IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(I) 3

Originating Summons No 1 of 2021 (Summons No 5567 of 2020)

Between

(1) CHY
(2) CHZ

… *Plaintiffs*

And

CIA

… *Defendant*

JUDGMENT

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

[Arbitration — Public policy]

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CHY and another
v
CIA

[2022] SGHC(I) 3

Singapore International Commercial Court — Originating Summons No 1 of 2021 (Summons No 5567 of 2020)
Vivian Ramsey IJ
20 April 2021

11 February 2022 Judgment reserved.

Vivian Ramsey IJ:

1 This case concerns an application by the plaintiffs, CHY and CHZ, to set aside the Final Award dated 19 June 2020 (the "Award") made in an arbitration under the auspices of the International Chamber of Commerce (the "ICC") (the "Arbitration"), pursuant to Art 34(2)(*b*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"), as incorporated under s 3 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") on the ground that the Award is in conflict with the public policy of Singapore.

2 The first plaintiff, CHY, is a company incorporated under the laws of India. It has been a majority shareholder in the second plaintiff, CHZ, since around 2009. CHZ is also a company incorporated under the laws of India.

3 The defendant, CIA, is an investment holding company incorporated under the laws of the Republic of Mauritius. CIA is part of a larger investment group ("X Co") and was incorporated for the purposes of completing X Co's minority investment in CHZ.

4 CIA has applied in HC/SUM 5567/2020 ("SUM 5567") to strike out the plaintiffs' expert evidence on Indian law, Dr [Y].

The Transaction

5 In or around 2010, CIA agreed to invest in CHZ and CHY. CHZ, CHY and CIA (the "Parties") entered into a number of agreements pursuant to which CIA acquired a total of 1,340,000 shares in CHZ (approximately 14.91% of CHZ's shared capital) by 12 March 2010 (the "Transaction Documents").

6 The Transaction Documents included a Shareholders Agreement (the "SHA") and a Letter Agreement between CHY and CIA (the "Letter Agreement"), both dated 9 October 2009.

7 Clause 10.1 of the SHA obliged the plaintiffs to list CHZ on the Bombay Stock Exchange ("BSE") or the National Stock Exchange ("NSE"), or make a public offer of CHZ's shares on those exchanges by 30 June 2012. Clause 11.1 of the SHA listed various events, the occurrence of which would give rise to CIA's right (the "Put Right") under cl 11.2 to "require [CHY], if legally able or otherwise to arrange a third party, to purchase, at the option of [CIA], all or a portion of [CIA's shares in CHZ]" at the "Put Price" (*ie*, the "Put Option"). One such event was if the plaintiffs failed to comply with cl 10.1 of the SHA.

8 Under Clause 11.3 of the SHA, the consideration to be paid for the purchase of shares under the Put Option, was defined as the total amount

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invested by CIA in the acquisition plus an amount equal to a 22% compounded annual rate of return on the invested amount (the "Put Price"). Clause 11.3 also provided that, if required for the sale of the Put Shares, a valuation of the shares would be done by a specified merchant banker or chartered accountant within seven days. This valuation is referred to as the "Put Calculated Price".

9 The Letter Agreement provided that, should a valuation be required under cl 11.3 of the SHA, the Put Calculated Price was to be determined on the basis of a valuation methodology which would yield the highest valuation of CHZ for the Put Shares and that, should the Put Calculated Price be less than the Put Price, the parties would enter into a non-compete agreement and CHY would pay to CIA the difference between the Put Price and the Put Calculated Price, as consideration for the non-compete agreement (the "Non-Compete Fee").

10 As stated in the Award at [12], "[i]t is also common ground that the law governing the substantive rights of the Parties is Indian law. In this regard, clause 21 of the SHA provides: *This Agreement shall be governed and construed in accordance with the laws of India*."

Background

11 By 30 June 2012, CHZ's shares had not been listed on the BSE or the NSE and no public offer had been made for the sale of CHZ's shares on the said exchanges. Although CIA's right to exercise the Put Option arose on or around 1 July 2012, CIA did not exercise this right at that time but, instead, the Parties sought to negotiate CIA's exit from its shareholding in CHZ and eventually executed an Amended Share Purchase Agreement on or around 24 January 2013 ("ASPA"), under which CHY would re-acquire the Put Shares from CIA at a

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price level ranging from INR281.16 to INR352.58 per share depending on the time of purchase of the shares. Under cl 3.1 of the ASPA, CHY's reacquisition of the Put Shares from CIA was stated to be subject to the Reserve Bank of India ("RBI") approval. The RBI did not approve of the transaction, and CHY did not ultimately re-acquire the Put Shares.

12 Subsequently, CIA informed CHY that it would be exercising the Put Option by way of a notice dated 14 July 2017 (the "Put Notice"). On 21 July 2017, CHY notified CIA that it would not recognise and act on the Put Notice for various reasons, including that the Put Option was contrary to Indian law.

13 The dispute culminated in CIA submitting a Request for Arbitration ("Request") to the Secretariat of the ICC on 15 June 2018 which commenced the Arbitration under the 2017 edition of the ICC Rules ("ICC Rules").

14 A three-member tribunal was constituted (the "Tribunal") on 29 November 2018. The proceedings closed on 8 June 2020 and the plaintiffs received the Award by way of email on 9 July 2020, with the majority of the Tribunal deciding in favour of CIA and declaring that CHY had wrongfully challenged the validity and enforceability of the Put Option and wrongfully refused and/or failed to complete the acquisition of the Put Shares. The Tribunal then made orders requiring that the plaintiffs pay damages to CIA in the amount of the Put Price, and that upon receipt of the Put Price, CIA was to transfer its shares in CHZ to CHY or a party specified by CHY. The arbitrator in the minority provided a dissenting opinion dated 19 June 2020 in which he found that the Put Option was invalid and unenforceable under regulations made under India's Foreign Exchange Management Act 1999 ("FEMA"). These regulations will be referred hereafter as the FEMA Regulations.

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15 On 8 October 2020, the plaintiffs commenced these proceedings by HC/OS 992/2020 to set aside the Award. On 7 January 2021, the proceedings were transferred to the Singapore International Commercial Court and became SIC/OS 1/2021. The Parties provided written submissions and written reply submissions and the hearing took place on 19 April 2021.

