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

[2022] SGHC 74

Suit No 114 of 2020

Between

Carlsberg South Asia Pte Ltd

… Plaintiff

And

Pawan Kumar Jagetia

… Defendant

JUDGMENT

[Employment Law — Contract of service — Breach]
[Contract — Contractual terms — Implied terms]

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Carlsberg South Asia Pte Ltd
v
Pawan Kumar Jagetia

[2022] SGHC 74

General Division of the High Court — Suit No 114 of 2020
Hoo Sheau Peng J
13–17 September, 4 October, 17 December 2021

5 April 2022 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 From 1 April 2018 to 26 June 2019, the defendant, Mr Pawan Kumar Jagetia ("Mr Jagetia"), was employed as the Senior Vice President ("SVP") of the plaintiff, Carlsberg South Asia Pte Ltd ("CSAPL"). Following the termination of Mr Jagetia's employment, CSAPL claims against him for a purported breach of his employment contract (the "CSAPL SVP Contract"). Mr Jagetia denies the claim, and counterclaims for various sums allegedly owing to him. Having considered the evidence before me and the parties' submissions, I dismiss CSAPL's claim, and allow Mr Jagetia's counterclaim in part. These are my reasons.

Facts

The parties and other personalities

2 CSAPL is a Singapore-registered holding company which owns 100% of another Singapore-registered company, South Asian Breweries Pte Ltd ("SOAB") and 90% of a Nepal-registered company, Gorkha Brewery Pvt Ltd ("GBPL"). In turn, SOAB owns 99.99% of an India-registered company, Carlsberg India Pvt Ltd ("CIPL"). CIPL and GBPL sell beverages in India and Nepal respectively.[1]

3 CSAPL is a joint venture between Carlsberg Breweries A/S ("CBAS") and CSAPL (Singapore) Holdings Pte Ltd ("CSAPLH"). CBAS is part of the global brewery group to be referred to as the "Carlsberg Group". CSAPLH is owned and controlled, through a series of trust companies, by Mr Chandra Prakash Khetan, a Nepali businessman.[2]

4 As CSAPL is owned by CBAS and CSAPLH with a two-thirds and one-third shareholding respectively, its board consists of directors nominated by CBAS and CSAPLH in proportion to their respective shareholdings. Two-thirds of CSAPL's board (*ie*, 4 persons) are nominated by CBAS while one-third (*ie*, 2 persons) is nominated by CSAPLH.[3]

5 In support of its claim, CSAPL called four witnesses. Mr Graham Fewkes ("Mr Fewkes") was the Executive Vice President, Asia Region for

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1 Troels Libak Stollberg's Affidavit of Evidence-in-Chief ("AEIC") ("TLSA") at para 6.

2 TLSA at para 7.

3 TLSA at para 8; Pawan Kumar Jagetia's AEIC ("PKJA") at para 5; Yeo Soon Keong's AEIC ("YSKA") at para 4.

CBAS from September 2015 to March 2021.[4] Mr Low Chong Lim ("Mr Low") was a director of CSAPL between March 2015 and October 2018. Mr Low also oversaw the human resources matters for CBAS in Asia.[5] The other two witnesses were Mr Troels Libak Stollberg ("Mr Stollberg")[6] and Mr Peter Steenberg ("Mr Steenberg"),[7] who are CBAS nominated directors of CSAPL.

6 Mr Jagetia is a director of CSAPL, nominated by CSAPLH. From 26 September 2014 to March 2018, he was the Deputy Managing Director ("DMD") of CIPL under an employment contract which I shall refer to as the "CIPL DMD Contract".[8] Thereafter, he moved to be CSAPL's SVP.

7 Apart from himself, the defendant called one other witness, Mr Yeo Soon Keong ("Mr Yeo"). Mr Yeo is a director of CSAPL, nominated by CSAPLH. At the relevant time, he was also a member of its Remuneration Committee.[9]

The employment contract with CSAPL

8 Mr Fewkes, Mr Low and Mr Jagetia were actively involved in the negotiations for the CSAPL SVP Contract, while Mr Yeo had knowledge of the discussions during the process. The CSAPL SVP Contract, signed by Mr Jagetia

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4 Graham Fewkes' AEIC ("GFA") at para 1.

5 Low Chong Lim's AEIC ("LCLA") at para 1.

6 TLSA at p 1.

7 Peter Steenberg's AEIC ("PSA") at para 1.

8 Agreed Bundle of Documents ("AB") Vol 5 ("5AB") at pp 2008–2017.

9 YSKA at para 1.

on 19 April 2018, lies at the heart of this dispute, and I now set out the material clauses.[10]

9 Pursuant to cl 1.2, the CSAPL SVP Contract "supersedes" the CIPL DMD Contract. Although the CSAPL SVP Contract is dated 14 March 2018, it commences on 1 April 2018 while Mr Jagetia's length of employment is backdated to 26 September 2014 (*ie*, the date of the CIPL DMD Contract) as follows:

> 1.1 The employment contract will commence as of **1 April 2018** conditional to obtaining the relevant Singapore visa/work-permits.
>
> 1.2 This contract supersedes the current employment contract dated 24 September 2014 [*sic*][11] and any addendum employment agreements signed between [Mr Jagetia] and [CIPL]. In the event of any inconsistency between this contract and previous employment contract or other documents, this contract will prevail.
>
> 1.3 [Mr Jagetia]'s length of employment will count from **26 September 2014**.
>
> [emphasis in original]

10 Under cl 2.2, Mr Jagetia was to report directly to the board of CSAPL with "daily oversight **by Executive Vice President, Asia**" [emphasis in original]. As mentioned at [5], at the material time, the position was held by Mr Fewkes.

11 Under cl 5.1, Mr Jagetia was to "devote most of his working capacity to the employment with [CSAPL] and can use some of his time to support the activities of [CSAPLH]".

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10 5AB at pp 2258–2264.

11 This appears to be a typographical mistake within the CSAPL SVP Contract.

12 The CSAPL SVP Contract also addresses Mr Jagetia's move from India to Singapore with his family. That said, it is common ground between parties that the contract stops short of expressly requiring Mr Jagetia and his family to move to Singapore:

> **1 COMMENCEMENT**
>
> …
>
> 1.4 This contract shall come into force subject to [Mr Jagetia] being granted residence and work permit in Singapore. [CSAPL] is responsible for assisting [Mr Jagetia] and accompanying family, if any, in obtaining proper documentation (passport, visa, work permit, residence permit etc.) prior to the start of this role. For reasons beyond [CSAPL's], [Mr Jagetia's] and his family's control to secure work and residency permit in Singapore, [CSAPL] shall provide alternative employment arrangements which will allow the employee to perform same duties and receive similar remuneration under this contract.
>
> …
>
> **4 PLACE OF WORK**
>
> 4.1 The position will be based at a designated Service Office and/or home office in Singapore.
>
> 4.2 Travel activities within the country and abroad must be expected to a certain extent for periods of time, as must temporary stays abroad in connection with work related to the role.

13 Clauses 6.5, 6.6 and 6.9 provide for the related expenses of relocation (the "Relocation Allowance"), repatriation (the "Repatriation Allowance"), telecommunication and tax as follows:

> **6 COMPENSATION AND BENEFITS**
>
> …
>
> 6.5 Upon relocation to Singapore, a **Relocation Allowance of Gross SGD 5,000** will be paid with the first available payroll. At the end of this Contract, a repatriation allowance equalling to Gross SGD 5,000 is paid to [Mr Jagetia] together with the last salary payout.
>
> 6.6 Expenses for installation of telephone in the accommodation in Singapore will be reimbursed.

> …
>
> 6.9 [Mr Jagetia] is entitled to tax consultancy and assistance for the filing of Personal Income taxes in Singapore from income derived from this Employment Contract.
>
> [emphasis in original]

14 The remaining sub-clauses of cl 6 set out Mr Jagetia's compensation and benefits, including his gross annual base salary (the "Gross Annual Base Salary") and gross annual benefits package (the "Annual Benefits Package"):

> 6.1 The **Gross Annual Base Salary is Singapore Dollars ("SGD") 410,000 per annum** payable in 12 equal instalments at the end of each month. Mandatory labour law requirements in Singapore may prescribe a different pattern of payment, which is respected by this contract.
>
> 6.2 The Gross Base Salary shall be reviewed once a year leading to a revised "Compensation" compromising [*sic*] of Gross Base Salary and its corresponding Short-Term Incentive ("STI") target. The revised Compensation will be effective retroactively as of 1 January in the said year. The first review takes place in **April 2019**.
>
> 6.3 The Employee shall receive a **Gross Annual Benefits Package of SGD 290,000 per annum** payable on payable on [*sic*] 1st April 2018. This annual Gross Benefits Package covers housing, children's education, pension, life & accident/disability insurance, transport allowances, home leave travel and miscellaneous benefits.
>
> 6.4 The Company shall provide [Mr Jagetia] and his legal dependents with an international health care plan to cover outpatient medical treatment, appropriate accidental and death insurance and inpatient hospitalization.
>
> [emphasis in original]

15 In relation to the short-term incentive ("STI") mentioned in cl 6.2, cl 7 provides very broadly as follows:

> **7 INCENTIVES**
>
> 7.1 [Mr Jagetia] will participate in the Short-Term Incentive Plan (STI Plan) with a target bonus of **40%** of the Gross Annual Base Salary. STI mechanics and calculations will be discussed each year with the Board of CSAPL with oversight by EVP, Asia.

> For base assumption, the STI structure will reflect financial performance of [CIPL] and [GBPL] and CSAPL priorities in equal proportions.
>
> 7.2 The Actual STI payment (if any) will be paid out once a year – typically in April.
>
> …
>
> [emphasis in original]

16 This brings me to cl 11, the last clause I wish to highlight, which provides that the contract may be terminated by either Mr Jagetia or CSAPL as follows:[12]

> **11 DURATION AND TERMINATION**
>
> 11.1 The Employment period is ongoing and shall be terminated with notice from either [Mr Jagetia] or [CSAPL] as per the notice period served.
>
> …
>
> 11.4 [CSAPL] may at any time terminate this contract in accordance with applicable law in Singapore. If no other legal regulations prevail, the notice period is three months starting from the last working day of the month such notice is given. All expenses in connection with return journey and transport of [Mr Jagetia's] belongings etc. will be paid by [CSAPL]
>
> 11.5 In case of breach of this contract - including gross non-fulfilment of duties – [CSAPL] reserves the right to dismiss [Mr Jagetia]. In the event of dismissal this shall also be regarded termination/dismissal of any employment with [CSAPL] or other Carlsberg associated company. All expenses in connection with return journey and transport of [Mr Jagetia's] belongings are to be borne by [Mr Jagetia].

