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

[2024] SGHC 222

Originating Application No 1255 of 2023

Between

Haide Building Materials Co Ltd

… *Applicant*

And

Ship Recycling Investments Inc

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice — Tribunal not dealing with counterclaim after disposing of main claim — Whether tribunal failed to deal with essential issues in arbitration — Section 24(*b*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice — Tribunal alleged to have adopted "irrational or capricious" chain of reasoning — Whether party had sufficient notice of tribunal's chain of reasoning and opportunity to respond — Section 24(*b*) International Arbitration Act 1994 (2020 Rev Ed)]
[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice — Whether tribunal exhibited apparent bias in conduct of proceedings and in award — Section 24(*b*) International Arbitration Act 1994 (2020 Rev Ed)]

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[Arbitration — Award — Recourse against award — Setting aside — Tribunal issuing award past deadline contained in institutional rules — Whether award liable to be set aside due to deviation from parties' agreed procedure — Art 34(2)(*a*)(iv) UNCITRAL Model Law on International Commercial Arbitration]
[Arbitration — Award — Recourse against award — Setting aside — Tribunal issuing award past deadline contained in institutional rules — Effect of delay on tribunal's jurisdiction]
[Arbitration — Award — Recourse against award — Setting aside — Party alleging that false evidence tendered in arbitration — Whether award procured by fraud — Section 24(*a*) International Arbitration Act 1994 (2020 Rev Ed)]

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Haide Building Materials Co Ltd
v
Ship Recycling Investments Inc

[2024] SGHC 222

General Division of the High Court — Originating Application No 1255 of 2023
S Mohan J
22 March, 22 April 2024

30 August 2024

S Mohan J:

1 This was an application by the applicant, Haide Building Materials Co Ltd ("Haide"), to set aside a final award (the "Award") issued in respect of arbitration Reference No. SCMA 2023/002 (the "Arbitration"), administered by the Singapore Chamber of Maritime Arbitration (the "SCMA").

2 Having considered the parties' submissions, I dismissed the application in its entirety, delivering oral grounds on 22 April 2024. There has been no appeal against my decision but given the issues raised in this case, I consider it useful for me to furnish these full grounds of decision which expand on my reasons.

3 Before I turn to address the issues in this case, I register a concern at what has increasingly become a prevalent practice in setting aside applications

of the challenger to an award. Aggrieved by the adverse (or, in their perception, *perverse*) outcome of the arbitration, challengers often adopt a blunderbuss approach to their grounds of challenge, throwing everything but the kitchen sink (and often the kitchen sink itself) at the award and the tribunal. I would suggest that such an approach is rarely productive, and oftentimes counterproductive as the court sees through such an approach. Further, by doing so the challenger may by its own hand render it nigh impossible both for itself and the court to sift the wheat from the chaff. As the Court of Appeal observed in *Xia Zhengyan v Geng Changqing* [2015] 3 SLR 732, in the different context of misrepresentation claims (at [100]):

> We would observe that it is not necessarily beneficial for a litigant to adopt what is, in effect, a scatter-shot or kitchen-sink approach of this sort: there is a risk that the truly material facts and evidence will be lost in, or at least be diluted by, the morass of relatively peripheral matters. In the present case, several of the alleged misrepresentations contended for by the Appellant were clearly of a rather trifling nature; the wisdom of pursuing such points with any vigour may well be doubted. It is of course the prerogative of parties to advance their case as they see fit, but it is salutary to remember that one's prospects of success do not always increase in proportion to the number of claims or allegations that one makes.

4 The observations above would be equally apposite in a setting aside application that adopts a similar approach. A less charitable, but arguably no less defensible, view towards cases presented with no attempt to identify the issues that actually matter was recently suggested by Males LJ in the English Court of Appeal decision in *MEX Group Worldwide Ltd v Stewart Owen Ford and others* [2024] EWCA Civ 959, this time in the context of an application to discharge an *ex parte* injunction on the basis of lack of full and frank disclosure (at [112]):

> … I sought in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) at [14] and [15] to encourage a degree of restraint and

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> a sense of proportion on the part of those seeking to set aside without notice orders on this ground, but it appears that the message has not got through. In this case we have been prepared to separate the wheat from the chaff, but I would suggest a different approach for the future. *In future, if the court is presented with a long shopping list of alleged failures of disclosure, with no attempt made to identify the relatively few points which really matter, it should simply decline to consider the issue at all.*
>
> [emphasis added]

While I make no comment on whether Males LJ's suggestion ought to be taken up by our courts, his Lordship's evident frustration at being confronted with a "long shopping list" of points – most of which are often either irrelevant or *ex facie* unmeritorious – is readily understood and again, would be equally apposite in the context of applications to set aside an award. The court will no doubt endeavour to consider all points raised, but as it goes down each item in the shopping list of complaints and crosses it out, it becomes increasingly harder for the award challenger to escape the inference of being the proverbial boy who cried wolf.

Background facts

The parties

5 The applicant, Haide, is a company incorporated in Hong Kong, engaged primarily in the business of transporting and supplying building materials.[1] Haide was the respondent in the Arbitration.[2]

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1 Affidavit of Chung Siu Lok dated 18 December 2023 ("CSL-1") at para 6.

2 CSL-1 at para 5.

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6 The respondent, Ship Recycling Investments Inc ("Ship Recycling"), is a company incorporated in Liberia, and in the business of buying and scrapping vessels.[3] Ship Recycling was the claimant in the Arbitration.

Circumstances giving rise to the parties' dispute

7 The parties' dispute, which was the subject of the Arbitration, arose out of the abortive sale of a vessel, the "Winton T 128" (the "Vessel"), from Haide to Ship Recycling for scrapping. Pursuant to a Memorandum of Agreement ("MOA") dated 14 June 2022, Haide agreed to sell the Vessel at a purchase price of US$528,071.50. This purchase price was calculated on the basis of the Vessel's net steel weight, also referred to variously as the "light steel weight", "lightweight" or "LDT" of the Vessel.[4] Clause 1 of the MOA, which related to the purchase price, read as follows:[5]

> **1. Price**
>
> Vessel has been purchased for a lumpsum purchase price of USD528,071.5 (SAY US DOLLARS FIVE HUNDRED AND TWENTY-EIGHT THOUSAND, SEVENTY-ONE AND CENTS FIVE ONLY). This amount is based on a USD 550 / LT lightweight, which does not include permanent ballast, or constants and liquids in the system) Proof of LDT to be provided prior to deposit being lodged.
>
> Remarks: 975.49MT, which equals 960.13 LONG TON (975.49/1.016=960.13LT)

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3 CSL-1 at para 8.

4 CSL-1 at paras 6 and 9.

5 CSL-1 at p 48.

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8 Ship Recycling did not inspect the Vessel before entering into the MOA. Instead, it relied on Haide's representations as to the description, state and condition of the Vessel as stated in the MOA[6] (see cl 4 of the MOA).[7]

9 Pursuant to cl 2 of the MOA,[8] Ship Recycling paid an agreed deposit of 30% of the purchase price, totalling US$158,421.45, into escrow.[9] Under cl 3 of the MOA, this 30% deposit was to be released to Haide within three banking days of Haide providing a "No Objection Certificate" ("NOC") from the Chittagong Port Authority (where the Vessel was situated and to be delivered under the MOA) certifying that the authority had no objections to the Vessel's departure from Chittagong Port, such that the Vessel could then proceed to the scrapyard;[10] the remaining 70% of the purchase price was to be paid by Ship Recycling into escrow and remitted to Haide within five banking days of (a) Haide tendering a Notice of Readiness ("NOR") in accordance with cl 6 of the MOA; (b) an exchange of documents in accordance with cl 12 of the MOA; and (c) only once the Vessel was deemed ready for delivery as per the terms and conditions of the MOA.[11]

10 Under cl 5 of the MOA, the stipulated time of delivery was 15 June 2022 to 30 June 2022.[12] Haide purported to deliver the Vessel at the designated location at Chittagong, Bangladesh, on 26 June 2022. Upon carrying out an

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6 CSL-1 at para 9.

7 CSL-1 at p 50.

8 CSL-1 at pp 48–49.

9 CSL-1 at para 10.

10 CSL-1 at para 10.

11 CSL-1 at para 10 and p 49.

12 CSL-1 at p 50.

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inspection of the Vessel, Ship Recycling considered that the representations made by Haide *vis-à-vis* the Vessel were false, and that the Vessel did not meet the stipulated description set out in cl 14 of the MOA.[13] On the next day, by an email dated 27 June 2022, Ship Recycling informed Haide of the alleged discrepancies, and stated that in view of these discrepancies, Ship Recycling was only prepared to pay a downward-adjusted purchase price of US$264,450.[14] I set out the contents of this email below, as they provide a useful primer into the substance of the parties' dispute in the Arbitration:[15]

> Following the vessel's arrival at Chittagong anchorage and pending clearance, Buyers representatives have been on board the vessel. On review, the condition of the vessel and the status of the equipment on board is not as described or as per the condition of delivery of the vessel in MOA or in representations made.
>
> The pictures circulated by the Sellers and the representations in the vessel details form/Demo questionnaire do not match the condition of the vessel as arrived. While Sellers are no doubt aware of the discrepancies that exist, Buyers are summarizing some of the key issues below –
>
> 1. Please find attached the latest photos of the various parts of the vessel and the deplorable condition of the steel, equipment and machinery.
> 2. There [*sic*] vessel has no winch machine, no railings, no original anchor, and no anchor chain.
> 3. There is only around 2 MT of Bunkers ROB against the 28MT described in the MOA.
> 4. There is extreme rusting and corrosion of the steel on board, such that there are multiple holes on the ship sides, and the thickness of the ship's plates are reduced to one-third, such that the LDT is [*sic*] described is not present on board.

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13 Affidavit of Andrea Paola Diaz Carrasco dated 30 January 2024 ("APDC-1") at para 10.

14 CSL-1 at para 13.

15 CSL-1 at pp 61–62.

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> 5. The engines and machinery are not in working condition as required under the MOA, not being able to perform the final voyage or be possible to beach the Vessel on her own.
>
> 6. In view of heavy wastage vessel may not be sea worthy/port worthy as is required.
>
> Essentially the condition of the Vessel is so bad that it cannot be scrapped or recycled after cutting. It will also not be accepted by a recycling yard due to these discrepancies.
>
> Accordingly the vessel is not as per clause 10 read with clause 14 of the MOA [read with the Demo questionnaire]. Please note that the vessel is not ready for delivery for not being as per the condition on delivery stated in the MOA and the representations made by Sellers. In light of the above, Buyers reserve its rights under the MOA including but not limited to our right to reject the Vessel and/or terminate the MOA for breach of condition and rights under clause 15.
>
> Completely without prejudice thereto, delivery considered on the basis of an adjustment of the purchase price to account for and recompense for the severe discrepancies in the vessel condition and loss of value, which Buyers presently estimate to be in the sum of USD264,450/-, to be adjusted by way of addendum prior to payment of balance purchase price.
>
> Sellers are requested to confirm their position and acceptance of the above within 1200hrs China time, tomorrow 28 June 2022, to enable parties to proceed with further formalities towards delivery.
>
> In the meantime, Buyers rights remain expressly reserved.

11 Despite Ship Recycling's refusal to accept the Vessel at the purchase price stated in the MOA, Haide proceeded to issue a NOR.[16] Ship Recycling did not accept delivery of the Vessel, and on 1 July 2022, it purported to terminate the MOA on the basis of a repudiatory breach by Haide.[17]

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16 APDC-1 at para 13.

17 APCD-1 at para 14; CSL-1 at para 10.

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The Arbitration

12 On 3 August 2022, Ship Recycling commenced the Arbitration against Haide. By agreement between the parties in cl 19 of the MOA,[18] the Arbitration was seated and conducted in Singapore under the auspices of the SCMA. Given the low quantum in dispute, the parties agreed that the Arbitration would be conducted in accordance with the Expedited Procedure under r 44 of the Rules of the Singapore Chamber of Maritime Arbitration (4th Ed, 2022) (the "SCMA Rules").[19]

13 A two-member arbitral tribunal (the "Tribunal") consisting of the parties' nominated arbitrators presided over the Arbitration.[20] Ship Recycling and Haide respectively nominated Mr Jaya Prakash and Mr Winston Kwek as their arbitrators.[21]

14 Subsequently, Ship Recycling commenced Admiralty Suit No 41 of 2022 in the Supreme Court of Bangladesh, which resulted in the arrest of the Vessel by Ship Recycling at Chittagong on 11 August 2022 (the "Bangladesh Proceedings"). The Bangladesh Proceedings subsisted as at the time I heard the present application.[22]

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18 CSL-1 at p 57.

19 CSL-1 at para 14; APCD-1 at para 15.

20 CSL-1 at para 14.

21 CSL-1 at p 144: Award at paras 4–5.

22 CSL-1 at para 15.

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Ship Recycling's case in the Arbitration

15 Ship Recycling's primary case was that it was entitled to terminate the MOA either (a) under cl 18 of the MOA; or (b) at common law,[23] by virtue of various breaches of the MOA by Haide.[24]

16 First, Haide failed to tender a valid NOR as it did not tender certain documents required to be tendered alongside the NOR in accordance with cl 6 of the NOR.[25]

17 Second, Haide failed to tender a valid NOR as the Vessel was not physically ready for delivery in accordance with the MOA at the time that Haide purported to tender the NOR.[26] The Vessel was not ready for physical delivery because:

(a) Its LDT was not 960.13 and it did not have 28 metric tonnes ("MT") of bunkers remaining on board ("ROB") (as required by cll 4 and 14 of the MOA);[27]

(b) it was not in the requisite condition, which included being portworthy, free from leakages and having on board machinery in working condition (as required by cl 10 of the MOA);[28] and

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23 CSL-1 at paras 45–46.

24 CSl-1 at p 74: Ship Recycling's Claim Submissions dated 27 January 2023 ("Ship Recycling's First Submission") at para 40.

