise to possible issues of issue estoppel and *res judicata*. There is also a risk of undermining confidence in the administration of justice if the arbitral tribunal and the court were to come to inconsistent findings on the *same* evidence in relation to the overlapping or common issues. There is the additional complication that the parties would have the right to appeal against the court's findings but not the arbitral tribunal's findings. Hence, even if the court and arbitral tribunal happened to come to the same findings and one of the parties to the court proceedings then brought an appeal, the Court of Appeal might come to a different conclusion and this could result in the parties being bound by the arbitral tribunal's decision in relation to the FY2018 and FY2019 Dispute even if the decision rested on factual findings or legal principles that have been held to be *incorrect* by the Court of Appeal in relation to the FY2014 to FY2017 Dispute.

36 Finally, we do not consider the intention of the parties to be determinative in this case. As seen from the way the parties had structured their commercial relationship above at [8], any disputes that had arisen throughout the parties' engagement from 2003 to 2017 would have been resolved by the courts. The parties only included the Tiered Arbitration Agreement in the last

two engagement letters for FY2018 and FY2019. The change in policy to move towards arbitration as their preferred means of dispute resolution is a rather recent one. However, there is nothing to specifically suggest that they intended this change in policy to apply even to a dispute spanning multiple years engaging substantially similar issues or that they had foreseen the attendant inconveniences with resolving a multi-year dispute across two different fora. We accept the appellant's submission that the parties likely did not contemplate such a multi-year dispute of the sort we are faced with when they agreed to the Tiered Arbitration Agreement for FY2018 and FY2019.

37 This is quite unlike the position in *Cars & Cars* where the "[parties] had expressly chosen to enter into four separate agreements with significantly different dispute resolution clauses, each worded differently" within a span of *two days* (at [10] and [50]). There, it was an entirely reasonable inference that the parties had foreseen (or had to be taken to have foreseen) the risk of multiplicity and the consequent inconsistent decisions if disputes should arise out of those agreements and that they were prepared to live with that situation if it materialised. Further, the fact that the parties here have chosen to structure the Tiered Arbitration Agreement under the AA instead of the IAA suggests that they did not harbour a specific intention that the Tiered Arbitration Agreement they entered into for FY2018 and FY2019 was to have mandatory force regardless of the circumstances. In the premises, exercising the court's discretion to refuse a stay of the FY2018 and FY2019 Dispute cannot be said to contravene the parties' intentions.

38 For these reasons, we are not persuaded that a stay of the FY2018 and FY2019 Dispute in favour of arbitration would be in the interests of justice. The shape of the resolution of the FY2014 to FY2017 Dispute and of the FY2018 and FY2019 Dispute would likely involve a factually intensive exercise of

scrutinising the respondent's conduct over the course of many years of audits. Splitting the task into two discrete portions to be dealt with by two separate fora would almost certainly add very significantly to the already complex task of managing the resolution of this matter. Indeed, it is questionable whether such a division of the task would even be viable in the final analysis. Apart from it being needlessly duplicative to have two fora consider the same evidence, there is a real possibility that there would be satellite litigation of issues relating to issue estoppel or *res judicata* over the findings made by the first forum rendering a decision on the merits. The factual witnesses would also be put to the expense and inconvenience of testifying before two different fora on the very same issues. Considering the right to appeal against the court's decision, there is also the risk that the resolution of the parties' entire dispute may be unduly delayed. If S 237 were heard entirely in court, a single judge would best be able to deal with the management of the factual evidence spanning the entire period that is relevant in the most efficient manner. These considerations drive us to conclude that it is in the best interests of the parties for their entire dispute to be resolved in one forum. This would additionally avoid the embarrassment and prejudice of ending up with inconsistent findings.

39 We therefore hold that there is sufficient reason to refuse a stay of the FY2018 and FY2019 Dispute in favour of arbitration.

Whether the FY2014 to FY2017 Dispute should be subject to a case management stay

40 As we foreshadowed earlier at [21], the appellant's prayer in SUM 2888 for an order that the FY2014 to FY2017 Dispute be stayed pending the completion of the steps in the Tiered Arbitration Agreement is predicated on a stay of the FY2018 and FY2019 Dispute in favour of arbitration. Given our decision not to stay the FY2018 and FY2019 Dispute in favour of arbitration,

the issue of imposing a case management stay for the FY2014 to FY2017 Dispute is moot.

41 We only make a brief observation that the option of utilising a case management stay for the FY2014 to FY2017 Dispute does not seem to us to be a meaningful option in the resolution of the parties' dispute. The Judge granted the case management stay of the FY2014 to FY2017 Dispute which meant that the FY2018 and FY2019 Dispute would be tried and resolved in arbitration before the FY2014 to FY2017 Dispute is heard in court. This immediately strikes us as counter-intuitive. Ms Lin submits that there was nothing inherently odd about this given that this was how the JMs had approached their investigation.

42 With respect, Ms Lin's submission fails to recognise the very considerable difference between investigating the underlying causes of a catastrophic and unforeseen corporate collapse in its immediate aftermath, where the main objective is to gain a sufficient understanding of what had transpired in order to plan and take other steps to safeguard assets or bring claims against those who had caused or contributed to the collapse, and presenting the evidence in court in order to help a judge understand the evidence and enable the judge to reconstruct what happened over the course of several years. We see nothing odd in the way the JMs prioritised their tasks and went about trying to ascertain what had happened. However, it seems to us to be wholly improbable that the putative arbitration of the FY2018 and FY2019 Dispute could sensibly be conducted without knowing or understanding what had happened in the years before that. Nor could the trial of the FY2014 to FY2017 Dispute be completed without seeing how it all ended. In any event, given our decision on the first issue, it is unnecessary for us to say more on this.

Conclusion

43 For the foregoing reasons, we allow CA 67. The usual consequential orders apply. Unless the parties can come to an agreement on costs within 14 days of this judgment, they are to make written submissions on the proposed costs submissions limited to eight pages each within another 14 days thereafter.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Cavinder Bull *SC*, Chia Voon Jiet, Sim Bing Wen, Tan Shihao Sean and Benjamin Tan Zhi Xiong (Drew & Napier LLC) for the appellant;
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