16 On 15 June 2021 CIA wrote to draw my attention to the judgment of the Privy Council in *Betamax Ltd v State Trading Corporation (Mauritius)* [2021] UKPC 14 ("*Betamax*") and made submissions on its relevance to the issues in this case. On 25 June 2021, the plaintiffs responded to those submissions.

17 In proceedings in India to enforce the Award, the Calcutta High Court held that the Award was enforceable and I was provided with a copy of the court's judgment. The plaintiffs stated that they disagreed with that judgment and intended to file an appeal. I understand that the Supreme Court of India has now dismissed the plaintiffs' application for leave to appeal.

The ground for setting aside

18 The plaintiffs submit that the Award should be set aside for being in conflict with the public policy of Singapore because the Award compels the plaintiffs to pay CIA assured returns as consideration for the Put Shares; it is illegal under Indian law for the plaintiffs to pay CIA such assured returns as that would be a violation of FEMA Regulations exposing them to criminal sanctions; and an arbitral award which compels the parties to perform an illegal act punishable by criminal sanctions in a foreign state is contrary to the public policy of Singapore and should be set aside.

19 CIA submits that the plaintiffs' application should be dismissed, first, because the issues regarding "illegality" of the Put Option were fully ventilated

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and finally determined in the Award and, as a seat court, the Singapore courts will not and cannot intervene in findings of foreign law made by an arbitral tribunal. Second, while the plaintiffs have characterised their application as a challenge based on "illegality" of the Put Option, they are in fact arguing that the Tribunal wrongly interpreted cl 11.2 of the SHA which cannot be relied upon to set aside the Award. Thirdly, the "public policy" concerns do not meet the threshold for setting-aside of arbitral awards under Singapore law. Fourthly and in any event, the Put Option and the Award are not "illegal" under Indian law and neither are they contrary to Indian public policy. Fifthly, the plaintiffs' assertion that the Award ignores the requirement of proof of loss for the grant of damages under s 73 of the Indian Contract Act 1872 ("Indian Contract Act") is incorrect and does not raise any concern of Singapore public policy.

20 The FEMA Regulations, which form the main underlying basis for the challenge, were made under FEMA. They require that a foreign investor, who wishes to exit from an Indian entity by selling its shares to a resident Indian third-party, has to conduct such sale at a FEMA compliant price determined by a valuation exercise and not at "assured returns".

21 The issues in this case arising to the challenge based on non-compliance with the FEMA Regulations are:

> (a) To what extent can the Tribunal's findings based on Indian law be reviewed on an application under Article 34(2)(*b*)(ii) of the Model Law.
>
> (b) To what extent can the Tribunal's award of damages and return of shares be challenged on an application under Article 34(2)(*b*)(ii) of the Model Law.

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(c) If the court can review the Tribunal's findings on Indian law and come to a contrary view on those findings, would the matters raised amount to grounds for setting aside an award as being contrary to public policy of Singapore under Article 34(2)(*b*)(ii)?

To what extent can the Tribunal's findings based on Indian law be reviewed on an application under Article 34(2)(b)(ii) of the Model Law

22 The issues in this case bear some similarity to the issues which I had to decide in *Gokul Patnaik v Nine Rivers Capital Ltd* [2021] 3 SLR 22 ("*Patnaik*") in which there was an application to set aside an award on the grounds that it was contrary to Singapore public policy on the basis that, contrary to the findings in the award, a share transaction was illegal under Indian law as it failed to comply with the FEMA Regulations. In that case I found that the arbitral tribunal's findings could not be reviewed by the court.

23 The general position on the review of arbitral awards in Singapore is set out in ss 19B(1) and 19(4) of the IAA which provides that an IAA award is final and binding on the parties, subject only to narrow grounds for curial intervention. This was underlined in the decision of the Court of Appeal in *BBA v BAZ* [2020] 2 SLR 453 at [41], repeating its views in *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [37]:

> … The courts do not and must not interfere in the merits of an arbitral award and, in the process, bail out parties who have made choices that they might come to regret, or offer them a second chance to canvass the merits of their respective cases. This important proscription is reflected in the policy of minimal curial intervention in arbitral proceedings, a mainstay of the Model Law and the IAA…

24 In this case the relevant provision allowing for curial intervention in Article 34(2)(*b*)(ii) of the Model Law provides:

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> (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
>
> (2) An arbitral award may be set aside by the court specified in article 6 only if:
>
> …
>
> (b) the court finds that:
>
> …
>
> (ii) the award is in conflict with the public policy of this State.

25 The central decision on illegality and its relationship with the public policy ground in Article 34(2)(*b*)(ii) of the Model Law is the judgment of the Court of Appeal in *AJU v AJT* [2011] 4 SLR 739 ("*AJU v AJT*"). In that case, there was a Singapore International Arbitration Centre arbitration based on an agreement governed by Singapore law (the "Concluding Agreement"). It was alleged that the Concluding Agreement was null and void on the grounds of duress, undue influence and illegality. The arbitral tribunal decided that the Concluding Agreement was valid and enforceable. The other party then applied to the High Court to set aside the award under Article 34(2)(*b*)(ii) of the Model Law on the basis that the award was contrary to Singapore public policy as it was an agreement to take steps to stifle a prosecution in Thailand and therefore illegal under Singapore law (the governing law) and Thai law (the place of performance).

26 The Court of Appeal held that the High Court judge was not correct when he reopened the findings of the arbitral tribunal and held, instead, that the Concluding Agreement was an agreement to stifle the prosecution in Thailand and was contrary to public policy in Singapore, therefore setting aside the award.

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27 In coming to that conclusion, the Court of Appeal reviewed the English decisions of Colman J in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [1999] QB 740 ("*Westacre HC*"); the Court of Appeal in *Soleimany v Soleimany* [1999] QB 785 ("*Soleimany*"); the Court of Appeal in *Westacre Investments Inc v Jugoimport-SPDR Holding Co Ltd* [2000] 1 QB 288 ("*Westacre (CA)*") and Walker J in *Omnium de Traitement et de Valorisation SA v Hilmarton Ltd* [1999] 2 Lloyd's Rep 222 ("*OTV*").

