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

[2024] SGHC 194

Originating Application No 888 of 2023

Between

DIB

… *Applicant*

And

DIC

… *Respondent*

JUDGMENT

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

TABLE OF CONTENTS

DIB
v
DIC

[2024] SGHC 194

General Division of the High Court — Originating Application No 888 of 2023
Wong Li Kok, Alex JC
12 June 2024

26 July 2024 Judgment reserved.

Wong Li Kok, Alex JC:

Introduction

1 This is an application by the Applicant to set aside the arbitral award dated 2 June 2023 (the "Award"), rendered by Mr Peter Ashford (the "Tribunal"). The Respondent had succeeded in an arbitration in Singapore under the auspices of the International Chamber of Commerce ("ICC"). The Applicant is now, through HC/OA 888/2023, seeking to set aside the Award on the basis that there have been breaches of natural justice.

2 Having considered the parties' submissions, I dismiss the Applicant's application to set aside the Award. I find that none of the alleged breaches raised by the Applicant constituted breaches of natural justice which resulted in prejudice that would warrant setting aside the Award. I set out my reasons below.

Facts

Background to the dispute

3 The arbitration arose out of a contract dated 16 March 2015 (the "Contract"). The Contract was for the supply of a [confectionary product] preparation and sterilisation line (the "Line") by the Respondent to the Applicant.[1] The Contract contained an express condition that the Respondent would supply a Line that could produce 8,000 litres per hour ("l/h") of the [confectionary product].[2] Pursuant to Article 3 of the Contract, the Applicant was required to pay a purchase price of [$] 128,250,000 to the Respondent (the "Purchase Price").[3] On 27 March 2020, the Applicant terminated the Contract, on the purported basis that the Line suffered from several defects which rendered it unfit for purpose.[4]

The arbitration

The proceedings

4 The Applicant thus commenced arbitration at the ICC on 21 September 2020.[5] The Applicant sought restitution of the Purchase Price as well as additional sums paid for delivery and customs as well as services and materials to test the Line, all of which totalled to [$] 171,661,109.[6] Conversely, the

---

1 Applicant's Written Submissions ("AWS") at para 5; Respondent's Written Submissions ("RWS") at para 7.

2 Applicant's Chief Executive Officer's first affidavit (dated 7 September 2023) ("AA-1") at p 70.

3 AA-1 at p 70.

4 AWS at paras 7–9.

5 AA-1 at p 1055 para 9.

6 AA-1 at pp 118 and 206.

Respondent denied liability for the Line and asserted, *inter alia*, that: the Applicant lost its right to reject the Line and was estopped from doing so; it duly performed its contractual obligations; and the Applicant was disentitled from restitution.[7]

5 The Tribunal was constituted on 19 March 2021.[8] The arbitration hearing was held from 11 to 13 April 2023 where the Tribunal heard submissions from counsel as well as from factual and expert witnesses.[9]

6 Notably, at the start of the arbitration hearing, on 11 April 2023, there was an exchange between the Tribunal and the Applicant's counsel for the arbitration:[10]

> THE ARBITRATOR: … if the case, for example, were to fail on acceptance, if I were to find that the line had been accepted by [the Applicant], do I understand your case that I, therefore, dismiss the claim? Have I understood that correctly? There is no alternative claim in damages?
>
> APPLICANT'S COUNSEL: There is no claim in damages, no.
>
> THE ARBITRATOR: So, logically, if I found it to be accepted, that would involve a dismissal of the claim?
>
> APPLICANT'S COUNSEL: Yes, we're not seeking the 15 percent of the damages.

This exchange forms one of the key points of dispute which the Applicant relies on to establish a purported breach of natural justice.

---

7 AA-1 at pp 241–260.

8 AA-1 at p 1056 para 11.

9 AA-1 at p 1058 para 30.

10 Respondent's Regional Sales Manager's affidavit (dated 29 February 2024) ("RA-1") at p 58.

The Award

7 The Tribunal rendered its Award on 2 June 2023.[11] Although the Award canvasses a wide range of issues, I only set out the key findings which are relevant for the purposes of the present application.

8 On the issue of whether the parties had satisfied their obligations under the Contract, the Tribunal concluded that the Line was not in compliance "with the express term to produce 8,000 l/h of … [confectionary product] and, in consequence, [found] that it was not fit for such purpose".[12] In arriving at this finding, the Tribunal accepted that the line was able to produce *some* [confectionary product] and in substantial quantities, but that it was not clear that it was able to produce the [confectionary product] at the rate and viscosity required by the Applicant.[13] It also concluded that the breach was "substantive and serious and not 'so slight'", thereby entitling the Applicant to reject the Line.[14]

9 Despite finding that the Respondent's breach of the Contract was of such a nature as to entitle the Applicant to reject the Line, the Tribunal nevertheless concluded that the Applicant was not entitled to the restitution of the Purchase Price. I pause here to note that, although the Applicant sought to recover the Purchase Price and additional advances (totalling [$] 171,661,109) in restitution before the Tribunal,[15] the Tribunal appears to have focused on the Applicant's

---

11 AA-1 at p 1052.

12 AA-1 at p 1112 para 140.

13 AA-1 at p 1110 para 135.

14 AA-1 at p 1112 para 139.

15 AA-1 at p 204 para 119.

ability to recover the *Purchase Price* in its Award. As the Applicant does not contend the Tribunal's decision to do so in this application, I will use the term "Purchase Price" to discuss the Applicant's claim in restitution.

