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

[2023] SGHC 89

Suit No 709 of 2019

Between

(1) Raffles Education Corporation Limited
(2) Raffles Education Investment (India) Pte Ltd
(3) Raffles Design International India Pvt Ltd

… *Plaintiffs*

And

(1) Shantanu Prakash
(2) Lui Yew Lee Dennis Paul

… *Defendants*

JUDGMENT

[Tort — Conspiracy]
[Tort — Inducement of breach of contract]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]

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v
Shantanu Prakash and another

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6 April 2023 Judgment reserved.

Audrey Lim J:

Introduction

1 The first plaintiff, Raffles Education Corporation Limited ("REC"), is a Singapore company in the business of private education. Its Chairman and Chief Executive Officer ("CEO") is Mr Chew Hua Seng ("Chew"). REC wholly owns the second plaintiff, Raffles Education Investment (India) Pte Ltd ("REI"), a Singapore company, and the third plaintiff, Raffles Design International India Pvt Ltd ("RDI"), a company incorporated in India. REI and RDI are also private education providers. Where appropriate, I refer to REC, REI and RDI as the Raffles Education Group ("REG").

2 The first defendant, Mr Shantanu Prakash ("Shantanu"), is the founder of the Educomp group of companies ("Educomp") which includes Educomp Solutions Ltd ("E-Solutions"), a publicly-listed company in India where he is

Chairman and Managing Director ("MD"), Educomp Asia Pacific Pte Ltd ("E-AP") and Educomp Professional Education Limited ("E-Prof"). E-AP and E-Prof are wholly owned by E-Solutions. Shantanu was a director of E-AP until 5 December 2016 and of E-Prof until at least 24 December 2013. The second defendant, Mr Dennis Lui ("Dennis"), is a Singaporean lawyer. He was a director of E-AP from 22 June 2009 to 5 December 2016 and of Edulearn Solutions Limited ("Edulearn") from October 2013 to 15 October 2019.[1]

3 Essentially the plaintiffs claim in this suit ("the Suit") that the defendants had conspired and made misrepresentations that caused one or more of the plaintiffs to enter into a Share Purchase Agreement ("SPA") and a Business Advisory Agreement ("BAA") with counterparties under the defendants' control, which they never intended for the counterparties to comply with. This, and the defendants' other acts, had caused loss and damage to REG.

Background

Joint Venture Agreement and ERHEL

4 In around 2006, Chew and Shantanu discussed the prospect of REG and Educomp entering into a joint venture ("JV") for the provision of education-related services in India. This resulted in REC and E-Solutions executing a Joint Venture Agreement dated 16 May 2008 ("JVA"), which provided for the parties to procure the incorporation of entities for the establishment of their higher education business in India.[2] Pursuant to the JVA, Educomp-Raffles Higher Education Limited ("ERHEL") was incorporated on or about 6 June 2008, and which shares were eventually held by REI and RDI (58.18%) and E-AP/E-Prof

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1 Shantanu's Affidavit of Evidence-in-Chief ("Shantanu's AEIC") at [6], [9]; Exhibit A; 10/5/22 NE 43.

2 1AB 414–448.

(41.82%). Chew and Shantanu were appointed directors. ERHEL subsequently set up various education establishments in India.[3]

JRRES and MIDL

5 In around mid-2008, Chew and Shantanu discussed the JV setting up a management college and technical university in India ("College") *via* the Jai Radha Raman Education Society ("JRRES"). JRRES is a private not-for-profit society in the business of running educational institutions. It had a lease over a 44-acre site in the Greater Noida Area ("Noida Site") and intended to build a management and technical university on the Noida Site.[4]

6 JRRES consists of a general body of all its members ("General Body") and the governing body ("Governing Body") (collectively the "JRRES Bodies"). At that time, the members of the Governing Body were appointed by the General Body and with the former deciding on key matters in JRRES. Around end 2008 or early 2009, Shantanu became a life member of JRRES.

7 On 1 July 2009, ERHEL and JRRES entered into a loan agreement ("Loan Agreement") whereby ERHEL loaned JRRES INR500m for the latter to establish the College (or "Noida College"). Subsequently, ERHEL and JRRES executed three addenda to the Loan Agreement, which provided for an increase in the principal loan amount to INR600m. ERHEL disbursed INR513,655,098 to JRRES between 2008 and 2014 which Chew asserts JRRES

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3 Statement of Claim (Amendment No. 3) ("SOC") at [14]–[15]; Shantanu's Defence (Amendment No. 2) ("D1 Defence") at [12]–[13]; Chew's AEIC at [15], [23]–[25]; Shantanu's AEIC at [29]; 1AB 543–544 (Share Purchase Agreement at Recitals (E) to (H)).

4 Chew's AEIC at [26]–[28]; Shantanu's AEIC at [30], [34], [38]–[39].

has to-date failed to repay. Shantanu does not dispute that ERHEL has disbursed around INR 1,100m to JRRES.[5]

8 Construction of Noida College began in 2009 but fell behind schedule. Thus, Millennium Infra Developers Limited ("MIDL") was incorporated on 21 January 2010 (as a wholly-owned subsidiary of ERHEL) to take over its construction, and entered into a Project Management and Construction Agreement ("PMC") with JRRES on 17 February 2010 for this purpose.[6]

9 In 2011, construction of Noida College was completed. It obtained approval from the All India Council for Technical Education ("AICTE") and the Government of Uttar Pradesh to conduct engineering and management courses for the 2011–2012 academic year. It then began to admit students.[7]

10 I will refer to JRRES, ERHEL and MIDL collectively as the "JV Entities". I note Shantanu's assertion that JRRES was not part of the JV, an issue which I will return to.

Educomp's potential exit from the JV and changes to the JRRES Bodies

11 In or around mid-2011, E-Solutions faced cash flow problems and contemplated exiting the JV. Chew and Shantanu discussed several options, but nothing materialised. In the interim, REG continued funding the JV. Subsequently, REC, E-Solutions and ERHEL executed an addendum to the JVA

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5 Chew's AEIC at [39]–[43]; Shantanu's AEIC at [42]–[43]; 1AB 454–465, 482–485, 499–507; D1 Defence at [17(b)].

6 Chew's AEIC at [35], [37], [45]; Shantanu's AEIC at [46]–[51]; 1AB 467–481.

7 Chew's AEIC at [48]; Shantanu's AEIC at [55].

dated 9 May 2012 for REC and E-Solutions to inject funds into ERHEL with equity in ERHEL to be issued proportionate to the funding received.[8]

12 Educomp did not match REG's injection of capital into ERHEL. In July 2013, E-Solutions embarked on corporate debt restructuring proceedings and filed for insolvency in May 2017. Due to the mismatch in funding, REG's shareholding in ERHEL increased to 58.18%, with a concomitant fall in Educomp's shareholding to 41.82%, in around 28 November 2013.[9]

13 On 17 December 2013, REC's representatives Chew, Mr Mike Yam ("Mike") and Mr Sunil Peter ("Sunil"), met E-Solutions' representatives Shantanu and Mr Harpreet Singh ("Harpreet") and discussed a potential sale of JRRES. They met again on 28 January 2014 and discussed the future funding of the JV. REC was willing to invest up to INR350m in the JV Entities. It was further agreed that the composition of the JRRES Bodies would be aligned with the shareholding in ERHEL, such that each of REG and Educomp would have an equal number of nominees on them ("JRRES Changes").[10]

14 To effect the JRRES Changes, the JRRES rules were amended to create a position of Chairman (to which Chew was subsequently appointed) with equal standing and powers in the Governing Body as the President (*ie*, Shantanu), and to increase the size of the General Body from 12 to 16 members.[11]

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8 Chew's AEIC at [79]–[82], [85]–[87]; Shantanu's AEIC at [56], [59]–[60]; 1AB 492–495.

9 9AB 4601 (Shantanu's 1st witness statement dated 8 June 2016 in the Arbitration ("D1's 1st SIAC Statement") at [54]); 23AB 10613–10614; Chew's AEIC at [89]–[90]; Shantanu's AEIC at [8], [60], [71]; 19/4/22 NE 9.

10 Chew's AEIC at [55]–[58], [91], [94], [96]; Shantanu's AEIC at [74]–[77]; Harpreet's AEIC at [29]–[32]; 14AB 6784–6787, 6793.

11 Chew's AEIC at [61]; Shantanu's AEIC at [78]–[79]; 22AB 10307–10324.

15 Thereafter: (a) Dr Bindu Rana ("Bindu"), Mr Soumya Kanti ("Soumya") and Mr Mohan Krishnan Lakhramraju ("Mohan") resigned from the Governing Body; (b) Ms Priya Prakash ("Priya"), Dr Anjlee Prakash ("Anjlee") and Mr Mansoor Raza ("Raza") resigned from the General Body; and (c) new persons were inducted as members of the JRRES Bodies.[12] By April 2014, REG had five nominees (including Chew), while Educomp was represented by Shantanu, Harpreet, Mr Jagdish Prakash ("Jagdish", Shantanu's father), Mr Pramod Thatoi ("Pramod") and Mr Ashok Mehta ("Ashok"), on the Governing Body. As for the General Body, REG had eight nominees and so did Educomp (*ie*, the five persons on the Governing Body and Bindu, Soumya and Mohan).

JRRES Sale and Purchase Agreement

16 On 5 May 2014, Chew, Mike, Ms Doris Chung (Chew's wife, a director of REI and RDI) ("Doris") and Mr Rick John Tham (Director of Legal, REC) ("John") met Shantanu and Harpreet in Singapore to discuss the potential sale of JRRES's assets. In the interim, JRRES required funding of INR180m to continue with its near-term operations.[13]

17 RDI and JRRES thus entered into a Sale and Purchase Agreement on 6 May 2014 ("JRRES SPA"), which governed RDI's purchase of JRRES's rights and interests to the Noida Site for INR3 billion, to be completed within six months. RDI paid INR40m and INR100m to JRRES (as advanced sale consideration) around 13 May 2014 and 29 May 2015 respectively.[14]

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12 Chew's AEIC at [62]–[63]; Shantanu's AEIC at [86]–[87].

13 Chew's AEIC at [97]–[99]; Shantanu's AEIC at [90]–[92]; 22AB 10337–10339.

14 Chew's AEIC at [50]–[51], [54]; Shantanu's AEIC at [94], [97]; SOC at [18(d)(i)]; D1 Defence at [51]; 1AB 509–517.

Share Purchase Agreement

18 In January 2015, Shantanu discussed with Doris and/or Chew about REG buying Educomp's stake in the JV Entities. Ms Jyotsna Sharma ("Jyotsna"), Educomp's in-house counsel, prepared and forwarded term sheets ("Term Sheets") to REG. REG's lawyers then prepared a draft of a share purchase agreement, which John circulated on 21 February 2015 to Mr Ashish Mittal ("Ashish"), E-Solutions' Chief Financial Officer ("CFO"), and Jyotsna.[15]

19 From around 10 to 13 March 2015, Doris and John (from REG) and Dennis, Ashish and Jyotsna (from Educomp) conducted negotiations on the draft share purchase agreement in Singapore ("Mar 2015 Meetings"). Discussions crystallised in the execution of the SPA dated 12 March 2015. The parties to the SPA comprised E-AP and E-Prof ("Sellers"), and REI and RDI ("Purchasers"). Ashish signed the SPA on the Sellers' behalf.[16]

20 In particular, the SPA provided as follows:[17]

(a) The Sellers shall sell E-AP's shares in ERHEL to REI and E-Prof's shares in ERHEL to RDI for a total of INR986.4m ("SPA Consideration").

(b) The Purchasers shall deposit INR98.64m ("SPA Deposit"), being 10% of the SPA Consideration, to the escrow agent on execution

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15 5PB 597–602, 8PB 63–69, 1AB 527–532; 21/4/22 NE 27; 24/5/22 NE 6–7; Chew's AEIC at [114] and [118]; Shantanu's AEIC at [113]; Doris' AEIC at [14]–[15], [19]; Ashish's AEIC at [26]; John's AEIC at [13]; 14AB 6964.

16 Chew's AEIC at [129]; Doris' AEIC at [37]–[41]; John's AEIC at [16]–[18]; Dennis' AEIC at [37]; Ashish's AEIC at [23], [30]–[31]; Jyotsna's AEIC at [9]; 1AB 541–583.

17 Chew's AEIC at [133]; Shantanu's AEIC at [123]; Doris' AEIC at [41]; Ashish's AEIC at [30]–[31]; 1AB 540–583.

of the SPA. Thereafter, the Sellers shall allow the Purchasers "to take control of [ERHEL] and JRRES limited to the extent that the Purchasers shall have absolute say on the hiring and dismissal of employees" (cl 3).

(c) The Sellers are to submit the originals of documents set out in cl 4.1 to the escrow agent, by 5 July 2015 ("Cl 4.1 Docs"). Thereafter, the Purchasers shall, by 10 July 2015, inform the escrow agent and Sellers of the availability of funds to discharge the remaining purchase price.

(d) The Sellers are to submit the originals of documents listed in cl 4.4 to the escrow agent by 29 July 2015 ("Cl 4.4 Docs"). These included signed letters from persons listed in Annexure D of the SPA ("Annex D Persons") resigning from the JRRES Bodies (cl 4.4.5).

(e) Finally, closing is to take place on 31 July 2015 ("Closing Date") and deemed to have taken place after various steps are completed, including payment of the remaining SPA consideration (*ie*, 90% of INR986.4m) to the Sellers (cl 5) ("Closing").

21 The Purchasers then paid the SPA Deposit to the escrow agent. On 12 March 2015, REC announced on the Singapore Exchange ("SGX") that it had through REI and RDI entered into the SPA to acquire E-Solution's 41.82% stake in ERHEL for INR986.4m ("12/3/15 SGX Announcement").[18]

Business Advisory Agreement

22 REI and Edulearn concurrently executed a BAA dated 12 March 2015. The BAA culminated from the time the Term Sheets were negotiated in January

[18] Chew's AEIC at [136], [142]; Shantanu's AEIC at [137]; 23AB 10616–10618.

2015. Then, the draft was an "MOU" with the parties being REC and Shantanu as "Advisor", but which Advisor was then changed to Edulearn in March 2015.[19]

23 In particular, the BAA provided as follows:[20]

(a) Edulearn would provide advisory services to REI on, among other things, the operation and management of higher education business. The services would be provided through Edulearn's directors "that shall include [Shantanu]". Should he cease to be a director, Edulearn is to engage Shantanu as a consultant to provide the services.

(b) REI would pay Edulearn INR100m ("BAA Consideration") comprising INR10m on execution of the BAA ("BAA Initial Payment") and the balance payable to the escrow agent on the SPA Closing Date.

(c) If Closing did not occur by the Closing Date due to the Sellers' default, Edulearn was to refund the BAA Initial Payment within five business days of the receipt of notice from REI requesting the same.

24 Also on 12 March 2015, Dennis, in his capacity as Edulearn's lawyer, provided REI with an undertaking to confirm that Shantanu "has been appointed director of [Edulearn] with effect from 10 February 2015" and to undertake to deliver a Certificate of Incumbency ("COI") to REI by 31 March 2015 ("12/3/15 Undertaking"). REI also paid Edulearn the BAA Initial Payment.[21]

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19 5PB 596–602; 14AB 7208, 7365–7371; 29/4/22 NE 116.

20 1AB 534–539; Chew's AEIC at [140]; Shantanu's AEIC at [136].

21 Chew's AEIC at [141]; Shantanu's AEIC at [137]; Dennis' AEIC at [13(k)]; 21AB 9800.

Failure to complete the SPA and arbitration proceedings

25 The Sellers failed to fully comply with cl 4.1 of the SPA by 5 July 2015. To allow them more time to submit the necessary documents, the Closing Date was extended to 13 and then 19 August 2015 ("New Closing Date").[22]

26 On 18 August 2015, Dennis informed John that his clients were facing "practical difficulties" in completing the Closing and that Shantanu suggested deferring the New Closing Date or terminating the SPA.[23]

27 John replied to Dennis on 19 August 2015 ("John's 19/8/15 Email"), conveying REG's proposal as follows ("Proposal"). The New Closing Date would be extended by 30 days from 19 August 2015 ("Extended Closing Date"). The Sellers were to comply with all the condition precedents of the SPA (save for procuring the resignations of Harpreet and Soumya from JRRES) within seven working days. If the Sellers were unable to procure Harpreet's and Soumya's resignations by the Extended Closing Date, they would still have to complete the SPA and deposit 10% of the SPA Consideration into stakeholding. The Sellers were to then obtain the resignations of Harpeet and Soumya within six months from the Extended Closing Date failing which the SPA should still be completed and the Purchasers would forfeit the Sellers' deposit.[24]

28 On 20 August 2015, Dennis informed John that his clients were unable to close the SPA due to "practical restraints" but wish to close on the basis of satisfying all closing conditions. Dennis proposed adjourning the closing for "4 months hence" ("Counter-Proposal"). John replied that REG was not agreeable

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22 Chew's AEIC at [148], [153]; Shantanu's AEIC at [151]–[152]; 17AB 8503–8505.

23 Chew's AEIC at [154]; Shantanu's AEIC at [153], [155]; 17AB 8590–8591.

24 Chew's AEIC at [156], [158]; Shantanu's AEIC at [156]; 17AB 8589–8590.

to a further unconditional extension of the Extended Closing Date and that the Proposal stood until 20 August 2015. On 21 August 2015, Dennis reiterated the Counter-Proposal, whereupon John sought clarification on the "practical restraints" the Sellers faced. As Dennis did not reply, John placed his non-response on record in a final email of 25 August 2015.[25]

29 On 2 September 2015, the Purchasers sent a letter to the Sellers calling on them to comply with their obligations under, and to close, the SPA. On 15 September 2015, the Purchasers commenced arbitration proceedings against the Sellers ("Arbitration") in the Singapore International Arbitration Centre ("SIAC") on the SPA. REC announced the Arbitration on the SGX on 16 September 2015 ("16/9/15 SGX Announcement").[26]

30 Shortly after, the following letters were exchanged:

(a) On 24 September 2015, the Purchasers' Indian lawyers, Luthra & Luthra, informed the Sellers to comply with the SPA.[27]

(b) On 25 September 2015, the Sellers issued a notice to terminate the SPA ("Termination Notice") on the basis that the Purchasers had committed a repudiatory breach of the confidentiality clause of the SPA (cl 11) by REC announcing the Arbitration *via* the 16/9/15 SGX Announcement. Alternatively, the SPA had been frustrated as the Sellers could not procure the Annex D Persons' resignations, which they claimed the obligation was only on a "best effort" basis. The Sellers

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25 Chew's AEIC at [161]–[168]; Shantanu's AEIC at [157]–[159]; 17AB 8593–8595, 8589–8590.

26 Chew's AEIC at [173], [181]; Shantanu's AEIC at [160], [169], [178(a)]; 21AB 9808–9810; 23AB 10632.

27 Shantanu's AEIC at [177]; 21AB 9820–9823.

asked the Purchasers to waive the performance of cll 4.4.2, 4.4.3 and 4.4.5 of the SPA or mutually terminate the SPA pursuant to cl 9.1.1.[28]

(c) On 29 September 2015, the Purchasers stated they were not agreeable to waiving the conditions in cl 4.1 or 4.4 of the SPA or terminating the SPA; the 16/9/15 SGX Announcement did not breach cl 11; and there was no frustration of the SPA as the Sellers' obligation to procure the resignations of the Annex D Persons was mandatory.[29]

31 In the Arbitration, the Purchasers sought specific performance, alternatively damages for the Sellers' breaches, of the SPA. The SIAC Tribunal ("Tribunal") issued a final award on 31 March 2017 ("Final Award") in the Purchasers' favour, ordering the Sellers to pay INR 163.2m (constituting damages for their breaches of cll 4.1, 4.3 and 4.4 of the SPA) to the Purchasers; the Sellers to introduce an amount equivalent to the total funding contributed by the Purchasers in JRRES for its operations between 12 March 2015 to 31 March 2017; and the SPA Deposit to be released to the Purchasers with interest.[30]

32 Thereafter, REI sought a refund of the BAA Initial Payment *via* two letters to Edulearn dated 8 May 2017 and 11 February 2019, which Edulearn has not refunded to date.[31]

REG's claims

33 I briefly set out REG's claims against the defendants here.

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28 Shantanu's AEIC at [178]; 21AB 9825–9827; 6AB 139–142.

29 Shantanu's AEIC at [180]; 21AB 9835–9839.

30 Chew's AEIC at [188]; Shantanu's AEIC at [370]; 11AB 5334–5423.

31 Chew's AEIC at [203]–[204]; Shantanu's AEIC at [373]; 21AB 9943–9944, 9947–9949; 24AB 11264.

Unlawful means conspiracy and misrepresentation

34 REG pleads that the defendants are liable for unlawful means conspiracy and set out three conspiracies, *ie*, the "SPA Conspiracy", "BAA Conspiracy" and "Wrongful Conduct Conspiracy". Overarching them is a claim that the defendants devised a plan to mislead REG into believing that Educomp would agree to a buy-out of its stake in the JV when it possessed no such intention. This is so REG would continue to fund the JV Entities while Shantanu retained control of JRRES and Noida College ("the Conspiracy").[32]

35 In respect of the SPA Conspiracy, REG claims that from around late 2014 to 13 March 2015 (when the SPA and BAA were executed), the defendants or their representatives conspired to make the following false representations to REG to induce the Purchasers to enter into the SPA with the Sellers, which they never intended for the Sellers to comply with and subsequently induced the Sellers to breach ("SPA Reps"):[33]

(a) E-Solutions and/or Educomp would give up their stake in and control of the JV Entities (including JRRES).

(b) E-Solutions and/or Educomp could and would ensure that complete control over JRRES would be ceded to REG following their exit from the JV since Shantanu was JRRES President and E-Solutions/Educomp (through E-AP and E-Prof) were in control of their 50% membership in JRRES and thus able to procure the resignations of their nominee members in the JRRES Bodies and to provide for REG's nominees to take over those positions.

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32 SOC at [8], [20].

33 SOC at [8(a)], [21], [37]; Plaintiffs' Further and Better Particulars and Reply to the Defence of the 1st Defendant dated 8 March 2022 ("8/3/22 PFBP") at [17].

36 The SPA Reps were made *via* email and phone calls by Shantanu to Doris and/or Chew, and by Ashish to Doris. They were repeated by Ashish and Dennis to Doris and John at the Mar 2015 Meetings. Alternatively, the SPA Reps were implied by words or conduct.[34]

37 As for the BAA Conspiracy, REG pleads that, during negotiations on the BAA, the defendants (or their representatives) conspired to make the following false representations to induce REI to enter into the BAA which they never intended Edulearn to comply with and subsequently induced it to breach ("BAA Reps"):[35]

(a) The defendants/E-AP/E-Prof would take steps to ensure that closing under the SPA would materialise.

(b) Edulearn would abide by the terms of the BAA, including cl 3.2.5.1, which required it to refund the BAA Initial Payment to REI if Closing did not materialise due to the Sellers' default.

38 Consequently, following non-completion under the SPA, Edulearn retained the BAA Initial Payment for Shantanu's benefit in breach of the BAA.

39 Finally, REG claims, by the Wrongful Conduct Conspiracy, that the defendants conspired to engage in wrongful conduct vis-à-vis Educomp, JRRES and Noida College by, amongst other acts, inducing Educomp/the Sellers to continue acting in breach of the Final Award and causing JRRES to default on its various obligations. REG claims that this conspiracy was achieved through unlawful means as the defendants breached their director's duties owed to E-

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34 Doris' AEIC at [14]–[18], [40]; Chew's AEIC at [117]–[120]; John's AEIC at [4], [6(b)], [18]; 8/3/22 PFBP at [17]; 21/4/22 NE 27; SOC at [21A].

35 SOC at [8(b)], [27], [38].

AP/E-Prof/Edulearn by participating in the conspiracy and which was brought about through fraudulent misrepresentations.[36]

40 REG also pleads that the defendants are liable for fraudulent or negligent misrepresentation for making the SPA and BAA Reps.

REG's other claims

41 Further, and/or in the alternative, REG claims: (a) the defendants are liable to REI and RDI for inducing E-AP, E-Prof and Edulearn to breach the SPA and the BAA; and (b) Shantanu is liable to REG for the tort of causing loss by unlawful means and to REC for inducing E-Solutions to breach the JVA.

Preliminary issues

42 I begin by dealing with some preliminary issues.

Issue estoppel arising from the Arbitration

43 REG's counsel, Ms Wendy Lin ("Ms Lin"), submits the defendants are bound by the Tribunal's findings in the Arbitration, in that: (a) REG and Educomp had nominated their affiliates as nominees to be members of JRRES, to control JRRES through the membership; (b) the Sellers breached the SPA by failing to provide the completion documents in accordance with cll 4.1, 4.3 and 4.4 of the SPA, which were mandatory; and (c) the Sellers could not rely on cl 5.9 of the SPA as failure to complete was caused by their default.[37]

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36 SOC at [8(c)], [33]–[35], [39]–[40].

37 Plaintiffs' Closing Submissions ("PCS") at [9]; 11AB 5398–5403, 5418, 5422–5423.

44 To raise an issue estoppel, there must be a final and conclusive judgment on the merits from a court of competent jurisdiction and there must be identity of parties and of subject matter in the two actions (*Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15]). An arbitral award can constitute a final and conclusive determination for this purpose (*AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 at [57]–[59]). The required commonality is a direct, parallel or corresponding interest in the subject matter of the litigation, and not simply a financial interest in the result of the action (*Ong Han Nam v Borneo Ventures Pte Ltd* [2021] 1 SLR 1248 at [59]). The issue here is whether there is identity of parties in that the defendants are privies of E-AP.[38]

45 I find no issue estoppel arises in relation to Dennis. He is not a privy of E-AP and there is no identity of parties. REG seeks to show the connection between them by Dennis' directorship of E-AP, his involvement in the execution and subsequent non-performance of the SPA, his awareness of the Arbitration, and that he would have been able to enjoy the benefit of an award made in the Sellers' favour.[39] But these merely show Dennis had a financial interest in the result of the Arbitration. He was not a party to the Arbitration nor could he have been one, and Shantanu's testimony that Dennis was not involved in the Sellers' conduct of the Arbitration was unchallenged. As for Dennis' involvement in the non-performance of the SPA, the Tribunal had merely commented that there were exchanges between lawyers who were seeking to understand each side's position and attempting to negotiate a resolution.[40]

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38 Shantanu's Closing Submissions ("D1CS") at [28]–[30]; Shantanu's Reply Closing Submissions ("D1RCS") at [3]; Dennis' Reply Closing Submissions ("D2RCS") at [9].