25 CS1-1 at pp 73–74: Ship Recycling's First Submission at paras 37 and 41.

26 CSL-1 at p 74: Ship Recycling's First Submission at para 42.

27 CSL-1 at p 74: Ship Recycling's First Submission at paras 38(a), 42(a) and 42(b).

28 CSL-1 at p 74: Ship Recycling's First Submission at paras 38(b), 42(c).

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(c) it was delivered with removals having been made, such that this affected the description of the Vessel and significantly reduced its LDT from 960.13 (as required by cl 20 of the MOA).[29]

18 In the alternative, Ship Recycling argued that it was entitled to rescind the MOA on the basis of misrepresentations that Haide had made as to the condition and LDT of the Vessel.[30]

19 In terms of remedies, Ship Recycling sought (a) the refund of the deposit; (b) interest on the deposit at a rate of 8% per annum from the date of its purported termination of the MOA; and (c) an order directing Haide to sign the joint release instruction to the escrow agent so as to facilitate the return of the sums held in escrow to Ship Recycling.[31]

Haide's case in the Arbitration

20 Haide argued that there was no basis for Ship Recycling to reject the Vessel or terminate the MOA, and painted Ship Recycling's conduct as a bad faith attempt to extort a lower purchase price from Haide than that which the parties had agreed to in the MOA.[32]

21 Haide disputed Ship Recycling's claim that it was entitled to terminate the MOA under cl 18 or at common law based on the doctrine of repudiatory breach:

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29 CSL-1 at p 74: Ship Recycling's First Submission at paras 38(c), 42(a) and 42(b).

30 CSL-1 at p 77: Ship Recycling's First Submission at para 53.

31 CSL-1 at p 78: Ship Recycling's First Submission at para 56.

32 CSL-1 at p 83: Haide's Response to the Claim Submission and Statement of Counterclaims ("Haide's Response") at paras 1–2.

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(a) Haide submitted that it had tendered a valid NOR with the requisite supporting documents in accordance with cl 6 of the MOA, and it was Ship Recycling that had deliberately rejected the NOR and supporting documents in its bid to drive down the purchase price, or to escape liability to pay the agreed purchase price in the MOA.[33]

(b) Haide also argued that the Vessel was physically ready for delivery in accordance with cl 10 of the MOA, and that none of the objections raised by Ship Recycling as to the Vessel's condition held any water.[34] Haide had not made the removals of equipment from the Vessel that Ship Recycling alleged,[35] and the Vessel was in working condition.[36] Moreover, Haide emphasised that the MOA provided for the sale of the Vessel "as is", such that Ship Recycling could not raise any objection based on the Vessel's condition at the time of its delivery.[37]

22 In respect of Ship Recycling's alternative case of misrepresentation, Haide argued that Ship Recycling was not entitled to rescind the MOA as there had been no misrepresentation by Haide as to the condition and LDT of the Vessel.[38]

23 Apart from responding to Ship Recycling's case, Haide also advanced counterclaims against Ship Recycling:

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33 CSL-1 at p 87: Haide's Response at paras 26–32.

34 CSL-1 at p 88: Haide's Response at para 33.

35 CSL-1 at pp 88–91: Haide's Response at paras 34–40 and 51.

36 CSL-1 at pp 89–90: Haide's Response at paras 41–44.

37 CSL-1 at p 90: Haide's Response at paras 47–50.

38 CSL-1 at pp 92–93: Haide's Response at paras 66–69.

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(a) First, Haide argued that Ship Recycling had breached the MOA by wrongfully refusing to accept delivery of the Vessel and seeking to drive down the purchase price.[39]

(b) Second, following from Ship Recycling's wrongful refusal to accept delivery of the Vessel, Haide argued that Ship Recycling had also breached the MOA by failing to release the deposit from escrow, as well as to pay the balance of the purchase price, to Haide.[40]

(c) Third, in light of Ship Recycling's breaches of the MOA, Haide argued that it was entitled to terminate the MOA as of 1 July 2022.[41] As a result, Haide sought compensation for its losses arising from Ship Recycling's breaches, including but not limited to liquidated damages at 10% of the purchase price pursuant to cl 17 of the MOA.[42]

(d) Fourth, Haide argued that Ship Recycling was not entitled to arrest the Vessel, and sought an order from the Tribunal that Ship Recycling withdraw the Bangladesh Proceedings and release the Vessel from its ongoing arrest.[43]

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39 CSL-1 at pp 93–94: Haide's Response at paras 71–73.

40 CSL-1 at p 94: Haide's Response at paras 74–80.

41 CSL-1 at p 96: Haide's Response at paras 86–88.

42 CSL-1 at pp 96–97: Haide's Response at paras 89–95.

43 CSL-1 at p 98: Haide's Response at paras 96–99.

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The Award

24 In a pithy Award, the Tribunal found in favour of Ship Recycling and dismissed Haide's counterclaim.[44] It held that Ship Recycling was entitled to the return of the deposit that it had paid (with interest), and ordered Haide to sign the joint release instruction for the sums held in escrow to be returned to Ship Recycling.[45]

25 In arriving at its conclusion, the Tribunal made the following key findings:

(a) First, that the NOR tendered by Haide did not comply with cl 6 of the MOA, such that Ship Recycling was entitled to cancel the MOA pursuant to cl 18 of the MOA.[46]

(b) Second, that the Vessel was not physically ready for delivery under the terms of the MOA, as it did not contain the agreed quantity of 28 MT of bunkers ROB, as required under cl 14 of the MOA. As a result, Ship Recycling was entitled to cancel the MOA pursuant to cl 18 of the MOA.[47]

(c) Third, in view of its findings that Ship Recycling was entitled to cancel the MOA, it was unnecessary for the Tribunal to determine the issue of whether Haide had misrepresented the condition of the Vessel.[48]

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44 CSL-1 at p 159: Award at para 48.

45 CSL-1 at p 159: Award at para 49.

46 CSL-1 at p 153: Award at para 34.

47 CSL-1 at p 158: Award at para 45.

48 CSL-1 at p 158: Award at para 46.

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Haide's setting aside application

26 In the present application, Haide sought to set aside the Award in its entirety. Haide invoked various grounds under the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA") and the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") which is given force of law in Singapore as the First Schedule of the IAA:[49]

(a) First, relying on s 24(*b*) of the IAA, Haide argued that the Tribunal had breached the rules of natural justice by failing to consider and decide on various issues arising out of Haide's counterclaim in the Arbitration.

(b) Second, also relying on s 24(*b*) of the IAA, Haide submitted that the Tribunal had breached the rules of natural justice as its reasoning and findings in the Award lacked rationality.

(c) Third, relying on s 24(*a*) of the IAA, Haide argued that the making of the Award had been induced by fraud due to fraudulent evidence tendered by Ship Recycling in the Arbitration.

(d) Fourth, relying on Art 34(2)(*a*)(iv) of the Model Law, Haide submitted that the arbitral procedure adopted by the Tribunal was not in accordance with the parties' agreed procedure, due to the Tribunal having exceeded the timelines for rendering its award under the Expedited Procedure as set out in r 44 of the SCMA Rules.

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[49] Claimant's Written Submissions dated 18 March 2024 ("CWS") at paras 6(1)–6(5).

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(e) Fifth, relying on s 24(*b*) of the IAA, Haide contended that the Tribunal had breached the rules of natural justice by exhibiting bias against Haide throughout the Arbitration.[50]

27 In the alternative, if the court were to take the view that the Award need not be set aside, Haide sought an order that the Award be remitted to the Tribunal to determine issues arising out of Haide's counterclaim that the Tribunal had allegedly not addressed.[51]

My decision: Haide's setting aside application was dismissed

28 For the reasons that follow, I considered all of Haide's objections to the Award and the Tribunal's conduct of the Arbitration to be unmeritorious. Accordingly, I dismissed Haide's setting aside application.

Whether the Tribunal breached the rules of natural justice

29 I start with Haide's objections based on alleged breaches of natural justice by the Tribunal. As summarised at [26] above, there were three aspects to Haide's claim that the Tribunal breached the rules of natural justice:

(a) first, that the Tribunal had failed to consider and decide on various issues arising from Haide's counterclaim;

(b) second, that the Tribunal had adopted a chain of reasoning that was irrational or capricious; and

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50 CWS at paras 69–72.

51 CWS at para 6(6).

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(c) third, that the Tribunal had demonstrated apparent bias against Haide.

Applicable legal framework

30 A breach of natural justice in the arbitral process may give rise to grounds for setting aside an award, as s 24(*b*) of the IAA provides that an award may be set aside if "a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced".

31 An applicant who seeks to set aside an award on the basis of a breach of natural justice must establish (a) the rule of natural justice which was breached; (b) how it was breached; (c) how the breach was connected with the making of the award; and (d) how the breach prejudiced its rights (see the Court of Appeal decision of *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29]).

32 As I will address the specific principles applicable to each species of natural justice challenge invoked by Haide at appropriate junctures below, it suffices at this stage to emphasise that demonstrable prejudice is a necessary element of a successful natural justice challenge. This requirement is borne out from the wording of s 24(*b*) of the IAA itself (see [30] above). In short, the principle of minimal curial intervention which circumscribes the extent of the court's intervention means that the court would not take cognisance of trifling or inconsequential irregularities; rather, it would reserve its intervention for cases where there has been "some actual or real prejudice caused by the alleged breach", as opposed to mere "technical unfairness" (see *Soh Beng Tee* at [91]).

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As the Court of Appeal explained in *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 (at [54]):

> … the real inquiry is whether the breach of natural justice was merely technical and inconsequential or whether as a result of the breach, the arbitrator was denied the benefit of arguments or evidence that had a real as opposed to a fanciful chance of making a difference to his deliberations. Put another way, the issue is whether the material *could reasonably* have made a difference to the arbitrator; rather than whether it *would necessarily* have done so. Where it is evident that there is no prospect whatsoever that the material if presented would have made any difference because it wholly lacked any legal or factual weight, then it could not seriously be said that the complainant has suffered actual or real prejudice in not having had the opportunity to present this to the arbitrator[.]
>
> [emphasis in original]

Whether the Tribunal omitted to deal with issues arising from Haide's counterclaim

33 I begin with Haide's allegation that the Tribunal had breached natural justice by failing to consider and decide on various issues arising out of its counterclaim in the Arbitration. These issues can be summarised as follows:[52]

(a) First, Haide's entitlement to the 30% deposit of the purchase price paid by Ship Recycling on account of Haide having presented a NOC as required by cl 3 of the MOA. I will refer to this as the "Deposit Issue".

(b) Second, Haide's request for the Vessel to be released from its arrest by Ship Recycling in the Bangladesh Proceedings. I will refer to this as the "Arrest Issue".

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52 CSL-1 at para 19(a).

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(c) Third, Haide's request for the Vessel to be sold and for the proceeds to be paid into court pending the outcome of the Arbitration. I will refer to this as the "Sale Issue".

(d) Fourth, Haide's "pleaded claim for documents to be furnished by Ship Recycling in order to facilitate Haide being revested with the rights to dispose of the Vessel" in the event that the Tribunal found that the MOA had been validly terminated by Ship Recycling. I will refer to this as the "Revesting Issue".

(e) Fifth, Haide's objection that a report (the "Report") prepared by one Mr Md Shamsuzzaman ("Mr Shamsuzzaman") had been a fabrication. I will refer to this as the "Fraud Issue".[53]

34 I begin first with a primer on the applicable legal principles to challenges of this sort, before turning to consider each of these issues in turn.

(1) Applicable legal principles

35 It is well-established that a tribunal's failure to consider an issue that was submitted to it for determination can amount to a breach of natural justice (see the Court of Appeal decision of *CKH v CKG and another matter* [2022] 2 SLR 1 ("*CKH v CKG*") at [12]). Here, the implicated rule of natural justice is the right to a fair hearing (see the High Court decision of *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*") at [31]).

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53 CSL-1 at paras 50 and 67–68.

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36 It does not follow, however, that a tribunal is required to address each and every issue that is raised in the arbitration, such that a failure to address *any* issue would *ipso facto* justify setting aside the award. I accept the following comments by Andrew Baker J in the English High Court decision of *Orascom TMT Investments SARL (formerly Weather Investments II SARL) v VEON Ltd (formerly VimpelCom Ltd)* [2018] Bus LR 1787 which, although in the context of the English Arbitration Act 1996 (c 23) (UK) ("English Arbitration Act"), are of general application (at [27]):

> … On a perhaps simplistic view, any proposition advanced by one party to an arbitration but disputed by the other party creates an issue. If for whatever reason it is not dealt with in the award, then on that view there will have been a failure by the tribunal to deal with an issue that was put to it. However, as both sides before me accept, and as is well reflected in the case law … that does not feel right. That is because it does not feel right to say, no matter the circumstances, no matter the importance or significance of the point to the way in which the case has been advanced overall or is determined by the arbitrators, that failure to deal with something that was in issue before them is, without more, irregular. …

Therefore, a tribunal is only required to deal with the *essential issues* arising in the arbitration, and the court would generally give the tribunal fair latitude in determining what is essential and what is not (see the High Court decision of *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 ("*TMM Division*") at [72]–[74]).

37 Further, the tribunal's duty to consider an issue does not, strictly speaking, require the tribunal to provide a response to *all* submissions made by the parties to it (see the English High Court decision of *Margulead Ltd v Exide Technologies* [2005] 1 Lloyd's Rep 324 at [42(i)]). Although a tribunal's failure to respond to an issue in its award may well suggest that it has failed to apply its mind to it, that is a matter of inference rather than a foregone conclusion. As

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Judith Prakash J (as she then was) observed in *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733, "[n]atural justice requires that the parties should be heard; it does not require that they be given responses on all submissions made" (at [60]).