10 First, the Tribunal considered the issue of whether there was a failure of basis.[16] It held that even if the Respondent "merely [undertook] design work and preparatory construction [that] that would have been sufficient to deprive [the Applicant] of the right to reject and recover the [Purchase Price] as unjust enrichment construction". Thus, seeing as how the Respondent did not only deliver the Line, but also assisted in its installation, this was "more than sufficient to reject a failure of basis".[17] The Tribunal therefore concluded that "there was no total failure of basis and the claim for restitution must, therefore, fail".[18]

11 Second, the Tribunal considered whether the Applicant had accepted the Line. The Applicant would have done so by undertaking its own modifications and by the passing of time, either of which would prevent the Applicant from exercising the right to reject and, consequently, the right to recover the Purchase Price by way of restitution.[19]

12 After reviewing the Applicant's evidence, the Tribunal rejected the Applicant's claim that *all* of the modifications which it undertook were directed by the Respondent's senior mechanical engineer ("Employee-R") or amounted "to [repairs] to be approved by [Employee-R] in some sense that would retain

---

16 AA-1 at p 1114 para 149.

17 AA-1 at p 1117 para 154.

18 AA-1 at p 1117 para 155.

19 AA-1 at p 1117 paras 156–157.

the right to reject".[20] The Tribunal went on to find that, even assuming that the Applicant "changed the Line … with the approval of the on-site engineer", Employee-R, this would not "chang[e] the legal analysis" as Employee-R was "not the authorised person of [the] Respondent and changes to the Contract required agreement in writing" as per Article 20 of the Contract. In other words, since "clear words are required in a contract to exclude a remedy" and "somebody with appropriate authority was needed to waive a potential defence", Employee-R was "not such a person" from whom "a clear statement from someone in authority" could be obtained. Thus, by "undertaking [the] modifications [the Applicant] acted inconsistently with the ownership of [the] Respondent and thereby accepted the Line".[21]

13 The Tribunal also found that the Applicant had accepted the Line by the passage of time. In arriving at this finding, it took into account the fact that the line was delivered in March 2017 and "had been in [the Applicant's] possession (and ownership) for some 3 years".[22] The Tribunal stressed the following facts to be "especially material" in its final finding:

(a) The Applicant's case was "that the line never worked and if that were correct it would have been apparent after the first attempt at commissioning and if proven, could have been rejected at that stage".

(b) By June 2018, substantial production had been possible. Thus, by this stage, the Applicant "had had a proper opportunity to install and inspect the Line".

---

20 AA-1 at p 1123 para 176.

21 AA-1 at pp 1123–1124 paras 177 and 179.

22 AA-1 at p 1124 para 181.

(c) Additionally, by June 2018, the Applicant was given "the options or information (to the extent that it had not been before) to enable [the Applicant] to decide upon the accept, reject or cure option that may have been available prior to this date".

(d) Finally, latest by October 2018, the Applicant had "substantial production and had the information on the various options available after which a reasonable time had passed … to elect on the options available to it".

By failing to make an election after a reasonable period had elapsed, the Applicant "had thereby accepted the Line and lost its right to reject".[23]

14 Accordingly, the Tribunal refused and dismissed the Applicant's claim.

Issues to be determined

15 The Applicant's case is that the Award should be set aside on the grounds that there was a breach of natural justice in connection with the making of the Award. The Applicant alleges that its rights have been prejudiced, under s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"), as it was unable to present its case within the meaning of Article 34(2)(*a*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") read with s 3 of the IAA.[24] In reply, the Respondent denies these claims. The Respondent argues that the Applicant had been afforded fair opportunity to advance its case and that the Tribunal had applied its mind to all of the essential

[23] AA-1 at p 1124 paras 184–185.

[24] AWS at para 2.

issues in arriving at the final decision[25] and the application to set aside the Award should be dismissed.

16 There are four grounds on which the Applicant seeks to rely on to show that the Award should be set aside. These four grounds form the four issues in the present application as follows:[26]

(a) whether the Tribunal denied the Applicant a reasonable opportunity to respond to the unpleaded issue that the delivery of a Line that was unfit for purpose was sufficient consideration to defeat a claim for total failure of consideration (the "Failure of Consideration Breach");

(b) whether the Tribunal failed to consider the Applicant's case by erroneously holding that the Applicant would concede its claim for total failure of consideration if the Tribunal found that the Line had been accepted (the "Acceptance Breach");

(c) whether the Tribunal denied the Applicant a reasonable opportunity to respond to the unpleaded issue that Employee-R did not have authority to accept the Line on the Respondent's behalf and/or erred on ruling on whether Employee-R had the requisite authority, as it was an issue outside the scope of the arbitration (the "Authority Breach"); and

(d) whether the Tribunal failed to pay attention to the materials placed before it and/or did not give a reasoned decision on the

---

25 RWS at para 4.

26 Applicant Counsel's letter to the court dated 30 May 2024 at Annex paras 1–4.

arguments and evidence presented in relation to the Applicant's letter dated 31 October 2018 (the "Notice of Rejection Breach").

General legal principles

17 Parties are in broad agreement with the legal principles governing the scope for judicial intervention – namely, that it is narrowly circumscribed and there is generally minimal curial intervention in arbitral proceedings.[27] As held in *Sanum Investments Ltd and another v Government of the Lao People's Democratic Republic and others and another matter* [2022] 4 SLR 198 (at [32]), the key principles for the setting aside of an arbitral award under the breach of natural justice ground are as follows:

> … As set out by the Court of Appeal in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [29], the **party who challenges the award on this ground must: (a) identify the rule of natural justice which was breached; (b) establish how the rule was breached; (c) establish the way the breach was connected to the making of the award; and (d) show that the breach prejudiced its rights**. The rule said to have been breached in the present case is the right to be heard. This right requires each party to have a "full opportunity" of presenting its case, subject to considerations of reasonableness and fairness. The result is that **what constitutes "full opportunity" is a contextual inquiry of whether the proceedings were conducted in a manner which was fair**, and the 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**: *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 at [104].
>
> [emphasis in bold added]

---

27 AWS at para 22; RWS at para 12.

18 It is also important to note that in assessing whether there was a breach of natural justice, the court will not carry out a "hypercritical or excessively syntactical analysis of what the arbitrator has written". Thus, a breach is only occasioned when the arbitral tribunal fails to "even consider [a party's] argument" and it is not sufficient to merely show that the tribunal wrongly rejected an argument or failed to appreciate its merits (*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN*") at [47] and [59]). There would also be a breach of natural justice if the tribunal decided a case on "a basis that has not been raised or contemplated" by the parties (*Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [30]).