39 PCS at [12(d)].

40 Dennis' AEIC at [59]; D2RCS at [10]; 10/5/22 NE 21–22; 11AB 5406 (Final Award at [425]).

46 However, I find there was privity of interest between Shantanu and the Sellers, and identity of parties. He was the main director of E-AP. Both defendants attested that Dennis was merely a nominee director appointed by Shantanu, and it was Shantanu who had instructed E-Solutions to appoint Dennis as E-AP's director.[41] Shantanu was the only person making key decisions and approving the SPA on E-AP's behalf and, as will be seen later, the key person involved in the subsequent non-performance of the SPA. Ashish also attested that he took instructions from Shantanu on important matters pertaining to the SPA negotiations.[42] On the whole, I find Shantanu was the key person giving instructions (for the Sellers) on the conduct of the Arbitration and he had a direct, parallel or corresponding interest in the subject matter of it.

47 That said, although REG relies on the Final Award to establish that Shantanu controlled the Annex D Persons,[43] at the highest, the Tribunal found REG and Educomp had nominated their affiliates as nominees of JRRES with a view to exercising control over JRRES and made this finding to refute the Sellers' claim that their obligations under cll 4.3 and 4.4 of the SPA were on a best-effort basis.[44] This is distinct from the question of whether Shantanu had control over the Annex D Persons *such that he could compel them to resign from the JRRES Bodies*.

48 In any event, even if I disregard the Tribunal's findings, this would not make a difference to my determination on the material issues in the Suit.

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41 Exhibit A (s/n 3); 29/4/22 NE 28–29; 4/5/22 NE 110; 10/5/22 NE 44–45; 12/5/22 NE 105–106.

42 10/5/22 NE 81; 17/5/22 NE 2–25.

43 PCS at [9(a)] read with footnote 5.

44 11AB 5398–5402 (Final Award at [377]–[392], [402]).

Whether certain claims sufficiently pleaded and abuse of process

49 Next, Ms Lin took issue with Shantanu's reliance on the doctrines of approbation and reprobation, waiver by election and abuse of process to assert that REG is not permitted to claim misrepresentation (in respect of the SPA Reps) as it had sought specific performance of the SPA in the Arbitration.[45] Mr Poon (Shantanu's counsel), on the other hand, submits that REG failed to plead its claims that Shantanu (through Dennis) fraudulently represented to REG that he had been appointed Edulearn's director with effect from 10 February 2015 in the 12/3/15 Undertaking ("Directorship Representation") (see [24] above) and that Shantanu induced a breach of the JRRES SPA ("JRRES Inducement Claim").[46] Mr Padman (Dennis' counsel) contends that REG did not plead the tort of lawful means conspiracy.[47]

50 Before me, Ms Lin stated she was no longer relying on the Directorship Representation as a standalone tortious claim. I thus consider the alleged Directorship Representation only where relevant to REG's pleaded case.[48]

51 The doctrine of abuse of process must be pleaded (*Eng Hui Cheh David v Opera Gallery Pte Ltd* [2009] SGHC 121 at [132]), and likewise, the defences of approbation and reprobation and of waiver by election. Waiver by election is fact-dependent and pleading the material facts is an indispensable foundation upon which a plea of waiver rests (*Royal Melbourne Institute of Technology v Stansfield College Pte Ltd and another* [2018] SGHC 232 at [124]). As for the

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45 29/8/22 NE 2, 4–5; Plaintiffs' Reply Closing Submissions ("PRCS") at [45]; D1CS at [34]–[38].

46 PCS at [147]–[156], [334]–[337]; D1CS at [91]–[93]; 29/8/22 NE 9–13, 15–22.

47 PCS at [323]; D2RCS at [51].

48 29/8/22 NE 13.

doctrine of approbation and reprobation, the nature of the inquiry would involve consideration of whether a party has received an actual benefit because of an earlier inconsistent position (*BWG v BWF* [2020] 1 SLR 1296 ("*BWG*") at [118]). This would render it imperative for the opposing party to know the case it has to meet.

52 Mr Poon relies on paragraph 71 of Shantanu's Defence (as follows) to show that the defences of approbation and reprobation and of waiver by election were sufficiently pleaded:[49]

> 71. … Further, having obtained the [Final Award] on the basis that the SPA was valid, it is an abuse of process for the Plaintiffs to advance claims on the basis of fraudulent misrepresentation and/or negligent misrepresentation, both of which are premised on the disavowal of the contracts entered into in reliance of the alleged misrepresentation.

53 At a general level, the doctrines of approbation and reprobation and of waiver by election prohibit a party from raising a new position inconsistent with a prior position. Inconsistent positions are broadly dealt with under the doctrine of abuse of process, which is ultimately exercised at the court's discretion (*BWG* at [53], [100], [101], [121] and [127]). Nevertheless, it is unclear, having regard to the spirit of pleadings, that Shantanu has sufficiently informed REG that he intends to rely on approbation and reprobation and of waiver by election by mere reference to "abuse of process" in his Defence, as it is not necessarily the case that the doctrines are exactly the same. REG's witnesses have not prepared their affidavits of evidence-in-chief ("AEIC") to respond to Shantanu relying on approbation and reprobation and waiver by election, and Shantanu has also

[49] 29/8/22 NE 4–5; D1 Defence at [71].

not attested to state that REG has taken inconsistent positions in the Suit and Arbitration.[50]

54 In any event, these defences would not succeed. REG has not taken inconsistent positions in the Arbitration and Suit. It only sought damages for its claims in misrepresentation and had treated the SPA as valid, even seeking its specific performance in the Arbitration.[51] Misrepresentation does not render a contract void *ab initio* but merely voidable. There is no inconsistency between specific performance or damages for breach of the SPA being sought on one hand, and damages for misrepresentation on the other. The latter claim is predicated on a party being misled into entering a contract, which wrong may exist independently of a claim for a breach of the contract. Hence, there is no contradiction in the positions adopted by the claimants in the two proceedings, even if the basis for calculating damages may differ for a claim for breach of contract and for misrepresentation.

55 Additionally, REG could not have brought a misrepresentation claim for the SPA Reps against Shantanu in the Arbitration. He was not a party to the SPA and any dispute pertaining to the SPA had to be resolved by arbitration pursuant to cl 15 of the SPA. That said, the Purchasers having succeeded in the Arbitration on the basis that the Sellers breached the terms of the SPA may have a bearing on the issue of double recovery. I address this if and when appropriate.

56 Next, I am of the view that REG pleaded its claim in lawful means conspiracy. It pleaded in the alternative the defendants' conduct as "evidence of a predominant and/or intention on [the defendants] to induce [E-AP, E-Prof and

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50 Shantanu's AEIC at [377]–[378].

51 SOC at prayer (2); 11AB 5353 (Final Award at [82]).

Edulearn] to breach their respective obligations under the SPA and BAA",[52] essentially being the element of "predominant purpose" to cause injury, for lawful means conspiracy. Even if I disregard the claim as not being pleaded, this would make no difference to REG's claims as will be seen later.

57 I find however, that the JRRES Inducement Claim was not pleaded. Ms Lin submits the facts underlying this claim are set out in para 33(c) of the Statement of Claim ("SOC"),[53] which reads "[c]ausing JRRES to default on its contractual obligations under the JRRES SPA". However, this excerpt must be read in context of the whole SOC. It falls under para 33 which discusses "the *Educomp Group's* wrongful conduct vis-à-vis JRRES and Noida College" [emphasis added], the subsection "***Educomp's SPA Breaches and continuing wrongful conduct***", and the header "**BACKGROUND**". The focus of the averment is thus *Educomp's* conduct in relation to JRRES, even assuming that Shantanu is its directing mind. Pertinently, para 33(c) of the SOC pleads *Shantanu*'s conduct as limited to failing to cause JRRES to obtain requisite approvals pursuant to JRRES's obligations under the JRRES SPA, which is not what REG is relying on for the JRRES Inducement Claim; rather REG is relying on Shantanu's conduct as causing JRRES to refuse to refund the Advance Sale Consideration which is not pleaded (see also [280]–[281] below). Furthermore, the "**BACKGROUND**" portion of the SOC is ultimately relied upon to ground REG's claims in sections C, C1, C2, C3 and D of the SOC which claims are specifically set out and do not include the JRRES Inducement Claim.[54]

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52 SOC at [9], [39], [40], [41].

53 29/8/22 NE 16.

54 SOC at [33]–[43].

58 I agree that Shantanu would be prejudiced if REG were allowed to advance the JRRES Inducement Claim, of which he has not been given a proper opportunity to respond to, including whether and to what extent the principle in *Said v Butt* [1920] 2 KB 497 ("*Said v Butt*") applies to JRRES being a society.[55]

Shantanu's control over the Annex D Persons

59 I proceed, at the outset, to deal with whether Shantanu had control over the Annex D Persons. I find that he wielded control over them even when the parties were negotiating the Term Sheets and when the Annex D Persons' resignations were purportedly sought in 2015 after the SPA was executed.

60 The evidence from the time JRRES came to be part of the JV between REC and E-Solutions consistently point to the above. I find they had envisaged JRRES to be the vehicle through which they would employ staff and run Noida College and it was commercially absurd for the parties to proceed on this basis if they could not exercise control over JRRES *via* their nominees therein.

61 In October 2007, Shantanu and Mr Rohit Kumar ("Rohit") from E-Solutions, met with Chew and Mr Kenneth Ho ("Kenneth") (CFO of REC). E-Solutions proposed structuring the JV through three entities, one of which would employ staff and run the colleges on a day-to-day basis and may "need to be a non-profit organi[s]ation to comply with [the] [I]ndian regulatory environment". Significantly, Educomp proposed a "partnership" in respect of the "operating company/Trust".[56]

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55 29/8/22 NE 19; D1CS at [91]–[92].

56 22AB 10421–10459; Chew's AEIC at [11], [14]; Shantanu's AEIC at [17]–[19].

62 The three-entity structure envisaged was subsequently reflected in the JVA in May 2008. Clause 3.1 stated that REC and E-Solutions would procure the incorporation of two companies and "such other companies … trusts … or non-profit organisations as may be deemed necessary" (cl 3.1.1.3). Additionally, cl 5.8 provided that if any entity had to be organised "as a trust or foundation", E-Solutions and REC would be able to nominate an equal number of trustees, with the Chairperson being either an Educomp or Raffles nominee.

63 I reject Shantanu's claim that cll 3.1.1.3 and 5.8 of the JVA did not give effect to the three-entity structure as initially proposed by E-Solutions' as the JVA applied to setting up of an entity and not to taking control of a pre-existing one such as JRRES. Shantanu agrees the JVA spoke in "general terms about the incorporation of new entities" as parties had yet to identify any specific or "pre-existing" entities the JV might wish to partner with or "acquire".[57] Thus, despite the language of cl 3.1.1.3, the JVA parties envisaged leveraging and eventually leveraged on a pre-existing entity, *ie*, JRRES.

64 Then, on 27 May 2008, shortly after the JVA was executed and when Chew and Shantanu were discussing the potential involvement of JRRES as a JV entity,[58] Rohit emailed Chew (copied to Shantanu) as follows ("Rohit's Email"):[59]

> …
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> - Land was allotted to [JRRES] …
>
> …
>
> - Since the land is in the name of a society, *we are buying the society itself/taking control of it* … We are changing the

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57 D1RCS at [16]–[17]; Shantanu's AEIC at [25].

58 Chew's AEIC at [26]–[34]; Shantanu's AEIC at [38]–[39].

59 1PB 441–442.

> trustees from their 26 to *our nominees*. Currently, *we have appointed 8 trustees representing Educomp in the trust*. Once our acquisition is complete, we will reduce the number of trustees. We will add some more trustees and the original trustees are all resigning from the trust …
>
> [emphasis added]

65 Rohit's Email supports that REC and E-Solutions believed they could exercise effective control over JRRES *via* their nominees and brought JRRES into the JV on that basis. I reject Shantanu's claims that Rohit's understanding was wrong and that "we" in the email did not refer to REC and E-Solutions.[60] Shantanu never replied to refute what was stated in Rohit's Email. Further, that E-Solutions had "appointed 8 trustees" is supported by the fact that eight persons were accepted into the General Body in May 2008.[61]

66 In fact, the JVA parties proceeded as per Rohit's Email. REC contributed about INR 640m in around June 2008,[62] and the JVA parties acquired control of JRRES in broad accordance with the plan in Rohit's Email:

(a) Between December 2008 and April 2012, persons aligned with Educomp, including Shantanu, his family members (Jagdish, Anjlee and Priya), Bindu (then E-Solutions' employee), and his personal acquaintances Mohan and Harpreet (who became E-Solutions' employee), were appointed JRRES members.[63]

(b) On 6 September 2010, 11 persons whom Shantanu confirmed were all E-Solutions' employees were elected to the Governing Body;

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60 10/5/22 NE 107–111.

61 4PB 17–18 (Minutes of the General Body meeting of 10 May 2008); 10/5/22 NE 112–113; 11/5/22 NE 2.

62 10/5/22 NE 114–116, 122; 1AB 450; 13AB 6712–6713.

63 Shantanu's AEIC at [37], [45], [61]–[62]; 10/5/22 NE 128, 137; 25/5/22 NE 6.

and Harpreet agreed that by December 2010, most, if not all, of the "non-Educomp members" on the General Body had resigned.[64]

(c) By June 2012, 14 of the 16 of the General Body members were E-Solutions' employees; with Mike (from REC) and Mohan being the other two. Mohan was a director of Great Lakes Institute of Management, of which Shantanu was also a director and E-Solutions was associated with.[65] I find Mohan was aligned with Shantanu.

(d) On 8 December 2012, the Governing Body resolved to limit the members in the Governing and General Bodies to ten and 12 respectively. Shantanu admitted this was so that he and Chew could "have complete control" of JRRES as they did not want unknown persons to apply for membership and "scuttle [their] control of JRRES". At that time, the General Body appointed members to the Governing Body and the latter decided on key matters for JRRES.[66] Hence, around 15 January 2013, the Governing and General Bodies were reconstituted with ten and 12 members respectively.[67]

67 Next, the Supplementary Agreement to the JVA dated 21 September 2008 stated that it was "the intention of [E-Solutions] and REC to … appoint same number of trustees in and jointly man[a]ge [JRRES]". I reject Shantanu's assertion that this agreement was "non-binding". He conceded the agreement

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64 4PB 109–112 (Minutes of the General Body meeting of 6/9/10); 4PB 121–122 (Minutes of the Governing Body meeting of 20/12/10); 10/5/22 NE 135–139; 25/5/22 NE 23.

65 10/5/22 NE 138–140; 25/5/22 NE 23–24; 4PB 173–175 (Minutes of the General Body meeting of 16 June 2012); Chew's AEIC at [70] (Table at s/n 8).

66 9AB 4598–4599 (D1's 1st SIAC Statement at [44]); 10/5/22 NE 144–145.

67 10/5/22 NE 147–148; 9AB 4599 (D1's 1st SIAC Statement, at [46]); 4PB 222–232 (Minutes of the General Body meeting of 29/1/13).

reflected the parties' intentions with respect to JRRES, and the JVA parties took steps to fulfil the objectives therein such as by constructing a university campus for JRRES. The JVA parties also subsequently appointed the "same number of trustees in" JRRES *via* the JRRES Changes in 2014 (see [13] above), consistent with their respective shareholding in JRRES.[68]

68 The JRRES Changes are significant in two other respects. First, it created the position of Chairman (to be held by Chew) which had equal standing and powers of the JRRES President (Shantanu), "significantly" expanded the powers of the Chairman and President and correspondingly reduced the powers of the JRRES Bodies.[69] All decisions in JRRES were now to be taken jointly by the Chairman and President unless specified otherwise, and they would jointly appoint members of the Governing Body.[70] Shantanu accepts these amendments gave Chew and him "absolute control and say in JRRES".[71] Apart from General Body meetings held on 26 April 2014 and 19 May 2014 and Governing Body meetings held on 18 July 2014 and 10 July 2015, JRRES did not hold any meetings after these amendments, consistent with Shantanu's and Chew's plan to increase the powers of the President and Chairman and reduce the powers of the Governing Body.[72]

69 Second, to effect the changes (in particular, increasing the membership of the General Body to 16 persons to equalise the number of REC nominees vis-

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68 1AB 452; Chew's AEIC at [34]; Shantanu's AEIC at [40]–[41]; 10/5/22 NE 125–127; 11/5/22 NE 36–37; 9AB 4603–4605 (D1's 1st SIAC Statement at [64]–[70]).

69 Chew's AEIC at [61], [64]; Shantanu's AEIC at [78]–[79]; 9AB 4603–4605 (D1's 1st SIAC Statement at [66]–[68]).

70 4PB 264–265 (r 10 of the JRRES Rules), 269–273 (r 12 of the JRRES Rules).

71 9AB 4603–4604 (D1's 1st SIAC Statement at [66]).

72 11/5/22 NE 48–49, 53, 129–130; 4PB 283–287, 289–292, 289–301.

à-vis E-Solutions), Shantanu sent an email to Harpreet dated 26 March 2014, which Harpreet forwarded to Mike. The email is titled "List of Society Members from EDUCOMP", stated "here are the 8 from our side", and named Soumya, Pramod and Mohan to be removed from the JRRES Bodies. Shantanu agreed these persons were from E-Solutions or his side.[73] This showed Shantanu could unilaterally determine which persons "on [E-Solutions'] side" to retain or should step down to make way for REC's representatives, and strongly point to the existing nominees on the JRRES Bodies being persons who were aligned with E-Solution's interests and would comply with his directions.

70 Shantanu claimed the persons who eventually resigned from the General Body, namely, Anjlee, Priya and Raza (see [15] above), differed from those he identified in his email to Harpreet to show that he lacked control over the Annex D Persons. He claims that Soumya, Pramod and Mohan rebuffed his request for them to resign from the General Body because they could still contribute to JRRES and he thus had to ask Anjlee, Priya and Raza to step down ("Mar/Apr 2014 Incident").[74] I find his explanation untrue and differed from his account in OS 929/2015 (when resisting the Purchasers' attempt to enforce the Award on Emergency Interim Relief arising from the Arbitration). There, Shantanu claimed Soumya, Pramod and Mohan "originally intended to resign from the [JRRES Bodies]" but were "persuaded to stay on", and which Shantanu admitted this account to be correct.[75] Furthermore, I disbelieve they refused to resign because they could still contribute to JRRES, when the amendments to JRRES rules significantly reduced the powers of the JRRES Bodies and when Soumya and Mohan had readily resigned from the Governing Body. Indeed, I

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73 9AB 4605 (D1's 1st SIAC Statement at [68]); 14AB 6801–6802; 11/5/22 NE 41–42.

74 Shantanu's AEIC at [83]–[86].

75 3PB 1572–1573; 11/5/22 NE 54–58.

find Shantanu had control over Soumya, Pramod and Mohan such that they remained in JRRES because he chose to remove Priya, Anjlee and Raza instead.

71 Hence, by around May 2014, Educomp's nominees on the JRRES Bodies were the ones named in the Term Sheets and the Annex D Persons.[76]

72 The events surrounding Educomp's exit from the JV and the terms of the SPA further demonstrate that Shantanu exercised control over the Annex D Persons. I disbelieve Shantanu that JRRES was not part of the SPA or the JV between Educomp and REG,[77] as I have found otherwise (see [61]–[67] above). *E-Solutions'* Annual Report 2012/2013 also described its JV *with REC* included JRRES colleges (and Noida College), and Shantanu stated in the Arbitration that *REC* was buying out *E-Solutions'* stake in JRRES. He also agreed that REG's ability to take over the JRRES membership was part of the SPA transaction;[78] as was subsequently reflected in cl 4.4.5 of the SPA.

73 That Shantanu had control over the Annex D Persons can also be seen from the Term Sheets in January 2015, which attached a list comprising members of the JRRES Bodies and referred to as "Seller's Representatives in JRRES". Ashish admitted the term "Seller's Representatives" came from him.[79] Whilst Annexure D of the SPA describes the persons listed as "List of Representatives to resign from" the JRRES Bodies, the purport was the same, as that "List" pertained to the Sellers' obligation under cl 4.4.5 of the SPA. I disbelieve Ashish that the term "representatives" meant that Shantanu merely

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76 Chew's AEIC at [62]–[63]; 24/5/22 NE 10.

77 11/5/22 NE 79–82, 162.

78 2AB 930; 9AB 4613 (D1's 1st SIAC Statement at [97]–[98]); 15AB 7535–7536; 11/5/22 NE 77, 80–82, 159, 164.

79 5PB 596–602; 8PB 63–69; 1AB 527–532.

had "influence" over such persons, which was at odds with Jyotsna testimony that in the "ordinary course of business" a "representative" of a party would imply control the party has over the person.[80]

74 Pertinently, the SPA drafts and the SPA provided that the Sellers "shall" procure the resignations of the Annex D Persons. The various iterations of the SPA employed mandatory language that implied the Sellers (through Shantanu) were able to procure the resignations of the Annex D Persons,[81] and not merely as a "best effort" obligation.

75 In the final analysis, the commercial purpose of the JV must be borne in mind. This was a significant project for the provision of higher education services in India jointly undertaken by two sophisticated commercial entities. The JVA parties intended JRRES to step into the role of the operating entity which employed staff and ran the education institutions. As Shantanu agreed, control of JRRES was important given E-Solutions' and REC's investments in it.[82] Thus, the JVA parties appointed to the JRRES Bodies persons affiliated with them and who would act in accordance with their directions.

Claim against defendants for fraudulent misrepresentation

76 I turn to deal first with REG's claim in fraudulent misrepresentation. REG avers the defendants made the SPA and BAA Reps to induce the Purchasers and REI to enter into the SPA and BAA respectively.

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80 17/5/22 NE 67–70, 76–77, 177; 24/5/22 NE 11–12.

81 PCS at [75].

82 PCS at [80]; 10/5/22 NE 144–147; 25/5/22 NE 12, 25.

Abuse of process

77 Preliminarily, Shantanu contends it is an abuse of process for REG to bring claims in misrepresentations having obtained the Final Award on the basis that the SPA was valid. The Purchasers had been awarded expectation damages in the Arbitration, but now seek damages to restore themselves to the position they were in before entering into the SPA.[83] For completeness, Dennis does not advance a similar claim. I do not find REG to have acted in abuse of process and I reiterate my findings at [53] to [55] above.

Elements of fraudulent misrepresentation

78 The elements of the tort of deceit or fraudulent misrepresentation are set out in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14]. There must be a representation of fact, made with the intent that it should be acted on by the plaintiff. The plaintiff must have acted upon the false statement and suffered damage by so doing. Finally, the representation must be made with the knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

79 At this juncture, I deal with Mr Poon's submissions that Shantanu cannot be liable for fraudulent misrepresentation in relation to the SPA Reps because they were made on E-Solutions' behalf. He also submits that the second of the SPA Reps (see [35(b)] above) and the BAA Reps were statements of future intent and hence not actionable.[84] I find these submissions to be without merit.

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83 D1CS at [34], [37]–[38].

84 D1CS at [44]–[49], [67].

80 A director is personally liable for his own torts committed in relation to the company's affairs, whilst acting as a director or employee of the company (*Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 at [84]). "No one can escape liability for his fraud by saying: 'I wish to make it clear that I am committing this fraud on behalf of someone else and I am not to be personally liable'" (*Standard Chartered Bank v Pakistan National Shipping Corpn and others (Nos 2 and 4)* [2003] 1 AC 959 at [22]). Hence, if it can be shown that Shantanu and/or Dennis made the SPA Reps or BAA Reps fraudulently, it is no answer for them to say that they did so on behalf of the relevant companies. Similarly, a statement of future intent is actionable if it is proven that at the time it was made, the person who made it had no intention of doing what he asserted he would do (*Yong Khong Yoong Mark and others v Ting Choon Meng and another* [2022] SGHC(A) 21 at [17]–[18]).

SPA Reps

81 Starting with the SPA Reps. I find REG has failed to prove its case of fraudulent misrepresentation. I accept that Shantanu and Ashish (acting on Shantanu's instructions) made the SPA Reps to Doris and Chew. However, I find REG has failed to prove that Shantanu made them knowing they were false or in the absence of any genuine belief that they were true. As for Dennis, there is insufficient evidence to support that he made the SPA Reps. I elaborate below.

Whether SPA Reps made by Shantanu

82 I find Shantanu made the SPA Reps *via* phone calls with Chew and Doris leading up to the Mar 2015 Meetings. I accept Doris spoke to Shantanu in late 2014 or early 2015, and she recalled the SPA Reps were made because they were important points for the basis of the Purchasers entering into the SPA as they wanted control of JRRES because they would have to fund the JV which

E-Solutions was exiting. I likewise accept Shantanu told Chew that Educomp would cede control of the JV Entities and that it was in a position to and would procure the resignation of its nominees from the JRRES Bodies.[85]

83 Shantanu admits he spoke to Chew and Doris on the resignations of persons from the JRRES Bodies. But he claimed to have merely told them he would try his best to procure their resignations as he did not have control over them,[86] which I disbelieve.

84 First, Shantanu's claim to have merely said that he would try his best is predicated on his lack of control over the Annex D Persons and on the Mar/Apr 2014 Incident.[87] I have however found these to be untrue (see [59]–[75] above).

