IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 19

Court of Appeal / Civil Appeal No 27 of 2023

Between

DBL

… *Appellant*

And

DBM

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside — Rules of natural justice]

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DBL
v
DBM

[2024] SGCA 19

Court of Appeal — Civil Appeal No 27 of 2023
Sundaresh Menon CJ, Steven Chong JCA, Judith Prakash SJ
28 March 2024

21 May 2024

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

Introduction

1 This was an appeal against the decision of the High Court judge (the "Judge") in *DBL v DBM* [2023] SGHC 267 (the "GD"). The appellant had sought unsuccessfully to set aside an arbitral award (the "Award") on the basis that the Award was tainted by a breach of natural justice. The appellant relied on two principal grounds. First, the appellant pointed to a demonstration (hereinafter referred to as the "Searoutes Demonstration") conducted by the respondent's counsel during the oral closing submissions at the arbitration. According to the appellant, the arbitral tribunal (the "Tribunal") allowed the Searoutes Demonstration contrary to the agreed hearing protocol under which no demonstrative exhibits referring to the evidence that had been adduced were to be introduced during the arbitral proceedings unless prior notice had been given by a certain date; and further, the appellant was not afforded a reasonable

and fair opportunity to address or respond to the Searoutes Demonstration. Second, the appellant submitted that the Tribunal failed altogether to consider two defences which the appellant had raised.

2 The Judge refused the application to set aside the Award and held that there had been no breach of natural justice which prejudiced the appellant. We heard and dismissed the appeal on 28 March 2024. We now furnish the grounds of our decision.

Facts

3 We have adopted the same redacted terms as those used in the GD below. The material facts are set out in the GD (at [4]–[27]). We highlight only the salient facts.

4 The appellant, [DBL], and the respondent, [DBM], were engaged in the business of steel trading.

Sales contract between the appellant and the respondent

5 Pursuant to a sales contract (the "Sales Contract"), the appellant agreed to sell 19,600 mt of prime steel slabs (plus/minus 10% per size and in total) to the respondent. The total contract value was estimated to be around USD 9,074,800.00. The relevant terms of the Sales Contract are set out below:

(a) The Sales Contract expressly required the prime steel slabs to be loaded at "any Port from K.S.A", this referring to the Kingdom of Saudi Arabia ("KSA").

(b) The Sales Contract could be terminated by either party in the event of any breach of the conditions of the Sales Contract.

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(c) The Sales Contract was governed by English law and provided for arbitration in Singapore in accordance with the arbitration rules of the Singapore Chamber of Maritime Arbitration for the time being in force at the commencement of arbitration.

6 The prime steel slabs were loaded onto the vessel, M/V [FP] (the "Vessel"). According to the bill of lading, 21,430.136 mt of prime steel slabs (the "Goods") were loaded on 19 September 2013 at the Dammam Port in the KSA. On the same day, the appellant issued an invoice to the respondent for the sum of USD 9,922,152.97 (the "Purchase Price") in respect of the Goods. The respondent's bank, [FD] Bank, paid the Purchase Price to the appellant pursuant to a letter of credit.

The dispute over where the Goods had been loaded

7 On 24 September 2013, [FD] Bank notified the respondent that it had received information which caused it to believe that the Goods had been loaded at Bandar Abbas, Iran, rather than at the Dammam Port in the KSA. Given that Iran was a jurisdiction subject to sanctions, [FD] Bank requested some information from the respondent including the measures taken to verify that the Goods had been loaded as stated in the bill of lading.

8 On the same day, the respondent sought an indemnity from the appellant. The appellant provided the respondent with a signed document titled "Indemnity Bond" (referred to as the "Indemnity Deed" in the Award and hereinafter referred to as the "Bond"). Though the Bond was signed and sent by the appellant to the respondent on 24 September 2013, it was backdated to 8 September 2013.

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9 Under the Bond, the appellant confirmed that the Goods would originate from the KSA and be loaded at the Dammam Port in the KSA. The Bond also provided as follows:

(a) If the relevant parties (including the parties' banks) were not satisfied with the documentation in relation to the Goods, the Sales Contract could be terminated with all payments received by the appellant to be refunded to the respondent.

(b) The appellant undertook to indemnify the respondent against all "costs and losses incurred" by the respondent in the event of any such termination.