There was no breach of natural justice

19 I find that none of the four grounds raised by the Applicant constituted breaches of natural justice which resulted in prejudice to the Applicant. I will now provide my reasons for each ground in turn.

The Failure of Consideration Breach is not made out

20 Although the Tribunal determined that the Respondent had indeed breached the express conditions of the Contract, it rejected the Applicant's claim for restitution on the basis of a complete failure of consideration. The Tribunal concluded that the Respondent had provided some consideration to the Applicant. Specifically, it determined that the fact that the "Respondent did deliver the Line and g[i]ve assistance in the installation by" the Applicant, was "undoubtedly … more than sufficient to reject a failure of basis". Moreover, even if the Respondent had "merely undertaken design work and preparatory construction [that] that would have been sufficient to deprive [the Applicant] of

the right to reject and recover the [Purchase Price] as unjust enrichment".[28] In arriving at this conclusion, the Tribunal appears to have adopted the Respondent's reliance on *Stocznia Gdanska SA v Latvian Shipping Co and others* [1998] 1 WLR 574 ("*Stocznia*"). *Stocznia* was considered in *Chitty on Contracts vol 1* (H G Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) (at para 32-063), for the proposition that "*any performance* of the actual thing promised, as determined by the contract, is *fatal to recovery*" on the grounds of a complete failure of consideration [emphasis in original].[29] In this regard, it is relevant to note the Tribunal's finding that the Contract was one of design and supply. Installation of the equipment was to be carried out by the Applicant with assistance from the Respondent.[30] Therefore, this was not a turnkey contract in which the Respondent was obligated to deliver and install a completed Line.

21 For the Applicant to show that it was deprived of reasonable notice of an arbitral tribunal's decision, and hence a reasonable opportunity to respond, it has to show that "a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award" (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [65(d)]).

22 In *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] SLR 768 ("*JVL Argo*") (at [159]), the High Court further expounded on this test. It explained that a tribunal denies a party a reasonable opportunity to present its case if it follows a chain of reasoning which has no nexus to the case

---

28 AA-1 at pp 1112, 1114 and 1117 paras 140, 149 and 154–155.

29 AA-1 at p 1115 para 150.

30 AA-1 at p 1098 para 101.

advanced by the parties, *unless* the parties have been put on notice that they are expected to address that chain. The High Court listed four non-exhaustive scenarios where a chain of reasoning will be open to the tribunal: (a) if it arises from the parties' express pleadings; (b) if it is raised by reasonable implication from the parties' pleadings; (c) if it does not feature in parties' pleadings but is in some other way brought to parties' actual notice; or (d) if the links in the chain flow reasonably from the arguments actually advanced by either party or are related to those arguments.

23 The Applicant objects to the Tribunal's finding that consideration had been provided via the steps taken to install a defective Line on the basis that such a chain of reasoning was not open to the Tribunal. This was because there lacked sufficient nexus between the Tribunal's chain of reasoning and the parties' arguments (citing *JVL Agro* at [159]).[31]

24 In relation to scenario (a) and (b) of *JVL Agro* (see [22] above), the Applicant contends that the Tribunal's finding neither arose from parties' express pleadings nor was it a reasonable implication of their pleadings.[32] The Applicant argues that it was not the parties' case that the Respondent's design and delivery of a Line that was unfit for purpose would have been sufficient consideration. Before the Tribunal, the Respondent maintained that consideration was provided as it delivered a "functional Line" in compliance with the Contract. The Respondent also made no written submissions before the Tribunal to the effect that mere attempts at designing and installing a defective Line are sufficient to constitute *some* benefit and thus defeat the Applicant's

---

31 AWS at paras 54–56.

32 AWS at para 57.

restitution claim.[33] The Tribunal's reasoning also could not be reasonably implied from the Respondent's reliance on *Stocznia* in its statement of defence ("SOD"). According to the Applicant, the Respondent had cited that case for an entirely different proposition from that which the Tribunal eventually relied on.[34]

25 As for scenario (c) of *JVL Agro* (see [22] above), the Applicant argued that it also lacked actual notice of the Tribunal's reasoning as parties had purportedly operated on the understanding that a failure of basis would be made out if it is shown that the Respondent breached the express and implied conditions of the Contract by providing a defective Line.[35] Finally, for scenario (d) of *JVL Agro* (see [22] above), the Applicant's case is that it cannot be said that the Tribunal's reasoning – that there was no total failure of consideration, notwithstanding its finding that the Line provided was indeed in breach of the Contract – flowed reasonably from the arguments advanced by parties. This is because the Respondent did not articulate the benefits it purportedly provided to the Applicant or that delivery of a defective Line could constitute a "benefit".[36]

26 Accordingly, the Applicant alleges significant prejudice. Had the Applicant been given reasonable notice of the Tribunal's determination and reliance on *Stocznia*, the Applicant claims that it could have made submissions

---

33 AWS at paras 57.1–57.2.

34 AWS at para 57.3.

35 AWS at para 58.1.

36 AWS at para 59.

that the mere design and delivery of a Line, which was unfit for purpose, could not constitute consideration even with the authority of *Stocznia*.[37]