85 Second, his claim is contradicted by the evidence. Shantanu admitted he never informed REG (prior to the SPA being executed) that he would merely try his best to obtain the resignations.[88] Further, the SPA and final Term Sheet dated 21 January 2015 ("21/1/15 Term Sheet")[89] were plain and unambiguous in stating the Sellers' obligation in mandatory terms. Clause 4.4 of the SPA states the Sellers "shall" submit the resignation letters of the Annex D Persons. This is to be contrasted with an earlier draft of the SPA (of 12 March 2015 at 3.39pm), where the term "best efforts" was inserted in cl 4.5, in relation to compliance with the condition precedents in cl 4.1, but was subsequently removed in a later draft (of 12 March 2015 at 8.38pm). In fact, Dennis, who

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85 Chew's AEIC at [117]–[119]; Doris' AEIC at [15]; 21/4/22 NE 27; 22/4/22 NE 6–7, 69–72, 129–130.

86 11/5/22 NE 103–107; 9AB 4652 (Shantanu's 2nd statement dated 24 June 2016 in the Arbitration at [22]).

87 11/5/22 NE 102–103, 107.

88 11/5/22 NE 106–108.

89 John's AEIC at [7]; 26/4/22 NE 46.

represented Educomp during negotiations of the SPA, understood the Sellers' obligations under cl 4.4 (and cl 4.1) of the SPA to be mandatory![90]

86 Similarly, Ashish stated in his emails to Doris of 2 and 3 February 2015 ("Ashish's 2/2/15 Email" and "Ashish's 3/2/15 Email") that "You will deposit the 90% with the escrow, thereafter we will submit the resignation …" and "We will give [the resignation letters] to the escrow agent upon which the escrow will release us the money". There was no indication that he believed Educomp to be labouring under a best-effort obligation, despite Shantanu's claim that it was common knowledge amongst Educomp's representatives that he lacked control over the Annex D Persons.[91]

87 Turning to Ashish, I accept Doris' evidence that he also made the SPA Reps to her over the phone and repeated them at the Mar 2015 Meetings.[92] Ashish admitted he spoke to Doris on the phone between October 2014 to March 2015. However, I disbelieve he could not recall whether he discussed the resignations of the Annex D Persons with her.[93] That Ashish repeated the SPA Reps at the Mar 2015 Meetings is also attested to by John (who was at the meetings), whom I have no reason to disbelieve. John explained the discussions on E-Solutions exiting the JV proceeded on the common understanding that it would cede complete control of the JV Entities to REG, and he had checked that the Term Sheets and SPA were drafted to impose a mandatory obligation on the Sellers to obtain the Annex D Persons' resignations.[94] Dennis also confirmed

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90 15AB 7459, 7469, 7592, 7601; 29/4/22 NE 151–156.

91 Doris' AEIC at [21]–[23]; 14AB 6950, 6956; 11/5/22 NE 103–107.

92 Doris' AEIC at [15]–[17], [40]; 22/4/22 NE 69–72, 89–91.

93 17/5/22 NE 23; Ashish's AEIC at [27].

94 John's AEIC at [6]–[14], [18].

that cl 4.4 of the SPA and the issue of ceding control of JRRES by Educomp were discussed at the Mar 2015 Meetings and this was important to REG.[95]

88 I further find that Ashish acted on Shantanu's instructions and behalf throughout such that the SPA Reps he made are attributable to Shantanu. Shantanu agreed that during the Mar 2015 Meetings, Ashish and Jyostna would liaise with him on changes to be made to the draft SPA, and Ashish regularly updated Shantanu over the phone on the negotiations at those meetings. This comports with Dennis' testimony that Ashish attended the Mar 2015 Meetings on Shantanu's behalf in Shantanu's capacity as director of E-AP and in whatever role Shantanu had in Edulearn.[96]

89 In the round, I am satisfied the SPA Reps were made by Shantanu and Ashish (acting on Shantanu's behalf) to REG.

90 Finally, I deal with Shantanu's claim that REG did not raise the SPA Reps in the Arbitration, which showed they were an afterthought. But this is not entirely accurate as Chew had in his statement for the Arbitration alluded to Shantanu having informed REC that he would cause the resignation of E-Solutions' nominees from JRRES.[97] In any event, this point is neutral because the Arbitration pertained to the Sellers' claim against the Purchasers for breach of the SPA, and not for misrepresentation by Shantanu and Dennis.

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95 29/4/22 NE 157–159, 163–165.

96 Doris' AEIC at [15], [40]; 22/4/22 NE 69–72; 4/5/22 NE 24–25; 10/5/22 NE 11.

97 D1CS at [41(d)]; PRCS at [39]; 9AB 4574 (Chew's 1st SIAC statement dated 5 June 2016 ("Chew's 1st SIAC Statement") at [54]).

Whether SPA Reps made by Dennis

91 I turn to Dennis. Doris and John claimed he made the SPA Reps during the Mar 2015 Meetings.[98] I find REG has failed to prove that Dennis did so.

92 REG could not give a convincing account to support its claim against Dennis. Chew admitted that he was not present at the Mar 2015 Meetings and that Dennis did not utter any representations to him.[99] Whilst Doris stated in her AEIC that Dennis first made the SPA Reps at the Mar 2015 Meetings, she conceded in court that she did not have a clear recollection of what was said and admitted that Dennis did not expressly state that Educomp would cede control of the JV Entities by allowing REG to purchase the shareholding in the entities or that Educomp would procure the resignation of its nominees from JRRES and provide for REG's nominees to take over these positions. Rather, she claimed that Dennis "said something like that to imply all these things" and in particular, "don't worry, it will be a done deal". But Doris' evidence as such was not specifically stated in her AEIC.[100]

93 Similarly, whilst John initially claimed the SPA Reps were made at the Mar 2015 Meetings also by Dennis, he conceded in court that he could not recall what Dennis had said, but he had the impression that Dennis assured REG that Educomp would take steps to ensure Closing would materialise.[101] When re-examined on how he was "given to understand" that Educomp was in control of the nominees (or Annex D Persons) at the Mar 2015 Meetings, John claimed he had that understanding even before the Mar 2015 Meetings and hence there

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98 Doris' AEIC at [40]; John's AEIC at [18].

99 21/4/22 NE 50–51.

100 Doris' AEIC at [40]; 22/4/22 NE 82, 90–93.

101 John's AEIC at [4], [6(b)], [18]; 26/4/22 NE 60–61.

were no further communications to him on this. But it is undisputed that John and Dennis did not communicate on the SPA before the Mar 2015 Meetings.

94 I do not consider my finding that Dennis did not utter the SPA Reps at the Mar 2015 Meetings as inconsistent with Ashish having done so. Unlike Dennis, Ashish engaged in discussions with Doris leading up to those meetings during which he (and Shantanu), as I have found, first made the SPA Reps. Ashish also represented the interests of Shantanu and Educomp at the Mar 2015 Meetings.[102]

95 Next, REG relies on the following to show the SPA Reps were implied by Dennis: (a) the primary purpose of the SPA being to cede control of JRRES by Educomp; (b) the parties to the SPA communicated at all material times on the basis that Educomp was able to and would procure the resignations of the Annex D Persons; (c) the defendants never disabused REG of its belief that the Annex D Persons were Educomp's nominees over whom Shantanu had control; and (d) the SPA Reps made by Shantanu and Ashish.[103]

96 Even assuming the above matters amount to implied SPA Reps, REG has not shown how they were implied *by Dennis*. The purpose of the SPA in itself does not assist REG. The documents it relies on such as the 21/1/15 Term Sheet and the initial versions of the SPA which Jyotsna drafted,[104] and Ashish's 2/2/15 Email, did not involve Dennis. It was Jyotsna who inserted the words "shall" and "representatives" in the Term Sheet, and Ashish who had assured REG that Educomp "will submit" the Annex D Persons' resignations in his

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102 26/4/22 NE 52; 17/5/22 NE 13–14.

103 PCS at [74]–[78], [98]–[101].

104 24/5/22 NE 6–8; Jyotsna's AEIC at [6].

email.[105] As for a revised draft SPA dated 12 March 2015 at 8.38pm sent from Dennis' law firm ("TKQ Partnership"), Dennis inserted the phrase "[n]ominees of the Sellers" in cll 4.4.2 and 4.4.3, albeit based on a list of completion documents from E-Solutions.[106] But this does not assist REG's claim against Dennis, as the (final) SPA executed omitted the phrase.

97 Finally, REG claims Dennis impliedly made the SPA Reps because he failed to reply to and contradict John's 19/8/15 Email wherein John mentioned that REG had been given to understand "that the two recalcitrant members are Harpreet and Soumya … who are the representatives of your client" (see [27] above). But this email superseded the execution of the SPA, and Dennis' silence in this context cannot be taken as an implied representation.

Whether SPA Reps made to induce REG to enter the SPA

98 Having found that Shantanu and Ashish made the SPA Reps, I find they were made with the intention that they should be acted on by REG, *viz*, to induce the Purchasers to enter into the SPA. The SPA Reps related to E-Solutions and/or Educomp ceding control of the JV Entities, and especially their ability to cede control of JRRES to REG. This was the *raison d'être* of the SPA and was also acknowledged by Dennis to be an important issue to REG.[107]

Whether SPA Reps made knowing they were false

99 The SPA Reps must be shown to be made with the knowledge that they were false or in the absence of any genuine belief that they were true. What matters is the state of affairs at the date when the contract is concluded and the

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105 PCS at [75(a)]–[75(b)].

106 15AB 7592–7663; 29/4/22 NE 159; 4/5/22 NE 30.

107 29/4/22 NE 163–164.

representation is acted upon (see *Foodco UK LLP v Henry Boot Developments Ltd* [2010] EWHC 358 (Ch) at [186]–[192] and Pearlie Koh, "Misrepresentation and Non-disclosure" in *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd ed, 2021) at [11.059]).

100 REG submits that Shantanu made the SPA Reps fraudulently because he did not in good faith intend to cede control of the JV Entities. It relies broadly on the following. First, he directed Jyostna not to submit the Cl 4.1 Docs and took steps to frustrate and delay Closing. Second, he chose not to procure the resignations of the Annex D Persons. Third, he authorised Educomp to make repeated non-genuine requests for extension of the Closing Date. Fourth, he unreasonably caused the Sellers to decline the Proposal. Overarching these acts was Shantanu's desire to obtain personal gratification from the SPA.[108]

101 I accept Shantanu had taken deliberate steps to frustrate Closing. That said, I do not find his actions *after* the SPA was executed (and which I will elaborate on later) pointed to him having had no intention to comply with the SPA Reps when he first made them until the time the SPA was entered into. The motivation REG imputes to Shantanu for always having harboured an intention to frustrate Closing (even before the SPA was executed) is unconvincing. REG claimed that Shantanu never intended to close the SPA as he wished to retain control of JRRES without the burden of funding it unless REG agreed to pay the SPA Consideration directly to Shantanu.[109]

102 But REG has not adduced evidence to show, prior to the SPA being executed, that Shantanu wanted the Purchasers to pay the SPA Consideration to

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108 PCS at [106]–[143], [241]–[242], [273]–[283], [307(d)].

109 PCS at [268], [297], [332(c)]; Plaintiffs' Opening Statement ("POS") at [1], [19(c)].

him instead of to the Sellers. Doris' testimony pertaining to Shantanu's desire to receive a sum personally in connection with the sale of Educomp's stake in the JV, which was a conversation in January 2015 between Ashish and her, pertained to what was eventually the BAA. Doris claimed the first time Ashish called to ask if REG or the Purchasers could pay the SPA Consideration directly to Shantanu, was in April 2015.[110] This was after the SPA was executed. As for Chew, he mentioned he met Shantanu at Pan Pacific Hotel in Singapore ("Pan Pac Meeting"), where Shantanu repeated his proposal for the Purchasers to pay the SPA Consideration to him. But Chew stated this meeting occurred in July 2016 or at the time of the Arbitration hearing.[111]

103 It made no sense for Shantanu to make representations to induce REG to enter the SPA which Educomp/the Sellers did not intend to fulfil. It was unclear how Shantanu or Educomp would benefit from this (*ie*, execute the SPA with the attendant responsibilities therein only with the intent to later breach it). Under the terms of the SPA, the SPA Deposit would be (and was) paid by the Purchasers to the escrow agent and would only be released to the Sellers on Closing. Further, cl 3.1.2 of the SPA provided that if Closing did not take place and the SPA was terminated, the Sellers would within 30 days have to introduce an amount equivalent to the total funding contributed by the Purchasers in JRRES for its operations. Hence, the Sellers could not be relieved of the burden of funding JRRES indefinitely whilst continuing to retain control of JRRES. Such control was in any event (until the resignations of the Annex D Persons) jointly exercised by Chew as Chairman and Shantanu as President.[112]

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110 Doris' AEIC at [27]–[30], [45].

111 Chew's AEIC at [122]–[124], [139]; [187]; 19/4/22 NE 30–32.

112 20/4/22 NE 7–8.

104 At the material time, E-Solutions was facing cash flow problems and hence entered into discussions with REG to exit the JV. E-Solutions had started corporate debt restructuring in July 2013. The evidence on whole shows that Educomp entered into the SPA because it wanted to sell its stake in the JV Entities as it was unable to further contribute funds to the JV. Indeed, as will subsequently be seen: (a) Shantanu was keen to execute the SPA because he intended to enrich himself from the SPA Consideration (if and when Closing occurred); and (b) he formed the intention to frustrate Closing only after the SPA was executed because of events that transpired thereafter.

Conclusion

105 In the round, I find REG has not made out its claim for fraudulent misrepresentation against Shantanu. It failed to show that he made the SPA Reps either knowing they were false or in the absence of any genuine belief that they were true. As for Dennis, REG failed to show that he made the SPA Reps.

BAA Reps

106 I now deal with the BAA Reps.

Whether BAA Reps were made

107 I accept Doris' and John's evidence that Ashish and Dennis made the BAA Reps to them during the Mar 2015 Meetings. Doris attested that Ashish and Dennis represented that they would fulfil or comply with the BAA and that she recalled Dennis making the BAA Reps and saying that the contract would

be performed.[113] Their evidence is supported by the circumstances surrounding how the BAA came to be in its final form.

108 Doris attested that before Jyotsna sent a draft Term Sheet on 21 January 2015 to REG, Ashish informed her that Shantanu wanted some moneys personally in connection with the sale of Educomp's stake in the JV to REG. REG agreed on condition that Shantanu would continue to assist the JV Entities after REG assumed complete control of them on Closing. In early March 2015, the parties preliminarily agreed that Shantanu and an REG entity would enter into the BAA for Shantanu to provide advisory services to the latter.[114]

109 The MOU from Jyotsna to REG on 21 January 2015 and the first draft of the BAA from Jyotsna to Dennis on 9 March 2015 named Shantanu as the party. The BAA party was changed to Edulearn when Dennis replied to Jyotsna on 9 March 2015 (copied to Shantanu and Ashish) with a revised draft ("Party Amendment"). This change was based on Shantanu's instructions, and Doris also attested that Ashish told her that Shantanu wanted the BAA Consideration to be made to Edulearn instead.[115] Dennis circulated another draft to Jyotsna and Ashish (copied to Shantanu) on 10 March 2015 where the recipient of the BAA Initial Payment was changed from an escrow agent to Edulearn ("Payee Amendment"). I find Dennis introduced the Party and Payee Amendments following discussions with Shantanu, who attested that he instructed the "Singapore team" and Dennis on the changes.[116]

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113 Doris' AEIC at [34]–[35], [40]; John's AEIC at [18]–[19]; 22/4/22 NE 42–43, 51–52, 89, 93–94; 26/4/22 NE 57, 61–62.

114 5PB 596–602; Doris' AEIC at [27]–[29].

115 14AB 7068–7078, 7208; 5PB 596–602; 12/5/22 NE 96–97; Doris' AEIC at [30].

116 14AB 7204; 7PB 194–199; 11/5/22 NE 89–91; 12/5/22 NE 96–97.

110 I accept Ms Lin's submission that it was logical for REG to seek assurances from Ashish and Dennis that the defendants/E-AP/E-Prof would take steps to ensure Closing and Edulearn would abide by the BAA terms, in light of the Party and Payee Amendments. I find that Ashish and Dennis made the BAA Reps in response to the assurances sought by REG. With the Party Amendment, REI would contract with an unfamiliar entity and thus it asked for a COI of Edulearn which was a British Virgin Islands ("BVI") entity. When Ashish told Doris on 10 March 2015 that a COI could only be provided after five working days, she requested for a solicitor's undertaking confirming that Shantanu was then a director of Edulearn and that the COI would be delivered shortly after the execution of the BAA. Dennis then provided the 12/3/15 Undertaking (see [24] above). After the signing of the SPA, he provided a COI dated 17 March 2015 ("17/3/15 COI") that reflected Shantanu as a director of Edulearn from 10 February 2015.[117]

111 That the BAA Reps were made is supported by Ashish's testimony. He accepted *REG wished to be assured the BAA would still be performed according to its terms* as the contracting party was no longer Shantanu. Whilst Ashish claimed the assurance was only as to "delivery of services by Shantanu",[118] this was unbelievable considering the above and as I will explain below.

112 With the Party Amendment, REG was concerned that Shantanu should be a director of Edulearn. Hence the BAA stated that Edulearn would provide its services through its board of directors which "shall" include Shantanu. It is undisputed that REG wanted to retain Shantanu given his knowledge and

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117 Doris' AEIC at [31]; Chew's AEIC at [124]; Dennis' AEIC at [64]–[65]; 1AB 585; 14AB 7158; 29/4/22 NE 102.

118 17/5/22 NE 60–62.

experience in the Indian education business and his connections in India, as Chew and Ashish attested. In court, John explained that REG was "very concerned" as Shantanu would render the advisory services and yet Shantanu proposed the contracting entity be changed to a company.[119] It was against this backdrop that Dennis provided the 12/3/15 Undertaking. Similarly, the Payee Amendment (which Ashish agreed was discussed at the Mar 2015 Meetings) meant there was a risk that the BAA Initial Payment would not be refunded to REI if Closing did not occur. Dennis did not dispute this or that the Payee Amendment was an important matter discussed at the Mar 2015 Meetings.[120]

113 It is thus unbelievable that REG was only concerned with whether Shantanu would deliver the services under the BAA (without more) and would have accepted assurances limited only to this. The BAA and SPA were intertwined. REG wanted to continue tapping on Shantanu's expertise and experience in the Indian education business once Educomp exited the JV, for which expertise it would pay. It was thus important for REG to ensure Closing would take place given its already substantial investment in the JV Entities. As Doris attested, the assurance that Edulearn would refund the BAA Initial Payment if Closing did not materialise due to Educomp's default was important to REG. Otherwise there was no reason to make payment under the BAA if the SPA did not complete, as Educomp would still be part of the JV and Shantanu (being E-Solutions' Chairman and MD) would have to continue to act in the JV's interest without REG having to separately pay for his services.[121]

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119 Chew's AEIC at [122]; Shantanu's AEIC at [135]; Ashish's AEIC at [39]; 22/4/22 NE 36–37; 12/5/22 NE 104; 26/4/22 NE 93–94.

120 29/4/22 NE 117–121; 17/5/22 NE 64–65.

121 Doris' AEIC at [34].

114 Mr Poon submitted there was no need to provide a separate oral assurance by way of the BAA Reps since Edulearn was already obliged under the BAA to refund the BAA Initial Payment in the absence of Closing.[122] But this point does not assist the defendants. REG had sought the assurances precisely because the Party and Payee Amendments would lead to REI making the BAA Initial Payment directly to an entity unknown to it (Edulearn). REG's conduct is also consistent with it seeking a COI and the 12/3/15 Undertaking.

115 At this juncture I deal with Jyotsna's claim that she "did not think" Ashish and Dennis had at the Mar 2015 Meetings "expressly" said that the BAA would be performed.[123] I give no weight to her answer, which only came out in court. Despite the defendants knowing REG's pleaded case that the BAA Reps were made at the Mar 2015 Meetings, Jyostna's AEIC was bereft of details as to what transpired at the meetings and did not refute REG's claim. I also reject Mr Padman's submission that the amendments to the BAA and SPA on 13 March 2015 (after the BAA was signed and dated 12 March 2015) shows that Ashish and Dennis did not make the BAA Reps at the Mar 2015 Meetings. These amendments did not touch on the Party or Payee Amendments.[124]

116 For completeness, I do not consider my finding that Ashish and Dennis made the BAA Reps to be inconsistent with my determination that Dennis did not make the SPA Reps. Doris' and John's evidence that Dennis made the BAA Reps is supported by the Party and Payee Amendments, and Ashish's and Dennis' concessions that the amendments were the subject of discussion at the Mar 2015 Meetings. As will be seen below, Dennis had an interest in Edulearn.

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122 D1CS at [66]; 17/5/22 62–65.

123 24/5/22 NE 25; Dennis' Closing Submissions ("D2CS") at [81].

124 D2CS at [78]; 16AB 7974, 7978; 29/4/22 127.

Dennis' role in the BAA negotiations

117 Next, I find Dennis had made the BAA Reps as a director of Edulearn.

118 I begin with the 17/3/15 COI that Dennis provided to REG shortly after the SPA and BAA were executed. Whilst this COI reflected Shantanu as director of Edulearn from 10 February 2015, at trial Dennis disclosed COIs dated 3 October 2014, 13 March 2015 and 7 November 2019 ("3/10/14 COI", "13/3/15 COI" and "7/11/19 COI" respectively).[125] I set out the COIs for reference:

Edulearn's COI	**Directors (Date appointed)**	**Shareholders (Shares)**
3/10/14 COI	Dennis (1 Oct 2013) Soumya (5 Aug 2014)	Dennis (100,000) Soumya (6,328)
13/3/15 COI	Dennis (1 Oct 2013) Soumya (5 Aug 2014)	Dennis (100,000) Soumya (6,328)
17/3/15 COI	Dennis (1 Oct 2013) Soumya (5 Aug 2014) Shantanu (10 Feb 2015)	Dennis (100,000) Soumya (6,328)
7/11/19 COI	Lise Voisard (15 Oct 2019)	Lise Voisard (106,328)

119 Dennis did not dispute he was a director and 94.05% shareholder of Edulearn between 1 October 2013 and 15 October 2019. He initially gave the impression that he attended to the BAA at the Mar 2015 Meetings solely in his capacity as a lawyer for Edulearn, and that he was merely a nominee director and shareholder of Edulearn (with Shantanu as his principal).[126]

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125 4/5/22 NE 9, 20, 22, 100; 3DB at 30, 48, 55, 56.

126 Exhibit A (s/n 1); Dennis' Defence (Amendment No. 2) ("D2 Defence") at [7(d)(i)]; Dennis' Further and Better Particulars dated 7 August 2020 at [1(a)]; Dennis' AEIC at [13(g)], [14], [27]; 29/4/22 NE 58–59, 140–141; 4/5/22 NE 7–8.

120 However, at trial, Dennis admitted he executed the BAA as Edulearn's director and represented Edulearn not merely as its lawyer when negotiating the BAA. This was because the 13/3/15 COI revealed Shantanu was never Edulearn's director *before* the SPA and BAA were executed but this was not disclosed to REG at the Mar 2015 Meetings. Shantanu had informed Dennis, only at the Mar 2015 Meetings, that he should be made a director and that his appointment should be *backdated* to 10 February 2015 and reflected as such in the COI.[127] Yet Dennis had at the Mar 2015 Meetings told REG incorrectly that Shantanu was Edulearn's director and sent REI the 12/3/15 Undertaking, both of which sought to give REG the impression that Shantanu's appointment was made on or before 10 February 2015.[128] That Dennis also performed the role of a lawyer in relation to the BAA did not make a difference and even if he claimed to be a nominee director he could still be personally liable for any misrepresentations he made.

Shantanu's interest in Edulearn and whether BAA Reps made on his behalf

121 Next, I find the BAA Reps made by Ashish are attributable to Shantanu. Ashish admitted to representing Shantanu at the BAA negotiations and he acted on Shantanu's instructions.[129] Indeed, I find Shantanu was the beneficial owner of Soumya's shares in Edulearn. The evidence also shows Shantanu was a key decision-maker in Edulearn and instrumental in shaping the BAA negotiations through Ashish and Dennis, and that Soumya was his nominee director.

122 First, it was Shantanu who wanted to change the BAA party from himself to Edulearn; this was although he was not then reflected as its

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127 29/4/22 NE 141; 4/5/22 NE 21, 100–105; 21AB 9800.

128 29/4/22 NE 143; 4/5/22 NE 14–17, 103.

129 17/5/22 NE 9–10, 25, 38.

shareholder or director. Whilst Shantanu claimed to have sought Soumya's consent to change the BAA party to Edulearn,[130] this is unsubstantiated.

123 Second, Ashish represented Shantanu in the BAA negotiations including at the Mar 2015 Meetings although Shantanu was then not a named party to the BAA. Ashish agreed he could not have done so unless Shantanu had an interest in Edulearn. Tellingly, Ashish described Edulearn as "one of the Educomp companies". His explanation in court, that this was because Shantanu *subsequently* became a director in Edulearn when he was also the MD for E-Solutions, was unconvincing. That Shantanu had a real interest in Edulearn is also supported by Sunil's email to Ashish on 12 March 2015 referring to Edulearn as "Shantanu's advisory firm", which Ashish did not correct.[131]

124 Third, Dennis attested that Shantanu had (at the Mar 2015 Meetings) instructed Dennis to appoint him as Edulearn's director and to backdate the appointment, which Shantanu admitted to so doing.[132] Shantanu could only have decided on his own appointment as a director if he had an interest in Edulearn.

125 Fourth, Shantanu approved the key terms in the BAA for Edulearn. His claim that he obtained instructions from Soumya in this regard is unconvincing. As he later claimed, he could not recall who he took instructions from. He had also directed Ashish to have Dennis sign the BAA on Edulearn's behalf.[133]

126 Pertinently, after the BAA Initial Payment was made to Edulearn's bank account in Singapore ("ANZ Account"), Shantanu instructed Dennis to hold

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130 12/5/22 NE 97–99.