17 I pause to highlight that arising from the contractual provisions set out at [12] and [13], CSAPL contends that there is an implied term under the CSAPL SVP Contract for Mr Jagetia to relocate with his family to Singapore (the "Relocation Obligation"). Mr Jagetia contends, however, that he was merely given the option to relocate with his family to Singapore. As it

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12 5AB at p 2261.

transpired, Mr Jagetia's family did not relocate to Singapore. As to whether Mr Jagetia could be said to have relocated to Singapore, parties differ.

Management issues

18 During Mr Jagetia's employment, four issues were brewing in respect of the management of CSAPL. Operating in the background seems to be a disagreement between the two shareholders, CBAS and CSAPLH. Indeed, on most of the resolutions in relation to these matters, the CBAS nominated directors and the CSAPLH nominated directors appear to have taken opposite sides. I summarise the parties' perspectives on these issues.

The financing efforts

19 The first, and probably most significant of the four issues, concerns the refinancing of a loan facility granted by CBAS to CSAPL (the "CBAS Loan Facility").[13]

20 As set out in the CSAPL SVP Contract, one of Mr Jagetia's responsibilities was to "lead … financial management" so as to "lower financial cost … within CSAPL".[14] According to Mr Jagetia, he had attempted to reduce CSAPL's interest expenses arising from the CBAS Loan Facility by refinancing it. In that regard, Mr Jagetia attempted to obtain a loan from third-party banks at more competitive interest rates (the "Financing Efforts").[15] In particular, Mr Jagetia's position is that he secured an offer from Rabobank for a US$350m loan facility (the "Rabobank Loan Facility") in which CSAPL "stood to save up to US$123,000 per week or US$6,388,000 per annum in interest costs"

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13 5AB at pp 2025–2124.

14 5AB at p 2264.

15 PKJA at para 17(b).

compared to the CBAS Loan Facility.[16] However, Mr Jagetia was of the view that he was "met with blocking and delaying tactics" from CBAS nominated directors because CBAS "would lose the windfall it had been earning".[17]

21 According to CSAPL, the issue of refinancing was an important one. More information would have been needed on the financing options, and the board would only have acted after a review of all the relevant information and an analysis of the same. At a series of board meetings from 30 January 2019 to 4 June 2019, the Rabobank Loan Facility was discussed. Various members of the board had reservations about the key terms of the Rabobank Loan Facility, including the financial covenants and repayment schedule, and they wanted an understanding of CSAPL's financial position. Mr Jagetia failed to address the concerns of the board which, as SVP of CSAPL, was for him to do. Mr Jagetia was not blocked in the Financing Efforts.[18]

The whistleblowing efforts

22 Next, according to Mr Jagetia, sometime in 2017, when he was DMD of CIPL, he had discovered trade practices which were allegedly "improper" within CIPL. Although he attempted to investigate the matter while he was CSAPL SVP, the directors nominated by CBAS prevented him from doing so.[19] Specifically, Mr Jagetia raised concerns of "illegal trade practices and anti-competitive behaviour" to the CIPL Audit Committee (the "Whistle-Blowing Efforts").[20] However, Mr Fewkes and the CBAS nominated directors considered

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16 PKJA at paras 41–42.

17 PKJA at para 43.

18 TLSA at paras 40–43.

19 PKJA at para 11.

20 PKJA at para 17(a).

the Whistle-Blowing Efforts to be detrimental to CBAS and did not want any publicity or investigation in relation to the matters.[21]

23 CSAPL contends that these matters are irrelevant to the contractual dispute at hand. In particular, Mr Stollberg highlights that Mr Jagetia "never brought it to [CSAPL's] attention at the time when the matter surfaced in CIPL" but had instead "considered the whistle-blowing issues … a matter for CIPL to deal with". According to Mr Stollberg, the issue of illegal trade practices was first brought to the attention of the CSAPL's board of directors only on 23 June 2019.[22] However, CSAPL did not hamper Mr Jagetia's efforts in relation to the matters.

The initial public offering efforts

24 Another of Mr Jagetia's responsibilities was to "actively drive the IPO in close cooperation with Carlsberg representatives".[23] Mr Jagetia is of the view that CBAS nominated directors had been "obstructing [his] efforts" to "work towards" the initial public offering of CIPL and GBPL (the "IPO Efforts").[24] Again, CSAPL disputes Mr Jagetia's narrative of the events.[25] CSAPL highlights that at a board meeting on 23 October 2018, the CBAS nominated directors decided that they could not approve a mandate to proceed without "a complete understanding of the pros and cons for CSAPL of the IPO and restructuring" as they needed "an aligned input from the IPO Committee".[26]

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21 PKJA at para 18.

22 TLSA at paras 175–176.

23 5 AB at p 2264 (Appendix to the CSAPL SVP Contract).

24 PKJA at para 67.

25 TLSA at para 248; PSA at paras 45–48.

26 4AB at p 1579.

The planning efforts

25 Lastly, Mr Jagetia is of the view that the CBAS nominated directors "frustrated" his attempts to participate in the business planning of CSAPL's subsidiaries (the "Planning Efforts").[27] For instance, they did not support Mr Jagetia's efforts to get the management of CIPL and GBPL to engage him to manage short term and long range business such that he would be privy to the communications with the subsidiaries.[28] Also, they did not advise the Carlsberg Group and CSAPLH employees to (a) work with Mr Jagetia and (b) not communicate directly with CIPL and GBPL in relation to areas for which Mr Jagetia was responsible.[29]

26 Again, CSAPL disagrees with Mr Jagetia's narrative. When Mr Jagetia brought up the issues at a board meeting, Mr Steenberg mentioned that there is no mention in the CSAPL SVP Contract or the CSAPL's shareholders agreement that all information "needs to go through [the] SVP". In any case, it would be "entirely unpractical as it will create an unnecessary bottle neck to make one person the sole contact for all information". As a multinational corporation, "nowhere in the company is there one person that all communications go through".[30]

Remuneration issues

27 Apart from the management issues, disagreements soon emerged with respect to Mr Jagetia's remuneration.

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27 PKJA at paras 17(d) and 74.

28 4AB at pp 1693–1694.

29 PKJA at para 74(b)(2); 4AB at pp 1694–1695 (CSAPL's Board Meeting Minutes of 9 April 2019 at point 10).

30 4AB at p 1693–1694 (CSAPL's Board Meeting Minutes of 9 April 2019 at point 9).

28 In relation to the STI for 2018, there are two disputes. For context, it is not seriously disputed that the STI from January 2018 to March 2018 while Mr Jagetia was DMD of CIPL (the "CIPL STI") is still due to him. The first dispute is over which entity is liable to make the payment (whether CSAPL or otherwise). Mr Jagetia takes the view that CSAPL should pay him S$114,800 for the CIPL STI.[31] Second, the parties disagree on the computation of the STI from April 2018 onwards (the "CSAPL 2018 STI"). While CSAPL approved a sum of S$135,500 for the CSAPL 2018 STI, Mr Jagetia claims that it should have been S$192,363.80.

29 As reproduced above at [14], cl 6.2 of the CSAPL SVP Contract provides that Mr Jagetia's Gross Annual Base Salary shall be reviewed "once a year", for which the first review was to take place in April 2019. Mr Jagetia's view is that he should have received a salary increment similar to that enjoyed by the senior management in CIPL and GBPL (*ie*, about 5%). However, CSAPL disagrees, and Mr Jagetia received no such increment.

Mr Jagetia's termination

30 By June 2019, things had come to a head. At a board meeting on 26 June 2019, Mr Stollberg highlighted the following matters which purportedly supported an "immediate termination" of Mr Jagetia's employment under cl 11.5 of the CSAPL SVP Contract, as reproduced at [16] above:[32]

(a) failure and refusal to answer direct questions posed to him by the CSAPL board in breach of cl 2.2 of the CSAPL SVP Contract (see [10] above) especially in respect of the Financing Efforts;

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31 PKJA at para 14(v).

32 TLSA at para 85; AB Vol 4 at pp 1776–1779 (CSAPL's Board Meeting Minutes of 26 June 2019 at point 6).

(b) failure to relocate to Singapore even as of 26 June 2019 (*ie*, the date of termination as decided at that board meeting) with his family in breach of cll 6.1, 6.3, 6.5 and 6.9 of the CSAPL SVP Contract;

(c) retention of the Annual Benefits Package paid to him from 1 April 2018 to 30 June 2019 despite not having relocated to Singapore with his family; and

(d) failure to devote most of his working capacity to CSAPL in breach of cl 5.1 of the CSAPL SVP Contract (see [10]) by instead devoting most of his time to further the interests of CSAPLH.

31 In contrast, the other CSAPLH nominated director, Mr Yeo, stated that Mr Jagetia should be "given adequate opportunity to respond". Despite Mr Yeo's objections, the board nevertheless voted to terminate Mr Jagetia. Mr Fewkes then formally terminated Mr Jagetia's employment as SVP of CSAPL.[33]

The parties' cases

The plaintiff's claim

32 Following the termination, CSAPL claims against Mr Jagetia for sums which it had allegedly paid in consideration of the Relocation Obligation. In this regard, the plaintiff pleads that it is an implied term of the CSAPL SVP Contract that Mr Jagetia was obligated to relocate to Singapore with his family.[34]

33 The plaintiff avers that the Annual Benefits Package of S$290,000 per annum under cl 6.3 is attributable to the Relocation Obligation. In this

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33 TLSA Exhibit TLS-78 at pp 586–587.