27 In contrast, the Respondent argues that there was nothing impermissible about the Tribunal's reasoning. The Respondent maintains that its legal position has been that there would be no failure of consideration if a party had started to provide benefits. Hence, the Tribunal's reasoning that there was no total failure of consideration as the Respondent had performed *some* acts that form part of the contractual benefit flowed naturally from parties' pleadings.[38] According to the Respondent, the Applicant's main contention is with the Tribunal's finding of *fact* that the Respondent's acts were sufficient to amount to benefits under the Contract which constituted partial consideration. However, the Respondent submits that such a disagreement is not grounds for setting aside the Award.[39] The Respondent also contends that the Applicant cannot say that it lacked sufficient opportunity to address this issue and was thus prejudiced. The question of whether there was a complete failure of consideration was a key issue in the dispute.[40] Finally, the Applicant's argument that the Tribunal erred in its interpretation of *Stocznia*, is ultimately a legal issue which has been duly determined by the Tribunal.[41]

28 In my judgment, the Tribunal's reasoning did arise from the parties' pleadings and was a reasonable implication of their pleadings. I agree with the Respondent that the question of whether there was a *complete* failure of

---

37 AWS at paras 60–61.

38 RWS at para 26.

39 RWS at para 28.

40 RWS at paras 29–30.

41 RWS at para 31.

consideration is a crucial aspect of the parties' cases. As the Respondent points out, this issue of a complete failure of consideration was explicitly stated in its SOD wherein it averred that the "orthodox rule is that the failure of consideration must be total" and that the Applicant "must not have received any part of the bargained-for counter-performance, or, more accurately, that [the] Respondent must not have begun providing benefits".[42]

29 The Respondent also pleaded, in its SOD, that the Applicant "cannot seriously assert *any* failure of consideration, let alone *total* failure" since the Respondent had "fulfilled its share of duties under the Contract by delivering a functional Line".[43] The Respondent did not appear to expressly state that there was *no* complete failure of consideration as it had minimally undertaken design work and preparatory construction of the Line. However, the Respondent had expressly placed the issue of whether the Applicant can seriously assert a total failure of consideration before the Tribunal. Thus, the Tribunal's finding that there was no total failure of consideration, regardless of the factual basis for *why* it concluded as such, is clearly a reasonable implication of the Respondent's pleadings in its SOD.

30 At the hearing before me, the Applicant argued that this portion of the Respondent's submissions was a mere statement of law. It was not a factual argument on what kind of benefits could amount to partial consideration. I disagree. The issue of whether failure of consideration must be complete and/or total was clearly live before the Tribunal and not simply part of the legal background of the dispute, as evidenced by the parties' submissions before the

---

42 AA-1 at p 260 para 290.

43 AA-1 at p 260 para 291.

Tribunal. For instance, in the Applicant's reply submission, it relied on authority that "restitution is only barred where the failure of condition is insubstantial" to rebut the Respondent's claim that the failure of consideration must be "total".[44] Additionally, in the Respondent's opening submissions, it averred that the Applicant "cannot seriously assert any failure of consideration, let alone total failure, which would require the [Applicant] to not have received any part of the bargained-for counter-performance".[45] Taking parties' submissions before the Tribunal into account, it is clear that the question of whether there was a *complete* failure of consideration, was one of which *both* the Applicant and Respondent were aware of. Hence, it cannot be said that the Tribunal's determination on this issue was not brought to the Applicant's actual notice.

31 Furthermore, I find that the Tribunal's reasoning flowed reasonably from the cases and positions advanced by the parties. In *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM Division*"), the High Court held that arbitrators should not be "so straightjacketed as to be permitted to *only* adopt in their conclusions the premises put forward by the parties". A tribunal would be permitted to rely on unargued premises if those premises flowed reasonably from an argued premise as it is simply "inferring a related premise from one that has been placed before it" (at [65]). Based on the Applicant's claim in restitution, it was feasibly within the Applicant's burden to prove that there was a complete failure of consideration. Hence, it can hardly be said that the Tribunal's reasoning – that there was no complete failure in light of partial performance – is one which was

---

44 AA-1 at p 356 para 147.

45 AA-1 at p 417 para 27.

entirely unexpected or one which could not be reasonably contemplated by parties.

32 When looked at in totality, I do not accept the Applicant's claim that the Tribunal's chain of reasoning was so unexpected and uncontemplated by parties that it can be said to have no nexus to their submissions so to warrant a finding that the Applicant had no notice of it. To find otherwise would be to straightjacket the Tribunal in a manner warned against in *TMM Division*. It would effectively require the Tribunal to limit itself only to submissions *explicitly* pleaded by the parties. The issue of total failure of consideration was at the forefront of the parties' minds and it cannot be plausibly argued that the Tribunal's decision was not within the Applicant's contemplation. This is particularly the case bearing in mind the Tribunal's finding that the Contract is merely one of design, manufacture and supply (see [20] above) and thus not a turnkey contract imposing completion and commissioning responsibilities on the Respondent.

33 As a final note, I agree with the Respondent that any purported prejudice suffered by the Applicant is minimal. The Applicant claims that, had it been given the opportunity to respond to the Tribunal's finding, it could have: (a) submitted and provided evidence that it received no consideration in receiving a defective line; and (b) referred the Tribunal to a passage in *Stocznia* purportedly supporting a finding that the mere design and delivery of a Line that was unfit for purpose was insufficient consideration.[46] With regard to the former, as I have found that the Applicant had sufficient notice of the Tribunal's line of reasoning (see above at [30]), it cannot be said that it was unjustly denied

[46] AWS at paras 60–61.

the opportunity to submit and provide evidence on whether the Respondent's actions could have amounted to partial consideration. As for the Applicant's latter claim that it had been prejudiced by being deprived of the opportunity to address the Tribunal on *Stocznia*, I agree with the Respondent that this is a legal contest to the merits of the Award and such purported errors of law *cannot* be relied upon to prove a breach of natural justice (*AQU v AQV* [2015] SGHC 26 ("*AQU*") at [24]).