Termination of the Sales Contract

10 On 29 September 2013, the respondent informed the appellant that it was "cancelling" the Sales Contract and asked the appellant to refund the Purchase Price to the respondent's bank as soon as possible. The respondent never took delivery of the Goods. The appellant in due course sold the Goods to another buyer (see [46(b)] below). On 26 October 2013, the appellant wrote to the respondent stating that it was awaiting payment of the proceeds from the sale of the Goods to another buyer, after which it would remit the Purchase Price to the respondent.

11 We briefly set out below the series of events leading to the commencement of arbitral proceedings by the respondent:

(a) A net sum of USD 499,975 was paid by the appellant to the respondent on 7 November 2013. This was paid by the appellant as a demonstration of good faith while it was awaiting receipt of the proceeds from the sale to the other buyer.

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(b) Between April and May 2014, the respondent negotiated an agreement with another entity, [DKL], for the purchase of nickel. As the appellant was closely associated with the parent company of [DKL], the parties subsequently agreed that the appellant would assume the responsibility for supplying 500 mt (plus/minus 10%) of nickel to the respondent. The original nickel purchase agreement was subsequently amended to reflect that: (i) the appellant owed the respondent a sum of USD 9,422,177.97 (being the Purchase Price less USD 499,975) (the "Outstanding Amount"); and (ii) the sum of USD 4,960,653.48 (being the estimated value of nickel to be sold by the appellant to the respondent) would be set off against the Outstanding Amount. In the court below, this revised agreement was referred to as the "Nickel Purchase Agreement".

(c) The parties subsequently agreed on certain adjustments with respect to the value of nickel supplied. Adjusting the Outstanding Amount against the agreed purchase price of the nickel, the respondent contended that the net outstanding amount owed by the appellant was USD 4,683,418.77 (the "New Outstanding Amount"). The appellant, on the other hand, contended twice while confirming the balance outstanding that the net balance owing was USD 4,610,707.65 (being the New Outstanding Amount less a sum of USD 72,711.12). However, no explanation was provided by the appellant to account for the difference.

Arbitral proceedings commenced by the respondent

12 The respondent commenced arbitral proceedings on 24 July 2020 in which it pursued two alternative claims:

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(a) First, the respondent pursued a claim for breach of the Sales Contract as varied by the Bond, seeking a refund of the balance amount of the Purchase Price (the New Outstanding Amount) as well as an indemnity against some other losses, costs and penalties it had incurred, along with interest. In the alternative, the respondent sought damages for breach of the Sales Contract.

(b) Second, and in the alternative to its claim for breach of the Sales Contract as varied by the Bond, the respondent presented a claim in unjust enrichment, seeking restitution of the New Outstanding Amount.

13 Given the passage of time between the breach in September 2013 and the commencement of arbitral proceedings on 24 July 2020, there was a question as to whether the respondent's claim was time-barred. The respondent contended that its claim was not time-barred by virtue of the confirmations of the balance outstanding that the appellant had issued on two occasions, the effect of which was to extend the time from which any period of limitations would run.

14 In the arbitral proceedings, the appellant argued that:

(a) it had not breached the Sales Contract or the Bond and that the Goods had, in fact, been loaded at the Dammam Port in the KSA;

(b) the respondent's causes of action were time-barred because the acknowledgments which the respondent relied on did not meet the prescribed requirements under the English Limitation Act and thus did not extend the limitation period (the "Limitation Defence"); and

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(c) the Bond was unenforceable under English law because it was neither supported by consideration nor made by deed (the "Unenforceable Bond Defence").

Demonstration carried out by the respondent's counsel in the course of oral closing submissions

15 An agreed hearing protocol was issued which included a provision that if any party intended to rely on demonstrative exhibits derived from evidence on the record, this had to be disclosed by 14 October 2021.

16 The hearing took place on 18 and 19 October 2021. In its oral closing submissions on the second day of the hearing, the respondent's counsel carried out the Searoutes Demonstration by entering data onto a route planning and vessel tracking website, searoutes.com (the "Searoutes Website"). Briefly, the Searoutes Demonstration entailed the following:

(a) The respondent's counsel extracted data from a document titled "Vessel Finder Port Movements Report" (the "Vessel Finder Report") which had been adduced by the appellant. The Vessel Finder Report purported to set out coordinates of the Vessel at various points of time between 1 September 2013 and 31 October 2013. While the Vessel Finder Report did not set out the coordinates of the Vessel on 19 September 2013 (which was when the Goods were said to have been loaded onto the Vessel), the Vessel Finder Report did set out the Vessel's coordinates for the morning of 20 September 2013.