34 Statement of Claim (Amendment No 1) ("SOC") at para 25.

connection, CSAPL has paid Mr Jagetia the sum of S$290,000 for the period from 1 April 2018 to 31 March 2019, as well as the sum of S$72,500 for the period from 1 April 2019 to 30 June 2019.[35] CSAPL also avers that it paid the Relocation Allowance of S$5,000 under cl 6.5 as a one-off allowance to off-set Mr Jagetia's costs of relocating himself and his family to Singapore.[36]

34 CSAPL claims damages from Mr Jagetia arising from his breach of the Relocation Obligation by failing to relocate himself and his family to Singapore. Alternatively, Mr Jagetia has been unjustly enriched as a result of the failure of the basis for the Annual Benefits Package and the Relocation Allowance. CSAPL is, therefore, entitled to recover the payments.[37]

35 Accordingly, CSAPL claims S$232,000 against Mr Jagetia, calculated as follows:

Item	**Amount / S$**
Annual Benefits Package (From 1 April 2018 to 31 March 2019)	290,000
Annual Benefits Package (From 1 April 2019 to 30 June 2019)	72,500
Relocation Allowance	5,000
Less: CSAPL 2018 STI (withheld from Mr Jagetia)	- 135,500
Total	232,000

[35] SOC at paras 22(b), 25(d)(ii) and 32.

[36] SOC at para 33.

[37] SOC at paras 32–37.

The defendant's defence and counterclaim

36 Mr Jagetia avers that there is no basis to imply the Relocation Obligation under the CSAPL SVP Contract. There is thus no breach of such term or any unjust enrichment arising from failure of basis.

37 The CSAPL SVP Contract does not provide that CSAPL could vary or stipulate Mr Jagetia's place of residence.[38] In contrast, under the CIPL DMD Contract, CIPL had the right to vary his "place or work and/or require [him] to serve, visit or reside in such city/town as the scope of the work required or CIPL directed". Nevertheless, CIPL never exercised such right. Further, CSAPL had no right to "designate where Mr Jagetia's family resided".[39]

38 Relatedly, cl 6.3 of the CSAPL SVP Contract does not state that the Annual Benefits Package is conditional upon Mr Jagetia and his family being resident in Singapore.[40] As such, no payments were made in consideration of such Relocation Obligation.[41] The Relocation Allowance was intended to cover the inconvenience of Mr Jagetia changing his place of work. It was to be paid automatically, without showing that he had in fact relocated or incurred any costs in doing so.[42]

39 Further, Mr Jagetia pleads that he was being punished by the CBAS nominated directors for the Financing Efforts, Whistle-Blowing Efforts, IPO Efforts and Planning Efforts (the "Collateral Purposes"). Therefore, CSAPL

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38 Defence and Counterclaim (Amendment No 2) at para 14.

39 Defence and Counterclaim (Amendment No 2) at para 8(a)–(c).

40 Defence and Counterclaim (Amendment No 2) at para 16.

41 Defence and Counterclaim (Amendment No 2) at para 26.

42 Defence and Counterclaim (Amendment No 2) at para 27.

wrongfully denied Mr Jagetia the full entitlement to his CSAPL 2018 STI.[43] In particular, Mr Jagetia avers that CSAPL breached the implied term of mutual trust and confidence in the CSAPL SVP Contract by failing to "exercise its discretion as to the STI in a rational and non-capricious manner" and depriving him of the opportunity to earn his STI. CSAPL is "bound to" compensate him $192,363.80 for the CSAPL 2018 STI.[44]

40 CSAPL also failed to pay other contractual entitlements to Mr Jagetia, including the remainder of the Annual Benefits Package for 1 July 2019 to 31 March 2020 under cl 6.3 (see [14] and [30(c)] above), the CIPL STI (see [27] above), and the Repatriation Allowance under cl 6.5 (see [13] above).[45] Specifically, Mr Jagetia avers that cll 7.1, 1.2 and 1.3 of the CSAPL SVP Contract contractually entitle him to claim his CIPL STI from January to March 2018 from CSAPL.[46]

41 In relation to the termination, Mr Jagetia pleads that it is "wrongful and without adequate cause".[47] In Mr Jagetia's earlier version of his Counterclaim, he pleaded that CSAPL wrongfully dismissed him "in order to" stop and "punish" him for the Financing Efforts, Whistle Blowing Efforts, IPO Efforts and Planning Efforts.[48] In the second round of amendments to the Defence and Counterclaim, Mr Jagetia instead included his claim for three months' salary in

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43 Defence and Counterclaim (Amendment No 2) at para 80(b).

44 Defence and Counterclaim (Amendment No 2) at para 81.

45 Defence and Counterclaim (Amendment No 2) at para 87.

46 Defence and Counterclaim (Amendment No 2) at para 82.

47 Defence and Counterclaim (Amendment No 2) at para 29.

48 Defence and Counterclaim (Amendment No 1) at para 66 and para 87.

lieu of notice on the basis of CSAPL's contractual obligation under cl 11.4 of the CSAPL SVP Contract.[49]

42 Accordingly, Mr Jagetia claims S$632,163.80 against CSAPL as follows:[50]

Item / CSAPL SVP Contract Reference	**Amount / S$**
Remainder of the Annual Benefits Package under cl 6.3 (From 1 July 2019 to 31 March 2020)	217,500
Repatriation Allowance under cl 6.5	5,000
Salary In Lieu of Notice under cl 11.4	102,500
CIPL STI (From 1 January to 31 March 2018)	114,800
CSAPL 2018 STI (From 1 April to 31 December 2018)	192,363.80
Total	632,163.80

43 I note that Mr Jagetia pleads that CSAPL is "bound to provide an annual increment for 2019 of 5% on gross annual base salary and gross annual benefits package".[51] The computation above does not account for such increment. In his closing submissions, Mr Jagetia instead claims for a "4% increment on the Gross Annual Base Salary in the sum of $8,200" and a "4% increment on the [Annual Benefits Package] in the sum of $14,500" making the total value of the claim S$654,863.80.

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49 Defence and Counterclaim (Amendment No 2) at para 87.

50 Defence and Counterclaim (Amendment No 2) at paras 81, 83 and 87.

51 Defence and Counterclaim (Amendment No 2) at para 86.

Issues to be determined

44 From the foregoing, the issues to be determined are:

(a) whether the Relocation Obligation is to be implied, *ie,* whether there is an implied term requiring Mr Jagetia to relocate with his family to Singapore;

(i) if so, whether CSAPL is entitled to recover S$367,500 (for the Annual Benefits Package from 1 April 2018 to 30 June 2019 plus the Relocation Allowance) in damages for breach of such an implied term or, in the alternative, for unjust enrichment owing from a total failure of consideration;

(ii) if not, whether Mr Jagetia is entitled to claim S$222,500 for the Annual Benefits Package from 1 July 2019 to 31 March 2020 plus the Repatriation Allowance;

(b) whether Mr Jagetia is entitled to S$192,363.80 as his CSAPL 2018 STI Claim (*ie*, from April to December 2018) instead of S$135,500;

(c) whether Mr Jagetia is entitled to claim S$114,800 from CSAPL instead of CIPL for the CIPL STI (*ie*, from January to March 2018);

(d) whether Mr Jagetia is entitled to an annual increment of 4% of his Gross Annual Base Salary and Annual Benefits Package from January to June 2019 and July 2019 to March 2020 totalling S$22,700; and

(e) whether Mr Jagetia is entitled to three months' salary in lieu of notice pursuant to cl 11.4 of the CSAPL SVP Contract.

45 I consider each issue in turn.

Whether Mr Jagetia breached an implied Relocation Obligation or was otherwise unjustly enriched

The applicable legal principles

46 Was Mr Jagetia contractually bound to relocate to Singapore with his family by way of an implied term in fact? The legal test for implication of a term in fact is well-established. In *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*"), a three-step process is set out (at [101]):

(a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

(b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Finally, at the third step, the court considers the specific term to be implied. The term must be one to which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had it been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

47 In this regard, the first step cannot be glossed over or sidestepped. Indeed, the Court of Appeal in *Sembcorp* took pains to caution that "not all gaps in a contract are "true" gaps in the sense that they can be remedied by the implication of a term" (at [94]). Specifically, while there are at least the

following three ways in which a gap could arise, it is only in the first scenario where it would be appropriate for the court to even consider if it will imply a term into the parties' contract (at [94]–[95]):

(a) the parties did not contemplate the issue at all and so left a gap;

(b) the parties contemplated the issue but chose not to provide a term for it because they mistakenly thought that the express terms of the contract had adequately addressed it; and

(c) the parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution.

48 To round off, in implying a term, the court essentially gives effect to the parties' presumed intentions by filling the gaps in the contract (*Sembcorp* at [93]). Consequently, the threshold for implying a term is necessarily a high one (at [100]).

49 I should also touch briefly on the legal principles of unjust enrichment. In *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 ("*Benzline*"), the Court of Appeal reiterated that a claim in unjust enrichment against a defendant requires (a) enrichment of the defendant, (b) at the expense of the plaintiff, and (c) circumstances which make the enrichment unjust (*ie*, the presence of an "unjust factor") (at [45]). One such "unjust factor" is the "failure of basis". That inquiry has two parts: first, what was the basis for the transfer in respect of which restitution is sought; and second, whether that basis failed (at [46]). While it is less settled whether the failure of basis must be "total" (and not merely "partial"), any such uncertainty is merely academic in this case. CSAPL's pleaded case is that there was a total failure of basis for the Annual Benefits Package in that Mr Jagetia failed to relocate to Singapore.

50 With the foregoing principles in mind, I turn to the facts of the present case.

The parties' positions

51 CSAPL's position is that, "as evidenced by the negotiations", Mr Jagetia's entire Annual Benefits Package was to be paid on the basis of the Relocation Obligation.[52] In that regard, parties discussed whether CSAPL would (a) pay Mr Jagetia in Singapore dollars; (b) arrange for the employment and immigrant passes of Mr Jagetia and his family; and (c) cover Mr Jagetia's and his family's living expenses in Singapore as expatriates through the Annual Benefits Package.[53]

52 Concerning the Annual Benefits Package, CSAPL submits that the "figure of S$255,000 was premised, self-evidently, on the basis that [Mr Jagetia] would live in Singapore with his family".[54] The housing allowance was based on a family of four in the East Coast area (which is family friendly), the children's schooling was "based on the children attending an international school in Singapore", and the car benefit was "pegged to [Mr Low's] car allowance as Vice President, HR for CBAS Asia (based in Singapore). Given the context of the negotiations, the parties clearly intended for Mr Jagetia to be "compensated for moving himself and his family to live in Singapore exclusively" for many reasons. Indeed, "numerous terms" in the CSAPL Contract "expressly refer to Singapore or relocation from India" such as cll 1.1, 1.4, 4.1, 6.5, and 6.9.[55]

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52 PWS at para 67.

