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

[2024] SGHC 7

Suit No 222 of 2022

Between

Keppel DC Singapore 1 Ltd

… *Plaintiff*

And

DXC Technology Services Singapore Pte Ltd

… *Defendant*

JUDGMENT

[Contract — Contractual terms]

TABLE OF CONTENTS

Keppel DC Singapore 1 Ltd
v
DXC Technology Services Singapore Pte Ltd

[2024] SGHC 7

General Division of the High Court — Suit No 222 of 2022
Hri Kumar Nair J
22 December 2023

12 January 2024 Judgment reserved.

Hri Kumar Nair J:

Introduction

1 The issue before me is simple – does the written agreement between the parties allow the defendant to unilaterally amend the scope of the services the plaintiff had agreed to provide?

Facts

2 The plaintiff ("Keppel") operates a six-storey data centre facility (the "Facility") in Serangoon North Industrial Estate.[1] On 30 November 2010, Keppel entered into a Standard Services Agreement (the "SSA") with the defendant ("DXC"),[2] which contained the terms and conditions under which

---

1 Affidavit of Matthew William Benic (12 May 2023) ("Benic-1") at para 10.

2 Affidavit of Anson Tung (12 May 2023) ("Tung-1") at pp 36–55.

Keppel was to provide data centre space (the "Data Centre") in the Facility (and associated services) to DXC for a period of five years with an option for renewal.[3] The Statement of Work ("SOW") at Exhibit A of the SSA stated that the total space to be provided to DXC was 20,300 sq ft, comprising four modules (the "Modules") – Modules A to D – with each occupying approximately 5,000 sq ft of space.[4] DXC was to pay Keppel a Monthly Recurring Charge (the "MRC") and electricity charges. These charges were set out in the "Contract Pricing" document (the "Contract Pricing") at Exhibit B of the SSA.[5]

3 The SSA provided that Keppel was not to commence the provision of services to DXC until it received a Purchase Order ("PO") from DXC.[6] Following the execution of the SSA, DXC issued the first PO on 8 March 2011.[7] The SSA was subsequently renewed twice – first for five years commencing 1 March 2017 and then for five years from March 2020 to 31 March 2025.[8] DXC continued to issue yearly POs in relation to its use of all four Modules until May 2021,[9], although not all of them were issued immediately after the end of the preceding year of service. These POs would include the MRC for the Modules and an approximation of electricity charges for that year.[10]

---

3 Affidavit of Alexandra Theydon (12 May 2023) ("Theydon-1") at paras 12–13.

4 Tung-1 at para 11, p 59.

5 Theydon-1 at para 16, Tung-1 at pp 72–75.

6 Tung-1 at p 37.

7 Theydon-1 at para 37.

8 Tung-1 at pp 98, 106.

9 Theydon-1 at para 39.

10 Tung-1 at para 24(a).

4 In 2020 and 2021, DXC carried out a review of its requirements pertaining to the Data Centre. It concluded that the Data Centre had significant space capacity and it was unlikely that DXC would secure new customers to take up this spare capacity.[11] DXC therefore made the decision to give up the use of Modules C and D.[12]

5 On 13 May 2021, DXC issued a PO (the "2021 PO") for the use of only Modules A and B for the period between 1 April 2021 and 31 March 2022.[13] On 17 May 2021, DXC issued a Change Order ("CO") (the "2021 CO") reflecting its intention to return Modules C and D to Keppel.[14] Following the issuance of the 2021 PO, parties engaged in a series of correspondence in which they disputed the legality of the 2021 PO. Keppel's position was that the 2021 PO was in breach of the SSA, which (in Keppel's view) obliged DXC to pay for the use of all four Modules. DXC responded that there was no such requirement under the SSA.[15] Keppel continued to issue invoices to DXC which included the MRC and electricity charges for Modules C and D.[16] DXC maintained that the invoices were defective and only paid the amounts relating to Modules A and B.[17]

---

11 Theydon-1 at para 41.

12 Theydon-1 at para 42.

13 Tung-1 at para 34; Theydon-1 at para 43, pp 125–130.

14 Tung-1 at para 38; Theydon-1 at para 44, pp 131–132.

15 Tung-1 at paras 37–48; Theydon-1 at paras 46–56.

16 Tung-1 at para 45.

17 Tung-1 at paras 46–47; Theydon-1 at paras 49–50.

6 DXC issued similar POs on 8 March 2022 and 7 April 2023 for the use of only Modules A and B for the respective annual periods.[18] To date, DXC has only paid the invoiced amounts relating to Modules A and B from 1 April 2021, and has not paid any amounts relating to Modules C and D.[19]