28 The Court of Appeal in *AJU v AJT* had to consider the conflicting English approaches on whether the court could open up the findings of an arbitrator in deciding whether to set aside an award on the ground that an award was contrary to public policy. It concluded as follows at [58]–[60]:

> 58 It can be seen from the foregoing discussion that thus far, the English courts have adopted two divergent approaches *vis-à-vis* the circumstances in which the court may reopen an arbitral tribunal's decision that an underlying contract is legal. On the one hand, there is the approach taken by Colman J in *Westacre (HC)* ([40] supra) and the majority of the English CA in *Westacre (CA)* ([23] supra); on the other hand, there is the more liberal (and 'interventionist') approach taken in *Soleimany* ([23] supra) and by Waller LJ in *Westacre (CA)*. As noted in Shai Wade, 'Westacre v. Soleimany: What Policy? Which Public?' [1999] Int ALR 97 ("Wade's article"), although *Soleimany* adopted many aspects of the decision in *Westacre (HC)*, it also (at 99):
>
> > … promote[d] a rather different approach to the balance to be struck between the public policy of upholding arbitration awards and the policy against unsavoury international trade practices. In the judgment of the [English CA] in [that] case, which was delivered by Waller L.J., the limits to the principle of the separability of an illegal underlying agreement [from an arbitral award] were decidedly more strict. While *Soleimany* accepts that there are cases in which an arbitrator would have jurisdiction to decide on questions of illegality (such as [in *Westacre (HC)*] itself), the emphasis in the judgment is exemplified by the statement …:
> >
> > > 'The English court would not recognise an agreement between the highwaymen to arbitrate

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> > their differences any more than it would recognise their initial agreement to split the proceeds.'
>
> In exercising its supervisory role over the enforcement of arbitral awards, the court was:
>
> > 'concerned to preserve the integrity of its process and to see that it is not abused. The parties … cannot by procuring an arbitration conceal that they, or rather one of them, is seeking to enforce an illegal contract' …
>
> 59 In contrast, in *Westacre (CA)*, the majority of the English CA (namely, Mantell LJ and Sir David) rejected the approach taken in *Soleimany* (and by Waller LJ in *Westacre (CA)* itself), and chose "a return to the emphasis normally placed on the continued unhindered operation of the New York Convention as an overriding policy in matters concerning international arbitration" (see Wade's article at 100).
>
> 60 With respect, we do not agree with the approach taken in *Soleimany* and by Waller LJ in *Westacre (CA)*. In our view, it is the majority's approach in the latter case (which endorses Colman J's approach in *Westacre (HC))* which is consonant with the legislative policy of the IAA of giving primacy to the autonomy of arbitral proceedings and upholding the finality of arbitral awards (whether foreign arbitral awards or IAA awards).

29 The Court of Appeal in *AJU v AJT* then considered whether there were circumstances in which a court could reopen an arbitral tribunal's finding on the legality of the underlying contract and decide that issue for itself, as the High Court judge had done in that case.

30 At [61], the Court of Appeal first considered, as Colman J had done in *Westacre (HC)*, the issue of whether the arbitral tribunal was able to understand and determine the particular issue of illegality arising in that case. They said that the premise applied *a fortiori* and that "a Singapore court would all the more be entitled to assume that the members of the Tribunal had adequate knowledge of Singapore law".

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31 Considering that the law to be applied in the arbitration was Singapore law, the Court of Appeal at [62] held that the judge was entitled to decide whether the Concluding Agreement was illegal and to set aside the award if it was tainted with illegality. The Court of Appeal stated:

> 62 Be that as it may, since the law applied by the Tribunal was Singapore law, the question that arises is whether, if a Singapore court disagrees with the Tribunal's finding that the Concluding Agreement is not illegal under Singapore law, the court's supervisory power extends to correcting the Tribunal's decision on this issue of illegality. In our view, the answer to this question must be in the affirmative as the court cannot abrogate its judicial power to the Tribunal to decide what the public policy of Singapore is and, in turn, whether or not the Concluding Agreement is illegal (illegality and public policy being, as pointed out at [19] above, mirror concepts in this regard), however eminent the Tribunal's members may be. Accordingly, we agree with the Judge that the court is entitled to decide for itself whether the Concluding Agreement is illegal and to set aside the Interim Award if it is tainted with illegality, just as in *Soleimany*, the English CA refused to enforce the Beth Din's award as it was tainted with illegality.

32 Although the Court of Appeal therefore decided that the court was, in principle, entitled to decide whether the Concluding Agreement was illegal, at [63] they said that this did not mean that "*in every case where illegality in the underlying contract is invoked, the court is entitled to reopen the arbitral tribunal's finding that the underlying contract is not illegal*". They referred to the fact that the arbitral tribunal's decision "*took into account the principle that an agreement to stifle the prosecution of non-compoundable offences would be illegal and contrary to public policy*" and that the arbitral tribunal and the judge differed on the facts on which their respective findings on the issue of the legality of the Concluding Agreement were based. The arbitral tribunal held that a plain reading of the Concluding Agreement did not disclose any illegality whilst the Judge held that the arbitral tribunal should not have given a literal meaning to the words of the Concluding Agreement and should instead have

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considered all the relevant surrounding circumstances. The Court of Appeal said that the arbitral tribunal had considered the relevant surrounding circumstances and that the judge's criticism was not justified.

33 At [64] the Court of Appeal then stated that "*In our view, this was not an appropriate case for the Judge to reopen the Tribunal's finding that the Concluding Agreement was valid and enforceable.*" They said that the arbitral tribunal "*did not ignore palpable and indisputable illegality*" and then went on to consider the terms of the Concluding Agreement. They considered the findings of the arbitral tribunal that "*as a matter of Thai law, it was not possible for the Appellant to withdraw, discontinue or terminate the Forgery Charges, and that the Respondent was aware of this (through the objections of its Thai lawyers) when it signed the Concluding Agreement*". They concluded in these terms:

> In short, this case is not a *Soleimany*-type case involving an underlying contract clearly tainted by illegality, but a *Westacre (CA)* or *OTV*-type case, where the respective arbitral tribunals found that the underlying contracts in question did not involve the giving of bribes to, but merely the lobbying of, government officials, which lobbying was not contrary to English public policy (*ie*, the public policy of the Enforcing State).

34 At [65], the Court of Appeal found that the Judge was not entitled to reject the Tribunal's findings and substitute his own findings for them. They stated that:

> … On the facts of this case, s 19B(1) of the IAA calls for the court to give deference to the factual findings of the Tribunal. The policy of the IAA is to treat IAA awards in the same way as it treats foreign arbitral awards where public policy objections to arbitral awards are concerned, even though, in the case of IAA awards, the seat of the arbitration is Singapore and the governing law of the arbitration is Singapore law. Arbitration under the IAA is international arbitration, and not domestic arbitration. That is why s 19B(1) provides that an IAA award is

> final and binding on the parties, subject only to narrow grounds for curial intervention. This means that findings of fact made in an IAA award are binding on the parties and cannot be reopened except where there is fraud, breach of natural justice or some other recognised vitiating factor.