53 PWS at paras 68–69.

54 PWS at para 71; LCLA at para 9.

55 PWS at para 81.

53 CSAPL's position is that although "the parties had the common understanding that [Mr Jagetia] and his family would relocate to Singapore, … the parties did not contemplate recording that understanding as a term in the [CSAPL SVP Contract]".[56] Furthermore, CSAPL submits that the Relocation Obligation "passes the officious bystander test".[57] This is because the "contract cannot work if it gives the employee S$290,000 per year for no apparent reason".[58] Given Mr Jagetia's failure to relocate with his family, CSAPL suffered a total loss amounting to S$362,500.[59]

54 Mr Jagetia's position is that the CSAPL remuneration package "was negotiated as a whole" to include the three components "to put [him] at about 90% of the remuneration of then CIPL [MD] to address [his] long-standing grievance of [his] remuneration being less than half" previously when he was the CIPL DMD.[60] As an aside, I note that CSAPL's position is that only Mr Jagetia's Gross Annual Base Salary was meant to be 10% lower than the salary received by the CIPL Managing Director ("MD") only (*ie*, not the entire remuneration package).[61]

55 Further, Mr Jagetia argues that as a matter of threshold, the Relocation Obligation is not even "capable of clear expression" in that it is unclear what "the required standard of relocation" would be under the Relocation Obligation and CSAPL's "inability to specify the content and scope of the alleged implied

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56 PWS at para 83.

57 PWS at para 84.

58 Plaintiff's Reply Submissions ("PRS") at para 19.

59 PWS at paras 93–94.

60 PKJA at para 99(d)–(e).

61 GFA at para 19–20.

term fatally undermines its claim".[62] In this regard, a consideration relevant to the officious bystander test is whether the implied term is "capable of clear expression" (*Sembcorp* at [98]). At the trial, CSAPL alluded to the meaning of "permanent accommodation", "reside in Singapore", "live in Singapore" and "working out of Singapore". In any event, broadly speaking, Mr Jagetia claims that he had relocated to Singapore.[63]

56 Mr Jagetia further submits that any express terms purporting to encapsulate the Relocation Obligation both departs from CSAPL's pleaded case (that it is an implied term) and fatally undermines CSAPL's attempt to imply such term in fact.[64] In any case, it is evident by cl 1.4 of the CSAPL SVP Contract that parties "had contemplated the relocation issue" by qualifying the phrase "accompanying family" with "if any". As such, despite knowing that Mr Jagetia had a wife and two children, the CSAPL SVP Contract "did not expressly require that the [Mr Jagetia's] family must move to Singapore".[65]

57 Thus, according to Mr Jagetia, the parties' common understanding is that he would "have the option, but not an obligation, to relocate to Singapore with his family".[66]

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62 Defendant's Written Submissions ("DWS") at para 3.

63 DWS at paras 4.

64 DWS at para 7.

65 DWS at para 8.

66 DWS at para 16.

Findings

Whether the Relocation Obligation is to be implied

58 I am not persuaded by CSAPL's arguments that there is a "true" gap in the sense which the Court of Appeal enunciated in *Sembcorp* at [94]–[95], and that the Relocation Obligation is to be implied.

59 From the parties' positions, it is clear that the parties had contemplated the issue of Mr Jagetia's possible relocation to Singapore with his family. The disagreement lies in whether there was any common understanding reached that Mr Jagetia was contractually obligated to relocate with his family to Singapore. However, if I were to accept CSAPL's submission that the parties had a common understanding with respect to the Relocation Obligation, then the parties' lack of contemplation was merely in respect of "recording that understanding as a term". This does not and cannot satisfy the first stage of the test for implying a term in fact.

60 To elaborate, CSAPL's position is not that parties did not contemplate the issue at all, and therefore left a gap to be filled: as per [47(a)] above. Instead, the parties had indeed contemplated the particular question of an obligation to relocate. As CSAPL points out, numerous clauses in the contract, such as cll 1.1, 1.4, 4.1, 6.5, and 6.9, hint at this. Indeed, CSAPL admits that what parties failed to contemplate was the "*recording*" of the alleged common understanding. Thus, it appears to me that the parties chose not to clearly provide any term requiring relocation in the sense that CSAPL now contends. In my judgment, CSAPL's admission is fatal to their own pleaded claim. I digress to observe that in relation to the CIPL DMD Contract, CIPL reserved the right to require Mr Jagetia to reside in a specified location. However, this is omitted from the CSAPL SVP Contract. The circumstances of the present case thus fall outside

the situation which *Sembcorp* envisions at [94] (see [47(a)] above). In other words, the "gap" which CSAPL contends is not a "true gap" which the court may fill by way of implying a term in fact.

61 In any event, in my judgment, the question of whether there was any common understanding between the parties that Mr Jagetia would relocate with his family to Singapore must also be answered in the negative.

62 First, I agree that cl 1.4 of the CSAPL SVP Contract plainly contradicts any such common understanding. To reiterate, cl 1.4 provides that CSAPL is to assist Mr Jagetia "and accompanying family, *if any*, in obtaining proper documentation" [emphasis added]. In that regard, the qualifier "if any" plainly indicates that Mr Jagetia's family members might not be relocating to Singapore with him.

63 Second, I am not satisfied that the Annual Benefits Package was solely to compensate Mr Jagetia and his family for their relocation and for no other reason. On the contrary, I am satisfied that the undisputed evidence as a whole (including the background of the negotiation for Mr Jagetia's compensation package) supports Mr Jagetia's position that the three components (*ie*, Gross Annual Base Salary, STI and Annual Benefits Package) were intended to be read as a whole for compensation given his increased portfolio (*ie*, as SVP of CSAPL) from his previous position as DMD of CIPL.

64 In this regard, it is common ground that initially, CSAPL offered a remuneration package comprising of a S$350,000 annual base salary, STI worth potentially S$140,000 (*ie,* target of 40% of S$350,000), and S$255,000 as the

Annual Benefits Package.[67] In an e-mail to Mr Jagetia dated 19 January 2018, Mr Low stated the following (the "19 January 2018 E-mail"):[68]

> The package will be employed by CSAPL:
>
> a. Annual Base Salary (SGD 350,000 Gross)
>
> b. STI based on the CSAPL KPI's (target 40% = SGD 140,000). KPIs for STI will be determined by CSAPL board for the mission/purpose of your SVP role.
>
> c. A cash benefits package (SGD 255,000 Gross)*
>
> *The above* ***reflects a 10% delta difference*** between current MD, [CIPL] and your new role.
>
> **Benefits package as a* ***cash allowances p.a.*** *will provide* ***flexibility*** *on how best you spend to meet your personal needs.* Cash allowances is meant to cover:
>
> a. Housing 90,000 p.a. (SGD 7,500 x 12 months)
>
> b. Pension 47,600 p.a. (10% of Total Target Cash p.a.)
>
> c. Kids' schooling 90,000 (SGD 45,000 x 2 kids) p.a.
>
> d. Car Benefit 18,000 (SGD 1,500 per month)
>
> e. Others - Tax services, medical SGD 9,400 p.a.
>
> *All numbers in gross unless stated otherwise. You will be responsible for Singapore taxes (estimated to be 15-18%).
>
> [emphasis added]

65 It is particularly telling that CSAPL's own explanation to Mr Jagetia is that the three components together represented a "10% delta difference" between his compensation package and that of CIPL's MD (see [64] above). As such, at all material times whilst parties were drafting the terms of remuneration under the CSAPL SVP Contract, it is clear that the parties' *common* understanding was that the three components were to be taken together in order to justifiably peg Mr Jagetia's compensation package to that of CIPL's MD.

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67 LCLA at para 8; PKJ Supplemental Affidavit ("PKJSA") at paras 16–17.

68 PKJSA Exhibit PKJ-163 at p 72.

Certainly, the Annual Benefits Package was not specifically tied to any Relocation Obligation.

66 Indeed, a draft of the 19 January 2018 E-mail was first sent to Mr Fewkes by Mr Low on 17 January 2018, in order to keep Mr Fewkes updated on Mr Jagetia's remuneration package with the three components. Mr Low explained to Mr Fewkes that his "new approach" essentially "mirrors the 10% delta between [Mr Jagetia] and [CIPL MD]".[69] At the trial, when asked about Mr Jagetia being told about the package as a whole being assessed to be 10% lower than that of the CIPL MD, Mr Fewkes admitted that "it says what it says".[70]

67 Third, it is also significant that Mr Low explained to Mr Jagetia that the precise reason that CSAPL was agreeable to give a "cash benefits package" is to provide Mr Jagetia with "flexibility on how best" to spend such cash "to meet [his] personal needs". Although, as CSAPL points out, Mr Low is "not a lawyer",[71] I am of the view that his explanation (on CSAPL's behalf) to Mr Jagetia about the compensation package corroborates Mr Jagetia's position and would be a crucial factor for determining the parties' common understanding of Mr Jagetia's compensation package.

68 Fourth, Mr Stollberg also agreed that certain components of the Annual Benefits Package such as pension benefits do not relate to the cost of living in Singapore at the time of the contract.[72] As Mr Stollberg was well aware, such an arrangement for a lump sum cash payment is quite different from the

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69 GFA Exhibit GF-2 (Mr Low's E-mail to Mr Fewkes dated 17 January 2018).

70 Transcript dated 15 September 2021 at p 167, lines 7–11.

71 PRS at para 10.

72 Transcript dated 14 September 2021 at p 89, line 25 to p 90, line 9.

arrangement for the CSAPL MD for which his "housing is actually being paid directly by the company to the landlord". As such, the CSAPL MD enjoys "benefits in kind paid by the company" and not a "lump sum".[73] Indeed, I should also point out that other clauses in the CSAPL SVP Contract are expressly linked to living in Singapore. For example, cl 6.6 provides specifically for the installation of a telephone *in Singapore* to be reimbursed by CSAPL.

69 For these reasons, CSAPL's submission that there is a common understanding that Mr Jagetia would relocate with his family to Singapore is unpersuasive. Implying the Relocation Obligation would therefore be contrary to the parties' presumed intentions, which are of paramount importance: *Sembcorp* at [93].

70 Based on the analysis above, the Relocation Obligation cannot be implied in fact. As such, there is no need to consider the other arguments raised by the parties.