7 Keppel claims the sum of $3,021,316.20 as the sum outstanding from April 2021 to December 2021. Further and/or in the alternative, Keppel claims damages to be assessed for all losses it suffered from 1 April 2021 to 31 March 2025 as a result of DXC's breach, subject to the issue of mitigation.[20]

Summary determination

8 Much of the dispute centred on the interpretation of the SSA – primarily, whether DXC was permitted under the SSA to unilaterally revise the services provided by Keppel, such that DXC could "return" Modules C and D to Keppel and only use and make payment for the use of Modules A and B for its Data Centre.[21]

9 The action is currently set down for trial for 12 days in February 2024. At a case conference before me on 6 November 2023, I directed parties to state whether I needed to hear any evidence for the purpose of interpreting the SSA, and whether that issue could be decided summarily pursuant to O 14 r 12(1) of

---

18 Tung-1 at paras 50, 53.

19 Tung-1 at para 57.

20 Statement of Claim (Amendment No 1) at para 24; Plaintiff's Written Submissions ("PWS") at para 62; Plaintiff's Reply Submissions at para 32.

21 Defendant's Written Submissions ("DWS") at para 6; PWS at para 2.

the Rules of Court (Cap 322, 2014 Rev Ed) ("ROC 2014"). Keppel agreed to the summary disposal, but DXC did not.[22]

10 I therefore ordered parties to file written submissions on the issue of the proper interpretation of the SSA, granting leave to include arguments why this issue cannot or should not be determined ahead of trial.[23] However, neither party offered such arguments in their written submissions.

11 Under O 14 r 12(1) of the ROC 2014, the court may determine any question of law or construction of any document where it appears to the court that such question is suitable for determination without a full trial of the action, and such determination will fully determine (subject to any possible appeal) the entire cause or matter or any claim or issue therein. Summary determination is suitable for points of law which do not require any evidence or may be determined on the basis of agreed or undisputed facts; factual disputes are not suitable for summary determination: *The "Chem Orchid" and other appeals and another matter* [2016] 2 SLR 50 at [60]. In deciding whether the discretion under O 14 r 12(1) should be exercised, the overriding consideration is whether summary determination on the facts of the case would fulfil the underlying purpose of O 14 r 12, which is to save time and costs for the parties: *Manas Kumar Ghosh v MSI Ship Management Pte Ltd and others* [2021] 4 SLR 935 at [18].

---

22 Letter to court from TSMP Law Corporation (14 Nov 2023); Letter to court from Bird & Bird ATMD LLP (14 Nov 2023).

23 Correspondence from courts (16 Nov 2023).

12 I exercised the court's power under O 14 r 12(1) of the ROC 2014 to make a summary determination.[24] The interpretation of the SSA was an issue suitable for summary determination. The issue did not involve any material factual dispute and no evidence was needed to be heard to resolve it. None of the witnesses called by the parties were involved in the negotiations leading to the formation or execution of the SSA in 2010.[25] Further, the parties relied primarily on the text of the SSA in interpreting it and it is not their respective pleaded cases that the text bore a meaning different from that of its plain language.[26] I also considered that summary determination of the issue would save time and costs for the parties – if the issue were to be determined in DXC's favour, there would be no breach of the SSA and therefore no need for a trial; on the other hand, if the issue were to be determined in Keppel's favour, the sole issue at trial would be that of Keppel's (alleged) failure to mitigate its damages.

Applicable law

13 The relevant principles of contractual interpretation are set out in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [131]:

(a) the aim of contractual interpretation is to ascertain the meaning which the contractual language would convey to a reasonable business person;

---

24 Correspondence from courts (16 Nov 2023).

25 DWS at para 6.

26 PWS at para 17.

(b) the interpretive exercise is one based on the *whole* contract. Excessive focus should not be placed on a particular word, sentence, or clause;

(c) the court may consider the relevant context of a contract, which includes the legal, regulatory and factual matrix which constitutes the background in which it was drafted;

(d) a construction which leads to unreasonable results is to be avoided; and

(e) a more specific or detailed provision should override an inconsistent general provision.