35 The Court of Appeal then went on to consider its previous decision in *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 ("*PT Asuransi Jasa*") and said at [66] to [69]:

> 66 In this connection, we would reiterate the point which this court made in *PT Asuransi Jasa* ([27] supra) at [53]–[57], viz, that even if an arbitral tribunal's findings of law and/or fact are wrong, such errors would not *per se* engage the public policy of Singapore. In particular, we would draw attention to the following passage from [57] of that judgment:
>
>> … [T]he [IAA] … gives primacy to the autonomy of arbitral proceedings and limits court intervention to only the prescribed situations. The legislative policy under the [IAA] is to minimise curial intervention in international arbitrations. Errors of law or fact made in an arbitral decision, per se, are final and binding on the parties and may not be appealed against or set aside by a court except in the situations prescribed under s 24 of the [IAA] and Art 34 of the Model Law. While we accept that an arbitral award is final and binding on the parties under s 19B of the [IAA], we are of the view that *the [IAA] will be internally inconsistent if the public policy provision in Art 34 of the Model Law is construed to enlarge the scope of curial intervention to set aside errors of law or fact. For consistency, such errors may be set aside only if they are outside the scope of the submission to arbitration. In the present context, errors of law or fact, per se, do not engage the public policy of Singapore under Art 34(2)(b)(ii) of the Model Law when they cannot be set aside under Art 34(2)(a)(iii) of the Model Law.* [emphasis added]
>
> This passage recognises the reality that where an arbitral tribunal has jurisdiction to decide any issue of fact and/or law, it may decide the issue correctly or incorrectly. Unless its decision or decision-making process is tainted by fraud, breach of natural justice or any other vitiating factor, any errors made by an arbitral tribunal are not *per se* contrary to public policy.
>
> 67 That said, since s 19B(4) of the IAA, read with Art 34(2)(b)(ii) of the Model Law, expressly provides that an arbitral

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award can be challenged on public policy grounds, it is necessary for us to clarify the application of the general principle laid down in *PT Asuransi Jasa* (at [57]) that 'errors of law or fact, *per se*, do not engage the public policy of Singapore'. It is a question of law what the public policy of Singapore is. An arbitral award can be set aside if the arbitral tribunal makes an error of *law* in this regard, as expressly provided by s 19B(4) of the IAA, read with Art 34(2)(b)(ii) of the Model Law. Thus, in the present case, if the Concluding Agreement had been governed by Thai law instead of Singapore law, and if the Tribunal had held that the agreement was indeed illegal under Thai law (as the Respondent alleged) *but could nonetheless be enforced in Singapore because it was not contrary to Singapore's public policy*, this finding – *viz*, that it was not against the public policy of Singapore to enforce an agreement which was illegal under its governing law – would be a finding of law which, if it were erroneous, could be set aside under Art 34(2)(b)(ii) of the Model Law (read with s 19B(4) of the IAA).

68 In contrast, Art 34(2)(b)(ii) of the Model Law does not apply to errors of *fact*. ….

69 In our view, limiting the application of the public policy objection in Art 34(2)(b)(ii) of the Model Law to findings of *law* made by an arbitral tribunal – to the *exclusion* of findings of *fact* (save for the exceptions outlined at [65] above) – would be consistent with the legislative objective of the IAA that, as far as possible, the international arbitration regime should exist as an autonomous system of private dispute resolution to meet the needs of the international business community. Further, such an approach would also be fair to both the successful party and the losing party in an arbitration. Taking the present case as an example, we have held that the Respondent is bound by the Tribunal's factual finding that the Concluding Agreement did not require the Appellant to do anything illegal under Thai law and was therefore not an illegal contract. If the Tribunal had made the converse finding of fact instead – *ie*, if the Tribunal had found as a fact that the Concluding Agreement did indeed require the Appellant to engage in illegal conduct in Thailand and was therefore an illegal contract – and if the Tribunal had erred in this regard, the Appellant would equally have been bound by this finding as it would have no recourse under the IAA (read together with the Model Law) against such an error of fact.

36 Applying *AJU v AJT*, I consider that on an application to set aside an award under Art 34(2)(*b*)(ii), the court may reopen findings of law but, in the

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absence of fraud or other vitiating factors, the court cannot reopen findings of fact made by the arbitral tribunal.

37 As stated above, I was referred to the recent judgment of the Privy Council in *Betamax* which considered the extent to which a court could reopen findings of fact or law when considering an application to set aside an award on the basis of public policy. In that case a contract had been entered into under Mauritian law and there was a question as to whether that contract was illegal because it failed to comply with the procurement legislation in Mauritius. The arbitrator held that it was exempted from the procurement legislation and therefore not illegal. The Supreme Court held the Award was in conflict with the public policy of Mauritius because, contrary to the arbitrator's findings, the procurement legislation applied and the contract failed to comply and was illegal.

38 The main issue before the Privy Council was whether the Supreme Court, under the applicable international arbitration act, could review the arbitrator's decision that the contract was not illegal. In deciding to review the arbitrator's decision, the Supreme court had relied on *AJU v AJT* at [62] and the judgment of Waller LJ in *Soleimany*. In reviewing those cases, the Privy Council at [39] indicated that it was not easy to reconcile the observations in *AJU v AJT* at [62] with those at [67]–[69] and added:

> 39. … It has not been questioned that it is for the court to determine the nature and extent of the public policy of the state; and that, if an arbitral tribunal decides that an agreement is illegal, but makes an award which enforces the agreement, the court is entitled to set aside the award under section 39(2)(b)(ii) of the [Mauritius] International Arbitration Act as conflicting with public policy. That was the actual position in *Soleimany*. In *AJU,* the judge had reversed the determination in the award on the interpretation of the Concluding Agreement governed by Singapore law, held it was illegal and set the award aside. The Court of Appeal held that the judge should not have reopened

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> the finding on the legality of the Concluding Agreement in these circumstances and should not have set it aside. The better view of the observations in the judgment in *AJU* which are set out above is that they did no more than affirm the position that: (a) in the absence of fraud or other vitiating factors (as set out in section 24 of Singapore's International Arbitration Act - the equivalent of sections 39(2)(b)(ii) and (iv) of the [Mauritius] International Arbitration Act) a decision of fact or law within the jurisdiction of the arbitral tribunal was final and binding; and (b) the determination of the nature and extent of public policy was a question of Singapore law for determination by the courts of Singapore. The observations in para 62 referring to it being in the power of the courts under article 34(2)(b)(ii) to review the determination in the award of the legality of the agreement went further than was necessary for the decision in the case and are inconsistent with the judgment read as a whole. As had been observed in *PT Asuransi Jasa*, to read article 34 broadly in this way would be inconsistent with the principle of finality in respect of matters determined by the arbitral tribunal within its jurisdiction.