The Acceptance Breach is not made out

34 I turn next to the Tribunal's alleged failure to consider the Applicant's claim for total failure of consideration, based on its misconception of the Applicant's apparent concession during the arbitration hearing before it. In particular, the Applicant alleges that the Tribunal incorrectly interpreted a statement made by the Applicant's counsel for the arbitration during an exchange at the start of the arbitration hearing (see above at [6]).

35 The Applicant argues that the Tribunal wrongly concluded that the Applicant would concede its entire claim once the Tribunal finds that the Line had been accepted.[47] The Applicant's purported concession during the arbitration hearing was merely to clarify that it was focusing its case on restitution, and that it was not seeking an alternative claim in damages. The statement by the Applicant's counsel for the arbitration was *not* a concession of its claim for total failure of consideration if acceptance had been found.[48] Yet, as a result of its misapprehension, the Tribunal shut its mind to the Applicant's claim in restitution once it found that the Line was accepted by the Applicant.

---

47 AWS at para 76.

48 AWS at paras 78–80.

According to the Applicant, acceptance only defeats its claim under the Sale of Goods Act 1979 (c 54) (UK) ("SGA"), and not its common law claim in unjust enrichment arising from a total failure of consideration.[49] This constitutes a breach of natural justice as the Tribunal failed to apply its mind to the Applicant's submissions on the latter point due to its mistaken understanding.[50]

36 In contrast, the Respondent submits that the Applicant's characterisation of its restitution claim against the Respondent as consisting of two limbs – namely, one in reliance on the SGA and another in unjust enrichment – is contrived and disingenuous. According to the Respondent, based on the Applicant's pleadings, it is evident that the Applicant had inextricably linked its claim in restitution to its reliance on the SGA.[51] More significantly, the Respondent argues that the Applicant's contention holds little water as the Tribunal did *expressly* consider the issue of a total failure of consideration.[52] Since the Applicant conceded that it had no claim in damages, and was unable to prove its claim in restitution, its action was rightfully dismissed by the Tribunal.[53]

37 In *AKN* (at [59]), the Court of Appeal affirmed that "poor reasoning on the part of an arbitral tribunal is not a ground to set aside an arbitral award; even a misunderstanding of the arguments put forward by a party is not such a ground". Here, I do not find that the Tribunal shut its mind to the Applicant's claim in restitution. More specifically, I disagree with the Applicant that the

---

49 AWS at para 81.

50 AWS at paras 84–87.

51 RWS at paras 44–49.

52 RWS at paras 59–61.

53 RWS at para 57.

Tribunal had failed to properly regard the unjust enrichment claim and the Applicant's submissions on a complete failure of consideration, once it determined that there had been acceptance of the Line. In fact, a key aspect of the Applicant's submissions in the present application concerns the Tribunal's reasoning and finding that there was no complete failure of consideration in light of the Respondent's design and delivery of a defective Line. The Applicant's claim that the Tribunal "did not proceed to consider the Applicant's claim for total failure of consideration"[54] is directly at odds with its own submission that the Tribunal erred in concluding that "the Respondent's design and delivery of a defective Line … was sufficient to defeat the Applicant's claim for failure of consideration".[55]

38 To further illustrate this point, it bears comparing *AKN* to the present case. In *AKN*, the Court of Appeal acknowledged that it was "plausible that the Tribunal had simply misunderstood the [claimant's] Primary Argument" and failed to accord it sufficient weight. Nonetheless, it still found that this was insufficient to set aside the arbitral award (at [60]). This was because it was plain that the tribunal did "attempt to engage" the claimant's argument (at [57]). In a similar fashion, I agree with the Respondent that the Tribunal *did* engage with and consider the Applicant's case on a total failure of consideration. This is evidenced from the Tribunal's reasoning, as it considers and accepts the Applicant's reliance on *Benjamin's Sale of Goods* (Michael Bridge gen ed) (Sweet & Maxwell, 11th Ed, 2021) (at para 12-069) for the proposition that if a "buyer affirm[s] the transaction by accepting the goods, he cannot then sue upon

54 AWS at para 76.

55 AWS at para 54.

a total failure of consideration … but [would be] confined to a claim for damages".[56]

39 Such a consideration by the Tribunal also clearly distinguishes the present case from those relied upon by the Applicant:[57]

(a) In *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*"), the applicant contended that the arbitrator had breached the rule of natural justice by inexplicably concluding that the applicant only relied upon one of three misrepresentations and abandoned its reliance on the rest (at [2]). The High Court noted that the arbitrator had *explicitly* stated in the arbitral award that he was disregarding the issue concerning the other two representations (at [45]). It thus determined that the arbitrator was in breach of natural justice as it was labouring under the misapprehension "that [the applicant] had abandoned its reliance on the Representation" and thus failed to arrive at a proper decision on the issue of misrepresentation (at [53]).

(b) In *AKM v AKN and another and other matters* [2014] 4 SLR 245 ("*AKM*"), the High Court determined that the arbitral tribunal had wrongly found that the secured creditors had *accepted* that there was no prospect of them being able to make a transfer, although no such concession was made (at [224(c)] and [236]). As a result of its misunderstanding of the secured creditors' clearly-stated position, the

---

56 AA-1 at pp 1112–1113 paras 142–143.

57 AWS at para 85.

tribunal failed to consider any of the parties' arguments in that respect (AKM at [236]–[237]).