(b) Specifically, the respondent's counsel extracted the coordinates of the location of the Vessel on 20 September 2013 at 7.49am and entered this onto the Searoutes Website. The respondent's counsel then entered the coordinates of the Dammam Port in the KSA. It is undisputed

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that the coordinates of the Dammam Port were not otherwise in evidence. The respondent's counsel also entered an assumed speed of the Vessel of 15 knots. The respondent's counsel explained at the hearing that, based on the Vessel Finder Report, the highest speed at which the Vessel had travelled between 1 September 2013 and 31 October 2013 was 15 knots.

(c) The respondent's counsel demonstrated that, based on the plotted route on the Searoutes Website, the Vessel would have had to travel a distance of 1,261km from the Dammam Port in the KSA to arrive at the coordinates indicated in the Vessel Finder Report on 20 September 2013 at 7.49am. Even at an assumed speed of 15 knots, the Vessel would have taken a minimum of 45 hours to travel this distance. This made it highly implausible that the Goods had been loaded onto the Vessel at the Dammam Port in the KSA.

17 Notably, the appellant's counsel did not object to the Searoutes Demonstration during the hearing. The appellant's counsel also did not substantively address the Searoutes Demonstration in oral closing submissions (which followed the respondent's oral closing submissions), or otherwise.

The Award

18 The Tribunal found in favour of the respondent. The key aspects of the brief Award that was issued by the Tribunal may be summarised as follows:

(a) The Tribunal found on the evidence (including the Searoutes Demonstration) that the Goods could not have been loaded onto the Vessel at the Dammam Port in the KSA on 19 September 2013. Rather, the evidence showed that the Vessel was likely to have been at Bandar

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Abbas in Iran at the relevant time. The respondent was, therefore, entitled to terminate the Sales Contract and claim damages.

(b) The respondent's claims were not time-barred. This was because the acknowledgments given by the appellant extended the time for the running of any applicable limitations period.

(c) The appellant was ordered to pay the respondent the sum of USD 4,683,418.97, being the balance of the Purchase Price which had not previously been paid.

The Judge's dismissal of the appellant's application to set aside the Award

19 The appellant applied in the court below to set aside the Award pursuant to s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) asserting a breach of the rules of natural justice which resulted in the appellant's rights being prejudiced. The appellant made three arguments:

(a) First, the appellant argued that it was not afforded a reasonable and fair opportunity to address the Searoutes Demonstration which the Tribunal had allowed into evidence despite the respondent's failure to adhere to the agreed hearing protocol. The appellant also argued that the Searoutes Demonstration had introduced new evidence (being the coordinates of the Dammam Port in the KSA and the assumed speed of 15 knots). The appellant argued that it was prejudiced because the Tribunal had relied significantly on the Searoutes Demonstration in coming to its conclusion that the Goods had not been loaded onto the Vessel at the Dammam Port in the KSA.

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(b) Second, the appellant argued that the Tribunal had failed to consider the Limitation Defence which the appellant had raised. The appellant accepted that the Tribunal had concluded that any time bar had been extended by virtue of the acknowledgments given by the appellant and these gave rise to new causes of action. However, the appellant contended that the Tribunal did not specifically address its argument that the acknowledgments did not satisfy the prescribed requirements under the English Limitation Act and, therefore, were not effective to extend the limitation period.

(c) Third, the appellant argued that the Tribunal had failed to consider or apply its mind to the Unenforceable Bond Defence. The appellant contended that the Bond was a key part of the respondent's claim in the arbitration given that it was seeking a refund of the Purchase Price, which was a remedy that was expressly provided for only in the Bond. The Tribunal had considered the respondent's claim to be based on the Bond, but the Award was completely silent on the issue of whether the Bond was enforceable even though a key pillar of the appellant's defence was that the Bond was unenforceable.

20 The Judge dismissed the appellant's application to set aside the Award.

21 In relation to the Searoutes Demonstration, the Judge found that any objection by the appellant to the Searoutes Demonstration would have made no difference. This was because the Tribunal had relied on other evidence aside from the Searoutes Demonstration in concluding that the Goods had not been loaded at the Dammam Port in the KSA. The only evidence which the appellant had relied on in support of its case was the bill of lading, and the Tribunal found this was unlikely to be accurate. The Judge also found that the data used by the

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respondent in the Searoutes Demonstration had either been adduced in evidence or was not controversial. Finally, the appellant's conduct throughout the arbitration did not evince any intention on the appellant's part to object to the Searoutes Demonstration. Rather, its conduct suggested that it did not regard the Searoutes Demonstration as objectionable at all.