Whether CSAPL may recover the Annual Benefits Package paid

71 Flowing from the above, it cannot be said that Mr Jagetia breached any implied term. The Annual Benefits Package was not paid to Mr Jagetia to compensate for his and his family's relocation to Singapore. Since I do not find the Annual Benefits Package "tied to" the performance of the Relocation Obligation as CSAPL contends, CSAPL's claim for the recovery of the Annual Benefits Package, based both on breach of the implied term and alternatively in unjust enrichment for total failure of consideration, fails.

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[73] Transcript dated 14 September 2021 at p 89, lines 11–24.

Whether CSAPL may recover the Relocation Allowance paid

72 As regards the claim for the Relocation Allowance, I accept CSAPL's position that payment is contingent "[u]pon relocation to Singapore" as clearly stipulated in cl 6.5 of the CSAPL SVP Contract. Nevertheless, cl 6.5 does not go so far as to stipulate in what circumstances Mr Jagetia would be considered to have fulfilled the obligation contained in this clause. It also does not state when Mr Jagetia must do so. Mr Jagetia's obligation under cl 6.5 cannot be determined from a reading of the clause on its own, without more. I thus look at the totality of the circumstances to determine whether Mr Jagetia had satisfied his obligations under cl 6.5.

73 In this connection, I note that CSAPL is a Singapore incorporated holding company, and the business entities are CIPL and GBPL (which operate out of India and Nepal respectively). Therefore, Mr Jagetia's role and responsibilities did not require him to be physically present in Singapore. Indeed, Mr Yeo agreed that Mr Jagetia "could have carried out his function" from India.[74] Although it is quite clear that Mr Jagetia's family did not relocate to Singapore, whether, for the purpose of cl 6.5, Mr Jagetia himself had relocated to Singapore is a more vexed question.

74 Mr Jagetia argues that he has relocated to Singapore by (a) obtaining a Singapore employment pass; (b) spending more days employed in Singapore than outside Singapore based on his tax assessment on 14 August 2019 (*ie*, 275 days employed in Singapore); and (c) being tax resident in Singapore. CSAPL, however, strongly denies that Mr Jagetia could be said to have relocated. In that regard, his tax assessment for the year 2018 shows that Mr Jagetia was "only in

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74 Transcript dated 4 October 2021 at p 34, line 22.

Singapore for 70 days" (*ie*, 205 of 275 days outside Singapore for business purposes). Such filing merely shows "the number of days he was out of Singapore, and not whether he had relocated to Singapore".[75]

75 While it is undisputed that Mr Jagetia had in fact worked with an immigration vendor subsequent to signing the CSAPL SVP Contract to assist with any relocation to Singapore,[76] Mr Jagetia explained that he was unable to relocate his family to Singapore as his children would have already started school in India by the time that he was granted a Singapore employment pass on 31 July 2018.[77] Indeed, it was "four months after start of contract" that Mr Jagetia obtained his employment pass. Thereafter, Mr Jagetia was provided with a "serviced office" in November 2018.[78] Even as late as 12 September 2018, CSAPL agreed to the rental of a company car in India for Mr Jagetia's work with CIPL (which Mr Jagetia had been "provided by CIPL since 2014" on lease) until March 2019. As Mr Jagetia explained, this is to account for his presence in India "approx. 10 days/month for various projects/meetings" and helps "avoid taxi costs". In that regard, Mr Low affirmed that CSAPL is "ok with [the] arrangement for leased car to be paid by CIPL until Mar 19".[79]

76 The Relocation Allowance was "paid with the first available payroll". On the objective evidence before me as set out above, I am satisfied that at all material times thereafter, CSAPL was agreeable to Mr Jagetia being (a) tax resident in Singapore; and (b) travelling to Singapore and staying in India for

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75 PRS at para 26; PKJA Exhibit PKJ-135 at pp 1313–1314.

76 PWS at para 90.

77 PJKA at para 98(5)(d); PKJA Exhibit PKJ-134 at pp 1310–1311.

78 Transcript dated 16 September 2021 at p 87, line 22 to p 99, line 4.

79 PKJA at para 98(5)(g); PKJA Exhibit PKJ-138 at p 1333.

significant periods in fulfilment of the "relocation" under cl 6.5. It bears emphasising that CSAPL did not even provide Mr Jagetia with a serviced office in Singapore until November 2018.

77 I briefly deal with CSAPL's further argument that relocation is a "specific type of consideration" which entails "uprooting" which Mr Jagetia failed to do.[80] In my judgment, it is too late for CSAPL to now contend that relocation under cl 6.5 can only be fulfilled by the "uprooting" of Mr Jagetia and his family. Even on CSAPL's own case, it is wholly unclear what such "uprooting" would entail given the overall circumstances of the present case – Mr Jagetia was unable to secure his employment pass until some months after the CSAPL SVP Contract was entered into, and CSAPL approved of Mr Jagetia's request to continue leasing a company car in India until March 2019.

78 Accordingly, CSAPL's claim for recovery of the Relocation Allowance based on a breach of cl 6.5, and the alternative claim for unjust enrichment fail. For completeness, even if Mr Jagetia did not "uproot" himself to move to Singapore to the extent that CSAPL now desires, it is undisputed that Mr Jagetia was present in Singapore for a substantial period of at least 70 days (out of 275 days for which he was employed in Singapore) (see [74] above). Such stay in Singapore cannot constitute a total failure of consideration as CSAPL now contends.

Whether Mr Jagetia is entitled to the Repatriation Allowance

79 I now turn to Mr Jagetia's counterclaims. Mr Jagetia submits that if there is no Relocation Obligation, then CSAPL's claim on the Relocation Allowance should be dismissed while his counterclaim on the Repatriation Allowance

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80 PRS at para 37.

should be allowed without more.[81] CSAPL submits that the Repatriation Allowance under cl 6.5 of the CSAPL SVP Contract does not apply in the present circumstances as Mr Jagetia's employment was terminated. Under cl 11.5, all "expenses in connection with return journey and transport of the Employee's belongings are to be borne by the Employee".[82] In response, Mr Jagetia submits that CSAPL's argument is neither pleaded nor applicable on the facts since CSAPL was not entitled to terminate him under cl 11.5. For the reasons which I shall elaborate below, I agree with Mr Jagetia that CSAPL was not entitled to terminate him under cl 11.5 of the CSAPL SVP Contract. As the flip side to the Relocation Allowance, I am also satisfied that Mr Jagetia is likewise entitled to the Repatriation Allowance under cl 6.5 at the end of the CSAPL SVP Contract.

Whether Mr Jagetia is entitled to the Annual Benefits Package from 1 July 2019 to 31 March 2020

80 Mr Jagetia submits that the Annual Benefits Package is "payable in full on 1st April every year" having regard to cl 6.3 of the CSAPL SVP Contract and not every quarter of the year.[83] CSAPL submits that the logical conclusion of such a position is that even if Mr Jagetia had resigned on 2 April, he would be able to retain the full amount which "cannot be right" and is "legally unsustainable".[84] In response, Mr Jagetia submits that there is no "clawback" for the Annual Benefits Package which could possibly apply. As such, he is entitled to the full sum on 1 April every year.[85]

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81 DWS at para 42.

82 PWS at para 187.

83 DWS at paras 35–40.

84 PWS at paras 188–189.

85 DRS at para 71.

81 While it is not disputed that cl 6.3 stipulates the mechanics for the payment of the Annual Benefits Package (*ie*, promptly on 1 April as a one-time lump payment for the year), such mechanism does not and cannot in any way lead to the conclusion that Mr Jagetia is entitled to the full sum of the Annual Benefits Package for as long as the contract ends after 1 April of the year. On the contrary, cl 6.5 clearly stipulates that the figure of S$290,000 is "per annum" and as such appropriately called the *Annual* Benefits Package. Furthermore, Mr Jagetia's position on this part of his Counterclaim is contradicted by his own position (which I have found earlier) that his remuneration package is to be considered as a whole so as to justifiably peg it to the "10% delta difference" compared to the CIPL MD. Such remuneration package is clearly in respect of Mr Jagetia's annual remuneration.

82 Furthermore, even if CSAPL's failure to pay the full sum of the Annual Benefits Package on 1 April constitutes a breach of cl 6.5, in the present circumstances, I am not satisfied that Mr Jagetia has shown any loss for the period from 1 July 2019 to 31 March 2020. In that regard, I also rely on my decision to allow Mr Jagetia's three months' salary in lieu of notice (see [148] below). Accordingly, I dismiss Mr Jagetia's counterclaim for the remainder of the Annual Benefits Package.

The quantum of the CSAPL 2018 STI

83 Turning to the CSAPL 2018 STI Claim, parties disagree on the quantum payable to Mr Jagetia. In this connection, cl 7.1 of the CSAPL SVP Contract only provides for a "a target bonus of 40% of the Gross Annual Base Salary". As for "mechanics and calculations", the contract leaves it open for yearly discussion with the board, with oversight by Mr Fewkes. Nonetheless, cl 7.1 provides that as a "base assumption", "the STI structure will reflect financial

performance of [CIPL] and [GBPL] and CSAPL priorities in equal proportions".

The applicable legal principles

84 In *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30, the employee claimed a bonus based on a bonus clause which read "[i]n addition to your salary, a bonus *may* be paid to you…" [emphasis added]. Based on a proper construction of the bonus clause, the Court of Appeal held that the decision to grant a bonus was entirely at the discretion of the company. An employee was not entitled to claim against his former employer a bonus which was entirely discretionary in nature. In this regard, the Court of Appeal held that even if the employee had continued to work with the employer, he "would not have a legal right to claim a bonus from them, much less if his employment was terminated in accordance with the terms of the contract" (at [57]).

85 In determining whether bonuses are entirely discretionary in nature, I gather the following relevant principles from the case law. While there may be situations in which an employer reserves the absolute right to declare bonuses in whatever way he deems fit, all the relevant circumstances have to be examined to ascertain whether that was the true intention of the parties (*Leong Hin Chuee v Citra Group Pte Ltd and others* [2015] 2 SLR 603 ("*Leong Hin Chuee*") at [147] and [150]). Thus, the discretion in awarding a bonus may not be completely unfettered. Even a very broad discretion should nevertheless be exercised rationally, in *bona fide* and not arbitrarily or capriciously (*Leiman, Ricardo and another v Noble Resources Ltd and another* [2018] SGHC 166 ("*Leiman*") at [250]). Although such discretion may not be unfettered, the threshold for judicial intervention in the exercise of such discretion is not low, and the courts will generally not intervene unless the contracting party's

exercise of such discretion is "so outrageous in its defiance of reason that it can be properly categorised as perverse" (*Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] SGHC(A) 8 ("*Dong Wei*") at [90] citing *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 at [106]).