40 In *Front Row* and *AKM*, it was clear that the arbitral tribunal had mistakenly assumed that the parties had made certain concessions or abandoned their reliance on certain points. Unlike those cases, from a plain reading of the Award, it cannot be said that the Tribunal committed the error alleged by the Applicant by erroneously assuming that the Applicant had conceded its claim in unjust enrichment. Indeed, the furthest I can take the Applicant's case is that the Tribunal failed to appreciate the fact that the Applicant's claim for restitution on the basis of the SGA and in unjust enrichment (for a total failure of consideration), were distinct cases. This assumes that I accept the Applicant's argument that its claim in restitution ought to be properly regarded as constituting two heads of claims. Even so, this would merely suggest that the Tribunal had misunderstood the arguments put forward by the Applicant and is not, in itself, sufficient grounds to set aside the Award (*AKN* at [59]). In this regard, the cases of *Front Row* and *AKM* are clearly distinguishable as the arbitral tribunals' mistakes in those instances resulted in them neglecting to consider key arguments advanced by the parties. In contrast, as aforementioned, the Tribunal clearly did consider the Applicant's arguments on consideration and restitution and arrived at its own conclusion on these issues in finding that "there was no total failure of basis and the [Applicant's] claim for restitution must, therefore, fail".[58]

41 In sum, given the Tribunal's finding that the Applicant's receipt of some contractual benefit clearly precluded a finding of a failure of basis, it can hardly

---

58 AA-1 at p 1117 para 155.

be argued that the Tribunal completely failed to consider the Applicant's claim in unjust enrichment arising from a total failure of consideration. This is reinforced by the fact that the Tribunal only proceeds to consider acceptance, and its effect of precluding the Applicant from exercising its right to recover the Purchase Price, *subsequent* to its conclusion that there was *no* total failure of consideration (from [156] of the Award onwards).

The Authority Breach is not made out

42 Before the Tribunal, the Applicant argued that, as the installation and modifications that it undertook were at the direction and approval of Employee-R, the Applicant had not accepted the Line. Employee-R was the Respondent's engineer assigned to the project.[59] The Tribunal ultimately found that the Applicant had accepted the Line, and the Respondent did not waive the defence of acceptance. The Tribunal determined that there was insufficient evidence that the modifications made to the Line "were all directed by [Employee-R] as repairs".[60] It further found that, even accepting that Employee-R directed all the modifications, this would not change the outcome as he "[was] not the authorised person of [the] Respondent and changes to the Contract required agreement in writing".[61] Thus, the Tribunal concluded that since some of the modifications which the Applicant undertook "were not purely necessary repairs to the products that [the] Respondent supplied", by undertaking them, the Applicant had accepted the Line.[62]

---

59 AWS at para 63 citing AA-1 at pp 323, 332, 342 and 343.

60 AA-1 at pp 1122–1124 paras 175–176 and 179.

61 AA-1 at p 1123 para 177.

62 AA-1 at p 1123 para 179.

43 The Applicant submits that the Tribunal erred in finding that Employee-R lacked the authority to bind the Respondent as the question of whether Employee-R had such an authority was not disputed by the parties. By concluding that Employee-R lacked the requisite authority, the Tribunal denied the Applicant a reasonable opportunity to address the Tribunal on this issue of Employee-R's authority.[63] The Applicant stresses that despite the issue of authority being a fact-centric one, since Employee-R's authority was never called into question before the Tribunal, the Tribunal arrived at its conclusion without *any* reference to key pieces of evidence.[64] There was thus a breach of natural justice as the Applicant was not accorded a fair opportunity to give evidence or make submissions on the issue of Employee-R's authority. That being the case, the Tribunal's finding was a dramatic departure from the evidence tendered and positions adopted by parties before it.[65]

44 Conversely, the Respondent argues that the Applicant had misunderstood the Tribunal's reasoning. The Tribunal's key decision was that there is *no* documentary evidence that the modifications undertaken by the Applicant were indeed repairs or modifications requested and/or approved by Employee-R. Its subsequent finding on the *effect* of any approval from Employee-R in light of his lack of authority had no bearing on its final conclusion that the Applicant had accepted the Line.[66] I pause at this juncture to note that, at the hearing before me, I queried the Applicant on its response to the Respondent's point that Employee-R's lack of authority was a finding made in

---

63 AWS at para 66.

64 AWS at paras 67–72.

65 AWS at para 73.

66 RWS at paras 37–39.

the alternative. In response, the Applicant explained that the Respondent is the party who had misinterpreted the Award. The Applicant submitted that the Tribunal's finding that Employee-R lacked the requisite authority was not made pursuant to the determination of whether the Applicant had accepted the Line (through its modifications). Rather, it was a finding towards the *separate* question of whether the Respondent had *waived* the Applicant's acceptance of the Line. To illustrate this point, the Applicant raised the possibility of Employee-R waiving the Respondent's ability to rely on the defence of acceptance even if he had not approved of the modifications undertaken.

45 Finally, the Respondent contends that Employee-R's role and authority *was* discussed by parties through the course of the arbitration. For instance, counsel for the Respondent explained to the Tribunal that Employee-R only assisted and checked that everything was working but did not approve the Line on the Respondent's behalf.[67]

46 I agree with the Respondent that the Applicant was neither prejudiced by the Tribunal's findings on the issue of Employee-R's authority nor was it deprived of a fair opportunity to address it. As the Respondent points out, the Tribunal had already arrived at a factual finding that *not all* of the modifications were directed by Employee-R as repairs. In particular, the Tribunal determined that the Applicant had not referenced any document "to make good" its claim that "modifications were either directed by [the] Respondent (through [Employee-R]) or approved or accepted by [the] Respondent". The Tribunal thus rejected the Applicant's claim that the "modifications were all directed by [Employee-R] as repairs", instead finding that some of the modifications were

---

67 RWS at para 36 citing RA-1 at p 292.

"instigated to address viscosity issues which [the Tribunal had] already found were at [the Applicant's] risk".[68] As such, given that the Tribunal already concluded that there were modifications taken by the Applicant on its own initiative which constituted an acceptance of the Line, the question of whether Employee-R had authority, was ultimately immaterial. Its subsequent finding, on the *effect* of any approval from Employee-R, was thus entirely obiter – as the Respondent rightly points out.