131 Ashish's AEIC at [38]; 15AB 7535–7536; 17/5/22 NE 9, 38–40.

132 4/5/22 NE 21, 100–102; 10/5/22 NE 56–58.

133 10/5/22 NE 11, 84–85.

part of it personally and purportedly on trust for Edulearn when the ANZ Account was closed in 2017. Again, Shantanu's claim that this was done on Soumya's instructions was unbelievable and also unsubstantiated. By this time, Soumya was no longer a shareholder or director of Edulearn.[134]

127 Indeed, Shantanu's assertion in court that he was essentially acting on Soumya's instructions on all matters pertaining to the BAA, and that he merely "interfaced" with Dennis on Soumya's behalf, cannot be believed. Apart from the fact that Shantanu did not plead nor state in his AEIC as such and that Soumya did not testify in Shantanu's support, Soumya was never involved in the negotiations relating to Educomp's exit from the JV.[135]

128 In the round, regardless of Shantanu's interest in Edulearn at the material time, the fact remained that Ashish represented him in the BAA negotiations and made the BAA Reps on his behalf.

Whether BAA Reps made with intention to induce REI to enter the BAA

129 I find the BAA Reps were made with the intention that they should be acted on by REG. The Party and Payee Amendments introduced an unknown contractual entity into the BAA and the risk that REI would be unable to recover the BAA Initial Payment should Closing fail to materialise. The BAA Reps were thus made to assuage REI's concerns in this regard and to induce REI to enter into the BAA.

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134 29/4/22 NE 129–130; 4/5/22 NE 11, 125; 10/5/22 NE 23, 59, 93; 3DB 45.

135 10/5/22 NE 26–28, 88, 90–91; 11/5/22 NE 91; 12/5/22 NE 101.

Whether BAA Reps made knowing they were false

130 Dealing first with Shantanu, my finding that he had, until the time the SPA and BAA were executed, intended for Closing, would likewise mean that the first limb of the BAA Reps (*ie*, that the defendants/E-AP/E-Prof would take steps to ensure that Closing would materialise) was not false at the time the BAA was entered into. However, I find, based on events that transpired shortly before and after the BAA was executed, that Shantanu did not intend to abide by cl 3.2.5.1 of the BAA when the BAA Reps were made but intended all along to keep the BAA Initial Payment (once made to Edulearn) out of REI's reach. Hence, there is still substantial falsity in relation to the BAA Reps on which he may be liable (*Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar SA and others and other appeals* [2018] 1 SLR 894 at [173]).

131 I find the Party Amendment was requested by Shantanu to conceal (from E-Solutions' creditors) that he would be the ultimate beneficiary of the moneys paid to Edulearn under the BAA, and to reduce the amount of assets he was publicly known to possess. Shantanu was a guarantor of the debts of E-Solutions, which was then undergoing restructuring and subsequently underwent insolvency in 2017. He admitted he would receive a substantial portion of the BAA Consideration as the person performing the advisory services.[136] This is consistent with the difficulty REG faced in unveiling Edulearn's corporate structure. Dennis' false Directorship Representation went uncorrected until the Suit when he disclosed the 3/10/14 COI and the 13/3/15 COI[137] to REG.

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136 Chew's AEIC at [89]; Shantanu's AEIC at [8]; 9AB 4679 (D1's 3rd witness statement in the Arbitration ("D1's 3rd SIAC Statement") at [15]); 12/5/22 NE 8–9.

137 3DB 55–56; 4/5/22 NE 22, 100.

132 I disbelieve Shantanu that the Party Amendment was introduced for tax considerations (and which Ashish also claimed in court) or because a corporate entity would be better able to employ the individuals necessary to render the services. There is no evidence that these explanations were raised contemporaneously when the Party Amendment was proposed, or that the advisory services under the BAA were to be provided by someone other than Shantanu. Shantanu's and Ashish's account in their AEICs, of how the BAA came about, was bereft of details.[138]

133 Next, the Payee Amendment coupled with the Party Amendment, would enable Edulearn (a BVI entity) to transfer the BAA Initial Payment out of Edulearn easily and surreptitiously. Unlike the SPA Deposit which would be held in escrow and paid to the Sellers only upon Closing, the BAA Initial Payment would be paid directly to Edulearn on execution of the BAA. The defendants could not provide a reasonable explanation for why the Payee Amendment was introduced. Again, Shantanu's claim, that the amendment was made on Soumya's instructions,[139] was unconvincing and unsubstantiated.

134 Additionally, shortly after the BAA was executed and the BAA Initial Payment made to Edulearn, the defendants then transferred the moneys out.

(a) On 12 March 2015, REI paid the BAA Initial Payment of $221,080 into Edulearn's ANZ Account of which Dennis was the sole signatory.[140]

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138 Shantanu's AEIC at [134]–[136]; Ashish's AEIC at [38]–[39]; 12/5/22 NE 101–102; 17/5/22 NE 10–11.

139 11/5/22 NE 90–91.

140 29/4/22 NE 128–129; Chew's AEIC at [141]; 3DB 6.

(b) On 2 April 2015, Dennis transferred $70,000 (of the BAA Initial Payment) from the ANZ Account to Simbrex Ventures Pte Ltd ("Simbrex"), of which Dennis was the sole director and shareholder. Dennis claimed that Shantanu had instructed him on this transfer.[141]

(c) On 10 April 2015, Simbrex transferred $67,500 (from the $70,000 above) to E-Solutions.[142]

(d) On 31 March 2017, the Tribunal made the Final Award.

(e) On 8 May 2017, REI sent a letter demanding a refund of the BAA Initial Payment ("8/5/17 Demand Letter") to Edulearn's address set out in the BAA ("AXA Address") and also to E-Solutions' address and two of Shantanu's emails.

(f) On 12 June 2017, Dennis transferred $139,351.29 from Edulearn's ANZ Account to his personal account. He stated this sum came from the BAA Initial Payment and the transfer was done on Shantanu's instructions.[143]

(g) On 11 February 2019, REI sent another letter demanding repayment of the BAA Initial Payment by registered mail to the AXA Address ("11/2/19 Demand Letter") and a copy of the letter to E-Solutions' address. This letter was not successfully delivered to the AXA Address.[144]

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141 Exhibit A (s/n 17); 29/4/22 NE 128–130; 4/5/22 NE 112–114; 3DB 16.

142 4/5/22 NE 113–114; 10/5/22 NE 48–49; 3DB 16.

143 3DB 47; 29/4/22 NE 128–130; 4/5/22 NE 127, 134.

144 21AB 9943–9945, 9947–9949; 23AB 10651; 26/4/22 NE 73–74.

(h) On 3 December 2019, Dennis transferred US$102,019.15 (from his personal account) to Lienka Limited ("Lienka"), a Bahamian company with Lise Voisard ("Lise") as its sole director and shareholder. By this time, Lise was reflected as Edulearn's sole director and shareholder (see [118] above). Dennis claimed this sum was the moneys he had received from the ANZ Account (see [134(f)] above) and the transfer was made on Shantanu's instructions. Shantanu claimed he acted on Soumya's instructions, which again I disbelieve.[145]

135 Notably, the $70,000 transferred from Edulearn to Simbrex was made barely three weeks after REI made the BAA Initial Payment and before the Closing date. The defendants could not explain satisfactorily why this transfer was made before Closing materialised and when they knew of REI's concern of being unable to recover the BAA Initial Payment due to the Payee Amendment.

136 The defendants claimed the $70,000 was an interest-free loan extended by Edulearn to Simbrex ("Simbrex Loan") to assist Simbrex to enter into a lease of a building occupied by E-Solutions ("Simbrex Lease").[146] But I find this lease (which was not disclosed) to be a sham. The documents effecting the Simbrex Loan, namely an advance letter from Edulearn to Simbrex and a resolution passed by Edulearn's board of directors, were signed only on or after 13 April 2015 (after the Simbrex Loan had been disbursed and the Simbrex Lease purportedly executed) and backdated to 2 April 2015.[147]

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145 3DB 49–53; 4/5/22 NE 135–136; 10/5/22 NE 25–26.

146 3DB 11; 4/5/22 NE 112.

147 4/5/22 NE 114–117.

137 The defendants also could not satisfactorily explain why the Simbrex Lease was necessary when Simbrex was a dormant company. Dennis claimed he was Shantanu's nominee in Simbrex and was instructed by E-Solutions to execute the lease. Shantanu claimed Dennis was someone else's nominee, but he admitted to facilitating the lease.[148] I find Dennis was Shantanu's nominee in Simbrex. There was no reason why Simbrex, being dormant, would agree to lease office space from E-Solutions but for Shantanu's hand in the matter. Indeed, Ashish attested the lease came about because E-Solutions had vacant office space which needed to be occupied and admitted that Simbrex was a defunct company which was used to "fund" E-Solutions.[149] In the round, Dennis agreed that it was not in Simbrex's interest to incur a $70,000 liability (to E-Solutions) in the Simbrex Lease and that he had not acted in its best interest.[150] Against this backdrop, I infer the true reason Dennis transferred $70,000 of the BAA Initial Payment to Simbrex (of which $67,500 was then transferred to E-Solutions) was because the defendants intended to put the money beyond REI's reach should Closing fail to materialise.

138 I add that Shantanu's intention to fraudulently retain the BAA Initial Payment can also be discerned from the defendants' deliberate refusal to return this sum after the Final Award. Both defendants knew, when the Final Award was issued in March 2017, that the BAA Initial Payment was to be returned.[151]

139 Shantanu claimed that Edulearn did not return the BAA Initial Payment because: (a) it did not receive REI's notice for repayment (pursuant to cl 3.2.5.1

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148 4/5/22 NE 113, 117–119; 10/5/22 NE 46–52.

149 17/5/22 NE 53–54.

150 4/5/22 NE 118–119.

151 4/5/22 NE 107–108, 128–130, 133; 10/5/22 NE 24.

of the BAA); and (b) there were unresolved issues regarding this payment as the advisory services had been partly performed.[152] I reject his claims. I find he had received the 8/5/17 Demand Letter which was sent to his personal and E-Solutions' email accounts. The evidence showed he continued using these email accounts even in July and August 2017.[153] As for the purported unresolved issues, this was unsubstantiated.

140 Hence, Shantanu knew the BAA Initial Payment had to be refunded to REI but chose to put the moneys beyond its reach. As Dennis stated, the source of the transfer of US$102,019.15 to Lienka was the BAA Initial Payment (see [134(h)] above). Whilst Shantanu's failure to refund the BAA Initial Payment could be argued to merely evidence an intention to induce Edulearn to breach cl 3.2.5.1 of the BAA only after the BAA had been entered into, the body of evidence – in particular the Payee and Payment Amendments and (as I will explain later) Shantanu's desire to personally profit from the SPA – points to the stronger inference that Shantanu never intended to refund moneys should Closing fail to materialise, and made the BAA Reps fraudulently.

141 For completeness, there is no inconsistency in Shantanu originally intending for Closing to occur and yet intending to retain the BAA Initial Payment should Closing not materialise. Whilst he stood to personally gain more moneys if Closing took place (see [187] below), he would also benefit from the BAA Initial Payment even if it did not. It must be remembered the BAA came to be as Shantanu *wanted to receive some moneys personally* in connection with the sale of Educomp's stake in the JV. This led to the

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152 10/5/22 NE 24–25; 12/5/22 NE 121.

153 19AB 9317–9319; 20AB 9409–9410.

structuring of the BAA which first named Shantanu as a party before the Party Amendment.

142 As for Dennis, I find he also made the BAA Reps fraudulently. The matters I relied on to show that Shantanu was fraudulent would equally show Dennis had no intention to comply with cl 3.2.5.1 of the BAA. These included the Party and Payee Amendments (which Dennis negotiated on Edulearn's behalf) and the flow of the BAA Initial Payment from the ANZ Account.

143 In particular, Dennis claimed he did not receive the 8/5/17 Demand Letter at the material time (which I disbelieve) as it was sent to the AXA Address (being TKQ Partnership's address) but he had left TKQ Partnership's employ on 31 December 2016. Pertinently, Dennis did not deny receipt of the 8/5/17 Demand Letter in his AEIC although he denied receiving the 11/2/19 Demand Letter.[154]

144 Even if Dennis was unaware of the 8/5/17 Demand Letter at the material time, he nevertheless transferred $139,351.29 from the ANZ Account to himself after knowing about the Final Award and that the BAA Initial Payment should have been refunded to REI.[155] Dennis had discussed with Shantanu the refund of the BAA Initial Payment to REI in March 2017 before he transferred $139,351.29 to himself. Dennis claimed Shantanu instructed him on the transfer and Shantanu said he would handle the matter as a result of the Final Award.[156] Even if this were true, Dennis should not have transferred the money from Edulearn's account to himself. He knew the BAA Initial Payment should have

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154 Dennis' AEIC at [55]–[58]; 4/5/22 NE 123, 126.

155 4/5/22 NE 121, 127–129, 133–134.

156 4/5/22 NE 129–134.

been refunded and did not dispute that it would have been a breach of his directors' duties to do the contrary.[157] There was also no reason why Edulearn could not have opened another corporate account to hold its moneys when the ANZ Account was closed. Additionally, it is not disputed that Edulearn (of which Dennis was still its director until 15 October 2019) never made a demand for repayment of the $70,000 Simbrex Loan (which was repayable upon demand). Dennis' conduct supports that he never intended for the BAA Initial Payment to be refunded.

145 Mr Padman submitted that it was preposterous for Dennis to have risked his career and reputation just to retain the BAA Initial Payment of $221,080.[158] But this point is neutral. The quantum of the BAA Initial Payment does not, in and of itself, suggest that Dennis would not have made the BAA Reps fraudulently. Moreover, the evidence suggests that Dennis had assisted Shantanu in this regard to preserve their relationship from which he had received significant benefits on other occasions.

146 Dennis was a director in numerous entities linked to Shantanu.[159] REG adduced evidence showing Dennis had received substantial remuneration incommensurate with his roles therein. For instance, in Wizlearn Technologies Pte Ltd ("Wizlearn"), essentially a subsidiary of E-Solutions, the directors (Shantanu, Dennis and Soumya) were paid "[d]irectors' remunerations" of $1,047,619 in financial year 2013. He accepts these remunerations decreased to $660,000 in financial year 2014 after he had resigned as a director.[160] This

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157 4/5/22 NE 139–141.

158 D2CS at [141].

159 See Exhibit A.

160 Exhibit A (s/n 6); 7PB 142–143; 29/4/22 NE 80–82; 4/5/22 NE 62–63; 10/5/22 NE 90.

suggests that Dennis had received a few hundred thousand dollars (in financial year 2013) for simply being, as he claimed, a nominee director.

147 Dennis denied having received such a large remuneration in relation to Wizlearn and claimed that the amounts he received were all recorded in invoices which he had disclosed to the court. I disbelieve him. He merely disclosed some invoices to show that in 2009 and 2012 he had billed Wizlearn $2,800 per month for acting as a nominee director.[161] However, he did not disclose any invoices for the financial years ending 2013 and 2014. I disbelieve he had either forgotten or did not have copies of other invoices pertaining to Wizlearn, particularly the later invoices (of 2013), when he could disclose invoices for earlier years of 2009 and 2012. I infer that he deliberately chose not to do so as those invoices would not support his claim. This is consistent with Dennis' conduct, where he admitted to not disclosing the 3/10/14 and 13/3/15 COIs because they would have shown the Directorship Representation to be false.[162]

148 Similarly, in respect of Edulearn Solutions Pte Ltd ("Edulearn SG"), it is undisputed that Dennis, being the then-only director, received director's fees of $107,000 for the financial year ending 31 March 2017. I find that Edulearn SG was an entity related to Shantanu or Educomp. Shantanu admitted *he* told Dennis that Dennis would be appointed as shareholder and director of Edulearn SG and the defendants attested that Dennis' remuneration in Edulearn SG was approved by Shantanu.[163] Dennis attempted to explain away the large sum by claiming that it was the total amount he received from October 2013 to March 2017 and he had also "made a great contribution" to this company. He

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161 29/4/22 NE 81; 2DB 10–11.

162 4/5/22 NE 100.

163 29/4/22 NE 67; 12/5/22 NE 106–108.

explanation is not only unconvincing and unsubstantiated, but the evidence also showed otherwise. Edulearn SG was a holding company with no business. Moreover, its financial statement for the financial year ending 31 March 2017 showed the "director's fee" of $107,000 was paid only for that financial year, with no sum having been paid in the previous financial year. Shantanu also accepted that Dennis was paid $107,000 in that financial year alone.[164]

149 Additionally, Dennis did not dispute that he was paid a portion of the US$104,390 "management fees" paid to E-AP's directors for the financial year ending 2011, and directors' fees of some $2,800 per year for four years.[165]

Conclusion

150 In the round, I find the defendants had fraudulently represented to REI that Edulearn would comply with cl 3.2.5.1 of the BAA. This rendered the BAA Reps substantially false. The Party and Payee Amendments were introduced rather late in the negotiations and engendered risks that REI would be unable to recover the BAA Initial Payment. I have also found that REG sought assurances from Ashish and Dennis that Edulearn would abide by the BAA terms because of these amendments. Hence, it is also clear that REI acted on the BAA Reps in entering into the BAA. As such, REG has succeeded on its claim of fraudulent misrepresentation on the BAA Reps against the defendants.

Claim against defendants for negligent misrepresentation

151 REG pleaded that alternatively the defendants are liable for negligent misrepresentation for making the SPA and BAA Reps. It is unnecessary for me

164 4AB 1929; 29/4/22 NE 63–65, 68; 12/5/22 NE 110–113.

165 29/4/22 NE 71–77; 7PB 54; 2DB 2–5.

to consider this issue in relation to the BAA Reps as I have found REG has proven its case in fraudulent misrepresentation.

152 As for the SPA Reps, I find REG failed to prove its claim in negligent misrepresentation. I have found that the SPA Reps attributable to Shantanu were not false at any point before the SPA was entered into and REG has not shown that Dennis made these representations. Furthermore, cl 16.1 of the SPA specifically excludes liability for negligent representation. This clause provides:

> This Agreement … set out the entire agreement between the Parties in respect of the sale and purchase of the Sale Shares … None of the Parties has entered into this Agreement in reliance on any representation, warranty or undertaking which is not expressly contained in this Agreement. This clause 16 shall not exclude liability for (or remedy in respect of) fraudulent misrepresentation.

153 I am of the view that the defendants can rely on this clause. The plain language of cl 16.1 coupled with the fact that the parties to the SPA are corporate entities whose representations must necessarily be made by individuals representing them, support that the Purchasers and Sellers intended for cl 16 to extend to representations made by their agents or representatives.

Claim against defendants for inducing breach of contract

154 I now consider REG's claim that the defendants induced the Sellers and Edulearn to breach the SPA and BAA respectively.

155 To establish the tort of inducing breach of contract, a plaintiff must establish that the alleged tortfeasor knew of the existence of the contract, intended to interfere with the plaintiff's contractual rights and directly procured or induced a third party to breach the contract. He must also show that the contract was in fact breached and he suffered injury as a result of the breach

(*Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*") at [311]).

156 I deal first with the defendants' reliance on the principle in *Said v Butt* which provides that a director would ordinarily be immune from tortious liability for authorising or procuring his company's breach of contract if he was acting *bona fide* within the scope of his authority. The director can rely on the immunity unless his decision (to authorise or procure his company's breach) is made in breach of his personal legal duties to the company. The principle operates as a requirement of liability. The focus of the inquiry is on the director's conduct and intention pertaining to his duties to his company, and not towards the third party (*PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 at [65]–[66]).

157 The defendants' reliance on *Said v Butt* does not add much to the inquiry. In relation to the SPA, Dennis was never a director of E-Prof and Shantanu had ceased to be a director by 2013. Even if he was E-Prof's director at the time the SPA was executed, it is unclear if he was one at the time of the acts which REG founds its claim for inducement of breach of contract. Whilst the defendants were directors of E-AP at the material time,[166] REG's case is that they induced a breach of the SPA to achieve their joint scheme of ensuring that Educomp retained control of JRRES and to pressure REG into acceding to their demands for personal gratification.[167] I was not persuaded that Shantanu wished for Educomp to be relieved of its burden of funding JRRES whilst retaining control of it (see [101] above). But if the defendants had induced the Sellers to

166 Exhibit A; Shantanu's AEIC at [9].

167 PCS at [294], [315].

breach the SPA to put pressure on REG to pay moneys to either of them, they would have clearly acted in breach of their director's duties to E-AP. They would have attempted to either enrich themselves at E-AP's expense or deprived E-AP of receiving the SPA Consideration. As such, they would have acted dishonestly, for improper purposes, and contrary to E-AP's best interest.

158 Similarly, if the defendants induced a breach of the BAA to personally benefit from the BAA Initial Payment,[168] they would have acted in breach of their director's duties owed to Edulearn (such as the duty to act *bona fide* in its best interests) and cannot avail themselves of the principle in *Said v Butt*. Dennis accepts that he would have been in breach of his duties as a director of Edulearn in transferring moneys from the ANZ Account to himself, when he knew that Edulearn had to refund the BAA Initial Payment.[169]

Inducing breach of the SPA

159 Turning to the SPA, the crux of the dispute is whether there was a breach of cll 4.1, 4.3 and 4.4 and whether the defendants intended to interfere with the Purchasers' contractual rights and induced the Sellers to breach these clauses.

160 The evidence showed the Sellers failed to comply with cl 4 of the SPA to submit various documents. The defendants admitted the Sellers failed to deliver the Cl 4.1 Docs, Cl 4.4. Docs and cl 4.3 documents ("Cl 4.3 Docs") (collectively, "Closing Documents") in time, and which necessitated Closing being extended twice (see [25]–[27] above).[170] It is also undisputed that not all the Closing Documents were eventually submitted. As I will elaborate later, the

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168 PCS at [2], [317(b)].

169 4/5/22 NE 140.

170 SOC at [29]; D1 Defence at [34]; D2 Defence at [24].

only Cl 4.1 Docs submitted to the escrow agent ("Intertrust") was a document stipulated in cl 4.1.1 ("Cl 4.1.1 Doc") and submitted around 16 July 2015. The Sellers also never submitted the Cl 4.3 Docs and Cl 4.4 Docs.[171] I reiterate the obligations under cl 4 of the SPA are mandatory. But even if the obligation to submit documents was only to be on a "best effort" basis, the Sellers did not even use their best effort (as the Tribunal had found,[172] and as will be seen later). It is clear, consistent with the Tribunal's findings, that the Sellers had breached cll 4.1, 4.3 and 4.4 of the SPA from about 19 or 20 August 2015.

161 Hence, the issue then is whether the defendants had induced the Sellers to breach cll 4.1, 4.3 and 4.4 of the SPA, and did so with the requisite intent.

Inducing breach of SPA by Shantanu

162 I find Shantanu intended to interfere with the Purchasers' contractual rights and for the Sellers to breach the SPA and thus induced the Sellers to breach cl 4 of the SPA. I further find that he did so to pressurise REG to accede to his demands for some of the SPA Consideration to be paid personally to him.

Cl 4.1 Docs

163 I begin with the Cl 4.1 Docs. On 14 July 2015, Intertrust informed Dennis and Jyostna that these documents had not been submitted by the 5 July 2015 deadline. Whilst Jyotsna replied to Intertrust on 14 July 2015 to submit what were purportedly Cl 4.1 Docs ("Jyotsna's 14/7/15 Email"), the subsequent correspondence from Intertrust to Jyotsna/the Sellers showed that cl 4.1 was not complied with. This is further supported by Chew's explanation in his AEIC.[173]

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171 Chew's AEIC at [172]; 17/5/22 NE 92.

172 11AB 5401 (Final Award at [396]).

173 17AB 8456–8501, 8503–8514; 8560–8561; Chew's AEIC at [150].

As Ms Lin rightly pointed out to Jyotsna, the documents she submitted in relation to cll 4.1.2, 4.1.3 and 4.1.4 were incorrect, and John's 22 July 2015 email to Ashish and Jyotsna ("John's 22/7/15 Email") also explained how the documents REG received did not comply with cl 4.1.[174]

164 I find Jyotsna had deliberately sent non-compliant documents to Intertrust. Some of the documents were incomplete (such as under cll 4.1.4 and 4.1.5) and others (submitted under cll 4.1.2 and 4.1.3) were of a completely different nature. Jyotsna's claim to have been unaware of the discrepancies or not to have checked the documents beggared belief. She was Educomp's lawyer representing the Sellers in the SPA and in charge of collating and forwarding the Closing Documents to Intertrust. Even if she was not responsible for procuring them from source,[175] it was unbelievable that she merely acted as a post box in forwarding them to Intertrust without first verifying their accuracy.

165 Even if Jyotsna did not verify the documents when she first sent them to Intertrust, she would have seen John's 22/7/15 Email subsequently, highlighting the problems with the documents she submitted (as she replied to his email). Yet, she could not satisfactorily explain why on 23 July 2015, she insisted on sending Intertrust the correct Cl 4.1 Docs only after receiving the "documents pertaining to [cl 4.1.1] from [John's] end".[176] She had been in possession of the correct cl 4.1.1 document since 16 July 2015 and was aware the Sellers had breached the initial deadline for submitting the Cl 4.1 Docs.[177] When confronted in court, she then claimed she did not know if she had received the correct Cl

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174 24/5/22 NE 29–36; 17AB 8555, 8560.

175 24/5/22 NE 28–34, 46.

176 17AB 8554–8555; 24/5/22 NE 38.

177 24/5/22 NE 41–45; 17AB 8510, 8521, 8558, 8562–8566.

4.1.1 Doc in the first place and which was why she had asked for them from John.[178] Her claim that she did not know if the document she received was correct (thus implying she would be careful before forwarding it to Intertrust) was inconsistent with her testimony that she would *not* check the Closing Documents before forwarding them onwards, and showed up her lack of credibility. Further, the onus of obtaining the Cl 4.1 Docs was on the Sellers.