22 In relation to the Limitation Defence, the Judge found that the Tribunal had considered the appellant's defence of limitation and rejected it. While the Tribunal may not have explained why it considered that the acknowledgments satisfied the requirements of the English Limitation Act, the Tribunal was not required to deal separately with each argument canvassed by the parties as long as it dealt with the essential issues.

23 In relation to the Unenforceable Bond Defence, the Judge accepted that the Tribunal did not address the appellant's argument that the Bond was unenforceable under English law. However, this did not amount to a breach of natural justice because the respondent's claim was not based solely on a breach of the Sales Contract as varied by the Bond. Rather, the Judge found that the respondent had pursued an alternative claim based on a breach of just the Sales Contract. While the Award did not expressly refer to such an alternative, in the Judge's view, the Award had held that the appellant had breached terms in both the Sales Contract as well as the Bond. The Judge considered that the Tribunal saw no distinction between the respondent's claimed remedies under the two heads of claim (since the amount claimed under each was the New Outstanding Amount), which possibly explained why the Tribunal did not distinguish between the "refund" claimed for breach of the Sales Contract as varied by the Bond and the "damages" claimed for breach of the Sales Contract on its own.

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24 Following from this, the Judge found that there was no need for the Tribunal to decide on the enforceability of the Bond since the alternative claim did not depend on the Bond. There was, therefore, no prejudice suffered by the appellant. Even if the Tribunal had accepted the appellant's argument that the Bond was unenforceable and had considered the respondent's alternative claim for breach of just the Sales Contract, the Tribunal would likely have arrived at the same result.

The issues before us

25 Three issues arose before us:

(a) First, whether the Judge erred in holding that the Tribunal had not acted in breach of natural justice when it allowed and considered the Searoutes Demonstration (the "**Searoutes Demonstration Issue**").

(b) Second, whether the Judge erred in finding that the Tribunal had considered the appellant's defence of limitation even though it had failed to address the appellant's arguments relating to the English Limitation Act in the Award (the "**Limitation Defence Issue**").

(c) Third, whether the Judge erred in finding that the Tribunal had not acted in breach of natural justice even though it had failed to address the appellant's defence that the Bond was unenforceable in the Award (the "**Unenforceable Bond Defence Issue**").

26 We consider each in turn.

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The Searoutes Demonstration Issue

27 We disposed of the appellant's contention that it was not afforded a reasonable and fair opportunity to address the Searoutes Demonstration, on the ground that the appellant did not object to the Searoutes Demonstration before the Tribunal.

28 In *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*"), this court stated (at [98]) that, in considering whether a party had been denied its right to a fair hearing by a tribunal's conduct of the proceedings, the proper approach a court should take is to ask itself if what the tribunal did (or decided not to do) falls within the range of what a reasonable and fair-minded tribunal *in those circumstances* might have done. This court also made clear, however, that the tribunal's conduct and decisions should only be assessed by reference to *what was known to the tribunal* at the material time: *China Machine* at [99]. This was necessary because a tribunal cannot be criticised as having acted unfairly when the alleged unfairness was *never* brought to the attention of the tribunal by the aggrieved party: *China Machine* at [99]–[102].

29 Further, this court specifically stated in *China Machine* (at [170]) that an aggrieved party cannot simply "reserve" its position until *after* the award and only pursue a point if the outcome of the award turns out to be unpalatable to it. Hedging against an adverse result was identified as impermissible conduct because an aggrieved party ought not to be allowed to argue a breach of natural justice when at the material time it presented itself as a party which was ready, able and willing to see the arbitral proceedings through to the end.

30 The conduct of the appellant in the present case was squarely caught by these principles in *China Machine*. If the appellant had been aggrieved by the

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Searoutes Demonstration, why had it not raised an objection before the Tribunal? We accepted that the Searoutes Demonstration took place at a late stage of the proceedings. However, this was *before* the oral closing submissions were made by the appellant's counsel. The point could have been taken in the course of the appellant's own oral closing submissions. If it required time to consider and assess whether to object to the Searoutes Demonstration, the appellant's counsel could have requested this. In fact, the appellant's counsel *did* ask for and was granted a short break of ten minutes after the oral closing submissions of the respondent's counsel to "take account of what's been said" and "to make some revisions". Even after the oral closing submissions on 19 October 2021, the appellant did not raise any issue with the Searoutes Demonstration even up to the issuance of the Corrected Award on 28 October 2022.