Nature of the SSA

14 It is undisputed that the SSA was a standard form agreement that DXC used in its dealings with various counterparties when seeking the provision of services.[27] Thus, it appears that while the SOW and the Contract Pricing were specifically negotiated by parties, the body of the SSA was not.[28]

15 Although the SSA is framed as a contract for services, it is in substance a fixed-term contract for a custom-fitted space with services and utilities. This is evidenced by several clauses of the SSA and its exhibits.

16 First, cl 1.3 of the SSA provides that the SSA "will have a term of five (5) years", and "parties may agree in writing to renew [the SSA] for successive

---

27 Theydon-1 at para 11; Tung-1 at para 7.

28 Tung-1 at para 13.

five (5) year terms".[29] Similarly, the "Work Summary" at cl 1.2 of the SOW states that Keppel will provide the Data Centre space "according to the agreed specifications for a fixed price … for a period of 5 years (Initial Term) with an option to extend for a further 5 years".[30] Clause 3.1 of the SOW (titled "Supplier Provided Services") specifies the total area of the Data Centre (20,300 sq ft initially, later enlarged by consent to 20,500 sq ft)[31] and the technical specifications which Keppel was to design the Data Centre in accordance with (including circuitry, cooling and lighting requirements).[32]

17 The Data Centre space was to be provided in four modules – *ie*, Modules A to D – of 5000 sq ft each (the final one being 5300 sq ft), to be fitted out by Keppel over a period of 11 months (+/- three months at DXC's discretion).[33] In addition, Keppel was to provide, at no additional cost, "Media Management Office space and Media Storage space totaling [*sic*] 538 sq ft" (the "Media Space").[34]

18 Second, the Contract Pricing sets out the MRC on a year-on-year basis across the five-year term of the SSA.[35] The MRC is not based on the individual modules, but on a monthly subscription based on each square foot used or

---

29 Tung-1 at p 37.

30 Tung-1 at p 58.

31 Tung-1 at para 15.

32 Tung-1 at pp 59–61.

33 Tung-1 at p 59.

34 Tung-1 at p 61.

35 Tung-1 at p 72.

occupied of the Data Centre. The MRC excludes the costs of the power consumed by DXC.[36]

19 Third, cl 14 of the Contract Pricing provides, similar to cl 5.6 of the SSA, that in the event of suspension or termination of the SSA prior to the end of the term (other than for a material breach by Keppel), DXC must pay Keppel a sum – called a "Minimum Charge" – equivalent to 100% of the total charges which would have been payable to Keppel for the remainder of the initial five-year term, and, if the SSA was renewed, 50% of the total charges which would have been payable for the remainder of the renewed term.[37]

20 Thus, the clear implication from these provisions is that the SSA was meant to be a renewable *fixed*-term contract for a period of five years, under which Keppel was obligated to provide a *fixed* amount of space and specified services. In exchange, Keppel was to be paid the MRC and accompanying charges for the *entire* fixed space for the initial five-year term and second five-year term (if renewed), and in the event of premature termination, was *guaranteed* payment of the Minimum Charge, which was based on the MRC and accompanying charges for the *entire* fixed space.

21 The provisions make it clear that DXC was contracting for use of the entire space in the Data Centre as a whole, and did not contemplate that DXC had the option of only using, and paying for, some and not all of the Modules during the initial or renewed terms of the SSA.

---

36 Tung-1 at p 74.

37 Tung-1 at pp 41, 74.

22 This analysis is not affected by the subsequent amendments to the SSA in the Amendment Agreement dated 28 February 2017 (the "1st AA")[38] and the Amendment Agreement dated 27 March 2020 (the "2nd AA")[39] (collectively, the "AAs"). The AAs renewed or extended the SSA – first for five years commencing 1 March 2017, and then for five years up to 31 March 2025 – and introduced amendments mainly to vary the Contract Pricing and increase the Minimum Charge payable by DXC (under cl 5.6 of the SSA) in respect of the renewed terms.[40]

23 I note that cl 18.1 of the SSA (as it originally appears) states that "[DXC] reserves the right to terminate [the SSA] or any Statement of Work hereunder without liability at any time, with or without cause, upon thirty (90) [*sic*] days prior written notice to [Keppel]".[41] This appears to contradict the requirement under cl 14 of the Contract Pricing and cl 5.6 of the SSA that DXC pay Keppel the Minimum Charge in the event of termination or suspension of services (save for material breach by Keppel). However, the standard terms in the body of the SSA must be read in light of the specifically negotiated terms. A more specific or detailed contractual provision should override an inconsistent general provision: *Zurich Insurance* at [131]. Thus, the termination provision in cl 18.1 must be read subject to DXC's obligation to pay the Minimum Charge as stipulated under cl 14 of the Contract Pricing and cl 5.6 of the SSA.