38 It is not an "uncommon scenario where the tribunal may consider certain strands of argument particularly compelling or even determinative of the result so as to dispose of the matter and render all other arguments nugatory" (see the High Court decision of *BLB and another v BLC and others* [2013] 4 SLR 1169 at [81]). In this instance, if a tribunal considers an argument to be dispositive of an issue, or that its decision on an issue is dispositive of some part of the case (or the entire case), there is generally "no justification for insisting that the arbitral tribunal go on to consider the other arguments which have been rendered academic" (see *TMM Division* at [76]).

39 As a corollary of this point, the court should be slow to find that a tribunal has failed to apply its mind to an issue that has been put before it. For one, a tribunal may not address an issue expressly but deal with it implicitly. The following observations of Chan Seng Onn J (as he then was) in *TMM Division* are apposite (at [77]):

> It should be emphasised that an issue need not be addressed expressly in an award; it may be implicitly resolved. *Resolving an issue does not have to entail navigating through all the arguments and evidence. If the outcome of certain issues flows from the conclusion of a specific logically prior issue, the arbitral tribunal may dispense with delving into the merits of the arguments and evidence for the former.* Using a claim in tort as an example, if the arbitral tribunal has found that there is no duty of care, it follows of course that there can be no breach of a duty of care and consequently, damages. The arbitral tribunal is not obliged to pursue a moot issue and consider the merits of either the standard of care or the claim for damages.

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> [emphasis added]

As such, the fact that an award fails to address one of the parties' arguments or an issue expressly does not, without more, mean that the tribunal failed to apply its mind to that argument or issue, as there may be a valid alternative explanation for the omission (see the High Court decision of *ASG v ASH* [2016] 5 SLR 54 at [92]).

40 Ultimately, the threshold for a finding that the tribunal had failed to consider an issue is a high one; specifically, it has been held that the court should only draw such an inference if the inference is "clear and virtually inescapable" (see the oft-quoted Court of Appeal decision of *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [46]):

> … It will usually be a matter of inference rather than of explicit indication that the arbitrator wholly missed one or more important pleaded issues. However, the inference – that the arbitrator indeed failed to consider an important pleaded issue – if it is to be drawn at all, must be shown to be clear and virtually inescapable. If the facts are also consistent with the arbitrator simply having misunderstood the aggrieved party's case, or having been mistaken as to the law, or having chosen not to deal with a point pleaded by the aggrieved party because he thought it unnecessary (notwithstanding that this view may have been formed based on a misunderstanding of the aggrieved party's case), then the inference that the arbitrator did not apply his mind at all to the dispute before him (or to an important aspect of that dispute) and so acted in breach of natural justice should *not* be drawn.
>
> [emphasis in original]

(2) The Deposit Issue

41 The gravamen of Haide's complaint on the Deposit Issue is that the Tribunal failed to consider Haide's entitlement to the deposit paid by Ship Recycling into escrow – coming up to 30% of the purchase price – under cl 3 of

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the MOA. In brief, Haide argued that, once it had provided Ship Recycling with a NOC as required by cl 3 of the MOA, the deposit that Ship Recycling had paid into escrow ought to have been released to it within three working days. As it happened, the deposit was never released to Haide. This led to Haide contending in the Arbitration that this amounted to a breach of the MOA by Ship Recycling, and seeking an order from the Tribunal for Ship Recycling to release the deposit to it.[54]

42 There was plainly no merit in this objection. Although it was true that the Tribunal did not *expressly* address the Deposit Issue in the Award, it was clearly cognisant that the Deposit Issue arose out of Haide's counterclaim, as it recited this aspect of Haide's case in the course of outlining the parties' respective cases in the Award.[55] Further, and most pertinently, it was clear beyond peradventure that the Tribunal had not seen a necessity to address the Deposit Issue for the simple reason that it had *allowed* Ship Recycling's claim and, in so doing, *dismissed* Haide's counterclaim. The Tribunal's global dismissal of Haide's counterclaim in its statement that "[t]he Respondent's Counterclaim is dismissed" was,[56] effectively, a summary dismissal of all aspects of Haide's counterclaim that were inconsistent with its main finding in favour of Ship Recycling's claim.

43 More specifically, in finding that Ship Recycling had validly terminated the MOA, the Tribunal ordered that Ship Recycling was entitled to the return of the deposit. Not only that, it also granted Ship Recycling interest on the deposit

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54 CWS at paras 17–18.

55 CSL-1 at p 149: Award at para 23(1).

56 CSL-1 at p 159: Award at para 48.

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sum, as well as a consequential order to this end that Haide should facilitate the return of the sums held in escrow to Ship Recycling by signing a joint release instruction to the escrow agent.[57] Since these orders were logically inconsistent with Haide's claim that it was entitled to be paid (and to retain) the deposit paid by Ship Recycling, in making such orders the Tribunal had to be understood as having implicitly addressed – by resolving against Haide – the Deposit Issue. When a tribunal writes its award and states its findings, it does so on the fair assumption that its awards or findings would be interpreted in a commonsense manner rather than with a lens of obtusity. There was plainly no need for the Tribunal to state expressly that: (a) Ship Recycling was entitled to the return of the deposit; and (b) Haide was not entitled to the deposit, given that (a) and (b) are two sides of the same coin, and two ways of saying the same thing.

44 For this reason, there was either (a) no breach of natural justice at all, as the Tribunal did reject Haide's claim to the deposit by necessary implication of its acceptance of Ship Recycling's claim; or (b) no demonstrable prejudice, as no prejudice can arise from a tribunal choosing to articulate its conclusion only in positive terms.

(3) The Arrest Issue

45 Turning to the Arrest Issue, Haide's complaint here was that the Tribunal breached the fair hearing rule by failing to consider the question of whether the Vessel should be released from Ship Recycling's arrest arising out of the Bangladesh Proceedings.

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57 CSL-1 at p 159: Award at paras 49(1)–49(3).

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46 Haide submitted that it had raised the Arrest Issue to the Tribunal, and informed the Tribunal that the ongoing arrest of the Vessel in Bangladesh was placing it under significant financial strain.[58] On the other hand, Ship Recycling argued that the Tribunal had not dealt with the Arrest Issue as this issue had not formed part of the parties' submission to the Tribunal's jurisdiction for determination in the Arbitration.[59]

47 Given this, prior to determining if the Tribunal had failed to consider the Arrest Issue and whether this occasioned a breach of natural justice, it was necessary to determine, as an antecedent issue, whether the Arrest Issue was an issue that was within the scope of the parties' submission to the Tribunal. If, as Ship Recycling contended, the Arrest Issue was not a matter that was within the Tribunal's jurisdiction, *ex hypothesi* the Tribunal could not have been faulted for omitting to address it.

48 The principles for determining the parties' scope of submission to arbitration are well-established. In *CKH v CKG*, Jonathan Hugh Mance IJ said that (at [16]):

> Whether a matter falls or has become within the scope of the agreed reference depends ultimately upon what the parties, viewing the whole position and the course of events objectively and fairly, may be taken to have accepted between themselves and before the Tribunal.

49 I would add that as a matter of caution, the court should be alive to attempts by parties to artificially enlarge (or narrow) the scope of submission *ex post facto* in a bid to conjure up grounds to attack the tribunal's decision. Indeed,

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58 CWS at para 34.

59 Defendant's Written Submissions dated 18 March 2024 at para 43.

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the Court of Appeal in *BLC and others v BLB and another* [2014] 4 SLR 79 had warned against "underestimat[ing] the ingenuity of counsel who seek to … completely reinvent their client's cases with the benefit of hindsight" and "a party who accuses an arbitrator of failing to consider and deal with an issue that was never before him in the first place" (at [4]). Elsewhere, the same point was recently made by the Hong Kong Court of First Instance when it criticised the common occurrence of a losing party challenging an award by "repackaging" arguments which had not been made the focus of submissions to the tribunal, and presenting them to the court as key issues which had not been dealt with by the tribunal (see *X and another v ZCo* [2024] HKCFI 695 at [1]).

50 With the above in mind, upon reviewing the arbitral record, I concluded that the Arrest Issue had *not* been put into issue by Haide, such that the Tribunal could not be criticised for failing to resolve it.

51 I start with the parties' submissions. The first mention of the arrest of the Vessel came in Haide's "Response to the Claim Submission and Statement of Counterclaims" dated 24 February 2023 ("Haide's First Submission").[60] However, it was not clear from Haide's First Submission that it was requesting the Tribunal to determine the Arrest Issue. Rather, reference was made to the arrest as a wrongful act that had caused loss to Haide, in order to support Haide's claim for compensation from Ship Recycling for the latter's alleged breach of the MOA.[61]

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60 CSL-1 at para 16.

61 CSL-1 at pp 96–97: Haide's First Submission at paras 90, 93 and 95.

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52 It is one thing to say that an act has caused loss that ought to be compensated by the other party, but quite another to say that the Tribunal has to decide on whether the other party should continue that act. Broadly speaking, although both entail a common core complaint that the act complained of is wrongful, the former puts into issue a claim for compensatory damages, whereas the latter amounts to a prayer for injunctive or declaratory relief. The issues that would arise from each specific complaint are necessarily distinct.

53 I did accept, however, that there was a reference to a request for the Tribunal to order Ship Recycling to lift the arrest at the end of Haide's First Submission, in which it set out the relief which it prayed for from the Tribunal:[62]

> Respondent respectfully requests the Tribunal to reject all the claims raised by the Claimant.
>
> *Respondent also hereby raises its counterclaims and respectfully asks the Tribunal to award followings*:
>
> 1. The MOA shall be cancelled on 1 July 2022;
>
> 2. The Claimant shall compensate the loss of the Respondent at a total amount of USD 232,398.87. The disposable USD 154,421.45 in the escrow account shall be used for this compensation to cover liquidated damages at USD 52,807.15 and loss at USD 101,614.3. The rest compensation USD 77,977.42 shall be paid directly by the Claimant to the Respondent.
>
> …
>
> *4. The Claimant shall withdraw the Admiralty Suit No. 41 of 2022 before the Supreme Court of Bangladesh High Court Division (Admiralty Jurisdiction), and shall waive any and all rights to bring any litigation in any jurisdiction arising under or relating to the MOA or its subject matter.*
>
> *5. The Claimant shall withdraw the application for detention and ensure that releasement of the Vessel from*

62 CSL-1 at p 99: Haide's First Submission at p 18.

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> *detention before the Supreme Court of Bangladesh High Court (Admiralty Jurisdiction);*
>
> …
>
> [emphasis added]

54 But, it was important to focus on *how* Haide's request for the arrest of the Vessel to be lifted had been framed. It was not pleaded as a freestanding request that fell to be considered irrespective of whether the Tribunal ruled in favour of Ship Recycling's claim or Haide's counterclaim. Rather, it was framed as a consequential relief *in the event that Haide succeeded* on its counterclaim. That much was clear from the *chapeau* of Haide's list of requested reliefs (including the prayer for the lifting of the Vessel's arrest), *viz*, that "Respondent also hereby raises its counterclaims and respectfully asks the Tribunal to award followings".

55 Thus, even if a request for the Vessel's arrest to be lifted was within the scope of the parties' submission, it was in an attenuated form, being contingent upon the Tribunal first finding in Haide's favour and allowing its counterclaim. The implication of this, then, was that in the same way that the Tribunal disposed of the Deposit Issue by allowing Ship Recycling's claim and dismissing Haide's counterclaim (see [42]–[43] above), the Tribunal had also implicitly dealt with Haide's request for the arrest of the Vessel to be lifted by rejecting it, since that request had been framed and pleaded for its determination as part of the relief sought flowing from its counterclaim. As the condition precedent for Haide's request did not come into being (since the Tribunal dismissed Haide's counterclaim), the Tribunal must have necessarily rejected all reliefs sought by Haide that were contingent on the fulfilment of that condition precedent. A tribunal may deal with an issue by so deciding a logically anterior point; for example, a decision that liability has not been established

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would also dispose of questions of relief and quantum (see the English High Court decision of *Petrochemical Industries Co (KSC) v Dow Chemical Co* [2012] 2 Lloyd's Rep 691 at [27(ii)]). As HHJ Russen QC explained in the English High Court decision of *Gracie and another v Rose* [2019] EWHC 1176 (Ch), "the terms of the arbitrator's award may reveal that a point that was thought to form an issue requiring determination … has ceased to be such in the light of the other findings that he has made", and in such circumstances, there will be no failure to deal with an essential issue "if it is plain from the express findings or conclusions contained in the award that an issue has necessarily fallen away" (at [17]).

56 Coming to Ship Recycling's "Reply to Claim Submissions and Defence to Counterclaims" dated 31 March 2023 ("Ship Recycling's Second Submission"),[63] Ship Recycling took the firm position that the issue of the arrest of the Vessel was not a matter within the scope of the parties' submission to the Tribunal for determination. Although it did make some comments refuting Haide's characterisation of the Bangladesh Proceedings, Ship Recycling closed off its submissions under the header of "Bangladesh Arrest" with the unequivocal statement that "[a]ny issue being alleged by the Sellers in respect of the any [*sic*] action in Bangladesh, is *immaterial to the dispute at hand in this reference*" [emphasis added].[64]

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63 CSL-1 at para 16.

64 CSL-1 at p 106: Ship Recycling's Second Submission at para 8.

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57 In addressing Haide's claim that Ship Recycling ought to bear the costs arising from the arrest of the Vessel, Ship Recycling argued that there was no basis for such claim as:[65]

> … Such expenses are to the account of the Sellers, and cannot be claimed form [*sic*] the Buyers, *unless the arrest [and the expenses arising therefrom] have been challenged before the Bangladesh Court*, and has so been held wrongful by the Bangladesh Court, *being the competent court. The Sellers have taken no such steps before the Bangladesh Court* and have themselves delayed and/or avoided putting up security to have mitigated these costs.
>
> [emphasis added]

Here, Ship Recycling's averment was, again, that if Haide had any issue with the arrest, the proper forum for it to ventilate its grievances and seek to have the arrest lifted was the Bangladesh courts, being the "competent court" with subject-matter jurisdiction over the Vessel's arrest.