166 Strangely, Jyotsna also insisted on personally delivering the original Cl 4.1 Docs at Closing for "safety reasons". In court, she claimed this was because "there were so many versions of documents going around". Jyotsna's explanation was unconvincing. She knew the Cl 4.1 Docs should have been submitted by 5 July 2015, and Ashish agreed that even if the Sellers were to deliver the documents personally, this had to be done by the deadlines in the SPA. Tellingly, Jyotsna admitted she was acting under Ashish's instructions in raising the "safety reasons" for delivering documents personally.[179]

167 I note also that Jyotsna had submitted MGT-6 forms although cl 4.1.6 of the SPA called for MGT-4 forms. When Intertrust pointed this out, Jyotsna replied that MGT-4 forms were no longer in use, but strangely stated in another email to Intertrust that the Sellers would provide the forms if the Purchasers could share these forms with them.[180] Despite John then providing Jyotsna with the MGT-4 forms, Jyotsna did not complete nor send the forms to Intertrust.

168 Jyotsna's cavalier attitude towards dealing with Closing matters such as submitting incomplete or wrong documents and claiming not to verify before

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178 24/5/22 NE 40–41.

179 17/5/22 NE 91–92, 96–97, 113–114; 24/5/22 NE 43–45; 17AB 8511.

180 Chew's AEIC at [150]; 17AB 8511–8513, 8555.

forwarding the documents to Intertrust was telling. She even claimed that it was in cross-examination that she first realised she had forwarded the wrong cl 4.1.3 documents! This did not sit well with her claim (in court) that she took her task "very seriously".[181] Yet at the same time, she insisted on delivering the Cl 4.1 Docs personally for safety reasons. Her strange behaviour showed her to have been acting deliberately to frustrate Closing. There was no reason why the Cl 4.1 Docs could not be procured by the Sellers, who had more than three months to do so. Ashish accepted that the Sellers would have had no difficulties obtaining them as they were "very innocuous" and "very simple" documents and many of these documents were within Educomp's possession or control.[182]

169 I reject Ashish's suggestion that the documents were not provided to Intertrust because there were ongoing discussions between the SPA parties regarding the Closing Date (see [25]–[28] above).[183] This contradicted Ashish's position in his email of 23 July 2015 stating the Sellers were "moving ahead" since the Purchasers had "waived the delay".[184] Even if the SPA parties were discussing the extension of the Closing Date, the Proposal and Counter-Proposal did not countenance a change to the Sellers' obligations under cl 4.1 of the SPA.

170 I further find, contrary to Mr Poon's submission,[185] that Jyotsna had frustrated Closing under the Shantanu's instructions. She admitted to sending emails concerning Closing on Shantanu's and Ashish's instructions (see also [166] above).[186] I have also found that Ashish acted on Shantanu's instructions

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181 24/5/22 NE 31–33, 42–44.

182 17/5/22 NE 100–101, 103.

183 17/5/22 NE 98, 101, 112–113.

184 17AB 8558–8559.

185 D1CS at [77].

186 24/5/22 NE 43, 45.

and behalf in matters concerning the SPA. Ashish was also copied on Jyotsna's emails with Intertrust, and he and Shantanu were copied on Jyotsna's various emails to REG pertaining to the Closing Documents.

Refusal to obtain the resignation of Annex D Persons and Cll 4.3 and 4.4 Docs

171 I find that Shantanu had also deliberately refused to obtain the resignations of the Annex D Persons from the JRRES Bodies with the intent of causing the Sellers to breach cll 4.3 and 4.4 of the SPA.

172 Shantanu claims he exercised best efforts but was unable to persuade the Annex D Persons to resign. He claimed he first approached Harpreet, Soumya and Ashok (the "Three Persons"), whom he was most confident of persuading to resign from JRRES, and asked them to step down. Soumya and Ashok refused as they felt they could further contribute to JRRES, and Harpreet asked for time to consider whereupon Shantanu did not press him further on this issue.[187] Shantanu claimed he did not attempt to procure the resignations of Pramod, Bindu and Mohan because if he could not even persuade the Three Persons with whom he shared a closer relationship to resign, "it would be even harder to persuade" the other three to do so. As for Jagdish and himself, Shantanu wanted to maintain his position as President of JRRES to preserve his influence over the Annex D Persons. He also claimed the SPA did not provide for the appointment of a new President such that his resignation could cause a deadlock in JRRES. Once Shantanu had procured the resignations of the other persons, it would have been easy for him and his father to resign.[188]

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187 Shantanu's AEIC at [139]–[147]; Harpreet's AEIC at [46]; 25/5/22 NE 103–105.

188 Shantanu's AEIC at [148]–[150]; 12/5/22 NE 152–153.

173 I disbelieve Shantanu entirely. I had earlier found he exercised effective control over the Annex D Persons and could have procured their resignations if he so desired. Shantanu himself claimed the Three Persons had a "strong personal relationship" with him.[189] Thus, I disbelieve they had refused to step down from JRRES. Indeed, Shantanu's claim that he made unsuccessful attempts to get Soumya and Ashok to resign from JRRES is a bare one and unsubstantiated; and the reasons Shantanu claimed the Three Persons gave for refusing to resign from JRRES are unconvincing.

174 Harpreet purportedly refused to resign because he wanted to continue pursuing his passion in JRRES and as JRRES's secretary he wanted to ensure that Chew followed the JRRES rules because Shantanu was resigning from JRRES.[190] Yet he had taken a back seat in the operations of Noida College and was not involved in its affairs much since January 2014 and, by September 2015, he "did not read every email sent to [him]" and "did not pay close attention" to emails between Chew and Shantanu regarding JRRES matters.[191] Additionally, the JRRES Changes left little role for Harpreet to play in JRRES. Harpreet agreed that the JRRES Changes effectively consolidated power in the President and Chairman, and the secretary's role "was vastly reduced".[192]

175 I also disbelieve that, after Harpreet asked for time to consider the matter, Shantanu did not bother to follow up with Harpreet or that he did not do so as he did not want Harpreet to "turn against" him.[193] Given Shantanu's strong

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189 Shantanu's AEIC at [147]; 11/5/22 NE 113.

190 Harpreet's AEIC at [46]–[47]; 25/5/22 NE 103–106.

191 Harpreet's AEIC at [25], [54]; 25/5/22 NE 86.

192 Harpreet's AEIC at [36(a)]; 25/5/22 NE 106–107.

193 9AB 4619 (D1's 1st SIAC Statement at [120]).

personal relationship with Harpreet, it was unbelievable that he would be afraid of Harpreet turning against him just by raising the matter of Harpreet's resignation from JRRES. Harpreet claimed not to have much of a personal relationship with Chew, and it was more likely that he would have agreed to leave JRRES particularly when Shantanu (his close friend) would be stepping down – unless he stayed on because Shantanu wanted him to.[194]

176 Similarly, Shantanu's claim that Soumya wished to remain on the General Body for personal development and to contribute to JRRES is shown up by Soumya's failure to attend a single Governing or General Body meeting since June 2013.[195] Soumya also did not attest in support of Shantanu's position.

177 I also disbelieve that Ashok "outright refused" to resign because he identified with JRRES's aims and wanted to see through the good work that it had done.[196] Apart from the fact that Ashok has not testified, Shantanu's purported difficulties with getting him to resign were not raised contemporaneously. Shantanu stated in his AEIC that he had informed Doris of his difficulties in obtaining the resignations of only Harpreet and Soumya.[197] That there was no such incident (*ie*, Ashok refusing to resign) is supported by Doris, Dennis, Jyotsna and Ashish who all understood the Sellers were having difficulty with procuring the resignations of only Harpreet and Soumya,[198] and that parties to the SPA had made the Proposal and Counter-Proposal on the basis of the same understanding (see [26]–[28] above).

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194 11/5/22 NE 114.

195 Shantanu's AEIC at [143]; 11/5/22 NE 115–118.

196 Shantanu's AEIC at [146].

197 Shantanu's AEIC at [153]; 11/5/22 NE 120.

198 Doris' AEIC at [49]; 4/5/22 NE 56; 17/5/22 NE 130; 24/5/22 NE 47.

178 Pertinently, Shantanu could have, pursuant to the JRRES rules, jointly determined with Chew not to renew the memberships of the Three Persons. They would then cease to be JRRES members by 19 May 2015, before the deadline for the Cl 4.4 Docs to be submitted of 29 July 2015.[199] In the round, I find this was not a case where the Three Persons had refused to resign; rather, Shantanu did not procure their resignations either because he did not ask them to resign or had informed them to remain in JRRES.

179 Next, even if the Three Persons had refused to resign from JRRES, there was no good reason why Shantanu did not even *attempt* to procure the resignations of Pramod, Bindu, Mohan and Jagdish. Shantanu's inaction shows he was not interested in ensuring Closing would take place.

180 As for Shantanu, I disbelieve he refused to resign as President so as not to cause a deadlock in JRRES. His claim is contradicted by his and Harpreet's assertion where he told Harpreet that *he intended to resign* from JRRES, and hence he asked Harpreet to resign.[200] His claim is also contradicted by Harpreet who asserted he did not resign to keep Chew in check in the event Shantanu resigned as President. Harpreet's assertion (bearing in mind he was JRRES's secretary and his claim to know the JRRES rules to be able to keep Chew in check) assumes JRRES could continue to function without Shantanu. Harpreet also confirmed that under the JRRES rules, he could be removed as a General Body member by Chew alone, even after Shantanu resigned from JRRES.[201]

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199 23AB 10755, 10764 (rr 7(1), 17, 19 of the JRRES rules); 11/5/22 NE 132–133, 135.

200 Shantanu's AEIC at [144]; Harpreet's AEIC at [46]–[47]; 25/5/22 NE 103–106.

201 25/5/22 NE 140–141.

181 Finally, given that Harpreet had in fact resigned from ERHEL's board in May 2015,[202] the Sellers could have submitted Harpreet's resignation letter from ERHEL pursuant to cl 4.4.4 of the SPA, but this was not done.

Requests for extension of Closing

182 Next, I deal with the Sellers' request for extension of Closing, which I find (as REG submitted) was not genuine and was authorised by Shantanu.[203]

183 Despite Closing being first extended to 13 August and then 19 August 2015 (New Closing Date), Shantanu took no steps to attempt again to procure the Three Persons' resignation from JRRES since his purported attempt in May/June 2015. Indeed, the correspondence showed the Sellers were stalling for time, despite the Purchasers accommodating their request for more time to complete by extending the original Closing date.[204]

184 On 20 and 21 July 2015, John informed Ashish that the Purchasers were prepared to extend Closing to 11 August and then 13 August 2015 as the Sellers failed to submit the original documents in time, and that the Sellers' insistence on physically delivering the original documents only at Closing was a "drastic change" in the agreed completion process. Ashish then asked John to explain what he meant by "drastic change" and said the Sellers would physically submit the original documents on 11 August for Closing to occur on 13 August 2015. Ashish's query was strange as he knew what the "drastic change" was and given John's explanation in his prior email. Then, despite John informing Ashish that the Purchasers were prepared to extend the deadline for Closing provided they

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202 Harpreet's AEIC at [45].

203 PCS at [134]–[135].

204 17AB 8503–8509.

were given more time to review the documents, and which Ashish accepted in court was a reasonable proposal, Ashish replied that this was "not acceptable". This is despite the Purchasers accommodating the Sellers' non-compliance.[205]

185 Then on 29 July 2015, Ashish proposed that Closing be extended to 19 August 2015, which the Purchasers acceded to.[206] However on 18 August 2015, Dennis suddenly claimed the Sellers were having "practical difficulties" in Closing and suggested that either it be deferred or the SPA be terminated. This led to the Proposal in John's 19/8/15 Email of the Extended Closing Date to 30 days from 19 August 2015 with conditions (see [27] above). However, Dennis made the Counter-Proposal instead to extend Closing by four more months without explaining why the Sellers needed so much time and what "practical restraints" or "practical difficulties" they were facing. If the "practical difficulties" were rooted in Shantanu's purported difficulties in getting Harpreet and Soumya to resign from JRRES, I had earlier found they did not exist.

186 I reject Ashish's claim that he did not instruct Dennis to ask for a four-month extension. Shantanu had attested that it was the legal and transactions departments (which included Ashish and Jyotsna) who determined the extension period and Ashish was copied on Dennis' email setting out the Counter-Proposal.[207] Indeed, if Shantanu genuinely wanted to close the SPA (as he claimed) because it would benefit Educomp which urgently needed funds, the Sellers would have accepted the Proposal. I agree with Ms Lin that the Purchasers' proposal was attractive and would have enabled the Sellers to obtain 90% of the SPA Consideration (and put them in much-needed funds) with just

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205 17/5/22 NE 106–107, 109–110; 17AB 8505–8506.

206 17AB 8503.

207 11/5/22 NE 125–126; 12/5/22 NE 98–99; 17/5/22 NE 124.

two resignation letters which the Purchasers were willing to give the Sellers more time to procure.[208] Shantanu's explanation that the Sellers had rejected the Proposal because the Purchasers had put a price on the "recalcitrant members" resignation by withholding 10% of the SPA Consideration and that membership could not be "sold or bought",[209] is but a poor attempt to show that he had not intended to frustrate Closing. It also missed the point. The obligation to obtain the resignations of the Annex D Persons was already a condition precedent to Closing and the 10% of the SPA Consideration was meant to compensate the Purchasers where Closing took place with REG only obtaining a majority as opposed to total control of JRRES. With the Proposal, the Purchasers were prepared to release 90% of the SPA Consideration despite the Sellers not fulfilling all the conditions precedent for Closing.

General observations

187 The upshot is that Shantanu clearly did not intend the Sellers to comply with the SPA *after* it was executed. I find he developed the intention to induce the Sellers to frustrate the SPA after REC made the 12/3/15 SGX Announcement, and to put pressure on the Purchasers to pay the SPA Consideration to him. I find he had originally hoped to personally benefit from the SPA Consideration (to be paid to the Sellers) and thus intended for Closing to occur. However, his plans were scuppered by the announcement (which in practical terms notified E-Solutions' creditors that moneys would soon be paid to E-Solutions' subsidiaries),[210] following which he engaged in disruptive conduct to pressurise the Purchasers into paying some of it to him directly.

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208 Shantanu's AEIC at [113]; 11/5/22 NE 140–141; 12/5/22 NE 16; PCS at [138]–[140].

209 12/5/22 NE 154.

210 Chew's AEIC at [171].

188 Shantanu admitted he was "not happy" that the 12/3/15 SGX Announcement was made, for the following reasons which I find unconvincing. First, he claimed to be upset because it was in breach of the confidentiality clause (cl 11) in the SPA. Chew attested that shortly after the announcement, Shantanu asked him why REC made the announcement which was a breach of the confidentiality clause, to which Chew replied that REC was obliged under the SGX listing rules to make disclosure of the SPA and cl 11 permitted disclosure where it was required "by law or regulation".[211]

189 Second, Shantanu claimed the control of JRRES being ceded to REG could not be publicly made known and the SPA would have been illegal, contrary to public policy in India and against the education rules, as a for-profit corporation would then control a not-for-profit society.[212] But the 12/3/15 SGX Announcement made no mention of JRRES.[213] In any event, there is nothing to suggest the Purchasers acquiring control of JRRES was illegal or improper. Jyotsna had satisfied herself, in consultation with external Indian lawyers, that the Term Sheets (leading to the SPA) were proper under Indian law. Indeed, Shantanu never raised a similar objection when Rohit's Email (see [64] above) set out the proposal for REG and Educomp (for-profit entities) to jointly obtain control of JRRES or when the parties initially sought to sell their entire stake in JRRES to the Times of India Group (also a for-profit entity).[214]

190 Hence, it was clear Shantanu was displeased at the 12/3/15 SGX Announcement as it informed the world at large (and particularly E-Solutions'

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211 11/5/22 NE 142, 146, 148; Chew's AEIC at [136].

212 11/5/22 NE 143–144, 149; 9AB 4612 (D1's 1st SIAC Statement at [94]); 9AB 4680 (D1's 3rd SIAC statement at [16]).

213 11/5/22 NE 145–146; 23AB 10616–10618.

214 24/5/22 NE 9; 11/5/22 NE 143–147.

creditors) that the Sellers would be paid a significant sum, which would have made it difficult for Shantanu to thereafter extract moneys from the Sellers for his personal benefit in a manner that would go unnoticed.[215] This is supported by Chew's and Doris' evidence that Ashish had in April 2015 called Doris to ask if REG would pay the SPA Consideration directly to Shantanu, which request was repeated by Shantanu to Chew at the Pan Pac Meeting; and which requests REG refused to accede to.[216] These conversations evince that Shantanu had intended to extract moneys (to be paid to the Sellers) to himself after the SPA was executed, but once this could not go unnoticed, he hoped to personally receive the moneys from the Purchasers in a manner that would escape the attention of E-Solutions' creditors. He then acted to frustrate Closing to pressure REG to accede to the requests.

191 Shantanu's motivation as described is supported by the disparity between the SPA Consideration and the true value of ERHEL's shares. Shantanu agreed the shares were, at the time the SPA was signed, valued at about 10 crores (or INR100m).[217] Although the SPA also encompassed the transfer of control of JRRES, the SPA Consideration (of INR 986.4m) was expressed to be payment for the Sellers' shares. Thus, on its face, the Purchasers were overpaying for the Sellers' stake in ERHEL. As Shantanu admitted, it was "clearly overvalued", this caused him to be in "a bit of a sticky wicket" vis-à-vis Harpreet, and the deal for the Sellers was "too good to be true and people [were] going to question it".[218] Had the SPA been kept confidential, E-Solutions' creditors would not have known the Sellers would receive a windfall

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215 19/4/22 NE 68–69; 12/5/22 NE 10–12.

216 Chew's AEIC at [139], [187]; Doris' AEIC at [45]; 19/4/22 NE 71–73; 22/4/22 NE 32–35; 12/5/22 NE 14–15.

217 11/5/22 NE 153–154; 12/5/22 NE 11–12.

218 10AB 5083, 5086–5087; 11/5/22 NE 152–154; 12/5/22 NE 11–12.

for their stake in ERHEL. I accept that this would facilitate Shantanu's plan to siphon a portion of the SPA Consideration to himself,[219] similar to his plan to personally profit from the BAA Initial Payment regardless of whether Closing occurred.

192 Mr Poon submits that no weight should be placed on Chew's and Doris' testimony that Ashish and Shantanu had requested for moneys to be paid to Shantanu personally, as these conversations were never mentioned in the Arbitration and hence did not occur. I disagree. The Purchasers' case in the Arbitration was for breach of contract. It hence sufficed that they showed the Sellers did not comply with the SPA conditions.[220] Nevertheless, Chew did allude to Shantanu's desire to personally benefit from the SPA in the Arbitration, stating that the "undesirable consequence of [E-Solutions' insolvency] for Shantanu is that he does not derive any personal monetary benefit from [the performance] of the SPA".[221]

193 Mr Poon next submits that Shantanu did not make the requests to Doris and Chew because he could not have arranged for the SPA Consideration to be paid to him. REC is a publicly-listed company and would not have paid the SPA Consideration to Shantanu; hence it was impossible for him to restructure the SPA after the 12/3/15 SGX Announcement.[222] But this is neutral at best. It was precisely because the SPA Consideration had to be paid to the Sellers that Shantanu sought to renegotiate the SPA after it was executed.

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219 PCS at [274].

220 D1CS at [23(a)]; 19/4/22 NE 70; PRCS at [81(a)].

221 9AB 4643 (Chew's 2nd witness statement in the Arbitration at [35]).

222 D1CS at [23(b)]; 22/4/22 NE 33.

194 Finally, Shantanu's claim that he could not have benefitted from moneys paid to E-AP because E-AP was undergoing its own corporate debt restructuring in relation to a loan from the State Bank of India is not substantiated.[223] All that Ashish stated in court was that the loan "was being discussed" to be restructured. Moreover, E-Solutions' Annual Reports for the financial years of 2014–2015 and 2015–2016 showed the only companies that underwent corporate debt restructuring within Educomp at the material time were E-Solutions and Educomp Infrastructure & School Management Limited.[224]

195 In the round, I am satisfied that Shantanu induced the Sellers to breach cll 4.1, 4.3 and 4.4 of the SPA and did so with the requisite intent. His motivations also show that he did not act in the best interests of E-AP but rather for improper purposes, and hence cannot rely on *Said v Butt* to deny liability.

Inducing breach of SPA by Dennis

196 I turn to deal with REG's claim against Dennis. In Jyotsna's 14/7/15 Email, Jyotsna had submitted to Intertrust a resolution passed on 5 July 2013 by E-AP's board of directors for E-AP to acquire shares in ERHEL ("5/7/13 E-AP Resolution") which did not comply with cl 4.1.3 of the SPA which called for an "[e]xtract of the board resolution for sale of [E-AP's shares] by [E-AP]" ("Cl 4.1.3 Resolution"). Dennis was then one of two directors of E-AP and admitted he was responsible to procure the Cl 4.1.3 Resolution.[225]

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223 D1CS at [23(c)(ii)]; 12/5/22 NE 13; 17/5/22 NE 120–121.

224 3AB 1064, 1412; 4AB 1461, 1635–1636; 6PB 24–46 (E-AP's Financial Statement for FY ending 31 March 2013); 7PB 3, 35, 61; 4AB 1796; 17/5/22 NE 121.

225 1AB 548; 17AB 8464; 4/5/22 NE 45, 50–54; 24/5/22 NE 31–33.

197 I find Dennis had deliberately caused the 5/7/13 E-AP Resolution to be sent to Jyotsna (to forward to Intertrust), knowing it was not the Cl 4.1.3 Resolution, and with the intention of inducing the Sellers to breach the SPA. I disbelieve Dennis had prepared the Cl 4.1.3 Resolution which was then bundled with other documents to be submitted to the escrow agent, but Jyotsna had then sent over the 5/7/13 E-AP Resolution for some unexplained reason. There is no evidence that Dennis had even prepared the Cl 4.1.3 Resolution. When queried, he was evasive, merely claiming (twice) that he "probably" did.[226]

198 Indeed, Dennis had falsely given the impression of being wholly uninvolved in matters pertaining to Closing, to distance himself from any involvement in procuring the Sellers' breach of the SPA. In court, Dennis claimed his involvement with respect to the SPA ended after he sent the 17/3/15 COI to REI on 31 March 2015. He claimed that Closing concerned "India-related documents and activities" which were "not for [him] to look into" and that he had "no role" in the matters post-execution of the SPA. He also claimed in his AEIC that he did not have possession of or power to procure the Closing Documents. But this was untrue. Dennis subsequently claimed to have prepared the Cl 4.1.3 Resolution and further admitted (albeit reluctantly) to having corresponded with REG on Closing matters (see [25]–[28] above). As will be seen below, he was also involved in drafting the Termination Notice.[227]

199 Further, Dennis would have known by 22 July 2015 (from John's 22/7/15 Email) of the Sellers' non-compliance with cl 4.1 of the SPA. I disbelieve he could not recall reading that email then, as it was copied to him. I also disbelieve he merely left it to Jyostna to sort out the matter, as he claimed

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226 4/5/22 NE 44–45.

227 Dennis' AEIC at [13(m)], [25]; 4/5/22 NE 41, 43–44, 91–94.

to have procured the Cl 4.1.3 Resolution.[228] In any event, he knew by 2 September 2015 of the Sellers' non-compliance with cl 4.1, when John emailed him a notice setting this out ("2/9/15 Purchasers' Notice").[229] Yet Dennis did not take steps to remedy the Sellers' non-compliance with cl 4.1.3 although it would have been the "easiest thing" for him to have sent Jyotsna the Cl 4.1.3 Resolution he claimed to have prepared (and earlier sent).[230] His claim to have left everything to Jyotsna, Shantanu and "those individuals in India who were putting together the deliverables"[231] was unbelievable. The Cl 4.1.3 Resolution required his concurrence as one of two directors of E-AP. Dennis' inaction in the face of John's two emails was probative of him having intentionally provided the wrong document required under cl 4.1.3 of the SPA.

200 Next, instead of getting the Sellers to comply with the SPA after receiving the 2/9/15 Purchaser's Notice, Dennis participated in them issuing the Termination Notice dated 25 September 2015, which was emailed to Doris by Jyotsna ("Jyotsna's 25/9/15 Email"). I disbelieve Dennis was not involved in drafting the notice and that it was Darshan & Teo LLP ("Darshan LLP"), whom Jyotsna had copied on her email enclosing the notice, who had done so. Ashish claimed the Sellers had engaged Darshan LLP to defend the Purchasers' request for Emergency Interim Relief made to the SIAC.[232] Even so, I accept Jyostna's unchallenged testimony – that she had drafted the Termination Notice together with Dennis[233] – to be reliable, as she had sent the notice to the Purchasers. There

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228 4/5/22 NE 51–53.

229 4/5/22 NE 77 – 81; 17AB 8599–8602.

230 4/5/22 NE 80–81.

231 4/5/22 NE 81.

232 17/5/22 NE 19–20.

233 24/5/22 NE 49, 53–55.

was no reason for Jyotsna to claim to have drafted the Termination Notice together with Dennis if this was not true.

201 It is clear that not only was Dennis complicit in drafting the Termination Notice, he knew of the falsity of certain allegations made therein, namely that the Purchasers had breached the confidentiality clause of the SPA by REC making the 16/9/15 SGX Announcement, and that the SPA was frustrated because the Sellers were unable to comply with the cl 4 condition precedents despite using best efforts. Dennis admitted he saw the Termination Notice at the material time. He agreed the confidentiality clause did not prevent REC from making such announcement as required by law and the Sellers' obligations under cl 4 of the SPA were mandatory.[234] I agree with Ms Lin that it was precisely because Dennis knew of the false assertions in the notice, that he thus lied about his involvement in it. Indeed, his initial claim that he did not read Jyotsna's 25/9/15 Email (enclosing the Termination Notice) because it had "nothing to do with [him]" was unconvincing as he would not have known whether it had anything to do with him until he read it.[235]

202 Mr Padman submitted that REG believed, even in September 2015 (when they were chasing the Sellers for the documents under the SPA) and during the Arbitration, that Closing was being withheld by Shantanu/Educomp and not Dennis. Moreover, John reiterated REG's demands for the Closing conditions to be complied with in emails of 2 and 11 September 2015 to persons other than Dennis. This shows Dennis had not deliberately frustrated Closing.[236]

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234 4/5/22 NE 88–91.