The parties' positions

86 On the computation of the STI, the parties refer to the discussions between them, as supervised by Mr Fewkes. This is in line with what is set out in cl 7.1 of the CSAPL SVP Contract. On 17 April 2018, which was two days prior to signing the CSAPL SVP Contract, Mr Fewkes stated in an e-mail to Mr Jagetia (the "17 April 2018 E-mail") that:[86]

> Re: 2018 STI proposal for discussion before we ask LL to write it up. Gimme a bell when you've read it.
>
> …
>
> Jan-Mar : 25% pro-rata on final India stretch STI payout (LL to confirm if this should be budgeted by CIPL or CSAPL)
>
> Apr-Dec: 75% pro-rata to be split as below
>
> - 1/3rd of STI to mirror the India MD STI scheme payout
> - 1/3rd of STI to mirror the Nepal MD STI scheme payout*
> - 1/3rd to relate to delivery of CSAPL projects**
>
> …
>
> So, in practical terms, this means for 2018 that SVP would get 50% of the India STI payout, 25% of Nepal MD's STI payout and 25% based on CSAPL deliverables
>
> …

[86] PKJA Exhibit PKJ-87 at p 147.

87 Further, on 14 May 2018, Mr Low e-mailed Mr Jagetia to explain how the STI is to be computed, *ie,* the STI mechanics:[87]

(a) the structure of the 2018 STI is "on [CIPL's] and [GBPL's] financials coupled by [Mr Jagetia's] personal goals";

(b) CIPL's 2018 STI is "already approved by the CIPL board"; and

(c) GBPL's 2018 STI "has not been discussed or shared with GBPL board".

88 In particular, as stated by Mr Low, the structure is as follows:

> **2018 Plan Structure**:
>
> The 2018 STI Plan provides for financial objectives and Individual Objectives (also called "targets" in this STI Plan). Pay-out from the STI Plan requires that the objectives for a given year are partly or fully achieved along these 3 pillars of the structure:

	Weighing	**Payout Principles/Formula**
Financials 66.6%	33.33%	a) To mirror the [CIPL] MD STI scheme payout …
	33.33%	b) To mirror the [GBPL] MD STI scheme payout ….
Personals 33.34%	33.4%	Delivery of CSAPL projects** 1. A new 3YP presented to and accepted by the CSAPL board by end Nov'18 2. Satisfactory progress on IPO workstreams as per

[87] LCLA Exhibit LL-9 at pp 78 and 80–83.

		timeline of the board's IPO plan 3. Implementation of at least 2 meaningful business development projects in India and/or Nepal

…

Objective Achievement	**Payout**	**Description**
Below Threshold	50%	Only 2 of 3 personal objectives is met at target
At Threshold Performance	100%	3 of 3 personal objectives met at target
Above Threshold but below Target	150%	At least 1 personal objectives are above target with remaining personal objectives at target

89 At a board meeting on 6 May 2019, it was approved that Mr Jagetia be accorded S$135,500 as the CSAPL 2018 STI.[88] Mr Jagetia was formally informed of the decision on 8 May 2019.[89] The calculation for the CSAPL 2018 STI was explained to Mr Jagetia to be as follows:[90]

Company	**Target 2018**	**Performance 2018**
CIPL financial priorities	• Weight 70%: earnings before interest and tax ("EBIT") of DKK 119.171m	• EBIT of DKK 235.640m (a 400% stretch payout)

88 4AB at pp 1728–1729.

89 PKJA at para 120; PKJA Exhibit PKJ-122 at pp 1147–1149.

90 PKJA at paras 121–122; PKJA Exhibit PKJ-122 at p 1155.

	• Weight 30%: Market share of 19.0% threshold	• Market share of 18.5% last track
GBPL financial priorities	• Weight 70%: EBIT of DKK 562.829m • Weight 30%: Market share of 68%	• EBIT of DKK 433.650m • Market share: 63%
CSAPL priorities	• In lack of other agreement for 2018 the role & responsibilities	• 50% achievement score
Total	STI target bonus of 40% of Gross Annual Base Salary	<u>Suggestion for STI 2018</u>: S$180,400 payout (S$410,000 × 40% × 110.00%) ((⅓ × 70% × 400%) + 0) + ((⅓ × (0+0)) + ((⅓ × 50%) = 110.00%

90 Given that the CSAPL 2018 STI was for only nine months, this amounted to S$135,500 as follows:[91]

	Figures	**Formula**
CIPL	• Weightage: ⅓	• ⅓ × 280%

[91] PKJA at para 121; TLSA at para 48.

	• Multiplicand: 70% × 400% = 280%	
GBPL	• Weightage: ⅓ • Multiplicand: 0%	• ⅓ × 0%
CSAPL	• Weightage: ⅓ • Multiplicand: 50%	• ⅓ × 50%
Base Rate	• Pro-Ration (1 Apr – 31 Dec 2018): ¾ • Base: 40% of Gross Annual Base Salary	• ¾ × 40% × S$410,000
Total	[(⅓ × 280%) + (⅓ × 50%) + (⅓ × 50%)] × [¾ × 40% × S$410,000] = [93.333% + 0% + 16.667%] × [¾ × S$164,000] = [110%] × [S$123,000] = S$135,300 (as calculated by Mr Jagetia) ≈ S$135,500 (as actually awarded by the CSAPL board)	

91 Mr Jagetia's position is that he is entitled to S$192,363.80 instead of the S$135,500 which the board awarded him. The dispute centres on the GBPL component and the CSAPL component.[92]

The GBPL component

92 In relation to the GBPL component, Mr Jagetia submits that although the 2018 STI payout for the GBPL MD was 89.18%, the CBAS nominated directors applied a multiplicand of 0% when calculating Mr Jagetia's GBPL component and CSAPL resolved to award the GBPL component accordingly.

[92] PWS at para 103.

As such, CSAPL failed to mirror the GBPL MD's STI payout for 2018. CSAPL, however, submits that the GBPL MD received his STI payout under a "standard CBAS STI plan, which is markedly different from the local STI plan that he was supposed to transition into" for various reasons.[93] In that regard, the GBPL MD would likewise have received a 0% bonus had he been assessed only on GBPL's local performance.[94] In any case, the difference between the amount received and the amount claimed by Mr Jagetia is only S$56,863.80 which suggests that, on the whole, the CSAPL 2018 STI was not decided upon to punish Mr Jagetia for the Collateral Purposes or otherwise biased.[95]

The CSAPL component

93 As for the CSAPL component, Mr Jagetia's position is that he is entitled to a multiplicand of 100%, rather than 50%, as he had met all three of the personal objectives set for him as SVP of CSAPL independent of the performance of other employees within the CSAPL group.[96]

94 Concerning the first objective, Mr Jagetia's view is that his failure to present and have a three-year plan approved by December 2018 "was not due to [his] individual performance".[97] Rather, the CIPL and GBPL boards had not yet approved each company's respective budget in time, and these were delayed for months.[98] Mr Jagetia had kept the CSAPL board informed of the problem.

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93 PWS at paras 111–114.

94 TLSA at para 156.

95 PRS at paras 47–54.

96 DWS at paras 65–66.

97 DWS at paras 67–69.

98 PKJA Exhibit PKJ-114 at pp 1026–1027.

95 Concerning the second objective, Mr Jagetia's position is that the CSAPL board was unable to provide him with an IPO plan because, as admitted by Mr Stollberg, "there was a deadlock between what the CBAS side wanted and what the [CSAPLH] side wanted".[99] As such, there was no plan by the CBAS nominated directors to speak of and resolving a shareholder deadlock is beyond the purview of Mr Jagetia's responsibility as SVP of CSAPL.[100]

96 Lastly, Mr Jagetia claims he achieved the implementation of at least two meaningful business development projects.[101] On 26 April 2018, the CIPL board approved a project called the License Business Case of Chhattisgarh and on 27 June 2018, they approved a strategic investment into Kaama Breweries Private Limited. Then, on 20 September 2018, Mr Jagetia's 3-Years Capacity Plan was approved. These projects were presented by Mr Gaurav Mahajan and Mr Anurag Dutta, staff working under Mr Jagetia.[102]

97 CSAPL's position is that its decision to accord 50% as multiplicand was not irrational, capricious and/or arbitrary, or otherwise made as a result of the alleged Collateral Purposes.[103] CSAPL's board's discretion is "curtailed by the express language of the 2018 STI Plan" based on the meeting of the various objectives.[104] In that regard, the CSAPL component does not provide for any contingencies where the personal objectives were unmet as a result of factors beyond Mr Jagetia's control.

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99 Transcript dated 14 September at p 26, line 25.

100 DWS at paras 70–73.

101 DWS at paras 74–76; AB Vol 5 at p 2264.

102 4AB at pp 1500, 1502, 1544–1545; PKJA at para 124(f)(1).

103 PWS at paras 101–106.

104 PWS at para 107.

Findings

Whether CSAPL retained any discretion to depart from the STI payout awarded to the GBPL MD

98 It is common ground between parties that Mr Jagetia's STI payout is meant to "mirror" that of the GBPL MD. It is thus likewise common ground between parties that CSAPL did not have the discretion to compute the GBPL component in any manner which it wanted to. Indeed, even on Mr Fewkes' evidence, the GBPL component is "mechanically" calculated. As such, any discretion was necessarily fettered by the STI awarded to the GBPL MD.

99 The fundamental dispute is in respect of what such "mirroring" entailed in the circumstances (*ie*, the interpretation of the term "mirroring"). Stated thus, it is clear that CSAPL did not have the discretion to award the GBPL component in a manner which failed to "mirror" that of the GBPL MD. While Mr Jagetia's position is that such "mirroring" means that he was to be awarded a GBPL component based directly on the GBPL MD's STI payout, CSAPL's position is that such "mirroring" is satisfied precisely because the GBPL MD would have likewise been awarded an STI payout calculated with a 0% multiplicand if he was on the same "local" STI plan as Mr Jagetia (and not the CBAS STI plan). To explain, the "local" STI plan is meant to take into account only the performance of GBPL, whereas the CBAS STI plan would have taken into account the performance of the Carlsberg Group. CSAPL also explained that the GBPL MD was meant to transition to the "local" STI plan.