58 Still on Ship Recycling's Second Submission, Ship Recycling made clear that Haide could not seek to challenge the propriety of the arrest of the Vessel, as the arrest had been conducted pursuant to a valid court order obtained in the Bangladesh Proceedings:

(a) First, Ship Recycling submitted that any issue of damages for wrongful arrest lay outside the Tribunal's jurisdiction, as it was instead a matter "within the jurisdiction of the arresting Court (Bangladesh)".[66]

(b) Second, towards the end of its Second Submission, Ship Recycling restated that Haide could not claim expenses arising out of

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65 CSL-1 at p 110: Ship Recycling's Second Submission at para 30.

66 CSL-1 at p 121: Ship Recycling's Second Submission at para 74(d).

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> the arrest as the arrest was a "legally valid" act in light of the Bangladesh court's order in the Bangladesh Proceedings. Haide would only be able to claim its expenses "should the Bangladesh Court vacate the arrest and find it to be wrongful".[67]

59 Subsequently, in its "Respondent's Reply to the Claimant's Defence to Counterclaims" dated 26 April 2023 ("Haide's Second Submission"), despite the numerous statements in Ship Recycling's Second Submission that the subject-matter of the arrest was outside the scope of the Arbitration and the Tribunal's jurisdiction and instead properly a matter to be ventilated before the Bangladesh courts, Haide did not make any unqualified assertion that the Tribunal was to determine the propriety of the arrest of the Vessel, and whether Ship Recycling ought to lift the arrest, but focussed only on contending that its consequential losses arising from the arrest of the Vessel were within the scope of the Arbitration:[68]

> It is also wrongful for the Claimant to argue that the costs caused by the arrest should be decided by Bangladesh court … If it were not for the Claimant's breach of the MOA, these costs would not have been incurred at all. These costs are the loss suffered by the Respondent which falls into the scope of the dispute that shall be submitted to arbitration under the MOA and is under the discretion of this Tribunal.

As I noted at [52] above, there is an appreciable difference between Haide asking the Tribunal to award it *damages* for losses incurred from the arrest of the Vessel, and asking the Tribunal to decide on whether the arrest ought to be lifted and making orders compelling Ship Recycling to do so.

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67 CSL-1 at pp 121–122: Ship Recycling's Second Submission at para 78.

68 CSL-1 at p 133: Haide's Second Submission at para 30.

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60 Turning away from the parties' submissions in the Arbitration, the parties' subsequent correspondence with the Tribunal further lent to the inference that the Arrest Issue was not a live point in the Arbitration that required the Tribunal's determination. As a starting point, Haide contended[69] that it had raised the Arrest Issue to the Tribunal by way of the following email it sent to the Tribunal on 14 July 2023:[70]

> Dear Members of the Tribunal,
>
> The Respondent is grateful for the diligent efforts of the Tribunal, and we appreciate your time and commitment dedicated to resolving this case.
>
> Since the Vessel remains under arrest, the expenses continue to accumulate, causing significant financial strain on the Respondent. The longer the delay, the greater the risk of escalating losses for the Respondent. Therefore, we kindly request that the Tribunal provide us with an expedited response or a timetable for the following procedure.
>
> Thank you for your attention to this matter, and we look forward to receiving a prompt reply from the Tribunal.

61 I did not agree that this email raised the Arrest Issue as an *issue to be determined* by the Tribunal in the Arbitration. It was clear from a plain reading of the email that all Haide did was to inform the Tribunal of the fact that the Vessel's arrest was subjecting Haide to significant financial strain, in an apparent bid to get the Tribunal to expedite the proceedings. It did not, on a fair reading, intimate to the Tribunal that it was being asked to make a ruling or determination on whether the Vessel ought to be released from arrest.

62 This understanding of the import of Haide's email, as well as the existing state of affairs (that the Arrest Issue was not a live point in the Arbitration) was

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69 CWS at para 34.

70 CSL-1 at p 204.

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evidently shared by Ship Recycling in its email response to the Tribunal on the same day (*viz*, 14 July 2023). In this email, Ship Recycling stated plainly that "the subject matter of the arrest is not one before [the] Tribunal", and urged the Tribunal to not cave to the pressure that Haide was ostensibly seeking to apply on it to make its decision.[71]

63 A subsequent email from Haide itself all but betrayed Haide's perception that the Arrest Issue was not before the Tribunal. In an email dated 17 July 2023 which followed an earlier email from Ship Recycling purporting to update the Tribunal on the Bangladesh court's decision in the Bangladesh Proceedings that Haide was required to furnish security if the Vessel was to be released,[72] Haide criticised Ship Recycling for "attempt[ing] to interfere with this arbitration by relying on a court judgment", and requested that the Tribunal "not be influenced by the court's decision" in making its decision in the Arbitration. Indeed, Haide itself went on to repeatedly disavow the relevance of the Bangladesh Proceedings and the Bangladesh court's decision at various points of this email:[73]

(a) "the judgment of the Bangladesh court is irrelevant to the decision to be made by the Tribunal";

(b) "the Tribunal should not take the court's judgment into account when issuing its decision";

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71 CSL-1 at pp 203–204.

72 CSL-1 at pp 201–203.

73 CSL-1 at pp 200–201.

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(c) "the Claimant is again seeking to disrupt the independent and impartial proceedings by introducing the court judgment"; and

(d) "the Respondent respectfully requests the Tribunal to disregard the court decision".

64 This email was significant. It is settled law that the scope of the parties' submission to arbitration is not fixed but may adjust as the proceedings go on. In the Court of Appeal decision of *CBX and another v CBZ and others* [2022] 1 SLR 47, Mance IJ stated that "[t]he conduct of the parties to litigation before an arbitrator or judge may and does on occasion widen the scope of the issues falling for determination in a way which deprives a pleading objection of any force" (at [48]). While the authorities have usually focussed on an *expansion* of the scope of submission through the conduct of the arbitration, I see no conceptual difficulty in finding that the scope of submission can be *narrowed* in the course of the proceedings, although I would accept that a court would be considerably slower to find that an issue has been withdrawn from the arena by the parties, as it has been suggested that "an issue raised in a party's pleadings remains in play throughout the arbitration unless [it] is expressly withdrawn, no matter how weakly the party may actually advance it" (see the High Court decision of *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768 ("*JVL Agro Industries*") at [150]; and the English High Court decision of *P v D and others* [2017] EWHC 3273 (Comm) at [32]).

65 Reverting to the facts of this case, and assuming, *arguendo*, that the parties had hitherto been speaking at cross-purposes – *ie*, that Haide's genuine belief had been that the Arrest Issue was in play whereas Ship Recycling had (mistakenly) believed otherwise – the parties would nonetheless have been *ad*

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idem by the time that Haide sent this email which stated, no less than five times, that the arrest of the Vessel – being the subject of the Bangladesh Proceedings – had nothing to do with the dispute before the Tribunal in the Arbitration. Indeed, in this email, Haide articulated its view that the parties had vested the Tribunal – through their submission to the Arbitration – "the authority to determine the party in breach [of the MOA] and quantify the damages".[74] Thus, by this email, Haide specifically represented to the Tribunal, as well as Ship Recycling, that the parties' scope of submission was limited to the issues arising from the alleged breaches of the MOA by both parties, and *not the arrest of the Vessel per se*.

66 In fact, this was precisely the Tribunal's understanding of the parties' correspondence, and the basis upon which it proceeded to make its decision in the Arbitration. In its email response to Haide's email on the next day, 18 July 2023, the Tribunal assured the parties "that the Tribunal will bear in mind the *limits of its jurisdiction*, and proceed accordingly" [emphasis added].[75] This, in my view, was a clear indication that the Tribunal accepted Haide's position that issues relating to the arrest were *outside* the ambit of the Tribunal's jurisdiction. The Tribunal all but confirmed this in the Award, where it summarised the correspondence exchanged between the parties which I have canvassed above:[76]

> 12 … by way of email exchanges between [*sic*] dated 14 and 3 August 2023, the parties appraised [*sic*] the Tribunal of developments and orders made by the Supreme Court of Bangladesh in relation to the arrest of the Vessel at Chittagong. In essence, the Court had dismissed the Respondent's challenge of the arrest and ordered the Respondent to furnish

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74 CSL-1 at p 200.

75 CSL-1 at pp 199–200.

76 CSL-1 at p 146: Award at paras 12–13.

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> alternative security in the sum of US$122,000.00 for the release of the Vessel from arrest.
>
> 13 In an email to the parties dated 18 July 2023, the Tribunal acknowledged the emails from parties as well as the limits of its jurisdiction. In an email dated 14 July 2023, the Claimant stated that "… the subject matter of the arrest is not one before this Tribunal …" and the Respondent, in an email dated 17 July 2023, agreed that "… the judgment of the Bangladesh Court is irrelevant to the decision to be made by the Tribunal …" but added that the fact of the lengthy arrest of the Vessel supported the Respondent's application for security for costs.

67 In my judgment, reading these two paragraphs in the Award contextually, against the background of the parties' correspondence with the Tribunal, it was clear that the Tribunal took the view that it had no jurisdiction over the issue of the arrest of the Vessel. While I did accept that the Award was somewhat oblique as to the specific reason(s) for the Tribunal having arrived at this view, it seemed to me most likely that the Tribunal considered that both parties had specifically instructed it that the issue of the arrest was not a matter that was within its jurisdiction to determine. This could be gleaned from the Tribunal's reference to the statement in Ship Recycling's email on 14 July 2023 that "the subject matter of the arrest is not one before this Tribunal" (see [62] above), a position which the Tribunal took Haide as having "agreed" with in its email dated 17 July 2023 in which it was repeatedly stated that the Bangladesh court's judgment was irrelevant to the issues in the Arbitration (see [63] above).

68 To sum up, it was stated in the Singapore International Commercial Court decision of *CKG v CKH* [2021] 5 SLR 84 that "the court must look at the conduct of the reference as a whole in order to determine whether the arbitrators have or have not considered an important issue placed before them" (at [11]). Having done so, my review of the arbitral record above demonstrates that the Arrest Issue had *not* been put into issue by Haide (or Ship Recycling), at least

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not in the way that it was framed by Haide in the present application. As I observed at [54]–[55] above, taking Haide's case at the highest, the most that could perhaps have been said was that Haide had put the Arrest Issue into the arena in an *attenuated form*, by framing its entitlement to an order by the Tribunal for the release of the Vessel from arrest as contingent on the success of its counterclaim in the Arbitration. To the extent that this had been placed before the Tribunal as an issue for its determination, the Tribunal did address it implicitly by dismissing Haide's counterclaim.

69 Moreover, having examined the same correspondence between the parties and the Tribunal, insofar as Haide's complaint might have morphed into the Tribunal having erred in its own understanding of its jurisdiction by perceiving the issue of the Vessel's arrest as outside the parties' scope of submission, I was satisfied that no such error occurred. As I observed at [65] above, there was, at the latest, a *consensus ad idem* between the parties that the Tribunal did not have to concern itself with the issue of the Vessel's arrest by the time of Haide's email to the Tribunal on 17 July 2023. It could not be said that the Tribunal had patently misconstrued the parties' correspondence such as to have made a fundamental error as to the scope of its jurisdiction. Having taken this position in the Arbitration, Haide could not be allowed to resile from it in the present application by criticising the Tribunal for proceeding on a premise that *it had itself engendered*.

70 As a final point, the present case was distinguishable from *Front Row*, where a breach of natural justice by the arbitrator in failing to address an issue was found. In *Front Row*, the arbitrator had expressly stated in the award, in respect of the claimant's claim for misrepresentation, that he was disregarding multiple pleaded representations as the claimant "had ceased to rely on a

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number of points pleaded" (at [14]). Thereafter, the arbitrator went on to reject the claimant's claim on the basis that the single pleaded representation which he had perceived the claimant's case as having narrowed to did not entail a misrepresentation. In an application brought by the claimant to set aside the award, the High Court found that the arbitrator had breached the fair hearing rule by forming the erroneous impression that the claimant had abandoned its arguments relating to other representations (at [53]).

71 In the present case, unlike in *Front Row*, it could not be said that the Tribunal had gone off on a frolic of its own in forming the wrong impression that the Vessel's arrest was an issue outside of the parties' scope of submission, as this was an entirely logical and reasonable interpretation of the parties' correspondence.

72 For the above reasons, I found that the Arrest Issue did not form part of the parties' scope of submission to the Tribunal; *a fortiori*, there could also not have been a "clear and virtually inescapable" inference that the Tribunal had breached the fair hearing rule by failing to apply its mind to the Arrest Issue.

(4) The Sale and Revesting Issues

73 The Sale and Revesting Issues were closely related to the Arrest Issue, as they arose from the Vessel's arrest in the Bangladesh Proceeding.

74 To recapitulate, the Sale Issue was Haide's request to Ship Recycling for the Vessel to be sold and the proceeds to be paid into court pending the outcome of the Arbitration, whereas the Revesting Issue was Haide's pleaded claim for Ship Recycling to furnish documents to facilitate Haide being revested

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with the rights to dispose of the Vessel in the event that the Tribunal were to find that Ship Recycling had validly terminated the MOA.

75 In my judgment, Haide's complaints *vis-à-vis* the Sale and Revesting Issues fell to be dismissed for largely the same reasons as its objection to the Arrest Issue failed.

76 First, as discussed at length above, the Tribunal took the position – encouraged by the parties, including Haide, through correspondence – that the issue of the Vessel's arrest was *res inter alios acta* to the Arbitration. Thus, it was both logical and unsurprising that the Tribunal considered the Sale and Revesting Issues, which both spawned out of the Vessel's arrest, to be outside the scope of the parties' submission. Given that I have found that the Tribunal's impression on the scope of submission was entirely justified, so too was the Tribunal's perception that *all issues* relating to the arrest of the Vessel was beyond its remit.

77 Second, focussing on the framing of Haide's prayers for relief in respect of the Sale and Revesting Issues, a couple of points were apposite.