---

38 Tung-1 at pp 97–104.

39 Tung-1 at pp 105–110.

40 Tung-1 at paras 16–22.

41 Tung-1 at p 51.

24 In any event, this apparent inconsistency (as well as the typographical error in cl 18.1) was subsequently addressed. Clause 18.1 of the SSA was amended by the 2nd AA on 27 March 2020 to read "*[s]ubject to Section 5.6 (Minimum Charges)*, DXC reserves the right to terminate [the SSA] or any Statement of Work hereunder without liability at any time … by way of issuing to [Keppel] ninety (90) days' prior written notice".[42] Since the dispute began with the issuance of the 2021 PO and the 2021 CO on 13 and 17 May 2021 respectively,[43] the applicable version of the SSA includes the amended cl 18.1 which recognises DXC's obligation to pay the Minimum Charge in the event it terminates or suspends the SSA.

25 I highlight that DXC's case is that the terms of the SSA have been varied, *not* that the SSA has been suspended or terminated. No Notice of Termination has been issued, and DXC is still making use of Modules A and B.[44]

26 In the circumstances, the real issue is whether DXC is entitled under the SSA (as amended by the AA) to unilaterally reduce the Data Centre to just Modules A and B, and to pay a reduced charge for the same.

---

42 Tung-1 at para 22.

43 Tung-1 at paras 34, 38; Theydon-1 at paras 43–44.

44 DWS at para 61.

Main issues

Change Order

27 DXC argues that it is entitled, via a CO under the SSA, to unilaterally amend the SSA to reduce the size of the Data Centre or change the services Keppel is obliged to provide.

28 This issue turns on the interpretation of the provisions in the SSA relating to COs, set out below:[45]

> 2.3 "Change Order" means a written order in the form of Exhibit E Change Order Form that is signed by an authorized representative of [DXC], and that authorizes an addition, deletion or revision in the Services or an adjustment to the Maximum Cost or the time for performance of the Services.
>
> …
>
> 7.1 [DXC] may request changes in the Services at any time prior to completion. All changes will be documented in a Change Order before the change is executed. If any such change results in [Keppel's] request for additional compensation, such claim must be in writing and must be submitted to [DXC] within ten (10) days after [DXC's] request for the change that gives rise to the claim. Any such notice will include a reasonably detailed statement of the reasons for [Keppel's] proposed additional compensation. The parties will in good faith negotiate an equitable adjustment to the Maximum Cost.

29 DXC argues that the issuance of a CO under cl 7.1 of the SSA permits it to make changes in the services provided by Keppel at any time prior to completion.[46] DXC points out that cl 2.3 of the SSA expressly defines a CO as a document in the format set out in Exhibit E of the SSA and "signed by an

---

45 Tung-1 at pp 37–38, 43.

46 DWS at para 22.

authorised representative of [DXC]".[47] DXC submits that there is no requirement for a CO to be signed or otherwise acknowledged by Keppel – this was a deliberate decision made by parties, as evidenced by the fact that other clauses in the SSA (*eg*, cl 2.11) expressly required that other documents be signed by authorised representatives of both parties.[48]

30 DXC accepts that its reading of the SSA would result in it being able to freely vary the space provided by Keppel – *eg*, by requiring 20,500 sq ft of space one year, then 10,000 sq ft the following year, and back to 20,500 sq ft in the third year.[49] However, DXC argues that this scenario is not commercially absurd since Keppel would be able to seek recourse by submitting a written request for additional compensation pursuant to cl 7.1 of the SSA.[50]

31 DXC's arguments fail for several reasons.

32 First, any power given to one party to unilaterally re-write the terms of a contract is an extraordinary one and must be expressed in the clearest of terms. The terms of the SSA do not expressly allow DXC to unilaterally change the services it had contracted for, and indeed, suggest the opposite.