39 In finding that the Supreme Court of Mauritius was in error in reviewing the decision of the arbitrator in *Betamax*, the Privy Council held that the arbitrator's decision on fact and law was final and binding. They did however observe at [52]:

> 52. The issue in this appeal is the scope of section 39(2)(b)(ii) of the International Arbitration Act in relation to a decision of an arbitral tribunal which decided that a contract was not illegal on the basis of its interpretation of legislative provisions and regulations that were applicable to a contract. There may be unusual circumstances where different considerations may apply. More likely, as appears from the decided cases and observations made in them, are cases where the arbitral tribunal has expressly considered issues which have required the arbitral tribunal to inquire into circumstances suggesting illegality and set out their reasons for holding as a matter of fact and of law that there was no illegality. In cases of that kind, the arbitral tribunal's decision on fact and on law is a decision for the arbitral tribunal, if within its jurisdiction; if it holds that the contract is not illegal, then that decision will be final, in the absence of fraud, a breach of natural justice or any other vitiating factor. There may be some exceptional cases, where the court under the Model Law provision may be entitled to review the decision on legality, but it is not easy to think of such a case arising in practice. In the light of experience, it would not

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> be helpful to seek in this appeal to go further by delineating possible circumstances or making observations about them. There would be a risk that such observations could be deployed in the cases which are in practice likely to arise in misguided attempts to expand the ambit of intervention under section 39(2)(b)(ii) of the International Arbitration Act / article 34 of the Model Law.

40 In deciding this case under Singapore law, I have concluded at [36] that, applying *AJU v AJT,* on an application to set aside an award under Art 34(2)(*b*)(ii), I may reopen findings of law but cannot reopen findings of fact made by the arbitral tribunal, whereas the Privy Council interpreted *AJU v AJT* as holding that "in the absence of fraud or other vitiating factors… a decision of fact or law within the jurisdiction of the arbitral tribunal was final and binding". Although, as I have concluded in this case that the relevant findings are findings of fact, there is in this case no difference between those approaches, I respectfully leave it to the Court of Appeal in a case where it does arise, to decide whether findings of law can be reopened by the court or whether the only possibility of reopening findings arise in the undefined "exceptional cases" identified in *Betamax* at [39].

41 I therefore proceed on the basis that in this case, where there is no fraud or other vitiating circumstances, on this application to set aside an award under Art 34(2)(*b*)(ii), I cannot reopen findings of fact made by the arbitral tribunal.

42 The distinction between findings of fact and findings of law is sometimes not easy to glean and as Mustill J (as he then was) said in *Finelvet AG v Vinava Shipping Co Ltd (The Chrysalis)* [1983] 1 WLR 1469 at 1475 it is possible to divide an arbitrator's process of reasoning into three stages:

> (1) The arbitrator ascertains the facts. This process includes the making of findings on any facts which are in dispute. (2) The arbitrator ascertains the law. This process comprises not only the identification of all material rules of statute and common

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> law, but also the identification and interpretation of the relevant parts of the contract, and the identification of those facts which must be taken into account when the decision is reached. (3) In the light of the facts and the law so ascertained, the arbitrator reaches his decision.

43 Whilst the first stage involves findings of fact and the second stage involves findings of law, as Mustill J observed, the position in relation to the third stage is less clear. However, where the finding of law is a finding which for the particular court is a finding of foreign law then that is a finding of fact as to foreign law. As stated in Lord Collins of Mapesbury and Jonathan Harris, *Dicey, Morris & Collins on the Conflict of Laws* (Sweet & Maxwell, 15th Ed, 2018) at para 9-002:

> (1) Foreign law a fact
>
> 9-002 The principle that, in an English court, foreign law is a matter of fact has long been well established: it must be pleaded, and it must be proved: these requirements are examined in detail below. It follows that a representation of foreign law is a representation of fact for the purposes of the law of misrepresentation, and a finding upon foreign law made by arbitrators is a finding of fact which may not form the basis of an appeal on a point of law under s.69 of the Arbitration Act 1996.…

44 The relevant agreements in this case, unlike the Concluding Agreement in *AJU v AJT*, were governed by Indian law and not by Singapore law. On that basis the findings of fact and the findings of Indian law were all findings of fact and, on the basis of *AJU v AJT*, those findings cannot be opened up on this application under Article 34(2)(*b*)(ii).

45 In the Award at [147] to [174] the Tribunal dealt with Issue 1(b) which was in these terms: "*Is the exercise of the Put Option, including by reference to any agreement created by the exercise of the Put Option, agreed to by the Parties and set out in the SHA rendered invalid by operation of ... the FEMA and FEMA Regulations?*".

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46 At [149] the Tribunal concluded that, reading the SHA and the Letter Agreement together, "the Claimant is entitled to be paid the Put Price, either directly through the operation of the SHA, or alternatively through the aggregate of the Put Calculated Price and the Non-Compete Agreement consideration".

47 After setting out the provisions of FEMA at [150], the Tribunal set out the position in relation to FEMA at [151]–[153], as follows:

> 151. The effect of the FEMA regulations is undisputed between the Parties. The FEMA regulations do not operate to act as an absolute bar to a transaction like the Put Option. However, in the case of a non-resident selling shares in an Indian company to a resident, assured returns *are* barred. The maximum price payable in the case of a non-resident to-resident sale is that arrived at by any internationally accepted pricing methodology for valuation of the shares on arm's length basis, duly certified by a chartered accountant or a Securities and Exchange Board of India-registered merchant banker. The Parties also agree that there is no such restriction on price in the case of a non resident selling to another non-resident.
>
> 152 Given this agreement, it is clear that in the case of the Claimant selling its shares to the First Respondent, being a transaction between a non-resident selling to a resident, the Claimant would be unable to receive the Put Price as consideration for that sale.
>
> 153 The dispute between the Parties lies in their differing interpretations of clause 11 of the SHA, and whether the Respondents were obliged to procure a third party non-resident buyer so as to enable the Claimant to receive its assured return of its initial investment plus an amount equal to a 22% compounded annual rate of return on the initial investment. Further, the Respondents contend that the Non-Compete Agreement constitutes an agreement to agree, and is therefore [un]enforceable, or alternatively, that the Non-Compete Agreement constitutes an impermissible circumvention of the FEMA regulations.