31 The appellant submitted that it did not object to the Searoutes Demonstration because two earlier objections on other matters had been "brushed aside" by the Tribunal. We rejected this. If the appellant was contending that it was a deliberate decision on its part *not* to raise an objection that it considered to be open to it, then this was a cynical and wholly unacceptable course. By *not* objecting to the Searoutes Demonstration, the appellant's conduct clearly suggested that it had no issue with the Searoutes Demonstration at the material time.

32 In the circumstances, we agreed with the Judge that the appellant's belated objection to the Searoutes Demonstration in its setting aside application was inexcusable and opportunistic. It was therefore unnecessary for us to consider whether the Tribunal had acted in breach of natural justice by allowing the Searoutes Demonstration.

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The Limitation Defence Issue

33 We next considered the appellant's contention that the Tribunal had failed to apply its mind to the Limitation Defence.

34 We were amply satisfied that the appellant's contention on this point was without merit. It was clear on the face of the Award that the Tribunal had considered the essential issue as to whether the respondent's claims were time-barred:

> 26. There is no dispute between the Parties that the cause of action accrued when [the appellant] breached the Sale Contract around 21 September 2013 when the steel slabs were loaded in Iran. The six-year time limit therefore expired around 21 September 2019.
>
> …
>
> 29. *The [respondent's] position was that [its] claims are not time-barred* because the Sale Contract and the Indemnity Deed qualify as specialties for the purpose of the Limitation Act and are therefore subject to a limitation period of 12 years. *In addition, the [respondent] argue[s] that the limitation period was extended because of various "acknowledgements" given by [the appellant] to the [respondent].*
>
> 30. *My decision is that the acknowledgements of the debt given by the [appellant] on various dates gave rise to new causes of action and had the effect of interrupting any time bar.* These occurred when the [appellant] acknowledged to the

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> [respondent] that [it] owed the debt and it follows that the claims brought in this arbitration are not time-barred.
>
> 31. In addition, *I find that each acknowledgement had the effect of giving rise to a fresh cause of action*, including the First and Second Balance Confirmations.
>
> 32. *Accordingly, I find that the causes of action remain live, and were not time barred* on the date when the Notice of Arbitration was given.
>
> [emphasis added]

35 However, the appellant's contention was that the Tribunal's observations on limitation were "bare" and made no reference to the parties' arguments on whether the various acknowledgments (see [13] above) satisfied the prescribed requirements under the English Limitation Act.

36 This did not amount to a breach of natural justice. In *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733, Judith Prakash J (as she then was) noted (at [60]), in the context of an appeal arising from an application to set aside an adjudication determination under s 27 of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed), that natural justice requires that the parties should be heard; it does not require that they be given responses to *all* submissions made. And in the context of arbitration, Chan Seng Onn J (as he then was) stated in *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 (at [72]–[74]) that a tribunal is not obliged to deal with *every* argument as that would be neither practical nor realistic. Rather, a tribunal is only required to deal with the essential issues, with the tribunal being accorded fair latitude to determine what is essential.

37 Further, in *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488, this court stated (at [46]) that an aggrieved party needed to

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show that a clear and virtually inescapable inference could be drawn that a tribunal had failed to consider an important pleaded issue before such a finding would be made. We did not think that such an inference could be drawn in a case such as the present where the Tribunal had considered the essential issue under the Limitation Defence of whether the respondent's claims were time-barred, just because it did not go on to explicitly address each of the arguments made by the appellant.

38 We therefore did not think that the Judge had erred in relation to the Limitation Defence Issue.

The Unenforceable Bond Defence Issue

39 Finally, we considered the appellant's contention that the Tribunal had failed to consider or apply its mind to the Unenforceable Bond Defence.

40 As a starting point, the Judge recognised that the Tribunal did not deal with the Unenforceable Bond Defence. The Judge also stated that that there was neither an explicit nor implicit indication that the Tribunal had considered the Unenforceable Bond Defence. We agreed with this.

41 Despite this, the Judge concluded that there was no breach of natural justice which warranted setting aside the Award. In arriving at this conclusion, the Judge took the view that it was unnecessary to consider the enforceability of the Bond because the Award appeared to rest on findings that the respondent had breached terms in both the Sales Contract as well as in the Bond.