33 Clause 7.1 of the SSA expressly states that DXC may *request* changes in the services provided; it does not stipulate that Keppel is obliged to agree to DXC's requested changes. The requirement under cl 2.3 of the SSA for a CO to be "signed by an authorized representative of [DXC]" only speaks to the validity

---

47 DWS at para 40.

48 DWS at para 41.

49 DWS at para 51.

50 DWS at para 52.

of the CO – in other words, it is a *necessary* condition for an effective CO, but not a *sufficient* one. Indeed, Exhibit E of the SSA – the "Change Order Form" specifically referred to in cl 2.3 – requires the representatives of *both* DXC and Keppel to sign to indicate their acceptance of the proposed modifications to the SSA. This plainly requires Keppel to agree to the changes requested by DXC.

34 DXC argues that in the event of conflict between Exhibit E and the provisions of the SSA, cl 22 of the SSA provides that the latter would prevail.[51] However, cl 22 only applies where there is a clear contradiction between the exhibits of the SSA and its provisions. That was not the case here since the two could be read harmoniously.

35 DXC refers to other clauses in the SSA – cll 2.11 and 3.3 – where a party's acceptance is specifically provided for, and contrasts these with cl 7.1 which does not expressly refer to Keppel's acceptance of a CO.[52] This does not advance DXC's case. Those provisions deal with entirely different matters. Further, as explained above, the language of the provisions dealing with COs refers to Keppel's acceptance of DXC's *request*.

36 Second, the *additional* compensation provided for by cl 7.1 of the SSA clearly contemplates a situation where the requested change results in Keppel incurring *additional* costs or liabilities not agreed in or contemplated by the SSA. This is fortified by the requirement in cl 7.1 for Keppel to submit "a reasonably detailed statement of the reasons for [Keppel's] proposed additional compensation". Clause 7.1 does not contemplate a situation where DXC

---

51 DWS at para 49.

52 DWS at paras 41–42.

requests a change that will result in *less* payment being made to Keppel. It would not make sense for Keppel to have to submit reasons for such a change.

37 Nevertheless, I would not go so far as to say that Keppel has the right to reject any changes requested by DXC. A parallel may be drawn here to building and construction contracts, in which a contractor is generally obliged to carry out variations requested by the employer (subject to appropriate adjustments in compensation), unless the effect of the requested variation would be to change the scope of the contract such that the works as varied become fundamentally different from that contemplated by the parties at the time of contracting: see Chow Kok Fong, *Law and Practice of Construction Contracts* (Sweet & Maxwell, 5th Ed, 2018) at paras 5.145–5.146, citing *Thorn v London Corp* (1876) 1 App Cas 120. Similarly, it is arguable that there is an implied term in the SSA that Keppel may not unreasonably reject DXC's requested changes in so far as they are within the context of the scope of the agreed services. However, DXC is not asserting any such implied term. In any event, it would not be unreasonable for Keppel to reject the request under the 2021 CO to discontinue the use of Modules C and D. In the context of a fixed-term contract for custom-fitted space and services for a fixed price, that would amount to a change in the scope of the SSA that would make the services provided fundamentally or materially different from that contemplated by the parties at the time of contracting.

38 I hasten to add that much depends on the precise wording of the contract. In construction contracts, the power to order a variation often rests with the architect or engineer (who in turn acts on the employer's instructions): see *Law and Practice of Construction Contracts* at para 5.011. In such cases, the contractor is generally obliged to carry out the variation *unless* it changes the

scope of the contract such that the works as varied become fundamentally different from that contemplated at the time of contracting. However, in the present case, the SSA on its face requires *both* Keppel and DXC to agree to a change. Thus, the category of changes which Keppel is obliged to agree to may be narrower than that in such construction contracts. In any event, the exact delineation of this category is not pertinent to the present case; DXC's request under the 2021 CO was clearly outside its bounds.

39 Third, DXC's ability to unilaterally vary the area of the Data Centre in the manner it purported to do would be inconsistent with cl 14 of the Contract Pricing and cl 5.6 of the SSA, which guarantees Keppel the Minimum Charge. As stated above at [20], Keppel is guaranteed the Minimum Charge if DXC suspends or terminates the SSA. If DXC's interpretation is correct, it can simply avoid paying the Minimum Charge by reducing the Data Centre to only 1 sq ft of space instead of suspending or terminating the SSA. The parties clearly could not have intended such an outcome.