235 PCS at [247]; 4/5/22 NE 86.

236 D2CS at [50]–[60]; 17AB 8604–8605.

203 But the above is neutral. Whether REG had (earlier) believed that Shantanu, rather than Dennis, had induced the Sellers' breach of the SPA is irrelevant. Chew attested that it was only with time and after the Arbitration that a clearer picture of Dennis' role in inducing the Sellers' breach of the SPA emerged.[237] This is consistent with Dennis having suppressed evidence, and fudging his role in the SPA, even up to the present proceedings. I add that whilst he claimed he was not the lawyer involved in the Termination Notice or the post-SPA matters, he could not explain why he was copied on Jyotsna's 25/9/15 Email.[238] His only other role pertaining to the SPA would have been in his capacity as a director of E-AP (which was a party to the SPA).

204 In the round, the evidence shows Dennis had induced the Sellers' breach of the SPA. He thus failed to act in E-AP's best interests. He had deprived E-AP of receiving about $21m from the SPA, which he accepted was important to E-AP. By failing to close the SPA, E-AP was obliged under cl 3.1.2 of the SPA to equalise the Purchasers' contribution to JRRES for its operations. Vis-à-vis E-AP, Dennis cannot rely on *Said v Butt* to deny liability. In this regard, I accept Dennis held his directorship in E-AP as Shantanu's nominee. Both Dennis and Shantanu had attested as such (see [46] above). But this was immaterial as a nominee director owed the same duties to the company as any other director (*Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 at [136]) and Dennis knew this.[239]

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237 21/4/22 NE 105.

238 4/5/22 NE 83–85.

239 29/4/22 NE 7–9; 4/5/22 NE 42–43, 139.

Inducing breach of the BAA

205 I now deal with REG's claim that the defendants had induced Edulearn to breach the BAA and retain the BAA Initial Payment. The defendants knew Edulearn had breached cl 3.2.5.1 of the BAA by failing to refund the BAA Initial Payment to REI following receipt of the 8/5/17 Demand Letter. The issue then is whether they induced Edulearn's breach and with the necessary intent.

Claim against Shantanu

206 Shantanu claimed he could not have induced Edulearn's breach of the BAA. He claimed he had no beneficial interest in Edulearn and was no longer its director when REI sent the 8/5/17 Demand Letter, and he did not know the BAA Initial Payment had to be repaid as he did not receive the letter. I find these arguments unmeritorious. Shantanu admitted the BAA Initial Payment had to be returned to REI when the Final Award was issued in March 2017 and I have found that he knew of the 8/5/17 Demand Letter at the material time.

207 Shantanu could nevertheless induce Edulearn to breach the BAA even if he was not its director or shareholder when he received the 8/5/17 Demand Letter. However, contrary to Shantanu's claim, I have found that he was a shareholder and a key decision-maker in Edulearn at the material time, and that Soumya was his nominee director (see [121]–[128] above). The 17/3/15 and 7/11/19 COIs showed Shantanu to be a director of Edulearn at the material time.

208 Moreover, Shantanu's claim that he could not induce Edulearn's breach of the BAA is contradicted by the evidence. Dennis attested he followed Shantanu's instructions to transfer the money from the ANZ Account on 2 April 2015 and 12 June 2017, and from his personal account to Lienka on 3 December 2019 which he stated was Edulearn's money (see [134] above). Shantanu

conceded that he instructed Dennis to transfer $139,351.29 from the ANZ Account to Dennis' account but claimed that it was to hold on trust for Edulearn based on Soumya's instructions.[240] I have rejected his claim that this was based on Soumya's instructions. I similarly disbelieve the transfer to Dennis' account was to hold the money on trust for Edulearn. After all, the defendants could have opened an account in another bank in Edulearn's name.

209 I thus agree that Shantanu did the above to put the BAA Initial Payment beyond REI's reach, and thus intended for Edulearn to breach cl 3.2.5.1 of the BAA.[241] The transfer of US$102,019.15 from Dennis to Lienka is particularly telling. It was done after REG served the SOC on the defendants. Shantanu's assertion that it was Soumya who instructed Shantanu to get Lise to get in touch with Dennis to make this transfer (to Lienka)[242] in such a roundabout way, was bizarre. The series of transfers showed the defendants were putting moneys further from REG's reach at a time when they knew they might be made personally liable in the Suit. I repeat my observations at [134]–[140] above.

210 Finally, I deal with Mr Poon's submission that Shantanu would not have devised an entire scheme merely to obtain the BAA Initial Payment of around $221,080.[243] But this is neutral. The quantum of money does not, in and of itself, show that Shantanu would not have induced Edulearn's breach of the BAA. His conduct must also be seen together with his attempts in April 2015 and in about July 2016 to get REG to pay some of the SPA Consideration to him personally.

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240 10/5/22 NE 23, 59.

241 PCS at [163].

242 10/5/22 NE 25–26.

243 D1CS at [86].

Claim against Dennis

211 I find that Dennis, by transferring the BAA Initial Payment from the ANZ Account, likewise induced Edulearn to breach cl 3.2.5.1 of the BAA with the intent to interfere with REI's contractual rights.

212 I have set out how the BAA Initial Payment was transferred from the ANZ Account and I reiterate my findings at [135]–[137], [143]–[144] and [208]–[209] above regarding Dennis' inexplicable conduct in so doing. Pertinently, Dennis knew the commencement of the Suit was clear notice to him of the need to refund the BAA Initial Payment. Yet, he made the US$102,019.15 transfer to Lienka. Even if he was a nominee director (acting on Shantanu's instructions),[244] he nevertheless owed duties to the company.

213 Dennis' conduct, taken together with my finding of him having made the BAA Reps fraudulently (such that he never intended for Edulearn to refund the BAA Initial Payment) supports that he had intended to and did induce Edulearn's breach of the BAA.

Claim against defendants for conspiracy

214 REG next claims the defendants conspired to cause loss to it by unlawful means, and specifically *via* the SPA Conspiracy, BAA Conspiracy, and Wrongful Conduct Conspiracy. REG claims in the alternative that the defendants are also liable for the tort of lawful means conspiracy.[245]

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244 4/5/22 NE 138–140.

245 PCS at [323].

SPA Conspiracy

215 The SPA Conspiracy, as pleaded, concerns the defendants conspiring to induce the Purchasers to enter into the SPA (by making the SPA Reps) which the defendants never intended for the Sellers to comply with and subsequently induced the Sellers to breach (see [35] above).

216 I find REG has failed to prove this claim. It pleaded that the defendants made the SPA Reps to induce the Purchasers to enter into the SPA because Educomp wanted to retain control of JRRES without the burden of funding it unless the defendants could obtain personal gratification from the SPA and BAA Considerations.[246] However, I have found that Dennis did not make the SPA Reps. Thus, the element of a combination of persons in making the representations (being an element to be proved in a claim for conspiracy) is not made out.

217 I have also found that Shantanu did intend the SPA to be performed at the time it was executed. Even if REG's case can be seen as two separate conspiracies, *ie*, a conspiracy to induce REI and RDI to execute the SPA which the defendants never intended the Sellers to comply with and a conspiracy to induce the Sellers to breach essentially cl 4 of the SPA (and retain control of JRRES), this did not add anything more. I have found the former conspiracy is not made out. As for the latter conspiracy, I have already found that Shantanu and Dennis had separately induced the Sellers to breach cl 4 of the SPA, and the findings would also support that the latter conspiracy is made out.

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246 PCS at [268]; PRCS at [71]; SOC at [21]–[21A], [37(a)].

218 My conclusion would remain the same even if REG had relied on lawful means conspiracy. The element of agreement between the defendants to make the SPA Reps is not shown as I have found Dennis did not make the SPA Reps.

BAA Conspiracy

219 As for the BAA Conspiracy, I find REG has proved the defendants conspired to injure or cause loss to REI by unlawful means *via* the conspiracy.

220 I find there was an agreement between the defendants to induce REI to enter into the BAA with Edulearn by making the fraudulent BAA Reps whilst never intending for Edulearn to comply with the BAA (particularly, cl 3.2.5.1). This can be gleaned from the defendants having each made the BAA Reps fraudulently, their common interest in Edulearn, and their concerted acts of siphoning off the BAA Initial Payment to induce Edulearn's breach of the BAA. It is clear (from my earlier findings) the defendants intended to harm REI by their acts and their concerted action was performed in furtherance of their agreement. REI has also suffered loss as Edulearn has not refunded the BAA Initial Payment. The acts undergirding the BAA Conspiracy, *viz*, the defendants' fraudulent BAA Reps and inducing Edulearn to breach the BAA (see [158] above), are clearly tortious and unlawful.

221 As REG has proved its claim in unlawful means conspiracy, it is unnecessary to consider its alternative claim in lawful means conspiracy.

Wrongful Conduct Conspiracy

222 The Wrongful Conduct Conspiracy concerns REG's claim that the defendants conspired to induce Educomp/E-AP/E-Prof to first, breach the Final

Award ("Final Award Conspiracy") and second, breach their obligations owed to Noida College and the JV Entities ("JV Conspiracy").[247]

223 The Final Award Conspiracy is predicated on the defendants having deliberately resigned as E-AP's directors in anticipation of the Tribunal issuing an award adverse to the Sellers to induce the Sellers to breach the Final Award by taking the position that they had no ability to procure E-AP's compliance with it.[248] I find on balance that REG has not proved this conspiracy.

224 Apart from the refund of the SPA Deposit (which was effected by the escrow agent), the Sellers did not comply with the Final Award. The defendants also resigned as E-AP's directors on the same day, 5 December 2016, following an earlier discussion between them. They resigned after closing submissions in the Arbitration were filed but before the Tribunal rendered the Final Award on 31 March 2017.[249] But these facts do not sufficiently show the defendants resigned as E-AP's directors with the intent to frustrate, or to induce the Sellers to breach, an arbitral award potentially adverse to the Sellers. It must be remembered that Dennis was not a party to nor involved in the Arbitration.

225 It is also unclear how the defendants' resignation from E-AP would frustrate enforcement of the Final Award. Pursuant to their resignation, Mr Eric Lim became E-AP's director.[250] E-AP was, at the time of the Final Award, still solvent, and ordered to be wound up only on 30 June 2017 (upon an application

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247 SOC at [8(c)], [33]–[35], [40].

248 4/5/22 NE 111; 12/5/22 NE 114–118; PCS at [297]; SOC at [40].

249 Chew's AEIC at [201]; Shantanu's AEIC at [371]–[372]; D2CS at [115]; 4/5/22 NE 109; 12/5/22 NE 114–115; Exhibit A; 11AB 5341–5342 (Final Award at [24]–[26]).

250 4/5/22 NE 109, 111.

filed by the Purchasers).[251] It is unclear how REG's efforts to enforce the Final Award would be frustrated by a mere change in E-AP's directorship, as E-AP would have to comply with the Award irrespective of who its directors were.

226 Under the JV Conspiracy, REG claims the defendants perpetrated a series of wrongful acts against the JV Entities and Noida College when REG sought to unravel the SPA Conspiracy by seeking specific performance of the SPA in the Arbitration. These acts ("the Acts") included: (a) interfering with and disrupting the operation and management of JRRES; (b) causing JRRES to default on its obligations under the JRRES SPA; (c) unilaterally suspending key employees of Noida College without basis; (d) refusing to cooperate in approving payments to vendors and staff of Noida College; (e) deliberately withholding the approval of corporate compliance processes in India in relation to ERHEL and MIDL; and (f) improperly taking possession of documents belonging to the JV Entities. REG claims the defendants did so to pressure the Purchasers to withdraw the Arbitration, leave the JV or to accede to Shantanu's request to be paid the SPA Consideration directly.[252]

227 I find REG has likewise failed to prove the JV Conspiracy. On the assumption that the Acts occurred (and which I make no finding at this point), there is insufficient evidence to link Dennis to them. REG acknowledged that Dennis "does not appear to have been directly involved in the various wrongful acts vis-à-vis the JV [E]ntities". They, however, attempt to tie Dennis to the JV Conspiracy by suggesting the Acts were only made possible because of his role

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251 1AB 589; HC/CWU 112/2017.

252 SOC at [32]–[35], [37(c)], [40]; PCS at [295].

in preventing Closing (and particularly because he refused to submit the Closing Documents or allowed E-AP to vigorously contest the Arbitration).[253]

228 I do not find this to be convincing. REG has not substantiated its claim that Dennis had caused or permitted E-AP to vigorously contest the Arbitration. I reiterate that REG did not challenge Shantanu's evidence that Dennis was not involved in the Arbitration. But even if Dennis had been involved in the Arbitration and, as I have found, induced the Sellers' breach of the SPA by submitting the 5/7/13 E-AP Resolution instead of the Cl 4.1.3 Resolution, these do not prove his involvement (whether direct or indirect) in the Acts.

229 On the contrary, the evidence points to Dennis being uninvolved in the Acts, which were events based in India and largely concern Indian entities. Dennis had, however, dealt with matters whilst in Singapore, and dealt with foreign entities only when he had some link to them. Thus, he was responsible for obtaining the 17/3/15 COI because of his role in Edulearn and for procuring the Cl 4.1.3 Resolution as he was E-AP's director. None of the witnesses testified to Dennis' involvement in the Acts. Hence, the mere fact that Dennis had induced the Sellers' breach of the SPA is insufficient to show that he participated in the JV Conspiracy, even if his actions had prevented Closing.

230 The absence of an agreement between the defendants to perform the Acts would also mean that REG's claim in lawful means conspiracy pertaining to the JV Conspiracy likewise fails.

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253 PCS at [266], [295].

Claim against Shantanu for inducing breach of the JVA

231 Next, REG claims Shantanu is liable for inducing E-Solutions to breach the JVA because E-Solutions had breached various implied terms (the "Terms") given Educomp's failure to close the SPA and the disruptive acts its representatives undertook vis-à-vis the JV Entities (and Noida College) to seriously harm and destroy these entities. REG pleads and claims the Terms as follows: that REC and E-Solutions would act in ways which respect the spirit and objectives of the JVA (including in the interest of the JV and its entities), act in good faith, and not conduct itself in such a way that increases the other party's liabilities with respect to the JV and its entities.[254]

232 In determining whether to imply a term into a contract, the following test (set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*") at [101]) should be adopted:

(a) The court first ascertains if there is a gap in the contract and, if so, how the gap arises. The court will only consider implying a term if it discerns the gap arose because the parties did not contemplate the gap.

(b) The court will then consider whether it is necessary in the business or commercial sense to imply a term to give the contract efficacy.

(c) Finally, the court considers the specific term to be implied. This must be a term which the parties, having regard to the need for business efficacy, would have responded, "Oh, of course!" had the proposed term been put to them at the time of the contract. If it is not possible to find

254 SOC at [13A], [42C]; PCS at [326], [332]; D1CS at [177].

such a clear response, then, the gap persists and the consequences of that gap ensue.

233 REG claims a gap in the JVA existed because the JVA was completely silent on the duties the JVA partners would owe to each other in managing the JV, and parties had not contemplated this issue. Further, the Terms were necessary for REC and E-Solutions to achieve the commercial objective of the JV, whereby REC would contribute its expertise and know-how in the higher education sector and E-Solutions would contribute its market knowledge and its working relationship with government agencies in India. REG submits that the JV parties would have readily agreed to the Terms if they had been put to the parties at the time of contract formation. In particular, the JVA was a "relational" contract which called for the implication of a duty of good faith.[255]

234 I do not find that there is a gap in the JVA such that it is necessary to imply the Terms. I find the JVA has, as far as the JVA parties intended, provided for the duties the parties owe each other. A perusal of the JVA shows the parties had contemplated and provided for specific circumstances in which they had to act in "good faith" or "mutual co-operation". Clause 17.8 stipulated that the parties were "to do all things as may be reasonably required to give effect to [the JVA] according to its spirit and intent". Obligations of good faith and/or mutual co-operation were also provided for under cll 10.5 (to endeavour to achieve the listing of the shares of the relevant Special Purpose Vehicles), 12.2, 12.4.1, 12.12 (where the JVA is terminated by mutual agreement) and 15.1 (to resolve disputes relating to the JVA). Hence, this was not a case in which the JVA parties never thought about good faith obligations or the need to conduct themselves in respect of the spirit or objectives of the JVA. That the parties had

255 PCS at [330]–[331].

contemplated and provided for obligations similar to the Terms in specific circumstances would lead to the inference that they did not intend to provide for other obligations in the form of the Terms. In this regard, I also do not accept that the JVA should include the Term that a party is not to conduct itself in such a way as to increase the other party's liabilities with respect to the JV entities. To me, it is unclear what the ambit of this term (as proposed by REG) is.

235 It must be remembered that the parties to the JVA are highly sophisticated commercial entities (and represented by lawyers) and the JVA is a comprehensive document. Ultimately, the threshold for implying a term is a high one and a term will only be implied if necessary. The court will not rewrite the contract for the parties based on its own sense of what is fair and just (*Sembcorp* at [88] and [100]).

236 In any event, I find REG has failed to show, on balance, that Shantanu had induced E-Solutions to breach the JVA by breaching any such Terms. Even if Shantanu had induced *E-AP and E-Prof* to breach the *SPA* by frustrating or preventing Closing, this does not equate to Shantanu having induced *E-Solutions* to breach the *JVA*. As for the disruptive acts pertaining to the JV Entities and Noida College after E-AP and E-Prof's failure to close the SPA, it is unclear how Shantanu had induced E-Solutions to breach the JVA by reason of such acts (assuming they occurred and were unlawful). Noida College was established and managed by JRRES, a society. Any acts that Shantanu caused pertaining to Noida College would have been done by reason of his capacity and position in JRRES and it is unclear how such acts could be attributed to E-Solutions. The same reasoning applies in relation to ERHEL and MIDL.

237 As such, REG's claim against Shantanu for inducing E-Solutions to breach the JVA is not made out.

Claim against Shantanu for the tort of causing loss by unlawful means

238 Finally, I consider REG's claim that in Educomp committing various acts vis-à-vis the JV Entities and Noida College, Shantanu is liable to REG for the tort of causing loss by unlawful means ("Unlawful Means Tort").

Elements of the tort

239 To establish the Unlawful Means Tort, the claimant must show: (a) the defendant committed an unlawful act affecting a third party; (b) the defendant acted with an intention to injure the claimant; and (c) the defendant's conduct in fact resulted in damage to the claimant (*Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd* [2014] 4 SLR 574 ("*Paragon Shipping*") at [83]).

240 What amounts to "unlawful means" has not been settled in Singapore. In *OBG Ltd v Allan* [2008] 1 AC 1 ("*OBG*"), Lord Hoffmann (for the majority) held that in a three-party setting – namely, where a third party is the victim of the defendant's unlawful act – acts against the third party count as unlawful means only if they are actionable by that third party, or if the only reason why they are not actionable is because the third party has suffered no loss. Unlawful means, however, do not include acts which may be unlawful against a third party but do not affect his freedom to deal with the claimant, or criminal acts not actionable in private law (at [49], [51], [57], [59]). Lord Nicholls preferred a wider approach in that "unlawful means" embraced "all acts a defendant is not permitted to do, whether by the civil law or the criminal law", subject to the qualification that liability should be found only where the claimant is harmed through the "instrumentality" of a third party (at [159], [162]).

241 In Singapore, the court's analysis on this tort has hitherto been resolved on the basis of inadequate pleadings (see *Wolero Pte Ltd v Lim Arvin Sylvester*

[2017] 4 SLR 747 at [65]) or the plaintiffs' failure to prove any form of impropriety in the acts complained of or to prove the defendants committed the relevant acts with the intent of injuring the plaintiffs (see *Paragon Shipping* at [84]; *Leiman, Ricardo and another v Noble Resources Ltd and another* [2018] SGHC 166 at [270]).

242 That said, the divergence in views in *OBG* is not material to the present case, as will be seen later.

Whether the SPA automatically terminated on 2 September 2015

243 I deal first with Shantanu's claim that he believed that by around 2 September 2015 the SPA had automatically terminated under cl 5.9 (as Closing failed to materialise) such that management of JRRES and Noida College revested jointly in REG and Educomp.[256] This is relevant to whether he performed the acts attributable to him with the intent of injuring REG.

244 The Tribunal found that: (a) the SPA parties had agreed to extend the Closing Date to 19 August 2015; (b) the Sellers could not rely on cl 5.9 to assert the SPA was automatically terminated as failure of Completion was brought about by their default alone; and (c) the SPA did not terminate under cl 5.9.[257]

245 In any event, I find Shantanu did not, even around 2 September 2015, believe the SPA had terminated. Even on 7 and 10 September 2015, Ashish was informing REG that Closing had not occurred and that Shantanu was justified in calling for an operations review meeting of JRRES because Educomp was "still entitled to participate in JRRES to the extent not excluded under, or

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256 Shantanu's AEIC at [162]–[163], [166], [169], [184]; D1CS at [115].

257 11AB 5405–5411 (Final Award at [420], [442]–[443], [455], [521]).

inconsistent with the SPA".[258] In the Termination Notice (signed by Shantanu), the Sellers were, as of 25 September 2015, still calling on the Purchasers to mutually terminate the SPA. Contrary to Mr Poon's submission that the Sellers sought to equalise the Purchasers' funding of JRRES (to show they had treated the SPA as terminated), the Sellers had only requested the Purchasers to furnish details of their funding of the JV Entities so that the Sellers might introduce an equivalent amount should the Purchasers elect to terminate the SPA.[259]

246 I proceed to deal with REG's claim in the Unlawful Means Tort, but only in relation to the acts (vis-à-vis the JV Entities and Noida College) that REG relies on in its closing submissions for this claim.[260]

REG's termination of Gandhi as Director of Noida College

247 REG first claims that Educomp's wrongful conduct towards JRRES or Noida College is that Shantanu (or persons he instigated) refused to acknowledge REG's decision to terminate Professor Gandhi ("Gandhi") as Director of Noida College on 17 September 2015 and took steps to undermine this.[261] In particular: (a) Shantanu permitted Gandhi to take three days of leave on 17 September 2015; (b) Shantanu declared that Gandhi was to be returned to his position at Noida College at a purported Governing Body meeting on 21 September 2015 ("21/9/15 Meeting"); (c) Mr Narpat Singh ("Narpat"), Shantanu's representative in JRRES and Noida College, claimed in his emails of 21 September 2015 ("Narpat's Emails") that Gandhi's termination was not valid as no appointment or termination could occur without the joint consent of

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258 17AB 8604–8607; Chew's AEIC at [174]; Shantanu's AEIC at [164].

259 D1RCS at [45]; 21AB 9827.

260 PCS at [168]–[169], [339].

261 PCS at [168(a)], [171]–[172]; Chew's AEIC at [227]–[228].

Shantanu and Chew; (d) Gandhi returned to Noida College on 22 September 2015 and instigated students to dissent and turn against REG; and (e) Mr Dandona ("Dandona") forced Sunil to permit Gandhi to enter Noida College under the threat of physical violence on 24 September 2015.[262]

248 That Shantanu permitted Gandhi to take three days of leave on the same day REG terminated his services does not assist REG's case. In addition to REG's failure to plead this or put it to Shantanu, REG has not proved that it had terminated Gandhi's services before Shantanu approved Gandhi's leave or that Shantanu was aware that REG had terminated Gandhi's services when he permitted Gandhi to take leave.

249 Likewise, that Shantanu had deliberately undermined Gandhi's termination as Director of Noida College by his conduct at the 21/9/15 Meeting and *via* Narpat's Emails, were allegations that were not specifically pleaded (nor put to Shantanu)[263] and should be disregarded. Though Sunil mentioned them in his AEIC and Shantanu was cross-examined on the contents of Narpat's Emails,[264] I see no reason to depart from the rule that "pleadings delineate the parameters of the case". Shantanu had not prepared his AEIC or come to court ready to deal with this issue (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [36], [41]).

250 REG has similarly failed to plead that Shantanu instructed Gandhi to instigate student dissent at Noida College on 22 September 2015. Sunil (REG's

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262 PCS at [171(a)]–[171(d)]; Sunil's AEIC at [26]–[41]; 12/5/22 NE 44; 17AB 8613, 8615–8616.

263 12/5/22 NE 127, read with SOC at [33]–[34].

264 Sunil's AEIC at [20]–[22]; 12/5/22 NE 40–44.

material witness on this issue) did not aver in his AEIC that Gandhi had acted under Shantanu's instructions on this occasion, and he conceded it was merely his view that Shantanu was behind Gandhi's actions.[265] Also, REG did not put it to Shantanu that Gandhi fomented student dissent under his instructions on this occasion. Ms Lin merely put it to Shantanu that he had instigated Gandhi to partake in activities "disruptive to the functioning of" JRRES and Noida College.[266] She referred to Shantanu's affidavit in the Emergency Arbitration Proceedings ("Emergency Proceedings") (in which he did not deny REG's claim that the Sellers' representatives permitted Gandhi to incite student protests), but only did so to broadly suggest that Gandhi had acted on Shantanu's instructions at Noida College,[267] without specifying an incident of student dissent on 22 September 2015. Hence, this claim is insufficiently put into issue.

251 Lastly, I turn to Dandona's actions.[268] I find Dandona went to Sunil's office on 24 September 2015 on Shantanu's instructions (although Shantanu claimed to the contrary), and Shantanu's action as such was to undermine REG's decision to terminate Gandhi's employment. Dandona had introduced himself to Sunil as a "[d]irector of Educomp", was then E-Solutions' director and stated in the Emergency Proceedings that he was, on 23 September 2015, "directed" to go to Noida College to "look into the commotion caused by the students".[269] I agree with Sunil there was no reason for Dandona (who was not involved in JRRES) to involve himself with Noida College affairs unless he was

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265 D1CS at [120(a)]; Sunil's AEIC at [26]–[35]; 28/4/22 NE 30–31.