42 We respectfully disagreed with the Judge on this for two reasons:

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(a) First, it was clear to us from the respondent's pleadings that there was no such alternative claim for breach of just the Sales Contract standing alone. The Judge cited *Phoenixfin Pte Ltd and others v Convexity Ltd* [2022] 2 SLR 23 (at [50]) in support of the position that a more generous approach may be taken towards pleadings in arbitral proceedings, and that pleadings in arbitral proceedings are not determinative in the same way that they might be in court litigation. While we agreed with this as a general proposition, this does not allow the court to fill in gaps in the respondent's case or read into the respondent's case a claim which it had not explicitly advanced.

(b) Second, it was clear that the Tribunal had not expressly referred to or even considered an alternative claim for breach of just the Sales Contract standing alone. Given this, it could not be said that the Tribunal had made any finding in the Award that the respondent had breached the Sales Contract since there was nothing in the Award to suggest this.

43 Despite this, we did not think there was any basis for setting aside the Award. This was because the appellant did not suffer any actual or real prejudice on account of the breach of natural justice.

44 In *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86, this court made clear (at [91]) that curial intervention would only be justified where an aggrieved party is able to show that there was *actual or real prejudice* caused by the breach:

> 91 … It appears to us that in Singapore, an applicant will have to persuade the court that there has been some actual or real prejudice caused by the alleged breach. While this is obviously a lower hurdle than substantial prejudice, it certainly does not embrace technical or procedural irregularities that have caused no harm in the final analysis. There must be more than technical unfairness. It is neither desirable nor possible to

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> predict the infinite range of factual permutations or imponderables that may confront the courts in the future. What we can say is that to attract curial intervention it must be established that the breach of the rules of natural justice must, at the very least, have actually altered the final outcome of the arbitral proceedings in some meaningful way. If, on the other hand, the same result could or would ultimately have been attained, or if it can be shown that the complainant could not have presented any ground-breaking evidence and/or submissions regardless, the bare fact that the arbitrator might have inadvertently denied one or both parties some technical aspect of a fair hearing would almost invariably be insufficient to set aside the award.

45 As this court noted in *CBS v CBP* [2021] 1 SLR 935 (at [84]), it is not the case that an applicant seeking relief must demonstrate that a different outcome would necessarily have followed but for the breach of natural justice. Rather, as was stated in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 (at [54]), the central question is whether, as a result of the breach, the tribunal was denied the benefit of arguments or evidence that had a real as opposed to fanciful chance of making a meaningful difference to the outcome of the arbitral proceedings.

46 In the present case, we were not convinced that there was a real chance of a meaningful difference to the outcome of the arbitral proceedings even if the matter had been remitted to the Tribunal to consider the Unenforceable Bond Defence. This was for the following reasons:

(a) Even assuming that the Bond was unenforceable, this would not have changed the fact that there was nevertheless a breach of the Sales Contract. This was because the Sales Contract similarly included a term that the Goods would be loaded in the KSA (see [5(a)] above) and the Tribunal had found that the Goods were not loaded in the KSA.

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(b) The Tribunal would have then had to consider the damages payable by the appellant to the respondent for the breach of the Sales Contract. While damages would typically have had to be assessed, the present case was one where the Purchase Price had been released to the appellant by the respondent's bank under a letter of credit (see [6] above) *and* the Goods had made their way back to the appellant (see [10] above). The appellant subsequently sold the Goods to another buyer. In the circumstances, even if damages were to have been assessed, the outcome would not have been meaningfully different. The damages payable would have simply been the New Outstanding Amount (being the balance of the Purchase Price after deducting the amount of USD 499,975 received by the respondent from the appellant and the amount which was offset for the value of nickel which the respondent had received under the Nickel Purchase Agreement). This was the same amount which the Tribunal had ordered the appellant to pay the respondent in the Award, albeit framed as a refund.

47 When we put this to the appellant's counsel at the hearing, it was readily conceded that the final outcome of the arbitral proceedings would not have been different in any meaningful way even if the matter was to be remitted to the Tribunal and even if the Tribunal had found in favour of the appellant in relation to its Unenforceable Bond Defence. Therefore, there was no basis for curial intervention because no actual or real prejudice had been suffered by the appellant.

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Conclusion

48 We therefore dismissed the appeal, and fixed costs in favour of the respondent in the aggregate sum of $60,000.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Judith Prakash
Senior Judge

Prakash Pillai, Koh Junxiang and Wang Chunhua (Clasis LLC) for the appellant;
Chan Cong Yen Lionel, Caleb Tan Jia Chween and Kirsten Siow (Oon & Bazul LLP) for the respondent.

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