40 Fourth, I agree with Keppel's argument that DXC's reading of the CO mechanism under the SSA would result in commercial absurdity. If DXC is correct, Keppel would be obliged to make the full space – *ie*, Modules A–D – available for the entire contractual period, even though DXC could potentially request to use only 1 sq ft of space at any point.[53]

41 Further, as stated above at [30], DXC accepts that its reading of the SSA would result in it being able to freely vary the space provided by Keppel – *eg*, by requiring 20,500 sq ft of space one year, 10,000 sq ft the following year, and

---

[53] PWS at para 35.

back to 20,500 sq ft in the third year. DXC's response is that this argument "ignores the nature of the industry in which the parties operate. The very nature of a data centre makes it extremely unlikely for there to be such to-ing and fro-ing in terms of the space needed".[54] This argument must fail. Not only is there no evidential basis for this submission, DXC's argument in fact supports and explains why the parties would agree upfront to a fixed-term contract for a fixed space – DXC's requirements were, on its own case, unlikely to change.

42 DXC's interpretation would also allow it to "game" the deal it struck with Keppel: should market rates for data centre services fall substantially, DXC would be able to avoid paying Keppel the fixed rates it had agreed by substantially reducing the space under the SSA and taking up space at lower rates with Keppel's competitors; should the market rates rise, DXC would simply hold Keppel to the agreed bargain under the SSA.

43 In addition, regardless of DXC's unilateral reductions of the space used, Keppel would still be obligated under the SSA to continue providing DXC the Media Space free-of-charge.

44 All these consequences of DXC's interpretation make no commercial sense and a contractual interpretation resulting in them must be avoided: *Zurich Insurance* at [131]. The parties, which are both large commercial entities, were highly unlikely to have reached such a lop-sided deal.

45 Therefore, the 2021 CO was not valid, had no effect, and did not result in any change to the SSA or the services provided under it. Consequently, the

---

54 DWS at para 51.

POs issued pursuant to the 2021 CO were invalid as well, since the attempted revision of the services provided was ineffective.

Purchase Order

46 In its submissions, DXC seems to acknowledge that the validity of the POs issued pursuant to the 2021 CO depends on the validity of the 2021 CO itself – DXC notes that "[t]he 2021 CO and the May 2021 PO must be read together", such that the 2021 CO would contain the "deletion or revision of the Services", which would be reflected in subsequent POs.[55] However, DXC also appears to argue that the PO mechanism was an *alternative* way, in addition to the CO mechanism, through which the SSA and the services provided may be varied.[56] For the reasons below, I disagree with this argument.

47 DXC relies on cl 1.4 of the SSA, which provides that "[Keppel] acknowledges and agrees that it will not commence any work for [DXC] or incur any related expenses or costs unless and until it has received [a PO] expressly authorizing such work".[57] DXC argues that cl 1.4 made clear that Keppel's obligation to perform the services and DXC's obligation to pay for them were only triggered once DXC issued its PO.[58] DXC contends that this is further supported by cll 3.1 and 3.2, which stipulate that Keppel shall perform the services described in the SOW upon execution of the SOW and receipt of a PO from DXC.[59] Hence, Keppel could not charge DXC for anything that is not

---

55 DWS at paras 30–31.

56 DWS at paras 19–21, 28.

57 DWS at para 19; Tung-1 at p 37.

58 DWS at para 20.

59 DWS at paras 15–18.

set out in a PO.[60] DXC notes that this is in line with cl 5.2, which provides that Keppel will be paid for services for which it has received a PO.[61]

48 However, the provisions which DXC relies on must be read and understood subject to what the parties specifically agreed to in the SOW, as well as the purpose of a PO under the SSA. DXC's position that the POs allow it to freely vary the services to be provided to Keppel does not cohere with the structure of the SSA as a fixed-term contract with services and fees that were agreed upfront.

49 Pertinently, it was *not* the function of the PO under the SSA to set out or vary the services to be provided by Keppel. The SOW is the only document mentioned which is to set out the services to be provided by Keppel – cl 1.1 states that the services shall be described in the SOW; cl 3.1 states that Keppel will provide services described in the SOW; and cl 3.2 states that Keppel shall undertake to perform the services set out in a SOW upon the SOW's execution with an accompanying PO. Further, the SSA specifically provided (at cl 7.1) that any amendments to the services were to be requested via a CO. The POs were *not* contemplated as an alternative mechanism through which the SSA could be varied.