78 A starting observation is that, insofar as the Sale Issue was concerned, Haide framed its prayer for a sale of the Vessel as an order that it "be entitled to apply for *court* auction for the Vessel and the full amount from the auction …" [emphasis added].[77] This was somewhat peculiar; it was not clear why Haide was asking *the Tribunal* for its sanction to apply *to the Bangladesh court* for a sale *pendente lite*, given that there was no impediment to Haide making such an application to the Bangladesh court in the first place. Indeed, it would be

[77] CSL-1 at p 99: Haide's First Submission at p 18.

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recalled that it was precisely Ship Recycling's position in its Second Submission that Haide ought to take up any issues it might have with the arrest before the Bangladesh courts (see [56]–[58] above).

79 Leaving that oddity aside, as regards the Sale Issue, it was not even clear to me that Haide had sought a sale *pendente lite* for the Vessel to be liquidated into sale proceeds which were to be paid into court pending the Arbitration. A sale *pendente lite* is an interlocutory measure; its purpose is to convert the property which is the subject of a dispute (or as to which a question arises) into cash so that its value is not eroded while the litigation ensues, if it is in the interests of justice to do so (see the High Court decision of *Hyphen Trading Ltd v BLPL Singapore Pte Ltd and others* [2023] SGHC 302 at [19]). However, Haide's apparent prayer for a sale *pendente lite* was, strangely, nothing of this sort. This was because, similar to Haide's request for the arrest to be lifted, it was framed as a form of *final relief contingent on Haide's success* in its counterclaim against Ship Recycling in the Arbitration (see [54]–[55] above).[78]

80 Indeed, Haide's prayer for a sale *pendente lite* was a further step removed because it was sought only as an alternative to Haide's prayers for the Vessel to be released from arrest (giving rise to the Arrest Issue) and the revesting of the Vessel in it (giving rise to the Revesting Issue) in the event that Haide (a) succeeded on its counterclaim in the Arbitration; and (b) Ship Recycling failed to release the Vessel and/or facilitate the revesting of the Vessel in Haide within 30 days of an award deciding in Haide's favour.[79] If a tribunal finds that liability has not been established, there would already be little

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78 CSL-1 at p 99: Haide's First Submission at p 18.

79 CSL-1 at p 99: Haide's First Submission at p 18.

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reason for it to go on to consider the moot issue of the main relief claimed, let alone relief pleaded in the alternative (see the English High Court decision of *Secretary of State for Defence v Turner Estate Solutions Ltd* [2014] EWHC 244 (TCC) at [76]). Seen in this light, Haide either did not actually seek a sale *pendente lite* as it claimed (given the actual framing of its prayer) such that the Sale Issue never arose in the Arbitration, or the Tribunal did deal with the Sale Issue implicitly when it dismissed Haide's counterclaim altogether. On either view, there was in my judgment no cause for complaint *vis-à-vis* the Sale Issue.

81 The same difficulty plagued Haide's prayer for Ship Recycling to be enjoined to facilitate the revesting of the Vessel in Haide, as it was also framed as a relief contingent on Haide's success on its counterclaim in the Arbitration.[80] Thus, again, the Tribunal did deal with the Revesting Issue. Specifically, it rejected Haide's prayer relating to the revesting of the Vessel – by rejecting the condition precedent, *ie*, Haide's success in the Arbitration.

82 For all these reasons, it was impossible to conclude that there was a "clear and virtually inescapable" inference that (a) the Sale and Revesting Issues had been raised as issues in the Arbitration; and (b) the Tribunal failed to apply its mind to them.

(5) The Fraud Issue

83 I come to the Fraud Issue. To recapitulate, this issue was borne out of Haide's argument in the Arbitration that the Tribunal should not place any

[80] CSL-1 at p 99: Haide's First Submission at p 18.

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weight on the Report that had been prepared by Mr Shamsuzzaman, as a representative of Ship Recycling, as the Report was a "fraudulent fabrication".[81]

84 In the Report, Mr Shamsuzzaman stated that he had attended on board the Vessel on 26 June 2022 on Ship Recycling's behalf, and proceeded to set out his findings from his inspection of the Vessel.[82] In the Arbitration, Haide contended in its Second Submission that the Report was a fabrication because Mr Shamsuzzaman had not in fact attended on board the Vessel as he claimed:[83]

> As for the Report, interestingly enough, Mr Shamsuzzaman from Vertex states that he was on board on 26 June 2022 and made the Report according to his investigation. However, Mr Shamsuzzaman was not one of the 8 representatives on board, and the representatives were actually on board on 23 June 2022 but not 26 June 2022. … It is also wired [*sic*] that the Claimant changes its statements after receiving the Respondent's Response and makes more contentions. Therefore, the Report was made up by the Claimant, and the Claimant's arguments on removals are totally groundless.

85 Leaving aside the issue of fraud as a ground for setting aside the award in itself, which I return to address at [153] below, Haide complained that there had been a breach of natural justice in relation to the Fraud Issue as (a) it had clearly raised its objection to the Report's authenticity;[84] and (b) the Tribunal failed to address its objection as the Award contained no finding as to the authenticity or credibility of the Report.[85] Further. Haide argued that it had suffered prejudice from the Tribunal's omission to address its objection to the Report as the Tribunal "made extensive references to [the Report] in

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81 CSL-1 at para 68; CWS at para 59.

82 CSL-1 at pp 304–307.

83 CSL-1 at p 127: Haide's Second Submission at para 6.

84 CSL-1 at para 69.

85 CSL-1 at para 70.

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formulating its reasonings [*sic*] in the [Award] and fully relied on it in coming to its eventual decision".[86]

86 In my judgment, although I did accept that the Tribunal did not expressly deal with Haide's objection to the Report in the Award, the Fraud Issue provided no basis for setting aside the Award. Taking Haide's argument at its highest and assuming, *arguendo*, that there had indeed been a breach of natural justice arising out of the Tribunal's failure to address Haide's complaint on the Report, the Fraud Issue did not cause any actual or real prejudice to Haide. To put it bluntly, it was a storm in a teacup.

87 Despite its assertions in the superlative that the Tribunal had "made extensive references to" and "fully relied on" the Report, Haide's evidence to demonstrate that the Report was a crucial plank of the Tribunal's reasoning and decision was flimsy, to put it mildly. In its supporting affidavit, the only instances that Haide was able to identify[87] of the Tribunal having ostensibly relied on the Report in the Award were two similar statements[88] that the Vessel arrived at Chittagong anchorage on 26 June 2022.[89]

88 I did not think this to be particularly material. The Tribunal could well have relied on the Report for these dates. But the focus was not on whether the Tribunal had read or placed some reliance on the Report, as opposed to whether it had relied on the Report in a material way in arriving at the decision that it

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86 CWS at para 60.

87 CSL-1 at para 72.

88 CSL-1 at p 144: Award at para 1; CSL-1 at p 152: Award at para 29.

89 CSL-1 at para 72.

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did. A commonality between the date referenced in the Report and the date used by the Tribunal in the Award clearly did not cross the *de minimis* threshold.

89 Indeed, Haide did not even pick out the one instance in the Award where the Tribunal did make *express* reference to the Report. That reference was in the context of the Tribunal's statement of the parties' dispute as to whether the Vessel's LDT had decreased as a result of wastage and Haide's removal of equipment from it, and enumeration of the Report as a piece of evidence that the parties had put before it on this issue:[90]

> The Claimant's contention, in essence, is that the condition of the Vessel being in a deteriorated state and equipment having been removed, LDT at time of delivery has correspondingly been reduced such that her value was no longer US$528,071.50. The Respondent denies that there had been any removal that affected the LDT. The evidence produced by both parties comprise photographs and videos of the Vessel and her equipment – see Exhibit C2 to C4 from pages 13 to 71 in the Claimant's Submissions and Exhibits 1 to 9 in the Exhibit List of the Respondent, *as well as witness statements of Vertex's Md. Shamsuzzaman at Exhibit C17 to the Claimant's Reply to Claim Submissions and Defence to Counterclaims* and of Cao JianGuo (the Master of the Vessel) at Exhibits 44 and 45 of the Supplementary List of the Respondent.
>
> [emphasis added]

90 However, this reference was also wholly inconsequential. It was a passing reference to the Report's *existence*, and the Tribunal did not give any consideration to the *substantive contents* of the Report. In the premises, on the face of the Award, there was a complete dearth of evidence suggesting that the Tribunal had placed *any* reliance on the Report, still less that it had played a crucial role in the Tribunal's determinations. There was thus no prejudice

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90 CSL-1 at pp 156–157: Award at para 41.

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occasioned by an assumed failure on the Tribunal's part to address Haide's objections to the Report.

Whether the Tribunal's reasoning was irrational or capricious

91 I turn to Haide's arguments that the Tribunal had breached natural justice by adopting an irrational or capricious line of reasoning.

92 Haide identified two lines of reasoning by the Tribunal which it impugned as irrational or capricious:

(a) First, the Tribunal's finding that Haide had breached the MOA as the Vessel only had 2 MT of bunkers ROB instead of 28 MT of bunkers ROB at the time of delivery as required by the terms of the MOA, such that the Vessel was not ready for delivery at the time when Haide attempted to tender the NOR. I will refer to this as the "Bunkers Issue".[91]

(b) Second, the Tribunal's finding that Haide had not tendered the NOR in accordance with cl 6 of the MOA.[92] I will refer to this as the "NOR Issue".

(1) Applicable legal principles

93 It is settled law that a Tribunal may act in breach of natural justice if it acts irrationally or capriciously by adopting a chain of reasoning that the parties

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91 CSL-1 at paras 48–66; CWS at paras 46–57.

92 CWS at paras 63–68.

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could not reasonably have foreseen (see the Court of Appeal decision of *BZW and another v BZV* [2022] 1 SLR 1080 at [60(b)]).

94 For reasons that will become apparent when I turn to address Haide's arguments on this ground specifically, it is apposite, in my view, to clarify that the reference to "irrationality" ought to be treated with caution and properly understood in context. It is a loaded term that is evocative of a merits review; at the very least, a merits review conducted at a basal standard. However, as this ground of challenge is rooted in natural justice, the reference to "irrationality" should not be read as a licence to argue in a setting aside application that the tribunal's reasoning was *substantively* irrational; that is to say, that the tribunal's decision is so wrong in law and/or fact that no reasonable tribunal could have reached the same decision, such that the award is liable to be set aside on that basis. It is well-settled that a setting aside application is not an appeal on the merits, and a court will not intervene in an arbitral award on the mere allegation that the tribunal got the decision wrong (see the High Court decision of *CWP v CWQ* [2023] 4 SLR 1725 ("*CWP v CWQ*") at [2]). This is so regardless of how wrong the decision is. The courts' experience in setting aside applications has been that an aggrieved party often faces no difficulty in forming the perception that an award adverse to it is irrational or outrageously wrong. But such grievances would fall on deaf ears in a setting aside application given the principle of minimal curial intervention.

95 The usual baggage attached to the term "irrationality" should thus not detract from the fact that, being concerned with natural justice, this ground of challenge protects a party from a "failure of *process*" [emphasis in original] in the path taken by the tribunal, and not what lies at the final destination *per se* (see *CWP v CWQ* at [2]). It is intended to ensure that the parties had sufficient

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notice of the path that the tribunal charted, such that they were not caught by surprise, rather than whether that path was the correct one. Hence, in *Soh Beng Tee*, which appears to be the genesis of the language of "irrationality" and "capriciousness" in the context of setting aside applications in the local jurisprudence, the Court of Appeal stated that (at [65(d)]):

> … the overriding burden on the applicant is to show that a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award. It is only in these very limited circumstances that the arbitrator's decision might be considered unfair.

96 The *operative question*, then, is whether there was a sufficient nexus between the chain of reasoning adopted by the tribunal and the cases which the parties themselves had advanced, such that the parties cannot claim to have been caught unawares by the tribunal's reasoning (see *JVL Agro Industries* at [149]). In this connection, such sufficient nexus would exist, and the parties would thus have sufficient notice, if the tribunal's chain of reasoning (a) arises from a party's express pleadings; (b) is raised by reasonable implication by a party's pleadings; (c) does not feature in a party's pleadings but was in some way brought to the opposing party's notice; or (d) flows reasonably from the arguments actually advanced by either party or is related to those arguments (see *JVL Agro Industries* at [159]).

(2) The Bunkers Issue

97 I begin with considering Haide's complaint on the Bunkers Issue. This issue arose out of the Tribunal's finding that Ship Recycling was entitled to terminate the MOA on the basis that the Vessel did not comply with the stipulated description in cl 14 of the MOA as it did not have the agreed quantity of 28 MT of bunkers ROB at the time that Haide purported to deliver the

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Vessel.[93] The Tribunal dealt with this issue in two short paragraphs in the Award:[94]

> Bunkers ROB at time of delivery
>
> 39 In its email dated 27 June 2022 at 2210 local time (see Exhibit C5 at page 73 and 74 of the Claimant's Submissions), the Claimant had asserted that the Vessel had only 2 MT of Bunkers ROB when it was agreed in Clause 14 of the MOA that the quantity would be 28 MT. The Respondent has not denied or addressed this at all in any of its Statements.
>
> 40 The Tribunal thus finds and holds that the Vessel did not have the agreed 28 MT Bunkers ROB and was not ready for delivery in this regard.

98 The pith of Haide's complaint was that it had not been on notice that the Bunkers Issue was in play; that it resultingly did not have a sufficient opportunity to address the point; and that the Tribunal's findings on the Bunkers Issue were thus tainted by breach of natural justice.[95]

99 I rejected this submission as a review of the arbitral record proved otherwise. As the Bunkers Issue had been raised by Ship Recycling from the outset, it was reasonably foreseeable that it would form part of the Tribunal's reasoning, and by the same token, Haide had a reasonable opportunity throughout the Arbitration to address it.