47 To this end, I am unpersuaded by the Applicant's further claim that Employee-R's authority was an essential finding in determining whether the Respondent had waived the Applicant's acceptance, and not a finding made in the alternative. Having read the Award, I conclude that that once the Tribunal made the factual finding that some of the modifications were done by the Applicant on its own initiative without *any* directions from the Respondent, the issue of Employee-R's authority was no longer a relevant consideration.

48 This is clear from two aspects. First, the Tribunal's conclusion that the modifications could not "amount to [repairs] or be approved by [Employee-R] in some sense that *would retain the right to reject*" [emphasis added].[69] I read this as the Tribunal having already determined that the Applicant had irrevocably *lost* the right to reject, via its acceptance of the Line through undertaking its own modifications. Second, the Tribunal's further reasoning that Employee-R would not have the authority to waive the Respondent's defence of acceptance is prefaced by the phrase "assuming *arguendo* that that were the

---

68 AA-1 at p 1123 para 176.

69 AA-1 at p 1123 para 176.

case".[70] This clearly suggests that the Tribunal's further line of reasoning is *premised* on the assumption that *all* of the modifications to the Line had been directed by Employee-R. Put another way, the question of whether Employee-R had the requisite authority to waive the Applicant's acceptance only arises if he had been the one to direct and instruct all the modifications. If the Applicant's contention is that that is not the appropriate approach to the defence of acceptance and its corresponding waiver, that is a pure legal contention that cannot be relied on to set aside the Award (*AQU* at [24]).

49 For the reasons stated above, the Tribunal's finding that the Applicant had accepted the Line by undertaking modifications was ultimately unaffected by its determination on Employee-R's authority. As such, even if I were to take the Applicant's case at its highest and accept that the question of whether Employee-R had the requisite authority to waive the Applicant's acceptance of the Line was not properly ventilated before the Tribunal, this was ultimately immaterial. Such an inquiry would not have affected the Tribunal's final determination on the issue of whether the Applicant accepted the Line via undertaking modifications. Since the Tribunal did not *need* to make any findings on Employee-R's authority, its determination on that issue cannot be said to have prejudiced the Applicant.

The Notice of Rejection breach is not made out

50 I turn now to the final issue of the Notice of Rejection breach. The Tribunal determined that the Line was delivered in March 2017. As it had remained in the Applicant's possession and ownership for three years until its purported rejection in March 2020, a reasonable time had elapsed and the

[70] AA-1 at p 1123 para 177.

Applicant had effectively accepted the Line and lost it right to reject it.[71] In particular, the Tribunal stressed that no attempts were made by the Applicant to decide on the options available to it, even though "substantial production had been possible" and it had "a proper opportunity to install and inspect the Line" by June 2018.[72] The Tribunal further found that, at the latest, by October 2018, the Applicant had possessed substantial production and information, but still had not elected "on the options available to it".[73]

51 The Applicant contends that the Tribunal had breached the fair hearing rule by failing to pay attention to and consider the formal notice sent by the Applicant to the Respondent on 31 October 2018 (the "Defect Notification").[74] In this Defect Notification, the Applicant notified the Respondent of the defects in the Line and requested that the Respondent perform remaining rectifications and deliver a Line in compliance with the Contract. The Applicant further reserved its right to reject the Line.[75] The Applicant argues that, through the Defect Notification, it had effectively elected to cure the defective Line.[76] Despite this, *no* mention of the Defect Notification was made by the Tribunal. Given the temporal proximity of the Defect Notification to the deadline of what the Tribunal appeared to consider to be a "reasonable time" for the Applicant to make an election (*ie*, October 2018), the lack of any reference to the Defect Notification invariably suggests that the Tribunal had overlooked it in arriving

---

71 AA-1 at pp 1124–1125 paras 181 and 185.

72 AA-1 at p 1125 para 184(b).

73 AA-1 at p 1125 para 184(d).

74 AWS at paras 92–93.

75 AWS at para 93.

76 AWS at para 97.2.

at its finding that there was deemed acceptance.[77] The mere fact that reference to this Defect Notification was made in the summary of facts in the Award,[78] does not show that the Tribunal had properly considered it as it was not subsequently addressed in the Tribunal's reasoning.[79] Since the Defect Notification expressly reserved the Applicant's right to reject the Line, and was issued on the precipice of a "reasonable period", the Applicant asserts that it was a highly relevant and essential point that the Tribunal ought to have considered.