50 As the parties had agreed to a fixed-term contract for a fixed space and services under the SOW, a PO was plainly not necessary to *authorise* the same – the parties were already in a binding agreement. In that regard, the reference in cl 1.4 of the SSA to Keppel acknowledging that it will not "commence any

---

60 DWS at para 21.

61 DWS at para 26.

work for [DXC] or incur any related expenses or costs unless and until it has received a [PO]"[62] must be understood to mean that DXC will issue a PO consistent with the terms of the SSA (in particular, the SOW and the Contract Pricing) – *ie*, for data services for a fixed term of five years at the agreed rates. Such a reading is also consistent with cll 3.1 and 3.2 of the SSA. The PO does serve an important and useful purpose in that it specifies *when* the services under the SSA are to commence – in this case, the first PO was issued on 8 March 2011 and specified that the start date was 15 June 2011.[63]

51 I add that there is nothing objectionable with DXC issuing POs on a yearly basis, so long as their terms are consistent with, and reflect, the parties' agreement under the SSA. DXC is not permitted to issue POs inconsistent with the terms of the SOW and Contract Pricing, and then rely on its own wrong by claiming that it is only bound by the terms of the PO.

52 As an aside, I highlight that the parties' conduct also indicated that they understood the POs to be a payment mechanism which had no impact on the provision of services by Keppel (save for the first PO on 8 March 2011 which initiated the provision of services). DXC was late to issue the POs on multiple occasions; yet Keppel did not cease to provide utilities and services to DXC in the periods between the expiry of a previous PO and the issuance of a subsequent PO, and DXC did not object to the provision of such services or claim that they were unauthorised.

---

62 Tung-1 at p 37.

63 Theydon-1 at p 101.

53 DXC's interpretation of the PO mechanism – *ie*, allowing DXC to unilaterally vary the services provided – would also contradict other provisions of the SSA by rendering the CO mechanism and the Minimum Charge redundant. Further, similar to DXC's interpretation of the CO mechanism, DXC's interpretation of the PO mechanism would produce the absurd results noted above at [40], whereby DXC could, at will, increase or decrease the space it desired at any point during the term of the SSA, while Keppel is required to keep the entire agreed space available for DXC's use. This is compounded by the fact that the SSA does not specify how often POs are to be issued. Yet, as Keppel has rightly argued, parties have not provided for the consequent costs or the allocation of risks arising from the reconfiguration of the Data Centre in such a situation.[64]

54 I note DXC's reliance on cl 2.9 of the SSA, which defines a PO as a written authorisation signed by an authorised representative of DXC and which is issued by DXC to authorise Keppel "to perform all or a portion of the Services".[65] This clause does not assist DXC. It must be read in light of the fact that the SSA contained standard terms which DXC used in securing the provision of services by its various business partners. That may well include contexts where POs for the performance of only a *portion* of the agreed services are acceptable. Here, as explained above at [50], in the context of the SSA, DXC had already authorised Keppel to provide the services in the SOW. Further, POs for part of the services are acceptable in the present case as well – DXC can issue different partial POs, as long as the entirety of them covers all the services set out in the SOW. It bears reiterating (as noted at [49] above) that the PO did

64 PWS at para 39b.

65 DWS at para 28.

not play a role in defining or amending the services to be provided; that was the function of the SOW and the CO mechanism respectively. Clause 2.9 is therefore not inconsistent with the fact that the POs issued by DXC must be consistent with its obligations under the SSA and SOW.

Conclusion

55 I therefore accept the interpretation of the SSA as advanced by Keppel. DXC was not permitted under the SSA to unilaterally revise the services to be provided by Keppel to exclude the use of Modules C and D. The 2021 CO was therefore invalid and DXC's subsequent refusal to pay for Modules C and D amounted to a breach of the SSA.

56 I will hear the parties separately on the appropriate relief. For the avoidance of doubt, the time to appeal this decision does not run until I have dealt with the entirety of Keppel's claim.

Hri Kumar Nair
Judge of the High Court

Thio Shen Yi SC, Thara Rubini Gopalan, Goh Enchi Jeanne and Ang Kai Le (TSMP Law Corporation) for the plaintiff;
Siraj Omar SC, Joelle Tan (Drew & Napier LLC) (instructed), Choo Yu Jin Jonathan, Lee Wei Han Shaun, Adly Rizal bin Said and Lieu Kah Yen (Bird & Bird ATMD LLP) for the defendant.