48 The Tribunal then set out its analysis at [159] to [174]. At [168] the Tribunal found as follows:

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> On a proper construction, the Tribunal finds that the SHA and the Letter Agreement operate as follows:
>
> a. In accordance with clause 11.2, the SHA allowed [CIA] to require that [CHY] purchase its shares and, if it were unable to purchase [CIA]'s shares due to legal impediment in completing the transaction as contemplated, [CHY] was required to procure a third party to purchase the shares which, given the restrictions of FEMA, would be a non-resident third party….

49 This led the Tribunal to conclude at [174] that: "On the Tribunal's interpretation there was no requirement that valuation be procured, and no relevant potential circumvention of FEMA, as FEMA simply did not apply to a non-resident third party purchaser….".

50 On that basis the Tribunal held that on its findings of fact, including findings of Indian law, the terms of the SHA and the Letter Agreement did not give rise to a violation of FEMA Regulations. It held under Issue 2 at [186] that: "The failure on the part of [the plaintiffs] to procure a third party purchaser, and their repudiation of their obligation to do so, constitutes a clear breach, with clear consequences as to damages (set out below)." Those consequences, as set out in [195], were that CIA was entitled to the value of the bargain which was the Put Price, being INR1,140,190,000.

51 Accordingly, on the basis of *AJU v AJT* the court cannot reopen those findings of fact and therefore there is no basis on which the plaintiffs can challenge the Award under Article 34(2)(*b*)(ii) on the basis that the terms of the SHA and Letter Agreement were a violation of FEMA Regulations so that enforcement of an illegal contract would be in conflict with the public policy of Singapore.

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To what extent can the Tribunal's award of damages and return of shares be challenged on an application under Article 34(2)(*b*)(ii) of the Model Law

52 Whilst it appeared that the plaintiffs were seeking to challenge the Tribunal's findings that the SHA and Letter Agreement could be performed without a violation of FEMA and, on that basis, to contend that damages awarded for the breach of the SHA and Letter Agreement would be enforcing an illegal agreement, at the hearing they did not seriously seek to challenge the Tribunal's findings on the SHA and Letter Agreement and, as I have held could not do so. Rather, they submitted that the award of damages requiring the plaintiffs to pay the Put Price as damages and, upon receipt, to direct a transfer of shares was effectively payment of assured returns and would be a breach of the FEMA Regulations and unlawful under Indian law.

53 However, this submission, on analysis, again seeks to open up the findings of fact by the Tribunal under Indian law. That analysis requires, first, consideration of whether in the Arbitration, the plaintiffs raised the point that an award by the Tribunal of damages amounting to the Put Price and the transfer of shares would be contrary to FEMA. CIA referred at the hearing before me to a transcript of submissions made in the Arbitration where the following was said by counsel for the plaintiffs in the context of whether a determination of the issue relating to drag along rights was necessary:

> The reason why I said determination is not necessary is because if there's an adjudication in favour of the claimant, there's an undertaking by him to give those shares and that has to form part of the award. So yes, I'll only get the shares if I pay, but it will form part of the award, so there is no question of a drag being exercised there.

54 It is evident from that passage that, without any objection that such an award would be contrary to FEMA, the plaintiffs were making it clear that on

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payment of damages in favour of CIA, there would be a transfer of shares as part of the award. On that basis there was no objection to the Tribunal making an award as they did and the finding by the Tribunal that this is the relief that should be granted proceeded on the basis that an award in that form was not challenged. In those circumstances, the plaintiffs cannot argue the contrary of what they argued in the Arbitration and seek to open up that finding which proceeded on the basis that there was no objection.

55 In response to that submission, the plaintiffs submitted at the hearing before me that: "to the extent that it is suggested that [the plaintiffs], in the arbitration, conceded and did not address the issue of the reliefs being improper; that's quite incorrect." I was then referred to the rejoinder filed by the plaintiffs in the Arbitration. In reply, CIA said that it could not see where the point was made in the rejoinder. I therefore asked the plaintiffs to indicate where, in the rejoinder, the point was made. Whilst it is clear that the plaintiffs pleaded that the SHA and Letter Agreement were in violation of FEMA and therefore challenged the reliefs, I do not think that the plaintiffs made it clear that, contrary to what was said above, it challenged the reliefs on the basis that an award of damages and transfer of the shares would be, in itself, a violation of FEMA. If, in fact, they had done so, again, the decision of the Tribunal to the contrary would have been a finding of fact, including a finding of Indian law and could not be opened up on this application under Art 34(2)(*b*)(ii).

56 That brings me to the second point which is that, in the Arbitration, the Tribunal was referred to the relevant Indian law concerning the impact of FEMA on an award of damages and made its finding of damages based on that Indian law. From the Statement of Claim at [48] it is clear that the decision of the High Court of Delhi in *NTT Docomo Inc. v. Tata Sons Limited* (2017) SCC OnLine Del 8078 ("*Docomo*") was cited in which the court upheld an award of

damages in a case where the award was challenged based on similar arguments in respect of FEMA. In particular at paragraph 48 of the Statement of Claim, the passage in *Docomo* at [58] was cited relating to an award of damages where that court stated that "The [Arbitral Tribunal] held that Tata could have lawfully performed its obligation to find a buyer at any price, including at a price above the shares' market value, through finding a non-resident buyer. Its failure to do so was, according to the [Arbitral Tribunal], a breach entitling Docomo to damages."

57 At [50] of the Statement of Claim CIA then pleaded: "In light of the Docomo decision, under Clause 11.2 of the SHA, the Promoter had a lawful and an absolute obligation to arrange a third party (if necessary, who is a non-resident and therefore on any view not subject to FEMA 2000) to purchase the Put Shares at the Put Price. … The Promoter has breached this obligation and is, therefore, liable to pay damages amounting to the Put Price of the shares, along with interest for the significant delay in payment. To avoid any question of double recovery, the Claimant's shares in the Company can then, after payment of the award, be cancelled or returned."