52 In response, the Respondent points out that the Applicant had not made the case that it had rejected the Line via the Defect Notification in October 2018. The Applicant had characterised the Defect Notification as a "formal notice that the Line was unfit for its intended purpose" and that it only provided the Respondent notice of its intention to terminate on 27 January 2020 and confirmed that the contract was terminated on 27 March 2020.[80] Since the Applicant accepts that rejection only occurred in 2020, the Tribunal cannot be said to have breached natural justice in concluding that a reasonable time had elapsed between the Applicant's receipt of the Line in 2017 and its election to reject in 2020. In any event, the Tribunal *did* consider the Applicant's Defect Notification in relation to the issue of whether the Applicant could reject the Line (see [53] below). Hence, it can hardly be said that the Tribunal's dismissal

---

77 AWS at para 94.

78 AA-1 at p 1112 para 141(c).

79 AWS at paras 95–97.

80 RWS at para 65 citing AA-1 at pp 187–188 paras 61–63.

of the effect of the Defect Notification was so grave as to point to an inference that it did not even attempt to comprehend the essential issues.[81]

53 I agree with the Respondent that the Tribunal did consider the Defect Notification. As the Respondent points out, the Tribunal recognised that the Applicant "repeatedly demanded additional repairs and put [the] Respondent on notice by several letters from its legal advisors" under the section of the Award where it discussed whether the Applicant had "the right to reject the Line and recover the [Purchase Price]".[82] The Tribunal appears to have made a similar recognition when it observed that the Line had been subjected to "eleven so-called [i]nterventions" (*ie*, visits by [the] Respondent's engineers) until the Applicant's rejection in March 2020 and that there were "long periods where little happened" between the tenth and eleventh interventions.[83] In my view, these findings in the Award reveal that the Tribunal was at least cognisant that the Applicant was seeking repairs from the Respondent (via communications, like the Defect Notification) by requesting the latter to inspect the Line.

54 In *CVV and others v CWB* [2024] 1 SLR 32 ("*CVV*"), the claimant argued that the tribunal's failure to provide reasons and address essential issues gave rise to the inference that the tribunal has ignored, forgotten or overlooked their submissions. Similarly, the Applicant is claiming that the Tribunal's lack of reference to the Defect Notification clearly meant that it had overlooked this aspect of the Applicant's case. However, even if I were to accept that the Award does not contain *any* mention of the existence of the Defect Notification, such

---

81 RWS at para 68.

82 AA-1 at p 1112 para 141(c).

83 AA-1 at p 1124 para 181.

a failure is not sufficient to set it aside. As the Court of Appeal in *CVV* stressed, if a tribunal's purported failure to address a party's point in its reasons "is relied on to assert that a tribunal failed to apply its mind, the tribunal's omission to give reasons must logically be so grave or so glaring as to point to the inescapable inference that the tribunal did not even attempt to comprehend the essential issues in the arbitration" [emphasis in original omitted] (at [35]).

55 Here, I cannot agree with the Applicant that the Tribunal's failure to discuss the Defect Notification was so grave as to point to an inexorable inference that it failed to consider the essential issue of whether a reasonable time period had lapsed. Rather, in arriving at the conclusion that a reasonable time had lapsed, the Tribunal appeared to have focused on the time between the Applicant's receipt of the Line to the time of its purported rejection in arriving at its conclusion that a reasonable time had lapsed.[84] In other words, it was entirely possible that the Tribunal considered the Defect Notification inconsequential to its determination on the issue of acceptance as it did not contain any rejection from the Applicant.

56 To that end, I disagree with the Applicant's claim that had the Tribunal considered the Defect Notification, given its timing and content, the Tribunal would have concluded that the Applicant made an election to cure by October 2018 and that there therefore was no acceptance of the Line. The Tribunal's decision to focus its analysis on the fact that the Applicant only purported to reject the Line in March 2020, cannot be faulted as a failure to comprehend the essential issues of the Applicant's case. Indeed, the Tribunal did appear to have considered the Applicant's argument on its election to cure, by noting and

[84] AA-1 at p 1125 para 185.

rejecting the Applicant's claim that there was "a continuous attempt at repairs … as it [was] not apparent … that the undoubted issues that the Line had, all fell within the scope of [the] Respondent's responsibility".[85] Additionally, the Applicant's emphasis on the fact that the Defect Notification was sent in October 2018 appears misguided as the Tribunal ultimately did not "make any finding as to what a reasonable period of time was, only that by the time of *purported rejection*, a reasonable period has expired" [emphasis added].[86] In any event, it is *not* the Applicant's case that it had elected to *reject* the Line via its Defect Notification – but instead, that it had elected to "cure" the Line through that notification.[87] On that basis, it cannot be said that the Tribunal's lack of explicit recognition of the Applicant's purported election to cure gives rise to the inescapable inference that it failed to have regard to the Defect Notification.

57 Finally, I also agree with the Respondent that the Applicant ultimately did not suffer any prejudice as a result of the Tribunal's failure to consider the Defect Notification. As I have determined (see [49] above), the Tribunal's decision that the Applicant had accepted the Line by conducting its own modifications cannot be faulted. As held in *Soh Beng Tee* (at [91]), "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". Hence, even if I were to accept the Applicant's claim that the Tribunal had failed to consider the Defect Notification and would have concluded that a reasonable time had not elapsed if it had, this would not have

---

85 AA-1 at p 1124 para 181.

86 AA-1 at p 1125 para 184.

87 AWS at para 97.3.

assisted the Applicant. The Tribunal would still have concluded that the Applicant had accepted the Line (and thereby lost its right to reject the Line) by undertaking modifications on its own accord, even if not by the passage of time. As noted in *Soh Beng Tee* (at [91]), the bare fact that an arbitrator might have inadvertently denied a party some technical aspect of a fair hearing would almost invariably be insufficient to set aside the award if the final outcome of the arbitral proceedings would not have been altered in any meaningful way.

Conclusion

58 For the foregoing reasons, I do not find that there was a breach of natural justice by the Tribunal in arriving at the Award for any of the grounds on which the Applicant sought to rely as set out above (at [16]). I thus dismiss the Applicant's application to set aside the Award.

59 I will hear the parties on costs.

Wong Li Kok, Alex
Judicial Commissioner

Sim Daryl Larry, Lee Tze En Chrystal and Max Lim (Rajah & Tann Singapore LLP) for the applicant;
Leck Kwang Hwee Andy, Tan Jia Xin and Tan E-Jynn (Wong & Leow LLC) for the respondent.