100 As a preliminary point, it was clear as daylight even *before* the Arbitration had formally begun that the Bunkers Issue was a point of contention. After all, that "[t]here is only around 2 MT of Bunkers ROB against the 28MT described in the MOA" was one of several discrepancies in the Vessel's

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93 CSL-1 at p 158: Award at para 45.

94 CSL-1 at p 156: Award at paras 39–40.

95 CWS at para 49.

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condition that Ship Recycling raised in its email dated 27 June 2022 to Haide (see [10] above), shortly before Haide attempted to push through completion of the MOA by tendering the NOR and Ship Recycling's consequent termination of the MOA on the basis of the Vessel's non-compliance with the stated condition for delivery in the MOA. From the outset, therefore, it was plainly unrealistic for Haide to claim that it did not know that the Bunkers Issue was a major point of difference between the parties.

101 In any event, the deficient quantity of the bunkers ROB was expressly raised by Ship Recycling in the Arbitration right from the word "go". In Ship Recycling's Claim Submissions dated 27 January 2023 ("Ship Recycling's First Submission"), Ship Recycling set out the deficiencies with the Vessel that rendered it non-compliant with the description in the MOA, including that "[o]nly 2 MT of Bunkers ROB, compared to the 28MT that was to be ROB as per cl.14 [of the MOA]".[96] It would have been clear to Haide that, in fending off Ship Recycling's overall claim that Haide had breached the MOA, it would have had to address *all* of Ship Recycling's highlighted deficiencies with the Vessel. However, a response to the Bunkers Issue was conspicuously absent in Haide's First Submission.

102 Even if Haide could claim that it had overlooked, through inadvertence or otherwise, Ship Recycling's submission on the deficient quantity of the bunkers ROB in its First Submission, Ship Recycling then raised the Bunkers Issue once more in its Second Submission, and expressly referred to the insufficient quantity of bunkers ROB as a violation of the terms of the MOA:[97]

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96 CSL-1 at p 71: Ship Recycling's First Submission at para 23.

97 CSL-1 at p 115: Ship Recycling's Second Submission at para 53.

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> Additionally there are other issues in violation of clause 10 read with clause 14 of the MOA. These issues are referenced in [the Report].
>
> > a. *The Vessel was to be delivered with 28MT of bunkers ROB on delivery, while there was just about 1-2MT at the time Buyers reps boarded on 26 June*. Apart from being below the warranted bunkers on delivery, it was not even sufficient to perform the beaching voyage to the yard.
> >
> > …
>
> [emphasis added]

103 However, in Haide's Second Submission, despite making the broad submission that "[t]he Vessel was ready in all respects for physical delivery", Haide did not engage with the Bunkers Issue at any length, save for the following, rather cursory, reference to the Bunkers Issue:[98]

> Therefore, the Vessel is delivered as the Respondent's representation and without any removals. Furthermore, with respect to the additional misrepresentation contended in paragraph 53 [of Ship Recycling's Second Submission] (items a-d):
>
> > a. Bunker ROB refers to the measurable fuel that remains on board. The Vessel can get fuel at the destination port, and liquids in the system will not affect LDT according to the MOA [*Art. 1 of the MOA, line 34*].

104 Finally, to close the loop, in Ship Recycling's "Surrejoinder to Defendant's Reply to Claimant's Reply to Counterclaim" dated 2 June 2023 ("Ship Recycling's Surrejoinder"), Ship Recycling expressly responded to the above extract in Haide's Second Submission as follows:[99]

> As to paragraph 11(a) [of Haide's Second Submission], the MOA states that the Fuel (Bunkers) ROB (remaining on Board) shall be 24MT and *sufficient pumpable and usable* ***and evidently***

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98 CSL-1 at p 130: Haide's Second Submission at para 11a.

99 CSL-1 at p 138: Ship Recycling's Surrejoinder at para 15.

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> ***this was not the case***. Buyers were entitled to reject the Vessel.
>
> [emphasis added in bold italics]

105 It was thus unarguable that the Bunkers Issue arose directly and expressly from Ship Recycling's submissions, as opposed to requiring an inferential leap or reading between the lines of the parties' submissions to identify. In these premises, it was unrealistic for Haide to maintain that it did not have notice of the Bunkers Issue and/or did not have a reasonable opportunity to address it.

106 Indeed, Haide's fleeting reference to the bunkers ROB in its Second Submission – which included a cross-reference to a paragraph in Ship Recycling's Second Submission that had addressed the Bunkers Issue (see [103] above) – was confirmation that Haide knew full well that the deficient quantity of the bunkers ROB was a part of Ship Recycling's case that it had to respond to. For reasons best known to itself, Haide chose to remain silent in the face of Ship Recycling's repeated submissions on this point.

107 It was clear that no breach of natural justice could have occurred in such circumstances. As the Court of Appeal explained in *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311, if a party could have reasonably foreseen that an issue would form part of the tribunal's reasoning, but yet omitted to address the issue, it would have no cause for complaint on the natural justice front since there would have been no deprivation of its right to a fair hearing (at [60]). The High Court in *CDX and another v CDZ and another* [2021] 5 SLR 405 said, to similar effect, that no breach of natural justice occurs if a party fails to address an issue that is a link in the tribunal's chain of reasoning either because it fails to appreciate that the

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issue is in play through mistake or misunderstanding, or has made a deliberate decision not to engage it for some reason (at [34(h)(iv)]).

108 All things considered, Haide stared down the barrel of the Bunkers Issue for the entirety of the Arbitration, but chose not to engage it. That decision backfired and Haide was now seeking another roll of the dice. Needless to say, this could not be countenanced – natural justice provides no refuge for parties who make strategic choices and then seek to resile from them when they turn out inconvenient or disastrous.

109 Further, even if Haide had been correct that there was a breach of natural justice arising from the Tribunal's decision on the Bunkers Issue, this breach would not have warranted intervention as it did not cause Haide any prejudice. This was because the Tribunal had also concluded that Ship Recycling's termination of the MOA was valid because Haide's tender of the NOR had not been accompanied by the requisite documents, so that there was no valid tender of the NOR in compliance with cl 6 of the MOA. This finding was an *independent and sufficient* basis for allowing Ship Recycling's claim in the Arbitration. It thus followed that Haide would not have obtained a better result even if the Tribunal had made no finding at all on the Bunkers Issue.

110 Indeed, counsel for Haide, Mr Govintharasah s/o Ramanathan, confirmed in oral argument that Haide was no longer challenging the Tribunal's decision that Haide had failed to comply with cl 6 of the MOA when it purported to tender the NOR to Ship Recycling.[100] That concession fortified my conclusion that Haide was simply not able to demonstrate any prejudice arising from the

[100] Notes of Evidence dated 22 March 2024 at p 4 lns 28–29.

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Bunkers Issue. This was because even if I had accepted and found that the Tribunal had determined the Bunkers Issue in breach of the fair hearing rule, it would have made absolutely no difference at all to the outcome of the Arbitration – Haide would *still* have lost as its tender of the NOR would still have been invalid and therefore, the result of the Arbitration would have been the same. Thus, any notional excision of the Tribunal's findings on the Bunkers Issue would not have had any effect on the outcome of the Arbitration.

111 Finally, a different angle from which Haide impugned the Tribunal's decision on the Bunkers Issue as irrational was by arguing that the Tribunal had failed to consider that Ship Recycling was under an apparent duty to mitigate its loss arising from Haide's breach of the MOA in having insufficient bunkers ROB the Vessel. Related to this was a suggestion that the Tribunal had erred in its interpretation of the MOA's terms by finding that the MOA required Haide to deliver a Vessel with 28 MT of bunkers ROB.[101]

112 These arguments were an unabashed attack on the merits of the Tribunal's decision on the Bunkers Issue, and a classic example of the common occurrence I have highlighted at [94] above of a party misinterpreting the reference to "irrationality" in the context of natural justice as an invitation to submit on the substantive correctness of the Tribunal's decision in law and in fact. If Haide considered these points worthwhile, it should have taken them up before the Tribunal during the Arbitration. In a setting aside application, arguments of this sort that the tribunal ought to have considered certain points of law, or that it failed to apply its mind to certain legal authorities on an issue, would generally fail *in limine* on the basis that the court simply has no

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101 CWS at para 53–57.

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jurisdiction to entertain such arguments, still less to intervene in the award on such footing.

(3) The NOR Issue

113 Although Haide did, as mentioned at [110] above, drop its challenge on the NOR Issue in the course of its oral submissions, I shall address it briefly for completeness, given that arguments on this issue were fully made in Haide's written submissions. On this front, Haide did not even attempt to mount an argument that it had not been afforded an adequate opportunity to address the Tribunal on the NOR Issue, or that it had laboured under a misapprehension that the NOR Issue had not been in play in the Arbitration. Rather, Haide simply took issue with the Tribunal's decision that it had breached the MOA by failing to submit all documents that it was required to tender pursuant to cl 6 of the MOA, as it considered that the fault lay with Ship Recycling, rather than itself:[102]

> The Tribunal was acting irrationally and capriciously by holding that Haide had not submitted the relevant documents under Clause 6 of the MOA (and therefore breached the contract). In truth, Haide's agents confirmed that all the Accompanying Documents under Clause 6 were tendered along with the NOR ([30] of the Final Award) but simply because Ship Recycling rejected the documents due to technical issues with the Vessel, these accompanying documents were not given to Ship Recycling (which the Tribunal acknowledges at [30] of the Final Award).

114 I do not need to say much on this, as it was another undisguised challenge to the merits of the Tribunal's decision which had nothing to do with natural justice or Haide's right to a fair hearing.

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102 CWS at para 64.

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115 In the Award, the Tribunal considered the issue of whether Haide had tendered the NOR in accordance with the requirements set out in cl 6 of the MOA.[103] This much was clear from how the Tribunal's "Analysis and Findings" contained an entire section considering the question: "[w]as there a valid tender of the NOR in compliance with Clause 6 of the MOA".[104] In the course of its discussion of this issue, the Tribunal set out and construed the relevant terms of the MOA dealing with the tender of the NOR;[105] set out the parties' respective arguments on whether there had been a valid tender of the NOR;[106] and came to the conclusion that "the tender of the NOR did not comply with Clause 6 of the MOA and that the Claimant was thus entitled to cancel the MOA under Clause 18 of the MOA".[107] Even if I were to entertain Haide's complaint on the merits, there was plainly nothing irrational about the Tribunal's chain of reasoning; on the contrary, this was an entirely sensible approach to disposing of the NOR Issue. It was thus correct for Haide to concede the futility of this challenge and not pursue it further.

Whether the Tribunal exhibited apparent bias

116 The final natural justice challenge mounted by Haide was perhaps the most serious, as Haide contended that the Tribunal had exhibited "clear apparent bias through its conduct and actions throughout the arbitration proceedings".[108]

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103 CSL-1 at pp 150–153: Award at paras 25–34.

104 CSL-1 at p 150: Award at p 9.

105 CSL-1 at pp 150–152: Award at paras 25–28

106 CSL-1 at pp 152–153: Award at paras 29–32.

107 CSL-1 at p 153: Award at para 34.

108 CWS at para 70.

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117 The law on apparent bias is uncontroversial (see generally, the Court of Appeal decision of *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI v BOJ*"). A convenient reference in the particular context of setting aside proceedings is the Singapore International Commercial Court decision of *CFJ and another v CFL and another and other matters* [2023] 3 SLR 1, where Kannan Ramesh JAD set out the following helpful restatement of the key principles (at [51]):

> The test is not whether bias has affected the decision. That would be a case of actual bias. Instead, the test is whether there exist facts and circumstances that give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer. This is a fact-specific and objective inquiry, involving: (a) objectively identifying the facts and circumstances that are salient to the question of bias; and (b) understanding whether the fair-minded and informed observer would reasonably entertain an apprehension of bias from those facts and circumstances. The fair-minded and informed observer does not have an interest in the outcome of the matter other than the general interest shared by the public in the fair and proper administration of justice – namely, that justice is not only seen to be done, but is manifestly and undoubtedly seen to be done. This is a question of natural justice and due process, of which the perceived independence and impartiality of the adjudicator is a facet. …

118 Starting with the first step of identifying the circumstances relevant to the allegation of bias, Haide cited two acts of the Tribunal in support of its claimed inference of apparent bias:

(a) First, that the Tribunal "consistently allowed time extensions on Ship Recycling's side at the expense of Haide's recurring financial losses as a result of the Vessel being arrested and as a result of the arbitration proceedings".[109]

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109 CWS at para 71.

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(b) Second, that the Tribunal "consistently failed to apply its mind to essential issues arising from Haide's pleaded counterclaim".[110]

119 Turning to the second step of the analysis, it was, with respect, an absurd suggestion that a fair-minded and informed observer could have formed even the most remote suspicion of bias on the part of the Tribunal. In my judgment, this allegation should never have been made. I deal with Haide's two cited instances above in the reverse order.

120 First, given my findings that each one of Haide's objections of the Tribunal's failure to apply its mind to Haide's counterclaim was unmeritorious, there was no basis for Haide to claim apparent bias on the Tribunal's part from this false premise. To the extent that Haide had variously challenged the merits of the Tribunal's findings, these arguments also cut no ice. In *TMM Division*, Chan J held that "even if an arbitrator has utterly misapplied the law or misunderstood the facts, that will not suffice even as *prima facie* evidence that the arbitrator was apparently biased" (at [123]). At the risk of stating the obvious, a tribunal does not demonstrate an appearance of bias simply because it rules against a party and does not accept any of its arguments or the entirety of its case.

121 Second, Haide's reliance on the Tribunal having granted extensions to Ship Recycling during the Arbitration was also woefully unmeritorious. In the first place, it is well-settled that the courts pay significant deference to the tribunal's exercise of procedural discretion and its case management powers (see the Court of Appeal decision of *China Machine New Energy Corp v Jaguar*

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110 CWS at para 72.