100 I am unable to agree with CSAPL's position that the GBPL component for Mr Jagetia's STI could be said to have "mirrored" that of the GBPL MD on the basis that two different regimes applied to each person. The objective and contemporaneous evidence before me concerning Mr Jagetia's STI before and

up to the time of contracting clearly demonstrates that parties intended for the GBPL component to be directly pegged to that of the GBPL MD. In particular, Mr Fewkes had himself represented to Mr Jagetia that he *in effect* "would get 50% of the India STI payout, *25% of Nepal MD's STI payout* and 25% based on CSAPL deliverables [emphasis added]" as his 2018 STI (see the 17 April 2018 E-mail at [86] above).

101 Crucially, there was no explanation (or even any mention) of the differences between the GBPL MD's "CBAS" STI plan and Mr Jagetia's "local" STI plan at the material time. Needless to say, there was likewise no explanation to Mr Jagetia before and up to the point of contracting that such difference in plan would mean that Mr Jagetia could have in effect received a 0% multiplicand regardless of the actual STI payout which the GBPL MD received. I am unable to see how applying altogether different STI plans (which leads to the different multiplicands applicable) could in any way be coherent with Mr Fewkes' representation that Mr Jagetia will receive "25% of Nepal MD's STI payout".

102 In the totality of the circumstances, I find that CSAPL did not have the discretion to award a 0% multiplicand to Mr Jagetia. In doing so, CSAPL failed to "mirror" the STI awarded to the GBPL MD. That said, I briefly clarify that this does not mean that the decision on the GBPL component was necessarily motivated by the desire to "punish" Mr Jagetia in relation to the Collateral Purposes – nor need I say more on the alleged Collateral Purposes in order to determine the issue. For the foregoing reasons, I find that Mr Jagetia is entitled to the GBPL STI component based on a multiplicand of 89.18%.

Whether Mr Jagetia is entitled to a multiplicand of 100% for the CSAPL component

103 It is undisputed that the applicable multiplicand depends directly on the achievement of the three objectives mentioned earlier in the table at [88] above. For Mr Jagetia to be entitled to a 100% multiplicand, he must show that he met all three of the objectives. On the flipside, the failure to achieve even one of the objectives would lead to the conclusion that the CSAPL board is entitled to award him the CSAPL component based on a multiplicand of 50%. In that regard, it is undisputed that the CSAPL board retains the discretion to determine whether a particular objective has been met.

104 I find that the CSAPL board exercised its discretion reasonably in considering that not all of the objectives had been met. As for the third objective, I am not persuaded by Mr Jagetia's arguments that obtaining board approval for three proposals presented by two of his subordinates must necessarily amount to the successful meeting of the third objective – such that the decision to the contrary must have been tainted by bias as a result of the Collateral Purposes on the balance of probabilities. In that regard, Mr Jagetia's fails to demonstrate that the CSAPL board's decision is "a biased one-sided report in an attempt to justify a low STI payout".[105] Quite to the contrary, I find that a reasonable and fair-minded employer might assess such examples as insufficient to amount to the successful "implementation of at least 2 meaningful business development projects in India and/or Nepal".

105 It must be emphasised that the court will not readily intervene with the exercise of discretion (see *Dong Wei* at [90], as mentioned at [85] above). In this regard, I find that the decision in *Clark v Nomura International plc* [2000]

105 DWS at paras 80–116.

IRLR 766 at [40], wherein it was held that the employer was in breach of its contractual obligations in respect of a discretionary performance-based bonus and endorsed by the High Court in *Daniel John Brader and others v Commerzbank AG* [2014] 2 SLR 81 at [102], to be helpful:

> *My conclusion is that the right test is one of irrationality or perversity (of which caprice or capriciousness would be a good example) ie that no reasonable employer would have exercised his discretion in this way.* … Such test of perversity or irrationality is not only one which is simple, or at any rate simpler, to understand and apply, but it is a familiar one, being that regularly applied in the Crown Office or, as it is soon to be, the Administrative Court. In reaching its conclusion, what the court does is thus not to substitute its own view, but to ask the question whether any reasonable employer could have come to such a conclusion.
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> [emphasis in original]

Applying the foregoing principles to the present case, I find that Mr Jagetia fails to satisfy the threshold to successfully find that discretion had been irrationally exercised. The same may be said of the other two objectives, to which I now turn.

106 In respect of the first and second objectives, it is undisputed that the objectives were not met. The only dispute between the parties is whether the failure to meet such objectives should be overlooked. In my judgment, that inquiry must be answered in the negative. I am not convinced that the CSAPL board is required, under the CSAPL SVP Contract, to determine that an objective is met in the event that the failure to meet such objective was due to some other external factor beyond Mr Jagetia's control as Mr Jagetia contends. Even if the objectives are described as "personal", it is wholly unsurprising that someone working within the top managerial positions of a company is expected to work with other employees to drive tasks forward and complete them. As such, I find difficulty accepting Mr Jagetia's assertion that the CSAPL

component must be decided by such a granular inquiry of scrutinising the precise reasons for failure before determining, on the whole, whether the personal objectives were met.

107 As such, I reject Mr Jagetia's contention that he is entitled to a multiplicand of 100% for this portion of his STI.

Quantum

108 From the foregoing, I allow Mr Jagetia's counterclaim for the CSAPL 2018 STI in part. Mr Jagetia is entitled to the sum of S$171,863.80, calculated as follows using the method at [89] above:

	Figures	**Formula**
CIPL	• Weightage: ⅓ • Multiplicand: 70% × 400 = 280%	• ⅓ × 280%
GBPL	• Weightage: ⅓ • Multiplicand: 0%	• ⅓ × **89.18%**
CSAPL	• Weightage: ⅓ • Multiplicand: 50%	• ⅓ × 50%
Base Rate	• Pro-Ration (1 Apr – 31 Dec 2018): ¾ • Base: 40% of Gross Annual Base Salary	• ¾ × 40% × S$410,000
Total	[(⅓ × 280%) + (⅓ × **89.18%**) + (⅓ × 50%)] × [¾ × 40% × S$410,000] = [93.333% + 29.727% + 16.667%] × [¾ × S164,000] = [139.727%] × [S$123,000] = S$171,864.21	

Whether Mr Jagetia is entitled to claim the CIPL STI from CSAPL

The parties' positions

109 I turn to the claim for the CIPL STI. For context, at a board meeting on 6 May 2019, Mr Stollberg stated that "any claim for CIPL employment's bonus January to March 2018", should be resolved with CIPL as the CSAPL board was concerned only with "the CSAPL part of [Mr Jagetia's] employment". Mr Steenberg further clarified that "CSAPL cannot pay a bonus for a contract not related to CSAPL". Mr Yeo responded that under the CSAPL SVP Contract, Mr Jagetia's "role with CSAPL was a continuation of [his] contract with CIPL and will be counted from 26 September 2014" (see cl 1.3 at [9] above). Nevertheless, the CBAS nominated directors all voted in favour of Mr Stollberg's proposal that there be no CIPL STI payable by CSAPL.[106]

110 As mentioned at [40] above, Mr Jagetia's case is that he is contractually entitled to claim his CIPL STI from CSAPL pursuant to cll 7.1, 1.2 and 1.3. Clauses 1.2 and 1.3 provide that the CSAPL SVP Contract "supersedes" the CIPL DMD Contract and that his length of employment will nevertheless "count from 26 September 2014" (*ie*, date of the CIPL DMD Contract). The purpose of these clauses (*ie*, such backdating), according to Mr Jagetia, is to entitle him to a claim to his CIPL STI from CSAPL for the period from 1 January to 31 March 2018 under cl 7.1.[107]

111 Further, Mr Jagetia relies on the 17 April 2018 E-mail (see [86] above). To reiterate, in relation to the CIPL STI, Mr Fewkes wrote "Jan-Mar : 25% pro-rata on final India stretch STI payout (LL to confirm if this should be budgeted

106 4AB at pp 1728–1729.

107 DWS at paras 118–120.

by CIPL or CSAPL)". Mr Jagetia contends that the question as to which company would "budget the CIPL STI is [CSAPL's] internal matter".[108] As such, Mr Jagetia takes the view that CSAPL should pay him S$114,800 for the CIPL STI.[109] For this purpose, Mr Jagetia relies on the undisputed formula applicable set out above for CIPL (*ie*, multiplicand of 280% × target of Gross Annual Base Salary being 40% × S$410,000) but with a ¼ pro-ration for the period from 1 January 2021 to 31 March 2018.

112 CSAPL submits that it is not liable to pay the CIPL STI. Such incentive is for "work as an employee of CIPL" and not for CSAPL.[110] Furthermore, in the 17 April 2018 E-mail, Mr Fewkes noted that Mr Low was "to confirm if this should be budgeted by CIPL or CSAPL".[111] As such, the e-mail is not evidence of an agreement by CSAPL to pay the CIPL STI. However, CSAPL agrees that there is "no evidence that parties intended to forfeit [Mr Jagetia's] CIPL STI in the negotiations for the SVP role".[112] In that regard, CSAPL argues that Mr Fewkes merely agreed that Mr Jagetia's move to CSAPL will not result in him losing out on his CIPL STI. However, whether the CIPL STI is to be paid by CIPL or CSAPL had yet to be confirmed.[113]

Findings

113 From the foregoing, it is undisputed that Mr Jagetia remains entitled to his CIPL STI for January to March 2018. The only difficulty is whether CSAPL

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108 DWS at para 122.

109 PKJA at para 14(v).

110 PWS at paras 154, 157–158.

111 PWS at para 159.

112 PRS at para 55.

113 PRS at para 56.

is liable to make such payment, based on the CSAPL SVP Contract. In my judgment, that question must be answered in the positive.

114 To begin, I set out the relevant principles of contractual interpretation. The purpose of interpretation is to give effect to the objectively ascertained expressed intentions (and not the subjective intentions) of the contracting parties as they emerge from the contextual meaning of the relevant contractual language. To do so, in general, both the text and context must be considered. It is, however, the text of their agreement which is of first importance (*Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30]). Further, extrinsic evidence is only admissible if it satisfies the three requirements of being relevant, reasonably available to all contracting parties, and if it relates to a clear and obvious context (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [132(d)]).