58 That pleaded case was then challenged in the Statement of Defence of the first claimant at [69] and in the Statement of Reply at [78] CIA pleaded:

> It is evident from the above that the factual background of the *Docomo* case is analogous to this aspect of the Claimant's case. Even though the parties to the *Docomo* case ultimately settled their dispute, the High Court of Delhi independently upheld the award, holding that **(i)** the promoter could have lawfully performed its obligation to give an exit to the investor at any price, including at a price above the shares' market value, through a non-resident buyer, **(ii)** failure to do so entitled the investor to damages, and **(iii)** the agreement was not opposed to any Indian law including FEMA. The Claimant's present case is squarely covered and supported by the findings of the High Court of Delhi in the *Docomo* case.

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59 In addition, CIA also referred in the Statement of Claim to the decision of the High Court of Delhi in *Cruz City 1 Mauritius Holdings v. Unitech Limited* (2017) (3) ARBLR 20 (Delhi) ("*Cruz City*") and after setting out that decision, pleaded at [64] and [65]:

> 64.… The High Court of Delhi held that 'if an investment is made on representation which are breached, the investor would be entitled to its remedies including damages…Even if it is accepted that the Keepwell Agreement was designed to induce Cruz City to make investments by offering assured returns, Unitech cannot escape its liability to Cruz City.' The Court therefore held that if investor was induced to make an investment on a false assurance of the agreement being legal and valid, the respondent must bear the consequences for the unlawful agreement. In a similar manner, the Respondents induced the Claimant to invest, by assuring the Claimant of the fact that the SHA was a valid agreement. The Respondents now ought not to be allowed to evade their obligations by … now asserting that the SHA is unlawful under the applicable law.
>
> 65. The Claimant is entitled to damages for this breach of representation and undertakings, amounting to the payment of the Put Price as agreed and calculated under the SHA.

60 In the Award, the Tribunal referred to both *Cruz City* and *Docomo*. At [190] of the Award the Tribunal stated: "The Claimant further refers to *Cruz City 1 Mauritius Holdings v Unitech Limited* (**Cruz City**) as the arbitration award under scrutiny in that case involved damages assessed on a similar basis." At [193] of the Award the Tribunal then came to a conclusion as to damages and stated: "In such cases, the measure of damages is readily apparent by reference to the value of the agreements themselves. As stated by [CIA], this was the measure of damages in the underlying decisions in *Docomo* and *City Cruz,* and is a position that the Tribunal endorses."

61 It is therefore clear that the Tribunal made its findings on the basis of submissions on Indian law in which the cases cited, *Docomo* and *Cruz City*,

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were also authorities which were cited to me in relation to the contention that the award of damages and transfer of shares was contrary to FEMA.

62 Finally, it became clear at the hearing that the plaintiffs' complaint was essentially that the Tribunal had assessed damages wrongly and had not taken mitigation into account. In answer to a question, the plaintiffs confirmed that if the Tribunal had calculated damages differently, they would have had no complaint. This demonstrated that the plaintiffs were in fact challenging the Award on findings of fact including Indian law by seeking to open up the way in which the Tribunal had assessed damages and/or had dealt with mitigation in [193] and [194] of the Award and reflected, in part, the argument related to s 73 of the Indian Contract Act, referred to below. That is not a challenge open to the plaintiffs for the reason set out above.

63 For the reasons set out above, it is clear that the award of damages by the Tribunal was made on the basis of submissions of Indian law and, as stated above, this court cannot on an application under Art 34(2)(*b*)(ii), open up the findings of fact, including findings of Indian law on which the Award was based. It is not now therefore open to the plaintiffs to challenge the Award on the alternative basis that the award of damages and transfer of shares was contrary to FEMA.

64 Even if there had been a finding of law then, reflecting the considerations of the Court of Appeal in *AJU v AJT* at [61] based on *Westacre (HC)* at 769E, here "the parties had selected arbitration by an impressively competent international body (*viz*, the ICC)" and this court would be entitled to assume that the arbitrators appointed were of undoubted competence and ability, and well able to understand and determine the particular issue of illegality

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arising in this case. This is no less the position, in this case, where there was a dissenting opinion. The Award is the award of the majority.

65 CIA also submits that, while the plaintiffs have characterised their application as a challenge based on "illegality" of the Put Option, they are in fact arguing that the Tribunal wrongly interpreted cl 11.2 of the SHA which cannot be relied upon to set aside the Award. Whilst that no longer appears to be the thrust of their submissions, as I have stated, the finding of the Tribunal on the interpretation of the SHA under Indian law is a finding of fact on foreign law which cannot be re-opened on this application.

66 The plaintiffs also seek to challenge the Award on the basis that, in arriving at its award of damages, the Tribunal ignored the requirement of proof of loss for the grant of damages under s 73 of the Indian Contract Act, which deals with compensation for loss or damage caused by breach of contract.

67 In the arbitration the plaintiffs contended that CIA was not entitled to any damages because, among other things, "no actual damage or loss has been proved" by CIA: see [191b] of the Award. The Tribunal came to its conclusion at [193] where it said:

> As to the [plaintiffs'] second contention, the proof of loss in this case is set out in the agreement itself, being the loss of the bargain to which the [plaintiffs] have agreed. The [CIA]'s claim for damage does not involve any secondary losses flowing from the [plaintiffs'] failure to honour the Put Option on its terms. The [CIA] seeks only the amounts to which it would have received had the [plaintiffs] complied with their obligations. In such cases, the measure of damages is readily apparent by reference to the value of the agreements themselves. As stated by the [CIA], this was the measure of damages in the underlying decisions in *Docomo* and *City Cruz,* and is a position that the Tribunal endorses.

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68 Again, this is a finding of fact, including a finding on the proof of loss under Indian law and it is not for this court to open up that finding on an application to set aside the Award under Article 34(2)(*b*)(ii).

If the court could review the Tribunal's findings on Indian law and come to a contrary view on the findings, would the matters raised amount to grounds for setting aside an award under Article 34(2)(b)(ii)

69 The plaintiffs accept that the scope of "public policy" under the Model Law is narrow and that curial intervention is limited to situations where the upholding of the award would "shock the conscience" or is "clearly injurious to the public good" or where it would violate the forum's most basic notions of morality and justice or a case where there is "palpable and indisputable illegality". They refer to the decision in *CBX and another v CBZ* and others [2020] SGHC(I) 17 ("*CBX*") at [60], which considered *Westacre (HC)*, *Soleimany* and *AJU v AJT*.