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Energy Guatemala LLC and another [2020] 1 SLR 695 ("*China Machine*") at [103]). This is encapsulated in the maxim that "the tribunal is the master of its own procedure" (see the High Court decision of *Anwar Siraj and another v Ting Kang Chung and another* [2003] 2 SLR(R) 287 at [41]–[42]):

> 41 The arbitrator is, subject to any procedure otherwise agreed between the parties as applying to the arbitration in question, master of his own procedure and has a wide discretionary power to conduct the arbitration proceedings in the way he sees fit, so long as what he is doing is not manifestly unfair or contrary to natural justice …
>
> 42 It is therefore plain that the Court's supervisory role is to be exercised with a light hand and that arbitrators' discretionary powers should be circumscribed only by the law and the parties' agreement.

122 Apart from stating the bare fact of the extensions having been granted, and that Haide incurred increasing costs (arising from the arrest of the Vessel in the Bangladesh Proceedings) as a result of the delays, Haide did not actually explain *how* and *why* the Tribunal's grant of extensions were supposedly unjustified. This was a high hurdle to cross, given especially that the Tribunal had adopted an even-handed approach to extension requests by hearing out both parties before arriving at a decision.

123 The inherently tenuous foundation of Haide's allegation of unfair treatment by the Tribunal was eroded further when one took into account the fact that *Haide* itself had sought, and been granted, an extension by the Tribunal to file its First Submission in the Arbitration.[111] What was sauce for the goose had to be sauce for the gander. In these circumstances, Haide's claim that the Tribunal had given Ship Recycling preferential treatment by granting it extensions was exaggerated, to say the least.

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111 CSL-1 at para 76.

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124 It struck me as rather disconcerting that Haide apparently had no reservation against making what it must have known was – as any reasonable person viewing the facts would have – a baseless allegation of bias against the Tribunal. It cannot be gainsaid that such serious allegations cannot be bandied around in a cavalier manner. The Court of Appeal has, on more than one occasion, cautioned that given the severity of an allegation of bias, it is not one that should be made lightly (see, *eg*, *BOI v BOJ* at [141]):

> *Finally, we cannot emphasise enough how extremely serious allegations of judicial bias are.* Indeed, such allegations can be utilised not only as a weapon of abuse by disgruntled litigants but also waste valuable court time and resources in the process. *We would imagine that, by their very nature, such allegations would be rare in the extreme.* Should such proceedings arise before the court in the future and be found to be unmeritorious, there may be serious consequences.
>
> [emphasis added]

Although these observations were made in the context of allegations of *judicial* bias – which may fairly be described as being of greater severity in light of the judiciary's public-facing role in the administration of justice – they are, in my view, no doubt equally apposite to arbitration despite its status as a private mode of dispute resolution. Frequent, unbridled allegations of bias against arbitrators would inevitably cause discredit to the legitimacy of arbitration. Further, insofar as the arbitrators themselves are concerned, allegations of bias are often perceived as *ad hominem* attacks on their integrity and honesty. The inherently stigmatising nature of such allegations means that irreparable damage can be caused by the mere utterance of the allegation, even if they are subsequently vindicated in court.

125 Given the severity of the allegation, it was unfair of Haide to make an allegation of bias against the Tribunal without *ever* having given the Tribunal

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any indication during the Arbitration that it had harboured any such doubts over the Tribunal's impartiality. If Haide genuinely considered that the Tribunal had acted unfairly or given preferential treatment to Ship Recycling through its extensions of deadlines, it ought to have either informed the Tribunal of these concerns or, if that were thought futile or viewed as antagonising the tribunal, pursue the matter in the right way by taking out an application to challenge the Tribunal's appointment under Arts 12 and 13 of the Model Law (see, *eg*, the High Court decision of *PT Central Investindo v Franciscus Wongso and others and another matter* [2014] 4 SLR 978). That Haide never raised any concern about the Tribunal's impartiality until it lost in the Arbitration suggested that its allegation of bias was merely an afterthought.

126 For the reasons above, I rejected Haide's allegation of bias as completely devoid of merit. I would stress, again, that allegations of bias should only be made where there are genuine and cogent grounds for doing so. The Court of Appeal in *BOI v BOJ* has already laid down the general yardstick that these cases would be "rare in the extreme" (see [124] above), thus suggesting that there should be rather stark facts before the allegation *ought even to be made* (let alone succeed).

Whether there was a deviation from the parties' agreed procedure

127 I turn to Haide's argument that the Award should be set aside because the Tribunal had deviated from the parties' agreed arbitral procedure. Under Art 34(2)(*a*)(iv) of the Model Law, an arbitral award may be set aside where an agreed arbitral procedure was not adhered to. The requirements for establishing this ground are: (a) there must be an agreement between the parties on a particular procedure; (b) the tribunal must have failed to adhere to the agreed procedure; (c) the failure must be causally related to the tribunal's decision in

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that the decision could reasonably have been different if the agreed procedure had been adhered to; and (d) the party mounting the challenge will be barred from relying on this ground if it failed to raise an objection during the proceedings before the tribunal (see the High Court decision of *DGE v DGF* [2024] SGHC 107 ("*DGE v DGF*") at [121], citing the Court of Appeal decision of *Lao Holdings NV and another v Government of the Lao People's Democratic Republic* [2023] 1 SLR 55 at [98]).

128 The agreed procedure that Haide alleged the Tribunal to have deviated from was the requirement under r 44.7 of the SCMA Rules that a tribunal presiding over an arbitration conducted in accordance with SCMA's Expedited Procedure "shall issue the Award within 21 days either from the date of receipt of all parties' case statements or, if an oral hearing is fixed, from the close of the oral hearing".[112] In this case, given that the Arbitration was conducted on a documents-only basis, the last day for the Tribunal to issue its Award in accordance with r 44.7 of the SCMA Rules was 23 June 2023, as the final written submission – *viz*, Ship Recycling's Surrejoinder – was filed and served on 2 June 2023.[113] However, the Tribunal only released the Award on 19 September 2023.[114] As a side point, I note that although Haide calculated the length of the delay as being 96 days, my calculations tabulated the delay as having only been 88 days. Nevertheless, I did not regard a difference of just over a week's length as particularly material to the issue at hand.

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112 CWS at para 73.

113 CSL-1 at para 78 and 85.

114 CSL-1 at para 85.

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129 In my judgment, Haide's challenge failed to satisfy at least the third and fourth requirements set out at [127] above.

130 First, the requirement of prejudice arising from the deviation from the agreed arbitral procedure serves to ensure that an award is not set aside purely for a technical or minor breach (see the High Court decision of *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114 at [54]). Thus, it is necessary for the challenger to prove that the breach could reasonably be said to have altered the final outcome of the arbitral proceedings in some material way (see *DGE v DGF* at [126], citing the High Court decision of *Coal & Oil Co LLC v GHCL Ltd* [2015] 3 SLR 154 ("*Coal & Oil*") at [51]).

131 However, Haide put essentially *no* evidence or argument forward as to how the delay in the release of the Award might have altered the outcome of the Tribunal's decision. Rather, Haide focussed on the fact that the delay apparently resulted in it incurring higher costs arising from Ship Recycling's arrest of the Vessel in the Bangladesh Proceedings while the parties awaited the Tribunal's decision. But, to my mind, the issue of higher costs was *res inter alios acta*; it had nothing to do with the outcome of the Arbitration and the Tribunal's decision. It seemed to me that the inquiry of prejudice, as contemplated in the authorities, is focussed on the effect of the breach on the tribunal's decision on the parties' dispute, as opposed to general detriment or adverse effects that may flow logically from the breach, but which are strictly collateral to the arbitral proceedings.

132 Second, similar to its allegation of bias, Haide had never raised an objection as to the delay to the Tribunal during the Arbitration. Although Haide did in correspondence request the Tribunal to render its decision as soon as

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possible, it never indicated to the Tribunal that it considered the delay to be a fatal flaw that rendered any award rendered by the Tribunal susceptible to being set aside upon. It is useful, in this regard, to set out parts of the chain of correspondence between the parties – in particular, Haide – and the Tribunal *after the deadline of 23 June 2023*, as this revealed that Haide had not once indicated that the delay was (at least to it) a problem that struck at the heart of the tribunal's pending award.

133 In an email to the Tribunal dated 14 July 2023, the full text of which I have previously set out at [60] above, Haide did reference the costs it was incurring from the arrest of the Vessel, but merely requested the Tribunal to make its decision swiftly.[115]

134 Subsequently, in an email to the Tribunal dated 17 July 2023, Haide again requested for "an expeditious decision" and that the Tribunal "render the decision as soon as possible".[116] Again, no reference was made to the fact that Haide considered the delay up to that point to be a fatal defect to the arbitral process, or to impinge on the Tribunal's jurisdiction (this jurisdictional issue being one that I return to at [143]–[151] below).

135 Two weeks later, on 1 August 2023, Haide wrote to the Tribunal once more, in which it sought an update on the Tribunal's progress and an estimated timeline on when the Tribunal saw itself able to give its decision, and repeated its request for a "prompt decision":[117]

> Dear Members of the Tribunal,

115 CSL-1 at p 351.

116 CSL-1 at pp 347–348.

117 CSL-1 at pp 357–358.

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> We, the Respondent, are writing to kindly ask whether there is any progress in Tribunal's deliberations.
>
> *The Respondent is not meant to push the Tribunal*, but the Respondent does have to share that we just received another reminder from the Port Authority to urge us to shift and sail the Vessel as soon as possible. This Vessel has been floating on the Bangladesh water for almost one year. Not only the costs and expenses are generating, but also the coming adverse weather conditions will do harm to the safety of the Vessel.
>
> … Therefore, this arbitration award is indispensable for the Vessel to leave the port or to be resold. As such, the Respondent would like to see the timetable for the following procedure, i.e. the time for the award, and kindly request your prompt decision on this case.
>
> We look forward to your reply and decision. Thanks!
>
> [emphasis added]

It was noteworthy that, despite requesting expedition from the Tribunal, Haide expressly stated that it "is not meant to push the Tribunal", which I understood to mean that Haide was communicating that it did not intend to rush or put pressure on the Tribunal. Again, there was no mention of Haide having perceived the delay as a major issue that went to the future award's validity.

136 The Tribunal responded to Haide's inquiry on 4 August 2023, in which it communicated that "the Tribunal is in the closing stages of deliberations and expects to issue its Award in the near future".[118]

137 Just under three weeks later, on 23 August 2023, Haide wrote to the Tribunal seeking an update on the Tribunal's progress in delivering its decision. But the email was much the same as Haide's previous requests insofar as there

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118 CSL-1 at p 354.

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was no allegation that the delay constituted a fatal procedural or jurisdictional flaw in the Arbitration:[119]

> Dear Members of the Tribunal,
>
> The Respondent fairly appreciates the Tribunal's endeavor and commitment to the captioned case. Recognizing the complexity of the matter and the dedicated efforts the Tribunal has already invested, the Respondent would like to highlight the importance of a timely resolution to the parties. Therefore, the Respondent expects to know the approximate time for the Tribunal to make the final award.
>
> Thank you for your attention to this matter. We look forward to your response and eventual decision on this case.

138 The Tribunal responded to this email on the same day, in which it reported that "[t]he Tribunal has deliberated and in the process of writing its Award, and will endeavour to release the same as soon as practicable".[120]

139 Subsequently, on 6 September 2023,[121] the Tribunal wrote to the parties informing that it was ready to issue its award, save for the issue of the costs of the Arbitration and interest, and thus invited the parties to file their submissions on these issues. On 19 September 2023, the Tribunal handed down the Award, although it reserved its decision on costs as it had not received both parties' submissions on the issue.[122]

140 The tracing of Haide's correspondence with the Tribunal above, which all occurred after the 21-day deadline on 23 June 2023 had lapsed, made plain that Haide had, at all times, represented itself as willing and able to wait on the

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119 CSL-1 at pp 353–354.

120 CSL-1 at p 353.

121 CSL-1 at pp 360–361.

122 CSL-1 at p 363.

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Tribunal's decision notwithstanding the delay past the timeline set out in r 44.7 of the SCMA Rules. That being the case, it was not open for Haide to do a *volte-face* on this issue after it discovered that the Tribunal's decision was adverse to it, and argue that the delay was a ground upon which the Award should be set aside. This was a quintessential example of "hedging" that the Court of Appeal has outlawed in no uncertain terms (see *China Machine* at [168] and [170]).

141 In this connection, the striking facts of the Court of Appeal decision of *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 1 SLR(R) 510 ("*Hong Huat Development*") make it an instructive example of the importance of the parties adopting a "cards up" approach to their procedural objections. In that case, the applicant sought to set aside an arbitral award on the ground of arbitrator misconduct owing to the award having been rendered some *ten years* after the hearings were completed. In declining to set aside the award, Chao Hick Tin JA (as he then was) observed as follows (at [57]):

> … A delay of the magnitude as in this case is grossly inordinate and cannot be tolerated. We deplore such a length of delay on the part of an arbitrator. It can only undermine faith in arbitration. The court would have removed the arbitrator for such a cause if an application had been made to the court pursuant to s 18 [of the Arbitration Act (Cap 10, 1985 Rev Ed)]. However, in this instance, neither party felt strongly enough about the delay to take that step, though they (mainly the respondents) did send reminders to the arbitrator … *Now that the award had been rendered we do not think the delay per se could be a good ground to set aside the award. It smacks of the appellants saying, set it aside because it is not in our favour.* …
>
> [emphasis added]

142 Although the sheer length of the delay in *Hong Huat Development* is not the point *per se*, it is almost irresistible to contrast the delay in the present case, which was really a drop in the ocean relative to the ten-year gap between the end of the hearing and the release of the award in that case. Seen from that

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perspective, the same result in *Hong Huat Development* clearly followed *a fortiori* in this case. But, more important for present purposes is Chao JA's point that an arbitrant who is dissatisfied with the tribunal's delay should take action to remedy the situation. As Steven Chong J (as he then was) noted in *Coal & Oil* (at [65]), a case which concerned a delay – also of a considerably longer period than the instant case – of 19 months, if the delay had truly been intolerable, Haide ought to have applied under Art 14(1) of the Model Law to terminate the Tribunal's mandate prior to the issue of the Award, and not sit on its hands.