266 12/5/22 NE 52–55; 8AB 3933.

267 12/5/22 NE 55–57.

268 SOC at [33(j)(i)]; 8/3/22 PFBP at [36]–[37].

269 Shantanu's AEIC at [202]–[203]; 2PB 1045; 9AB 4144 (Dandona's Witness Statement (dated 1 October 2015) in the Emergency Proceedings at [3]–[4]).

directed to do so.[270] Also, by this time Shantanu knew REG had terminated Gandhi's employment as he was copied in Narpat's Emails.

252 That said, REG has failed to show that Shantanu directed or caused Dandona to threaten Sunil with physical violence, in order to force Sunil to permit Gandhi to enter Noida College. The transcript of the incident shows that Dandona had reacted spontaneously and threatened to slap Sunil after Sunil said "[w]e are not here for physical violence".[271]

253 Even based on acts above which I have found, REG has not articulated what is the "unlawful" act that Shantanu had committed. It is also unclear what loss was caused to REG as a result of Sunil having been forced to permit Gandhi to enter Noida College premises (or of any undermining of REG's decision to terminate Gandhi's appointment). It would be tenuous to link such incident(s) (which occurred in 2015) to Noida College being subsequently closed in 2017.

REG's appointment of Sharma as Director of Noida College

254 Next, REG claims that Educomp had committed an unlawful act against JRRES or Noida College by Educomp or Shantanu refusing to recognise REG's decision to appoint Dr CS Sharma ("Sharma") as provisional Director of Noida College from 19 September 2015 and approve the payment of his salary.[272] Shantanu did not dispute that he so refused,[273] but claimed there were improprieties with Sharma's appointment which justified his stance. I find

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270 28/4/22 NE 34.

271 Sunil's AEIC at [40]; 2PB 1044–1047.

272 SOC at [33(b)], [33(e)(ii)]; 8/3/22 PFBP at [22]; Chew's AEIC at [229]–[251].

273 Shantanu's AEIC at [191]–[195], [206]–[210]; 17AB 8611–8613.

Shantanu's explanations contrived and showed he had undermined Sharma's appointment with the intent of disrupting the functioning of Noida College.

255 Narpat first suggested in Narpat's Emails that Sharma's appointment had not been approved by the Governing Body (with the consent of both the Chairman and President) and was hence invalid. However, Shantanu accepted that REG was then entitled to absolute say on the hiring and dismissal of JRRES employees under cl 3.1.2 of the SPA.[274]

256 Shantanu raised other reasons for refusing to recognise Sharma's appointment as it contravened the rules prescribed by AICTE, AKTU (the university with which Noida College was affiliated) or JRRES because: (a) Sharma was not appointed pursuant to a Selection Committee convened by JRRES; (b) he did not have the necessary qualifications; and (c) the position of "Acting Director" was not prescribed in the AICTE Handbook.[275] I find these objections were not genuine.

257 Chew had explained that Sharma's appointment was a necessary interim measure to ensure Noida College could continue to function while a permanent replacement was being recruited. It is unclear how this contravened the AICTE Handbook. In fact, Noida College was able to renew its affiliation status with AKTU for the 2015–2016 academic year after Sharma's appointment as provisional Director.[276] Moreover, in February 2016, a Selection Committee whose members included an AKTU nominee resolved that Sharma possessed the necessary qualifications to be appointed Director of Noida College and

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274 Shantanu's AEIC at [194]; 17AB 8613, 8615; 1AB 547–548; 12/5/22 NE 50.

275 Shantanu's AEIC at [192]–[193]; D1CS at [125].

276 Chew's AEIC at [229]–[230], [236]–[237], [282].

ratified his appointment from 21 September 2015. Shantanu disputed the legitimacy of the Selection Committee, claiming that it was inquorate because it did not include the Chairman of the Governing Body and neither he nor Chew sat on the committee. But Chew (Chairman of the Governing Body) was on the committee, and Shantanu could not proffer a satisfactory answer when this was pointed out to him in court.[277]

258 Tellingly, Shantanu had no issues with Gandhi's appointment as Director of Noida College although his appointment should have raised the same issues as Sharma's. Gandhi did not possess the qualifications Shantanu demanded of Sharma, and his appointment was never approved by the Governing Body or a Selection Committee. Shantanu's explanation, that Sharma did not hold the same position as Gandhi, was illogical.[278]

259 I accept Chew's assertion that Sharma eventually resigned due to Shantanu's interference with his work and threats against him. Shortly before Sharma tendered his resignation on 25 July 2017 due to his "health conditions", Shantanu had on 13 July 2017 informed him that his appointment as Director was invalid, that his presence was not required at Noida College and that if he were to enter the premises this would constitute an act of trespass punishable as a crime. Finally, there was no good reason for Shantanu to withhold approval of payment of Sharma's salary. It is not disputed that JRRES did not pay Sharma's salary from the time of his appointment. As Chew attested, RDI stepped in on JRRES's behalf to pay Sharma's salary.[279]

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277 22AB 10376–10377; Shantanu's AEIC at [192(b)(ii)]; 12/5/22 NE 70–71.

278 12/5/22 NE 43, 52, 71–73, 77.

279 19AB 9282; 24AB 11267; Chew's AEIC at [248]–[251]; 20/4/22 NE 59–61; 12/5/22 NE 78.

Refusal to approve payments to Noida College employees and JRRES vendors

260 REG next claims that Educomp had committed an unlawful act against JRRES and Noida College by Shantanu (or his representatives) refusing to approve the payment of salaries to Noida College employees and payments to JRRES vendors. REG claimed that this led to serious disruptions of classes and protests at Noida College, and which eventually necessitated RDI making these payments.[280]

261 I disagree with Mr Poon that REG failed to put its case on the alleged non-payment of salaries to Shantanu in cross-examination.[281] Shantanu knew REG had pleaded this issue. He had the opportunity to respond and sought to meet REG's case. In his AEIC, he claimed to be unaware of which employees or service providers REG had referred to and why these sums were owed to them. Mr Mahesh Bathla ("Mahesh"), Shantanu's representative in JRRES and Noida College from around 27 April 2016, also attested to this issue.[282]

262 I find REG has shown that JRRES failed to pay some employees and vendors. There were emails (which Mahesh was aware of) from employees to Shantanu seeking their unpaid salaries, and invoices from JRRES vendors for services provided to Noida College (which authenticity was not disputed).[283] REG also tendered documents to show that RDI made payments on JRRES's

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280 SOC at [33(a)], [33(e)], [33(h)], [42B]; 8/3/22 PFBP at [27], [31]; PCS at [168(c)], [180]–[186].

281 D1CS at [139], [145].

282 Shantanu's AEIC at [206], [219]–[222]; Mahesh's AEIC at [15], [21]–[25]; 19/5/22 NE 13–55.

283 Chew's AEIC at [273]; 18/4/22 NE 3–5, 19/5/22 NE 19–26; 19AB 9171, 9173, 9175, 9190, 9197, 9253–9257, 9259–9263; 1PB 147–150, 152–154, 156, 158, 160, 162–164, 166, 175–178, 180–182, 184, 816.

behalf to vendors,[284] and deeds of assignments between RDI and various vendors and employees which stated that RDI had made to the vendors/employees specified payments that JRRES owed to them and which they then assigned to RDI the right to claim such payments from JRRES.[285]

263 The issue then is whether Shantanu (or his representatives) had unreasonably withheld his approval for such payments to disrupt and undermine the management and operations of Noida College. I find this was the case.

Salaries of Noida College employees

264 Pursuant to the JRRES rules, payments by JRRES had to be approved by the Chairman and President of JRRES or their respective nominees. Narpat was Shantanu's nominee in this matter.[286] In April 2015, Narpat agreed that Sunil would henceforth solely decide how JRRES's funds were to be utilised, and Narpat would merely "[point] out and [object] to anything away from the norms if such a transaction does occur". This was in view of the SPA under which REG would have responsibility for the day-to-day administration of the JV Entities.[287] I reject Shantanu's claim that this arrangement changed after August 2015. His claim is premised on the SPA having terminated and "the parties' rights and obligations reverted to the [state] prior to the SPA",[288] which belief I have found he did not genuinely hold.

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284 See, *eg*, 1PB 151, 155, 157, 159, 161, 165, 168, 179, 183, 185, 187.

285 2AB 601–719; 25AB 4–350; Chew's AEIC at [276] and pp 2103–5436.

286 Chew's AEIC at [252]; 4PB 274 (r 13(b)); Shantanu's AEIC at [219].

287 16AB 8444–8445; Chew's AEIC at [144]–[145].

288 Shantanu's AEIC at [207(e)].

265 Next, Shantanu insisted in February 2017 that payments to JRRES's employees and vendors had to be made by cheque. I accept this constituted an inexplicable departure from JRRES's established practice of making payments by bank transfer. In his email of 7 February 2017, Sharma explained that salaries of JRRES staff had always been paid by bank transfer; and that a shift to payment by cheque would be hugely inconvenient in terms of preparation and to the recipients. Shantanu did not respond to Sharma's email and Mahesh continued to insist that payments be made by cheques.[289]

Payment to JRRES's vendors

266 As for payments to JRRES's vendors, Shantanu claimed that he or Narpat withheld the approvals because: (a) payments to vendors were not put up for approval to the Governing Body; (b) advertisement expenses incurred in connection with Sharma's appointment as Director of Noida College were incurred after Sharma was appointed and unjustified; (c) payments to Noida College's marketing vendors (to recruit students) contravened the AICTE rules, appeared to be for inauthentic sums and were unwarranted as the vendors had marketed for REG in some instances; and (d) the housekeeping and security service providers were engaged without the approval of the Governing Body and the President and Chairman (as required under the JRRES rules).[290]

267 I find these explanations to be contrived. The Governing Body minutes showed the appointment of vendors and payments for their services had never been put to it for discussion and approval, but Harpreet (who was President of the Noida College from 2011 to 2015) nevertheless confirmed that JRRES and

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289 Chew's AEIC at [267]–[269]; 19AB 9177–9178, 9197–9198.

290 Shantanu's AEIC at [227]–[244]; D1CS at [146]; Mahesh's AEIC at [26]–[29]; 19/5/22 NE 38; 18AB 8908–8910.

Noida College were, during those years, still managed in accordance with the by-laws.[291] Indeed, Narpat agreed that Sunil was to decide how JRRES's funds were to be utilised after the SPA was executed (see [264] above). In any event, in July 2016, Chew sought to have the issue of the outstanding payments to vendors and employees placed before the Governing Body. But Harpreet omitted this matter from the agenda, hence it was never raised at a Governing Body meeting.[292] Shantanu knew Noida College required housekeeping and security services to function.[293] His explanation in court that just because certain things did not happen previously did not mean the JRRES rules should be disregarded moving forward, showed up his motive, especially considering he did not object to the payment of such services until after the 12/3/15 SGX Announcement and Arbitration.

268 Likewise, I find that Shantanu had refused to approve the expenses incurred to publicise the position of Director of Noida College for no good reason. The correspondence in February 2016 showed Narpat refused to approve payments to the vendor for an advertisement placed on 20 September 2015, with Narpat stating that REG had not given any cogent reason why the advertisement was published a day after Sharma's appointment.[294] But Sharma was appointed only as provisional Director pending Noida College's search for a permanent replacement, and in any event his appointment was subsequently ratified by the Selection Committee in February 2016.

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291 4PB 5–307; 12/5/22 NE 79–80; 19/5/22 NE 35–36; 25/5/22 NE 21–22.

292 25/5/22 NE 168–172; 10PB 140; 19AB 9111, 9116–9117.

293 12/5/22 NE 81–82.

294 18AB 8948–8950, 8974–8981.

269 Next, I find Shantanu did not genuinely believe the payments to vendors engaged to market Noida College were improper. Shantanu and Narpat never explained how these payments contravened AICTE's rules, despite Chew's query to Shantanu.[295] I accept Chew's testimony that this process of recruiting students had been a longstanding one instituted by Educomp and there was never any suggestion of illegality then. His evidence was corroborated by emails sent by Harpreet in November 2014.[296] I place no weight on Narpat's assertions that the payments were for inauthentic sums and JRRES ought not to bear the cost of the advertisement because the "logo of Raffles [was] displayed". Apart from the fact that Narpat did not testify, it was unclear why displaying REG's logo on the advertisement material was objectionable. In fact, E-Solutions' own Annual Report 2012/2013 had reflected JRRES as part of E-Solutions' higher education initiative at the material time. Narpat's lack of credibility was also showed up by his insistence that Chew personally certify the payments to the marketing consultants although he knew Chew had delegated Sunil the responsibility to consider and approve payments as REG's representative.[297]

JRRES's AICTE and AKTU applications

270 Next, REG pleads that Educomp had committed an unlawful act against JRRES and Noida College by Shantanu (or his representatives) refusing to sign three classes of documents Noida College needed to obtain approval from the relevant Indian regulatory authorities to provide technical and management courses, and this led to the ultimate closure of the college. First, affidavits by the President and Secretary of JRRES (Shantanu and Harpreet respectively)

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295 18AB 8948–8949; Chew's AEIC at [261].

296 Chew's AEIC at [261(c)]; 14AB 6915–6921, 6923–6929; 18AB 8948–8949.

297 10/5/22 NE 149–150; Chew's AEIC at [260(b)], [261(b)]; 17AB 8676; 18AB 8873–8874; 8974.

verifying Noida College's readiness to enrol students. These pertained to the academic years 2016–2017 and 2017–2018 and had to be submitted for AICTE's approval for Noida College to operate its technical courses ("AICTE Affidavits"). Second, an affidavit by the President or Secretary of JRRES certifying Noida College's technical course requirements were in accordance with that of AICTE, the Uttar Pradesh government and AKTU ("AKTU Affidavit"). This was to be submitted to AKTU and for the 2016–2017 academic year. Third, an undertaking from Harpreet for JRRES's application for affiliation with AKTU in 2016–2017 ("AKTU Undertaking").[298]

271 Shantanu and Harpreet claimed they did not sign the AICTE Affidavits because Noida College lacked a Certificate of Occupancy ("COO") from the Greater Noida authorities. Harpreet further claimed he was uncomfortable signing the affidavit as this required him to confirm that certain construction works at Noida College were complete, but he was not involved in the day-to-day operations of the college and had not received the information he requested of its Manager of Operations, Ms Moushumi Bhattacharya ("Moushumi").[299]

272 I reject these claims entirely. I find it was Harpreet's responsibility as JRRES secretary to apply for the COO. I disbelieve he had previously applied for the COO only as President of Noida College, to show that he did not have the authority to procure the COO at the material time as he had resigned as President in 2015. Pertinently, the same application was made in 2011 by JRRES's then secretary, Mr R N Tikku.[300]

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298 SOC at [33(a)(iv)]; 8/3/22 PFBP at [21]; Harpreet's AEIC at [66].

299 D1CS at [156]; Shantanu's AEIC at [261]–[282]; Mahesh's AEIC at [33]–[53]; Harpreet's AEIC at [69]–[71]; 19/5/22 NE 82–83; 25/5/22 NE 141–167.

300 25/5/22 NE 154–155; 4PB 314.

273 As for his claim to have been uncomfortable with certifying the state of construction of Noida College, Harpreet conceded the contents he was asked to certify were identical to what he had certified in 2014. Indeed, Moushumi repeatedly informed Harpreet *via* email that there was no change to Noida College's infrastructure. There was no evidence that Harpreet replied to Moushumi, and his claim to have done so orally was unbelievable as Moushumi had continuously chased Harpreet for the document.[301] Clearly, Harpreet's conduct was authorised by Shantanu. He was Shantanu's representative in JRRES and whom I have found Shantanu had control over. The emails and chasers from Moushumi were also sent to Shantanu.

274 As for the AKTU Affidavit, Harpreet claimed in his AEIC that he refused to sign it as he was then unaware of matters in Noida College (because no Governing Body meetings had been convened in the few months leading up to October or November 2015) and could not be sure the contents of the affidavit were true. He also claimed the affidavit had to be signed by either JRRES's Chairman (*ie*, Chew) or Secretary, and the Secretary would sign it only if the Chairman for some good reason was unable to do so.[302] Shantanu attested that when Manoj Jasoria ("Manoj") (who was assisting with compliance matters in JRRES) emailed Narpat on 28 October 2015 to obtain Shantanu's signature for the affidavit ("Manoj's Email"), Narpat told Manoj to obtain Chew's signature because the AKTU Affidavit stated it was to be executed by the Chairman.[303]

275 None of these explanations hold water. The evidence showed Shantanu and Harpreet had lied regarding whose signature was required for the AKTU

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301 18AB 9002, 9040–9041, 9043–9044, 9054–9055; 25/5/22 NE 156–159, 162–164.

302 Harpreet's AEIC at [68].

303 Shantanu's AEIC at [258].

Affidavit. The affidavit clearly stated it was the signature of the *President* or Secretary of JRRES. Shantanu knew this at the material time because Manoj's Email (enclosing the affidavit) was copied to him. Indeed, Shantanu attested that the AKTU Affidavit was to be made "by either the President or Secretary". Likewise, Harpreet conceded in court that the affidavit had to be signed by JRRES's President or Secretary, although he then claimed (unconvincingly) that "in the eyes of AKTU" the President and Chairman are similar positions![304]

276 Moreover, Harpreet accepted he never sought information to assuage his purported concerns on Noida College's affairs when this was the least he could have done. He also admitted that previous affidavits of this nature had never been presented to the Governing Body for approval because it was not required![305] In fact, Harpreet's claim that no Governing Body meeting had been convened in the past few months leading up to October and November 2015 was untrue as a meeting was convened in July 2015. Yet Harpreet did not then seek to include this issue on the meeting agenda. He claimed he could not be bothered to do so, despite asserting that it was important for it to be discussed.[306]

277 I disbelieve that Harpreet had acted independently,[307] and find that he refused to sign the AKTU Affidavit under Shantanu's instructions. I have found Shantanu had control over Harpreet. Shantanu was copied on Manoj's Email but did nothing to assist Manoj to sign the affidavit. He was also copied on Narpat's reply asking Manoj to get Chew's signature instead. I find Shantanu and Harpreet were trying to make things difficult for Chew. There was no reason

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304 24AB 11223; Shantanu's AEIC at [257(b)] and SP-10, Tab 85; 25/5/22 NE 142–144.

305 25/5/22 NE 145, 150, 153–154.

306 25/5/22 NE 146–149; 4PB 298.

307 D1CS at [153].

why Harpreet could not have approached Shantanu to sign the AKTU Affidavit (or signed it himself), instead of having Narpat re-route the matter back to Manoj for Chew to sign (and which in any event Chew could not do).

278 Finally, Harpreet claimed he did not provide the AKTU Undertaking as this required him to undertake to maintain the norms in Noida College and make payment of faculty and staff for the next three years, but he had not been apprised of Noida College affairs and Chew had made sweeping changes to the operations of JRRES and the college.[308] I find his reasons concocted to justify his deliberate inaction.

279 Harpreet accepted that maintaining the norms of Noida College was part of his role as JRRES's secretary, and the document did not demand anything more than for him to undertake to maintain such norms.[309] He also did not make any efforts to assuage his purported concern over whether Noida College could discharge its relevant financial obligations. Further, Chew had stated in an email of 28 July 2016 to Shantanu (copied to Harpreet) that JRRES had the wherewithal to make the payments (but they were not made because Shantanu, Narpat or Mahesh had refused to clear them),[310] and sought to have this matter specifically placed before the Governing Body meeting but which Harpreet scuppered (see [267] above). Again, Harpreet's refusal to cooperate was authorised by Shantanu, as he was Shantanu's representative in JRRES.

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308 Harpreet's AEIC at [72].

309 25/5/22 NE 165–167.

310 19AB 9116.

JRRES Inducement Claim

280 Next, REG pleads that Educomp had committed an unlawful act against JRRES by causing JRRES to default on its contractual obligations under the JRRES SPA, because *Shantanu failed to cause JRRES to obtain the requisite approvals in compliance with its obligation under the JRRES SPA*. JRRES had to obtain the requisite approvals from the Greater Noida Industrial Development Authority for the transfer of the lease in RDI's name, at least 30 days before the completion date of the JRRES SPA. REG pleads that the JRRES SPA thus failed to complete, RDI terminated it and sought a refund of the Advance Sale Consideration and had commenced an action in the High Court of Delhi against JRRES to do so, but which consideration has to date not been repaid.[311]

281 However, REG in Closing Submissions abandoned the above claim and framed the issue as Shantanu having induced the breach of the JRRES SPA *by refusing to cause JRRES to refund the Advance Sale Consideration on RDI's termination of the JRRES SPA* ("Different Act").[312] But this was not REG's pleaded case, and Shantanu had not in his AEIC dealt with this. He was also not cross-examined on the Different Act by REG, nor was it put to him to answer to. Hence, REG cannot rely on the Different Act to found a claim in Unlawful Means Tort against Shantanu, and even it could, there was no evidence to support this claim. Chew's AEIC merely mentions cursorily that "[u]nder Shantanu's influence and/or control … JRRES … continued to refuse to effect payment of the Advance Sale Consideration to RDI" without elaboration.[313]

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311 SOC at [33(c)] r/w [18(d)(iii)]; 8/3/22 PFBP at [23].

312 PCS at [168(e)], [196]–[199].

313 Chew's AEIC at [306].

Unilateral suspension of JRRES employees

282 REG further pleads that Educomp had committed an unlawful act against JRRES by Shantanu unilaterally suspending employees of Noida College (*ie*, Mr Saurabh Sharma ("Saurabh"), Mr Shiv Kumar Pal ("Shiv") and Mr Amit Agarwal ("Amit") without basis. This occurred in July and August 2017. Shantanu claimed that Saurabh and Shiv had denied auditors Shantanu engaged (to examine the accounts of JRRES and Noida College) access to information, and that Saurabh had embezzled funds and acted against the interests of Noida College. Shantanu further claimed that Amit had siphoned funds from JRRES, stole its confidential data and obstructed Shantanu's representative in Noida College from performing his official duties.[314]

283 I accept that Shantanu had suspended the three employees without good cause. In response to his actions, Chew informed Shantanu that he had not provided any details of how the "employees or faculty members [had] act[ed] in violation of the rules and regulations of JRRES" or any instance in which he claimed they had siphoned JRRES funds that thus required a financial audit. This is despite Shantanu's claims that he had "credible information with proofs" against Saurabh that he was "misusing [his] office … for embezzlement of funds" and that Amit was found committing the acts alleged by Shantanu.[315]

284 In fact, Shantanu knew he could not unilaterally suspend Saurabh, Shiv, and Amit. REG enjoyed absolute say on the hiring and dismissal of JRRES's employees under cl 3.1.2 of the SPA, and Shantanu knew that REG continued to enjoy this right even after Closing failed to materialise (see [244]–[245] and

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314 SOC at [33(d)]; 8/3/22 PFBP at [26]; Shantanu's AEIC at [332]–[345]; 19AB 9285, 9317; 20AB 9409–9410.

315 Chew's AEIC at [311]–[313]; 19AB 9285, 9321, 9368; 20AB 9409–9410.

[255] above). On 17 July 2017, Chew also informed Shantanu that decisions to suspend JRRES employees could not be made by Shantanu without consulting the Governing Body or Chew as JRRES Chairman.[316]

Transfer of Noida College students to other institutions

285 Next, REG claims that Shantanu instigated the transfer of Noida College's students to other colleges, which ultimately led to the shutdown of Noida College in November 2017. REG is, in my view, not entitled to rely on this purported act by Shantanu to form a claim in the Unlawful Means Tort, as this was never pleaded as a basis for any of REG's claims against Shantanu. This purported act by Shantanu was also not raised in his cross-examination for him to meet, nor was it put to Shantanu that it formed REG's case against him.[317] As such, I disallow this as a claim against Shantanu.

Frustrating ERHEL and MIDL's compliance with statutory requirements

286 I turn to REG's claim that Shantanu or Educomp deliberately undermined ERHEL and MIDL's efforts to comply with corporate compliance processes in India, which led to them being struck off the Register of Companies in or around August 2018. In particular, REG claims that Shantanu hindered ERHEL and MIDL's efforts to file their annual returns and financial statements for the financial years 2014–2015 to 2017–2018 and their income tax returns (for financial years 2016–2017 and 2017–2018 in respect of ERHEL and 2015–2016 and 2017–2018 in respect of MIDL).[318] Where appropriate, I refer to the

316 19AB 9313.

317 PCS at [168(g)], [201]–[203]; D1RCS at [49]; 12/5/22 NE 127.

318 SOC at [34], [42B]; Chew's AEIC at [337].

documents pertaining to ERHEL and MIDL as the "ERHEL Documents" and "MIDL Documents" respectively.

ERHEL

287 That Shantanu deliberately prevented ERHEL from filing the ERHEL Documents is evinced by his unwillingness to regularise ERHEL's board of directors. It is undisputed that REC and E-Solutions were each entitled to appoint two representatives to ERHEL's board. Shantanu was appointed to the board on 6 June 2008 until 31 March 2018.[319]

288 E-Solutions sought to appoint Ashish on 27 May 2015, and REC sought to appoint Doris and Kenneth on 31 October 2014, to ERHEL's board. Their appointments had to be approved by ERHEL at its annual general meeting to be held before 30 September 2015. This was not done and caused the appointments to be invalidated and Shantanu being henceforth the only director.[320]

289 In those circumstances, Doris repeatedly asked Shantanu to regularise ERHEL's board. She emailed Ashish (copying Shantanu) on 9 November 2015 to propose that Shantanu hold a board meeting to appoint an REG nominee to ERHEL's board, and these two directors should then hold a board meeting to ratify the previous resolutions, nominate two further directors (one each from Educomp and REG), and adopt and ratify ERHEL's accounts. On 25 and 30 November 2015, she repeated her request for Shantanu to reconstitute the EHREL board. Shantanu, however, never did, although he had on 28 December 2015 informed Manoj (ERHEL's company secretary) that he would like to

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319 1AB 424 (cl 5.1.1 of the JVA); Shantanu's AEIC at [285].