70 CIA refers to the Court of Appeal decision in *PT Asuransi* at [59] and submits that curial intervention is limited to cases where the upholding of an arbitral award would "shock the conscience", would be "clearly injurious to the public good", "wholly offensive to the ordinary reasonable and fully informed member of the public" or where it violates the forum's "most basic notion of morality and justice".

71 CIA also refers to the decision in *CEB v CEC* [2020] 4 SLR 183 at [50] where it was said that the observations of the Court of Appeal in *PT Asuransi* "are strong words which give effect to the underlying objective that it is only in circumstances where the effect of an award comes into conflict with accepted norms of public decency, behaviour, morality and/or justice that the court should intervene. This will seldom be the case in commercial disputes."

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72 CIA also refers to my decision in *Patnaik* where I also dealt with a case where the ground of conflict with Singapore public policy were similarly based on illegality for non-compliance with the FEMA Regulations because of an assured return in a share purchase agreement. In that case the question of whether non-compliance with the FEMA Regulations was dealt with at [204] to [206]:

> 204 The authorities demonstrate that the public policy ground under Art 34(2)(*b*)(ii) of the Model Law is a narrow ground, and the test is whether the upholding of the arbitral award would 'shock the conscience'; is 'clearly injurious to the public good or… wholly offensive to the ordinary reasonable and fully informed member of the public'; or 'where it violates the forum's most basic notion of morality and justice': *PT Asuransi Jasa* … at [59]. To succeed on a public policy argument, the party has to cross a 'very high threshold' and demonstrate 'egregious circumstances such as corruption, bribery or fraud, which would violate the most basic notions of morality and justice': *Sui Southern Gas Co Ltd v Habibullah Coastal Power Co (Pte) Ltd* [2010] 3 SLR 1 at [48]; *BAZ v BBA [2020] 5 SLR 266* at [156]–[159].
>
> 205 The relevant question is whether the illegality in the foreign state would demonstrate sufficiently egregious circumstances that would 'shock the conscience' or violate the most basic notions of morality and justice so as to amount to a breach of Singapore public policy.
>
> 206 In the present case, there is no reason why a breach of the FEMA Regulations or the laws of India, without more, would 'shock the conscience' or violate the 'most basic notions of morality and justice'. If Mr Patnaik's submissions are taken to their logical conclusion, then any minor illegality or regulatory infringement by a contract in its place of performance would *ipso facto* lead to the conclusion that international comity, and thus Singapore public policy, would be breached so that the arbitral award would have to be set aside. The public policy ground under Art 34(2)(*b*)(ii) of the Model Law is a narrow ground and does not lead to that conclusion. I therefore reject Mr. Patnaik's submission that Art 34(2)(*b*)(ii) of the Model Law would have been satisfied, even if the SSSA and 2014 SPA, as amended, were found to be illegal because of a breach of the FEMA Regulations or the laws of India.

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73 In this case the plaintiffs submit that there is "palpable and indisputable illegality" and that condoning an award which compels performance of an illegal act in India would run contrary to the public policy of maintaining international comity and the public policy of protecting and upholding the integrity of the Singapore courts. I disagree with these submissions.

74 There is no palpable and indisputable illegality in this case. That phrase came from Colman J's judgment in *Westacre HC*, a case in which a consultancy agreement was intended to be performed through bribery of Kuwaiti officials where, at 767, he said: "If the issue before the arbitrators was whether money was due under a contract which was indisputably illegal at common law, an award in favour of the claimant would not be enforced for it would be contrary to public policy that the arbitrator should be entitled to ignore palpable and undisputed illegality." In *Soleimany*, the case involved a contract for smuggling carpets out of Iran. In *OTV,* Walker J at [151a] contrasted the case of *Soleimany* where it was apparent from the face of the award that the arbitrator was dealing with an illicit enterprise for smuggling carpets out of Iran, so that as a matter of public policy no award would be enforced, with the *OTV* case where the element of corruption or illicit practice was not present. Similarly, in the present case there is no element of corruption or illicit practice.

75 Nor does maintaining international comity mean that, absent the type of criminal activity such as corruption, bribery or fraud, which would violate the most basic notions of morality and justice or would 'shock the conscience', public policy should be engaged.

76 For those reasons, even if this had been a case where the decision of the Tribunal could have been opened up and it had been found that the performance of the SHA and/or Letter Agreement or the award of damages and transfer of

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shares were contrary to the FEMA Regulations, I do not consider that this would have engaged the public policy of Singapore so that the Award would have been set aside under Art 34(2)(*b*)(ii) of the Model Law. *A fortiori*, even if it had been found that the Award failed to abide by the requirement of proof of loss for the grant of damages under s 73 of the Indian Contract Act, there would be no grounds to set aside the Award.

Issues of Indian law

77 In support of this application, the plaintiffs provided an affidavit from Dr [Y] dated 8 October 2020 in which he set out his opinion that the Award required the plaintiffs to enter into a transaction which is illegal under Indian law. On 17 December 2020, CIA applied to strike out that evidence in SUM 5567 as being irrelevant on the issue of whether the Award should be set aside. Also, without prejudice to that position, CIA provided opinions on Indian law in response by affidavits dated 17 December 2020 from two experts. Dr [Y] then provided a second opinion by affidavit dated 4 February 2021. There was then a joint statement of experts dated 19 March 2021 signed by all three Indian law experts and then Dr [Y] provided a third opinion by affidavit dated 15 April 2021, which I have referred to above.

78 As I have found, on this application to set aside the Award on grounds of public policy under Art 34(2)(*b*)(ii) of the Model law, it is not appropriate for the court to open up the findings of the Tribunal on Indian law. Accordingly, the opinions on Indian law are irrelevant and I therefore allow SUM 5567 and strike out the evidence of Dr [Y].

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Conclusion

79 For the reasons set out above, I dismiss the plaintiffs' application to set aside the Award under Art 34(2)(*b*)(ii) on the basis that it is contrary to the public policy of Singapore. I also allow SUM 5567 and strike out the evidence of Dr [Y].

Vivian Ramsey IJ
International Judge

Danny Ong Tun Wei and Sheila Ng Hui Ping (Rajah & Tann Singapore LLP) for the first and second plaintiffs;
Paul Tan Beng Hwee and Tian Yi Tan (Cavenagh Law LLP) for the defendant;

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