143 As a final point, I address Haide's reliance on the High Court decision of *Ting Kang Chung John v Teo Hee Lai Building Constructions Pte Ltd and others* [2010] 2 SLR 625 ("*John Ting*").[123] In that case, Art 14.1 of the Singapore Institute of Architects Arbitration Rules 1999 ("SIA Rules"), which the arbitration was conducted under, required the award to be released within 60 days of the "close of hearing". However, the award was only released one year and four months after the hearings had closed. The applicant, the defendant in the arbitration, applied to set aside the award. The High Court, somewhat exceptionally, agreed and set aside the award.

144 At first blush, the decision in *John Ting* did appear to provide some support for Haide's position. However, on a closer examination of the case, it was distinguishable. In the first place, it was critical to note that the court's reasoning in *John Ting* went beyond the mere fact of the delay *per se* such that any analogy drawn between that case and the present could have been more apparent than real. Specifically, the basis on which the award was set aside in

123 CWS at para 76.

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John Ting was, strictly speaking, a finding that the tribunal had *no jurisdiction* to issue the award by reason of the delay. I set out the reasoning on this point of Quentin Loh JC (as he then was), including the authorities that the learned judge drew upon, for ease of reference (see *John Ting* at [32]):

> The Arbitrator's error in overlooking a time limit within which to issue his award was a very serious error. Party autonomy, which is a cornerstone of arbitration, has been emphasised time and again by our highest court. If the parties have chosen to agree to a time limit within which an arbitrator has to render his award and that contract or arbitration clause contains no provision to extend time, other than by mutual agreement, then no court is in a position to re-write the contract for the parties, (unless there is a statutory provision conferring such a power). For this reason, Alan Redfern and Martin Hunter with Nigel Blackaby and Constantine Partasides *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell, 4th Ed, 2004) warns at para 8-66:
>
> > A limit may be imposed as to the time limit within which the arbitral tribunal must make its award. *When this limit is reached, the authority or mandate of the arbitral tribunal is at an end and* ***it no longer has jurisdiction to make a valid award***. This means there [*sic*] where a time-limit exists, care must be taken to see that either:
> >
> > - the time-limit is observed; or
> > - the time-limit is extended before it expires.
> >
> > The purpose of time-limits is to ensure that the case is dealt with speedily; such limits may be imposed on the tribunal or by the rules of an arbitral institution, by the relevant law, or by the agreement of parties.
> >
> > [emphasis added]
>
> A substantially similar passage in the first edition of the above book was cited with approval in *Petro-Canada v Alberta Gas Ethylene Co* (1991) 121 AR 199 at 214; see also *Ian MacDonald Library Services Ltd v PZ Resort Systems Inc* (1987) 14 BCLR (2d) 273 where the court set aside an arbitration award made several months after the expiry of the time for making it; see also *Halsbury's Laws of Singapore* vol 2 (Butterworths Asia, 1998) para 20.102 n 6. As against that, Robert Merkin, *Arbitration Law* (Informa, Looseleaf Ed, 1991, May 2009 Release) states at para 18.29: "… The expiry of the time limit

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> does not necessarily operate to remove the jurisdiction of the arbitrators, and there are a number of possibilities for the extension of time. In the first place, time may not be of the essence under the contract, so that its expiry has no effect." With respect, I disagree with the foregoing statement by Merkin. I am of the view that the statement in *Law and Practice of International Commercial Arbitration*, quoted above, is the correct analysis.
>
> [emphasis in original]

145 It is also apposite to note that, in coming to his decision, Loh JC expressly considered the Court of Appeal decision of *Hong Huat Development*, albeit he found it distinguishable on the basis that "the issue in *Hong Huat Development* was different" because "there were no rules governing the arbitration in *Hong Huat Development* that limited the time for the award to be issued" (see *John Ting* at [34]).

146 Consistent with my reading of the case, in the subsequent decision of *Coal & Oil*, Chong J considered *John Ting* and opined that "[t]he holding in *John Ting* is confined only to breaches of agreed time limits for the issuance of the award because such breaches have critical implications on the *mandate* of the tribunal" [emphasis in original] (at [55]).

147 In this regard, *John Ting* was distinguishable from the case before me because, unlike in that case (or at least not apparent from the court's decision), the SCMA Rules in the present case contained r 49.1 which provided as follows:

> Any party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection to such non-compliance shall be deemed to have waived its right to object.

148 In my view, the effect of r 49.1 of the SCMA Rules is two-fold. First, it bars a party from subsequently raising any non-compliance with the SCMA

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Rules (including by a tribunal) where no objection to the non-compliance was raised promptly upon a party being aware of it. It can be seen at once that there is an identity in the underlying rationale of r 49.1 of the SCMA Rules and the proscription against "hedging" identified by the Court of Appeal in *China Machine* that requires a party to give "fair intimation" of its procedural objections to the tribunal (see *China Machine* at [170]). Second, the effect of such non-objection (and consequent waiver of the right to object) could in an appropriate case also amount, at the least, to a tacit agreement (by the conduct of the arbitrants) to *extend* the mandate of the tribunal to continue with the arbitral proceedings and render its award.

149 My analysis above was in fact consistent with the approach adopted by the Judicial Committee of the Privy Council in the recent case of *Alphamix Ltd v The District Council of Rivière du Rempart* [2023] UKPC 20. There, the arbitrator's mandate was due to expire on 31 December 2018, but the final and signed version of the award was only handed down on 3 January 2019. The parties, however, had attended at a hearing before the arbitrator on 31 December 2018 in which the arbitrator had read out the operative part of the award, and informed the parties that they would only be provided at that stage with an unedited version of the award, with an edited version – without any changes to the substance of the findings – to follow "later on" (at [5]). To this, both parties' counsel stated that they had no objection. Lord Leggatt, delivering the advice of the Board, held that the parties had "demonstrate[d] an unequivocal common intention … that delay until 3 January [2019] in providing the final, signed version of the award would not result in the award being invalid", and this "amounted to a tacit agreement to extend the time limit for rendering the award" (at [26]).

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150 The question of whether the parties had agreed to extend a time limit for the tribunal to render its award, and thereby also extend the tribunal's jurisdiction, would invariably be a fact-sensitive one. In this case, Haide's conduct (as detailed above at [133]–[139]) demonstrated quite clearly that it (a) never insisted on strict compliance by the Tribunal with the timelines under the SCMA Expedited Procedure; (b) did not object to any delay in the Award being rendered after the 21-day period in r 44.7 of the SCMA Rules; and (c) on more than one occasion, requested that the Tribunal issue its award as soon as possible despite the 21-day deadline having passed.

151 Not having even once raised any objections to the Tribunal, Haide could not be heard to do so now. On the facts before me, I had little difficulty in finding such an agreement to extend the Tribunal's mandate to the time of the Award's release by reason of the conduct of the parties (including Haide), in much the same way as I found that Haide had waived its objection to any delay in the Tribunal handing down the Award (see [140] above). Unlike *John Ting*, therefore, the Tribunal was still seised of jurisdiction at the time that it rendered the Award.

152 For the foregoing reasons, I declined to set aside the Award on the basis of the Tribunal's non-compliance with the parties' agreed procedure in the form of the timelines in r 44.7 of the SCMA Rules.

Whether the Award was procured by fraud

153 Finally, I come to Haide's submission that the Award was liable to be set aside under s 24(*a*) of the IAA on the basis that it was induced or affected by fraud.

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154 As mentioned at [83]–[84] above, Haide alleged that Ship Recycling had practised a fraud on the Tribunal by adducing and relying on the Report, which Haide considered to be a "fraudulent fabrication".

155 In my judgment, there was no merit in this submission as it was flawed on at least two levels.

156 First, I was not satisfied that the requisite threshold for establishing that the Report was false or fabricated evidence had been met. It is well-settled that where allegations of fraud and dishonesty are raised by a party seeking to challenge an award, "strong and cogent evidence" must be adduced before a court would be prepared to make a finding of fraud (see the High Court decision of *CLX v CLY and another and another matter* [2023] 4 SLR 241 at [58], citing the High Court decision of *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 3 SLR 725 at [99]).

157 In the Arbitration and before me in this application, Haide's main basis for alleging that the Report was fraudulent was its contention that Mr Shamsuzzaman had not attended on board the Vessel on 26 June 2022 as he claimed. To support this assertion, Haide principally relied on the fact that Mr Shamsuzzaman was not on a list of representatives[124] of Ship Recycling who had boarded the Vessel. Haide also relied on (a) a statement by Ship Recycling in the Bangladesh Proceeding that its eight representatives who had boarded the Vessel were "watchmen", which Mr Shamsuzzaman was not;[125] and (b) a statement dated 9 February 2023[126] by the Master of the Vessel, Mr Cao

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124 CSL-1 at para 68(a) and pp 322–323.

125 CSL-1 at para 68(a) and p 181.

126 CSL-1 at pp 325–326.

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Jianguo, that only eight of Ship Recycling's representatives had boarded the Vessel on 23 June 2022, and the omission of any mention of Mr Shamsuzzaman having boarded on a subsequent date.[127]

158 I did not think that the evidence relied upon by Haide sufficed to discharge its heavy evidential burden to establish fraud. In the Arbitration, Ship Recycling had argued in its Surrejoinder that Mr Shamsuzzaman's omission from the list of representatives was entirely explicable by the fact that he had only boarded the Vessel on a later date than that which the list of representatives had captured.[128] This was not an inherently implausible explanation that I could reject out of hand in the absence of clear evidence refuting it. In this regard, to the extent that Haide relied on the Master's statement, this was using an absence of a statement of there having been any other boardings after 23 June 2022 to prove that no such boarding occurred. It is a well-known fallacy to assume that the absence of evidence is positive evidence of absence. The Master did not unequivocally state that no other persons had boarded the Vessel after 23 June 2022 so as to bring his statement into direct conflict with Mr Shamsuzzaman's claim in the Report. Given that the two statements were not fatally inconsistent, I was not prepared to make a finding of fraud in the circumstances.

159 Second, I was not satisfied that Haide had established that the Award had been "induced or affected" by the Report, even assuming, *arguendo*, that it had established the fraudulent nature of the Report. The phrase "induced or affected" in the wording of s 24(*a*) of the IAA plainly contemplates a causative link between the alleged fraud and the decision in favour of the party responsible

127 CSL-1 at para 68(b).

128 CSL-1 at p 137: Ship Recycling's Surrejoinder at para 8.

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for the fraud (see the High Court decision of *BVU v BVX* [2019] SGHC 69 at [49]). The meaning of that phrase was considered by the Court of Appeal in *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 1 SLR 1045, and explained by Judith Prakash JCA (as she then was) as follows (at [42]):

> In our judgment, the word "affected" must be understood in a manner similar to "induced" albeit perhaps somewhat more broadly. It would be going too far, however, to give the word "affected" such a wide definition as to allow an award to be set aside if the challenging party can merely show some peripheral fraud in the circumstances relating to a case or the parties notwithstanding that that fraud played no part in the conduct of the arbitration or the making of the award. The party challenging the award on grounds of fraud must show a connection between the alleged fraud and the making of the arbitral award. Absent such a connection, s 24 of the IAA would not be satisfied.

The importance of the fraud having a tangible or discernible influence on the arbitration and the tribunal's decision is illustrated by the English High Court decision of *Chantiers De l'Atlantique SA v Gaztransport & Technigaz SAS* [2011] EWHC 3383 (Comm) ("*Chantiers*"). In that case, although Flaux J did find that there had been a "serious deception of the tribunal" by dishonest concealment of evidence by a witness (at [291]), his Lordship considered that there was no "serious irregularity" necessitating the setting aside of the award under s 68 of the English Arbitration Act 1996 as "even if the true position had been disclosed to the tribunal, it would not, in all probability, have made any difference to the decision of the tribunal" (at [296]).

160 On the facts of the present case, as I explained at [86]–[90] above, there was no evidence at all from the Award that the Tribunal had placed any weight or reliance on the Report and its contents in making its decision in favour of Ship Recycling. I thus considered this a case alike *Chantiers* where, on account

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of the fraud (even if established) being inconsequential, there was no warrant for the court to intervene.

Conclusion

161 For all the reasons above, I dismissed Haide's application to set aside the Award.

162 In closing, I return to the point I made at the outset of these grounds on the importance of adopting a *discerning* approach when choosing to raise grounds of challenge against an arbitral award. Indeed, the *dicta* I have referred to at [3]–[4] above which discourage a kitchen-sink approach ought to apply with greater force to setting aside applications simply because the principle of minimal curial intervention already narrows both the grounds for challenge and prospects of a challenge bearing fruit (see the Hong Kong Court of First Instance decision of *CNG v G* [2024] 2 HKLRD 152 at [1]). In the present application, the vast majority of objections taken by Haide towards the Award were clearly misconceived, unmeritorious and therefore dead in the water. Haide's approach of flinging any mud it could cobble together at the Award and the Tribunal in the hope that some of it would stick was to no avail as it betrayed Haide's real grievance of simply being unhappy that it had lost in the Arbitration. An aggrieved arbitrant may well take offence to an award with every fibre of its being. But a party who approaches a challenge to the award with such a mindset almost invariably lapses into a strategy of launching the kitchen sink in its efforts to have it set aside. If it does so, that party runs the risk of the strategy being called out by the court for what it really is.

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163 Finally, on the issue of costs, as Ship Recycling succeeded in opposing Haide's application, I ordered costs of the application to be fixed in the sum of $18,000 (all-in), payable by Haide to Ship Recycling.

S Mohan
Judge of the High Court

Govintharasah s/o Ramanathan (Gurbani & Co LLC) for the applicant;
Chan Cong Yen Lionel (Chen Chongren) and Shalini Rajasegar (Oon & Bazul LLP) for the respondent.

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