320 Chew's AEIC at [327]–[328], Shantanu's AEIC at [296]; 18AB 8809; 17/5/22 NE 131–136.

convene a board meeting. Doris emailed Shantanu again on 18 and 29 January 2016 and 29 April 2016 on these matters.[321] This led to REG applying to the National Company Law Tribunal in New Delhi ("NCLT") for orders to reconstitute the board, and the NCLT so ordered on 10 June 2016.[322]

290 I find Shantanu's explanations for his failure to regularise ERHEL's board to be unconvincing and showed that he never intended to do so because he wanted to frustrate its compliance with corporate requirements.

291 Shantanu and Ashish claimed they first discovered (around 24 October 2015) that ERHEL had been conducting paper board meetings (in breach of Indian company law) on REG's instructions. This referred to ERHEL board resolutions signed by Doris and/or Kenneth in the absence of an actual meeting of directors. Shantanu and Ashish purportedly realised this because Ashish (on Shantanu's instructions) proposed on 15 October 2014 for an ERHEL board meeting to be held on 28 October 2015, but Doris replied on 24 October 2015 to state this was not needed as the board had met on 5 September 2015 ("5/9/15 Meeting"). Shantanu and Ashish claimed to be unaware of the 5/9/15 Meeting and this slowed their efforts to regularise ERHEL's board because in November 2015 Ashish had to ask Educomp's lawyers to examine ERHEL's articles of association and the applicable laws and to suggest corrective steps to reconstitute the board.[323]

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321 18AB 8808–8810, 8862–8863, 8867, 8906, 8936, 8956; 19AB 9093; Chew's AEIC at [331]–[332].

322 Chew's AEIC at [334]–[335]; 7AB 3489–3495.

323 Shantanu's AEIC at [288], [290]–[292], [297], [301]–[302]; Ashish's AEIC at [53]–[56], [66]; 17AB 8693–8701, 8739; 17/5/22 NE 142–143.

292 I disbelieve that ERHEL having conducted paper board meetings was an issue of genuine concern to Shantanu and Ashish. ERHEL's articles of association (Art 102(iv)) permitted the conduct of paper board meetings.[324] Pertinently, Shantanu and Ashish were aware of ERHEL having held paper board meetings (including the 5/9/15 Meeting) before 24 October 2015, and never raised any objections then.

293 On 13 October 2015, Manoj copied Ashish in an email to Mr Yogesh Saluja ("Yogesh") (E-Solutions' company secretary) ("13/10/15 Email")[325] seeking confirmation on: (a) a draft notice dated 5 September 2015 for ERHEL's AGM to be held on 30 September 2015; (b) an ERHEL director's report; and (c) certified true copies of resolutions passed at ERHEL's and MIDL's respective board meetings of 5 September 2015 to be signed by Ashish as director of ERHEL.[326] Hence, Ashish knew of the 5/9/15 Meeting. This is also given that his authority to sign the draft notice and director's report stemmed from that meeting,[327] and bearing in mind that his appointment as ERHEL director lapsed on 30 September 2015 (see [288] above). Yet he did not register his purported objections to the 5/9/15 Meeting with Manoj by replying to Manoj's 13/10/15 Email or Manoj's email of the next day stating that he (*ie*, Manoj) would be processing certain compliance matters for ERHEL and MIDL. Nor did Ashish raise this issue with Doris until 27 October 2015.[328]

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324 23AB 10692.

325 17/5/22 NE 143–144.

326 9PB 11, 13–38, 74–78.

327 22AB 10367–10368 (items 7 and 10).

328 8PB 92; 17/5/22 NE 153–154; Ashish's AEIC at [56]–[57].

294 On the contrary, on 15 October 2015, Ashish directed Manoj to liaise with Yogesh, following which Manoj circulated draft minutes of the 5/9/15 Meeting to Yogesh. I infer that Ashish instructed Yogesh to obtain the 5/9/15 Meeting minutes from Manoj. Manoj wrote in his email to Yogesh that these minutes were "[a]s desired", Yogesh held no role in ERHEL, and it was Ashish who connected Manoj with Yogesh.[329] Thus, Ashish knew the conduct of paper board meetings had been an ongoing practice. Indeed, his own appointment as a director of ERHEL had been effected pursuant to one. Ashish himself stated that he was E-Solutions' nominee director in ERHEL from 27 May 2015 to 10 June 2016 although his appointment was never formally confirmed at ERHEL's AGM.[330] Shantanu knew this too as Ashish admitted to sending emails on ERHEL matters on Shantanu's instructions (see [291] above).

295 Next, it was perplexing that Shantanu took nearly two months (after Doris raised the issue about ERHEL's board to him/Ashish on 9 November 2015) to attempt to regularise the board. I disbelieve Shantanu and Ashish had sought legal advice "to properly reconstitute the board".[331] First, this claim was unsubstantiated. Second, on 28 December 2015, Shantanu had simply directed Manoj to convene a board meeting of ERHEL for the purposes of appointing directors, adopting accounts and reviewing the internal audit report, which was substantially similar to what Doris had earlier proposed,[332] and showed no hint of Shantanu having received legal advice. Third, subsequent events showed it was not difficult to remedy the issues with the board. After the NCLT's orders, Shantanu convened a board meeting in July 2016 to appoint REG's two

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329 17/5/22 NE 155–157; 5PB 620.

330 17AB 8754; Ashish's AEIC at [14].

331 Shantanu's AEIC at [302]; Ashish's AEIC at [69].

332 18AB 8906; Shantanu's AEIC at [304].

nominees (Chew and Mr Edmund Lim) and Mahesh to the board and another board meeting in November 2016 to regularise the appointments.[333]

296 The complications surrounding the audit of ERHEL's tax returns could not have significantly delayed Shantanu calling a board meeting since Doris had agreed on 30 November 2015 to Ashish's proposal "to comply with the minimal filing requirements, and to give ERHEL more time to file its tax audit report and audited annual returns for the financial year of 2015–2016".[334] Yet Shantanu took nearly a month thereafter to purportedly attempt to convene a board meeting by informing Manoj of the same on 28 December 2016 (see [289] above), which meeting unsurprisingly never materialised. I find Shantanu was deliberately dragging his feet.

297 Shantanu and Ashish further claimed it was REG who refused to cooperate because Doris did not submit a recommendation from REG's director for her to be a director of ERHEL, as requested by Manoj on 29 December 2015.[335] I give no weight to this reason. It was not mentioned by Shantanu or Ashish in the NCLT proceedings (despite them having mentioned Doris' 29 January 2016 email therein), but only in the Suit.[336] Indeed, Doris had indicated REG's nomination of herself in her email of 18 January 2016 to Shantanu (copying Ashish); and the draft notice of 5 September 2015 for ERHEL's AGM had mentioned a request to propose Doris' appointment to ERHEL.[337]

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333 Shantanu's AEIC at [324]–[325].

334 Shantanu's AEIC at [299]–[303]; Ashish's AEIC at [63]–[68]; 18AB 8869, 8871.

335 Ashish's AEIC at [70]–[73]; Shantanu's AEIC at [313]; 18AB 8913, 8956.

336 17/5/22 NE 170; 10PB 26–27.

337 18AB 8936; 9PB 17; 17/5/22 NE 169.

298 It was also highly suspect for Shantanu to have, on 21 January 2016 and 27 April 2016, asked Doris to suggest timelines for the proposed board meetings and the "remedial actions/compliances".[338] Doris had already asked Shantanu to promptly reconstitute ERHEL's board several times, particularly since ERHEL's tax returns had to be filed by 30 November 2015. She had also set out the steps Shantanu needed to take to remedy the issues as early as 9 November 2015, which Shantanu parroted to Manoj on 28 December 2015 (see [295] above).[339] I disbelieve Shantanu had asked Doris to initiate and suggest the timelines because he believed REG "wanted to be the sole decision-maker for matters pertaining to … the non-compliances" for ERHEL and MIDL".[340] It behoved Shantanu as sole director of ERHEL to reconstitute ERHEL's board, and of which he knew.

299 The above events show that Shantanu did not in good faith attempt to reconstitute ERHEL's board. His conduct following reconstitution of the board (after NCLT's orders) was similarly obstructive. After ERHEL's board was regularised on 17 November 2016, Shantanu and Mahesh refused to approve ERHEL's financial documents claiming there were numerous issues they needed the auditors to clarify. They claimed that these queries were never adequately addressed, thus they could not approve the ERHEL Documents.[341]

300 I find these concerns were not genuine. For instance, on 15 December 2016, Mahesh (after consulting Shantanu) queried Chew on a loan disbursed by ERHEL to JRRES of 51.35 crores and specifically why provision for a

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338 Shantanu's AEIC at [309]–[310], [317]; 18AB 8938; 19AB 9083–9084.

339 Shantanu's AEIC at [298], [300], [308]; 18AB 8862–8863, 8867, 8936; 19AB 9093.

340 Shantanu's AEIC at [310]; 18AB 8938.

341 Shantanu's AEIC at [326]–[329]; Mahesh's AEIC at [61]–[67]; 19/5/22 NE 57, 61–62; 22AB 10379–10386.

"doubtful" loan had not been made in ERHEL's financial statements. This pertained to the Loan Agreement and its three addenda.[342] But Shantanu and Mahesh did not explain why the loan made to JRRES pursuant to the Loan Agreement was "doubtful". Mahesh admitted in court that ERHEL did disburse the funds to JRRES, and Shantanu also agreed that funds were disbursed pursuant to the Loan Agreement (see [7] above). Indeed, Shantanu was involved in ERHEL and JRRES entering into the Loan Agreement, yet he had never raised issues with its propriety before December 2016.[343]

301 In sum, Shantanu did not genuinely wish to reconstitute ERHEL's board. Even after he was compelled to do so by the NCLT, he acted to prevent ERHEL from filing the ERHEL Documents, which led to ERHEL being struck off the company register.

MIDL

302 As for MIDL, REG relies on Doris' 18 January 2016 email (see [297] above) whereby she informed Shantanu of an issue with the constitution of MIDL's board (namely, that Kenneth was then its only director) and requested Shantanu convene an MIDL shareholders' meeting to nominate two persons (one each from REG and Educomp) to its board. As a result of Shantanu's failure to do so, the MIDL board was never regularised.[344]

303 However, REG has not proved that Shantanu was responsible for reconstituting MIDL's board of directors. Even if Shantanu was ERHEL's sole director and ERHEL wholly owned MIDL, REG's witnesses did not explain

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342 19AB 9140–9142; 19/5/22 NE 62–65; Mahesh's AEIC at [12], [66].

343 19/5/22 NE 64–66.

344 Chew's AEIC at [337].

how it behoved Shantanu to reconstitute MIDL's board *via* ERHEL, rather than this being a matter for Kenneth to resolve as the then-sole director of MIDL (as was the case with Doris' proposal regarding ERHEL (see [289] above)).[345] Indeed, Chew's focus in his AEIC was on matters in relation to ERHEL and did not explain what acts Shantanu had performed in relation to MIDL which caused MIDL's failure to file the MIDL Documents. Hence, REG's reliance on this incident to support a claim in Unlawful Means Tort cannot be sustained.

Misappropriation of ERHEL and MIDL properties

304 Finally, REG claims that Shantanu or Educomp improperly and forcibly took possession of documents belonging to the JV Entities for the sole purpose of frustrating REC/REI/RDI's attempt to pursue their rightful claims against the defendants or Educomp.[346] Chew claims that Mahesh had, on Shantanu's instructions, refused to return various documents in respect of ERHEL and MIDL when REG requested for them sometime in 2019. Mahesh did not dispute that he possessed (and continues to possess) these documents.[347]

305 I find that Mahesh was being obstructive in refusing to return the documents. Saurabh (who claimed to be ERHEL's director) had sent three requests to Mahesh to return the documents, on 14 August 2019 ("14/8/19 LOD"), 19 September 2019 ("19/9/19 LOD") and 25 September 2019.[348] Mahesh responded to the 14/8/19 LOD on 21 August 2019 to inform Saurabh that he could personally collect the documents from a stated location at a stated

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345 22/4/22 NE 53, 59–62; Shantanu's AEIC at [311]; Chew's AEIC at [330].

346 SOC at [34]; 19/5/22 NE 72, 76.

347 Chew's AEIC at [343]–[345]; PCS at [211]; Mahesh' AEIC at [69]–[70]; 19/5/22 NE 77.

348 1PB 430–433.

date and time. But when Saurabh requested Mahesh to deposit them at ERHEL's registered address, Mahesh then called upon Saurabh (on 28 August 2019) to first produce evidence to show he was indeed ERHEL's director, because the Master Data of the Ministry of Corporate Affairs did not reflect Saurabh as such, and he did not want to hand over documents to an unauthorised person.[349] ERHEL's reply in the 19/9/19 LOD subsequently highlighted the Master Data retrieved on 16 September 2019 reflected Saurabh as a director of ERHEL.

306 Mahesh then replied on 24 September 2019 and again told Saurabh to collect the documents from a stated place, at a stated date and time.[350] Even if I accept Mahesh was being cautious about ensuring the documents would be handed to an authorised person in ERHEL (and hence his request for Saurabh to show proof of authority) or that the documents were initially handed to him when he was ERHEL's director, the fact remained that he had no authority to retain them when he no longer held any role in ERHEL.[351] Hence he should have returned the documents; instead he required ERHEL to collect them from him and even gave Saurabh a very specific date and time to do so. Indeed, he could have all along arranged for the documents to be returned to *ERHEL*'s registered address, even if he were concerned with Saurabh's authority to obtain them.

307 Contrary to Mahesh's claim, I find he was acting on Shantanu's instructions in this regard. He was Shantanu's representative in JRRES and Noida College and had consulted Shantanu in regard to the Loan Agreement

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349 20AB 9685–9686; Mahesh's AEIC at [77]–[82].

350 20AB 9689.

351 19/5/22 NE 74.

pertaining to ERHEL vis-à-vis Noida College. There was also no reason for Mahesh to have acted independently in respect of ERHEL and MIDL matters.[352]

308 That said, it is unclear (even assuming REG can show a wrongful act or unlawful means employed by Shantanu in this regard) what is the "loss" or "damage" REG is claiming against Shantanu in this regard. This has not been articulated by any of REG's witnesses.[353]

Whether REG's claim made out

309 Where I have accepted that Shantanu did cause certain acts to be committed vis-à-vis a JV Entity or Noida College – in particular, where the acts disrupted the functioning of Noida College – I find he did so with the intent to injure REG's interest in the college. I find nevertheless that REG has not made out its claim in the Unlawful Means Tort. This is because REG has not pleaded for each of Shantanu's acts, who the relevant third party/victim is, and what is the "unlawful means" or actionable wrong committed by Shantanu against this third party (the victim).[354] REG has merely set out various incidents, without articulating what is the cause of action that the relevant third party would have had against Shantanu in relation to these incidents (or even what the criminal conduct, if any, was), in order for Shantanu to meet.

310 In Closing Submissions, REG then submitted that Shantanu's unlawful conduct constituted: (a) inducing E-Solutions' breach of the JVA; (b) inducing E-AP or E-Prof's breach of cl 3.1.2 of the SPA (which provided REI/RDI with

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352 19/5/22 NE 61–62, 75.

353 Chew's AEIC at [343]–[346], [359]–[363].

354 D1CS at [193].

the absolute say in hiring and dismissal of employees); and (c) inducing JRRES's breach of the JRRES SPA.[355]

311 In relation to inducing JRRES's breach of the JRRES SPA, I have earlier stated that this was not pleaded, and thus cannot support REG's claim for the Unlawful Means Tort (see [280]–[281] above). In relation to inducing E-Solutions' breach of the JVA, I have also found that REG's claim as such cannot be sustained (see [231]–[237] above).

312 As for REG's submission that Shantanu *induced E-AP/E-Prof to breach cl 3.1.2 of the SPA* (which REG relies on for the acts pertaining to the termination of Gandhi as director of Noida College and the refusal to acknowledge Sharma's appointment to that position), this was not pleaded as the wrongful conduct in the Unlawful Means Tort. REG pleaded the wrongful conduct as refusing to acknowledge Sharma's appointment and interfering with his work and which was committed by Educomp against JRRES/Noida College or that the wrongful conduct pertained to the conspiracy by the defendants to induce Educomp to breach their obligations as such (which conspiracy claim I have rejected – see [222]–[230] above).[356] REG's submission (that Shantanu induced E-AP/E-Prof to breach cl 3.1.2 of the SPA) also implies the victim of the wrongful conduct is E-AP/E-Prof (the parties to the SPA) rather than JRRES/Noida College and, if found to be made out, would have been actionable by E-AP/E-Prof against Shantanu. But if the victim of the conduct was JRRES and/or Noida College, they would not be able to claim under the SPA as they were not parties to it.[357] At the end of the day, a party must plead its case with

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355 PCS at [322(c)].

356 SOC at [33], [40], [42B].

357 PCS at [339].

sufficient particulars to enable the opposing party to know the case it has to meet.

313 In its Reply Closing Submissions, REG submits that the various acts it relies on amount to unlawful means because by engaging in them, "Shantanu would plainly not be acting in the best interests of [E-AP/E-Solutions]" and further, would have breached the director's duties he owed to ERHEL and the duties he owed to JRRES in his capacity as President and Governing and General Body member.[358] Again, this does not assist REG's case for the reasons at [312] above. Moreover, that Shantanu had breached duties he owed to ERHEL and JRRES was not pleaded nor put to Shantanu in his cross-examination but raised only in REG's Reply Closing Submissions. Hence, Shantanu was not accorded a fair opportunity to rebut these claims.

314 Given the above, I dismiss REG's claim in Unlawful Means Tort.

Damages

315 I deal finally with the damages to be awarded against the defendants.

316 First, in so far as I have found the defendants liable for fraudulent misrepresentation pertaining to the BAA Reps, inducing breach of the BAA and the BAA Conspiracy, I award REI $221,080 being the sum of the BAA Initial Payment. This sum was sought by REG and its quantum was not disputed.[359] I accept the interest is to be at the usual rate of 5.33% per annum and payable on this sum from 16 May 2017 (*ie*, five business days from the date of receipt of the 8/5/17 Demand Letter, pursuant to cl 3.2.5.1 of the BAA).

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358 PRCS at [91].

359 SOC at [42(b)]; PCS at [344]; D1CS at [197(b)], [198(b)]; D2CS at [264]–[266].

317 Second, in relation to the claim against the defendants for inducing the Sellers' breach of the SPA, REG seeks the sums awarded by the Tribunal to the Purchasers (for the Sellers' breach of the SPA), namely: (a) damages assessed at INR163.2m, with interest at 5.33% from 19 August 2015 until payment ("Arbitration Damages"); and (b) legal costs and expenses of the Arbitration of $750,000 and US$550,000, with interest at 5.33% from 31 March 2017 (date of the Final Award) until payment ("Arbitration Costs").[360]

318 For the tort of inducing breach of contract, the damages recoverable include all intended damages and damages that are not too remote at the time of breach (*Nanofilm Technologies International Pte Ltd v Semivac International Pte Ltd and others* [2018] 5 SLR 956 at [214]). The tortious concept of remoteness of damage centres on the principle of reasonable foreseeability (*Robertson Quay Investments Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623 at [71]; *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202 at [61]).

319 REI/RDI (the parties to the SPA) are not entitled to recover the Arbitration Costs. I do not consider it reasonably foreseeable that by inducing the Sellers to breach the SPA, the defendants would occasion damage to REI/RDI in the form of incurred arbitration expenses. It is not hindsight but the foresight of the reasonable man that undergirds the test of remoteness (*Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (The Wagon Mound)* [1961] AC 388 at 424).

320 However, I find the defendants are liable to REI/RDI for a sum equivalent to the Arbitration Damages for inducing the Sellers' breach of the

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[360] PCS at [315(c)], [344]; 11AB 5422–5423 (Final Award at [523]–[524], [528]).

SPA. I am cognisant that these damages were awarded on an expectation basis. The Tribunal quantified the Arbitration Damages by assessing the difference between the value of E-Solutions' share of ERHEL and JRRES as at the New Closing Date and under the SPA (*ie*, the difference between the value of what the Purchasers intended to purchase and the price they would have paid for it), and accounting for the refund of the SPA Deposit.[361] But even as damages in tort and contract differ in that the former seeks to place the plaintiff in the same position he would have been in had the tort not been committed whilst the latter is generally intended to place the claimant in the same position as he would have been in had the contract been performed, there are cases where the quantification of damages on either basis would be identical because the tort arises from a breach of contract, and the plaintiff's position had the contract been performed would be identical to that he would have been in but for the tort (*Turf Club* at [387]). The present case is one such case. But for the defendants inducing the Sellers to breach the SPA, the SPA would have been performed. With this, as well as the fact that the Sellers had proposed the method adopted by the Tribunal to quantify the damages resulting from their breach of the SPA in mind,[362] I accept the defendants are liable to REG for a sum equivalent to the Arbitration Damages (*ie*, INR163.2m), with interest of 5.33% per annum payable on this sum from 19 August 2015 (*ie*, from the New Closing Date).

321 I reject Mr Poon's submission that REI/RDI cannot claim for any loss against Shantanu for his act of inducing the Sellers to breach the SPA because the Purchasers agreed to be "bound by a specified contractual mechanism that dictates the parties' rights and remedies in the event that the SPA cannot be completed", namely a mechanism involving the Sellers equalising the

361 11AB 5418–5419 (Final Award at [497]–[500]); D1CS at [198(a)(iii)].

362 11AB 5418–5419 (Final Award at [497], [501]).

Purchasers' payments toward JRRES for the duration and termination of the SPA.[363] There is no evidence that the parties to the SPA intended for any mechanism in the SPA to govern their rights and liabilities against a person who is not a party to the SPA and who induces its breach.

322 I also reject Mr Poon's submission that the Arbitration Damages are an inapt proxy for the damages to be awarded against the defendants for inducing the Sellers to breach the SPA because this sum was premised on REG not having received any part of Educomp's shares in ERHEL, but REI had (in connection with E-AP's liquidation on 30 June 2017) received the ERHEL shares held by E-AP around 24 July 2018 and thus "a substantial portion of the benefit it was to receive under the SPA".[364] The general rule is that damages should be assessed as at the date of breach (*Miliangos v George Frank (Textiles) Ltd* [1976] 1 AC 443 at 468). Whilst the courts retain a residual discretion to assess damages at such other date as may be appropriate, I see no reason to depart from the general rule. Although REI has now obtained ERHEL's shares held by E-AP, this was only because E-AP was wound up by the court (pursuant to an application filed by the Purchasers). Further, there remains E-Prof's shares in ERHEL (even if comprising only 0.65% of all ERHEL's shares) of which there is no evidence that they have been transferred to REI/RDI. Pertinently, the ceding of control of JRRES to REI/RDI *via* the resignations of the Annex D Persons aligned with Shantanu was a crucial part of the SPA, and this remains unperformed.

323 Mr Padman's submission that REG is not entitled to recover the Arbitration Damages from Dennis because it "has not shown how the fact that

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363 D1CS at [198(a)(i)]; 1AB 547–548 (cl 3.1.2).

364 D1CS at [198(a)(iii)]; Chew's AEIC at [338]; 1AB 587–599.

the [Arbitration Damages] remain[s] unpaid is itself loss and damage occasioned by Dennis" misses the point.[365] REG is not claiming that Dennis is liable for the Arbitration Damages but a sum equivalent to this. Moreover, its basis for so claiming is not that Dennis was the cause of the Sellers' failure to pay the Arbitration Damages to the Purchasers, but that the Arbitration Damages is the quantum ascertained to be REG's loss arising from the Sellers' breach of the SPA, which Dennis induced.

324 For completeness, I note that REG seeks to recover the costs it incurred to investigate and mitigate the Conspiracy and reinstate ERHEL and MIDL to the Register of Companies[366] as well as the sums it invested into JRRES under the PMC, the Loan Agreement, the JRRES SPA and *via* RDI (who paid Noida College employees and JRRES vendors) by its conspiracy claims.[367] As REG has succeeded only in the BAA Conspiracy claim, it is not entitled to recover these sums which are unconnected to the BAA Conspiracy. Additionally, in so far as the defendants had conspired to induce a breach of the SPA (see [217] above), the damages recoverable would have been the same as for the claim against each defendant for inducing the breach of the SPA.

325 It is undisputed that REG is presently seeking to recover the Arbitration Damages and Costs *via* an action brought against E-Prof in the Delhi High Court.[368] REG's ability to recover sums equivalent to the Arbitration Damages from the defendants, whether *via* the proceedings in the Delhi High Court or the Final Award, is subject to the prohibition against double recovery.

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365 D2CS at [253]–[260].

366 Chew's AEIC at [341]; PCS at [169], [210], [340], [344]; POS at [26].

367 Chew's AEIC at [361]–[363]; PCS at [340(a)], [340(b)]; POS at [5(b)].

368 Chew's AEIC at [202(a)], [361(c)]; Plaintiff's Further Closing Submissions at Annex C (S/N 3).

326 Finally, for the sums which I have found the defendants liable (at [316] and [320] above), Shantanu and Dennis are jointly and severally liable.

Conclusion

327 To sum up, I find REG has proved its claims against the defendants in: (a) fraudulent misrepresentation pertaining to the BAA Reps; (b) inducing breach of the SPA; (c) inducing breach of the BAA; and (d) the BAA Conspiracy.

328 Shantanu and Dennis are jointly and severally liable: (a) to REI for $221,080 (with interest at 5.33% per annum from 16 May 2017); and (b) to REI and RDI for INR163.2m (with interest at 5.33% per annum from 19 August 2015).

329 I will hear parties on costs.

Audrey Lim
Judge of the High Court

Lin Weiqi Wendy, Chong Wan Yee Monica, Ho Yi Jie and Tai Mun Chien (WongPartnership LLP) for the plaintiffs;
Kelvin Poon SC, Tng Sheng Rong and Bernice Tan (Rajah & Tann Singapore LLP) for the first defendant;
P Padman and Lim Yun Heng (KSCGP Juris LLP) for the second defendant.