115 Turning to cll 1.2, 1.3 and 7.1, I am persuaded that read together, they impose a liability on CSAPL to pay the CIPL STI. I start by considering the text of the clauses. Clause 1.2 specifically provides that the CSAPL SVP Contract "*supersedes*" the CIPL DMD Contract, and that "[i]n the event of any inconsistency", the former will prevail. By a plain reading, this means that the CSAPL SVP Contract *replaces* the CIPL DMD Contract. However, CSAPL and CIPL are separate legal entities; CSAPL is a third-party to the CIPL DMD Contract with no rights, liabilities and obligations under the CIPL DMD Contract. Therefore, *prima facie*, there was no reason to include cl 1.2 at all. Nonetheless, parties deliberately chose to include cl 1.2. This raises the question of what aspects of the CIPL DMD Contract are to be replaced by the CSAPL SVP Contract.

116 Moving to cl 1.3, it backdates the CSAPL SVP Contract, providing for Mr Jagetia's length of employment to count from 26 September 2014, *ie,* the date of the CIPL DMD Contract. As explained by Mr Yeo at [109] above, I find that this captures the parties' agreement that the CSAPL SVP Contract is to be a continuation of employment from the CIPL DMD Contract (even though the CIPL DMD Contract is itself superseded by the CSAPL SVP Contract). In that regard, Mr Stollberg's evidence (which is consistent with Mr Low's evidence) is that the intention behind both cll 1.2 and 1.3 is that they were together a "seniority clause". I find it difficult to accept CSAPL's position since, even if there was a need to include a "seniority clause", cl 1.2 is not strictly necessary. On the flip side, a "seniority clause" begs the question of the entitlements which Mr Jagetia would enjoy due to his seniority. For instance, this could potentially include the non-forfeiture of the CIPL STI, especially given that parties agree that their intention was for Mr Jagetia to retain the CIPL STI despite taking up the position of SVP CSAPL on 1 April 2018. Furthermore, and more fundamentally, CSAPL's witnesses fail to satisfactorily explain the purpose for recognising Mr Jagetia's seniority within the CSAPL SVP Contract. It seems to me that read together, the CSAPL SVP Contract provides for any outstanding obligation of CIPL (which is not inconsistent with its terms) to be undertaken by CSAPL.

117 Rounding off, cl 7.1 provides for Mr Jagetia's entitlement to STI, and leaves the question of "STI mechanics and calculations" to the board, with oversight by Mr Fewkes. Read together with cll 1.2 and 1.3, the "STI" referred to in cl 7.1 (which is not confined to any time period) could and should include the entire period of Mr Jagetia's employment under the CSAPL SVP Contract (which is backdated to 26 September 2014). Therefore, payment of any outstanding STI is not excluded from the CSAPL SVP Contract. Indeed, I would say that the CIPL STI for Mr Jagetia's work from January to March 2018 is

contemplated within the CSAPL SVP Contract (with the quantum to be determined by the parties).

118 The conclusion I reach is fortified by the context. Parties do not dispute that the 17 April 2018 E-mail satisfies the *Zurich Insurance* requirements. Indeed, both parties rely on it. In it, Mr Fewkes set out the "2018 STI proposal", which was meant for discussion before Mr Low was to "write it up". Mr Fewkes stated "Jan-Mar : 25% pro-rata on final India stretch STI payout ([Mr Low] to confirm if this should be budgeted by CIPL or CSAPL)". He added that "in practical terms, … for 2018 … [Mr Jagetia] would get 50% of the India STI payout, 25% of Nepal MD's STI payout and 25% based on CSAPL deliverables" (see [86] above). In my view, Mr Fewkes had expressly represented to Mr Jagetia that the CIPL STI payable for January to March 2018 would be incorporated into the CSAPL SVP Contract.

119 Although Mr Fewkes also said that Mr Low was to confirm if the CIPL STI should be budgeted by CIPL or CSAPL, I agree with Mr Jagetia that this is but a budgeting matter between two companies in the same group (to be resolved between CSAPL and CIPL). It is for CSAPL (and not Mr Jagetia) to work out a suitable arrangement to finance the CIPL STI. Although it appears that Mr Fewkes did not follow up with Mr Low, CSAPL cannot rely on any difficulty on its part to fulfil its contractual obligations to defeat Mr Jagetia's claim for the CIPL STI.

120 To round off, I note that cl 4.3 of the CIPL DMD Contract provides that Mr Jagetia "will not be eligible to receive Performance Pay if [he is] no longer employed by [CIPL]". Mr Low states that under cl 4.3 "after [Mr Jagetia] leaves

CIPL employment he cannot claim CIPL STI".[114] Further, the CSAPL SVP Contract also expressly provides that the CIPL DMD Contract is superseded. Yet, I also note CSAPL's view that there is no intention for Mr Jagetia to forfeit his CIPL STI altogether. Such context supports the finding that by the terms of the CSAPL SVP Contract, CSAPL had undertaken CIPL's liability for the CIPL STI. I should add that even if there is any ambiguity within the CSAPL SVP Contract, by the *contra proferentum* rule, any ambiguity must be resolved against CSAPL who drafted the CSAPL SVP Contract and additionally represented to Mr Jagetia that he is entitled to the CIPL STI.

121 In terms of quantum, CSAPL belatedly argue that Mr Jagetia erred in his calculation for the CIPL STI. CSAPL submitted that the 2018 STI Plan "only applies to him as an employee of [CSAPL] from 1 April 2018" and thus he has "no right to demand that a 280% multiplicand be applied to him for his CIPL STI, which is for the period from January to March 2018".[115] I am unable to agree with such contention since the objective evidence before me leads to the conclusion that Mr Jagetia's CIPL STI will simply be pro-rated, *ie,* "25% pro-rata on final India stretch STI payout" as per the 17 April 2018 E-mail.

122 Furthermore, such argument is contradicted by CSAPL's own internal correspondence on the issue.[116] On 1 May 2019, the CBAS nominated directors calculated Mr Jagetia's STI from January to December 2018 based on a one-third weightage for each of the CIPL multiplicand, GBPL multiplicand and the CSAPL multiplicand respectively. On 2 May 2019, Mr Yeo reminded Mr Stollberg of the formula mentioned by Mr Fewkes in the 17 April 2018 E-mail

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114 Transcript dated 14 September 2021 at p 161, line 4.

115 PRS at para 57.

116 YSKA Exhibit YSK-12 at pp 105–109.

and thus suggested that a multiplicand of 280% be used. Mr Stollberg's reply on 3 May 2019 was that the CSAPL board can only approve the STI "related to the CSAPL contract with the SVP".[117] As such, the rationale behind the board's decision not to award the CIPL STI on 6 May 2019 (see [27] above) as shown by the contemporaneous objective evidence is that CSAPL did not consider it liable to pay the CIPL STI at all (and nothing was said about the basis of the calculation). Accordingly, I allow Mr Jagetia's counterclaim for the CIPL STI for the sum of S$114,800.

Whether Mr Jagetia is entitled to an annual increment

The applicable legal principles

123 Given the dearth of local authorities on claims in employment law for increments, I turn to consider the English authorities which Mr Jagetia relies on and CSAPL does not refute.

124 In *Clark v BET plc and another* [1997] IRLR 348 (at 349), the employment contract provided that the employee's salary "shall be reviewed annually and be increased by such amount if any as the board shall in its absolute discretion decide". Such a clause was held to mean that there is "an obligation to review the salary every year". Furthermore, despite the purported "absolute discretion", "if the board had capriciously or in bad faith exercised its discretion so as to determine the increase at nil and therefore to pay [the employee] no increase at all, that would have been a breach of contract". As such, the court went on to hold that the question to be answered on the facts is "what position [the employee] would have been in had [the employer] performed this obligation".

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117 1AB at pp 379–383.

125 In undertaking such inquiry, the increment offered to other employees in a similar position (if any) is a relevant consideration. In that regard, it was held in *Transco plc v O'Brien* [2002] ICR 721 ("*Transco*") that to "single out an employee on capricious grounds and refuse to offer him the same terms as were offered to the rest of the workforce is … a breach of the implied term of trust and confidence". This is because a "capricious refusal … to offer the same terms to a single employee" is likely to cause serious damage to the relationship of trust between an employer and employee (at [17]). I caveat, however, that *Transco* concerned a large workforce consisting of 75 workers whereas the present case concerns mainly two other persons – the CIPL MD and GBPL MD.

126 What is clear from the foregoing cases is that an employee has no automatic right to an increment. Rather, the rights and obligations of parties concerning increments ultimately depend on the employment contract in question. As such, whether an employee is *contractually entitled* to an increment depends on a proper interpretation the clauses in the employment contract between the parties, bearing in mind the *Zurich Insurance* principles. Where an employment contract provides for a discretionary increment, such discretion must be exercised in *bona fide,* rationally, and not arbitrarily or capriciously. These principles are consistent with the English cases above and draw upon the principles relating to bonuses (as mentioned at [85]).

127 I should add that by *Transco,* the proposition relating to the fetters on discretion in relation to awarding increments appears to hinge on the implied term of mutual trust and confidence in the employment context. I am mindful that the Appellate Division of the High Court in *Dong Wei* (at [70]–[93]), when discussing the issue of limits to the contractual right to terminate without cause, casted some doubt on the existence of an implied term of mutual trust and confidence in the employment context (albeit only as *obiter dictum*). However,

at [91], the Appellate Division of the High Court also acknowledged that in relation to "contractual discretions" which relate to rights subsisting within the contracts (*eg,* discretionary bonuses in *Leiman*), there may be "restrictions … to ensure that a party's contractual discretion [is] not exercised in a manner which deprived its counterparty of its contractual rights, or which warped their contractual bargain". Thus, I proceed on the position set out at [126] above.

The parties' positions

128 It is common ground that cl 6.2 of the CSAPL SVP Contract provides that the Gross Annual Base Salary and the STI are to be "reviewed once a year" for which the first review shall be held in April 2019 (see [14] above).[118] Mr Stollberg admitted that "we did not review his salary" and Mr Steenberg likewise testified that he did not "remember that [he] participated in a salary review".[119] It is thus undisputed that CSAPL breached cl 6.2 and the only issue left for determination is the damages suffered by Mr Jagetia, if any.

129 Mr Jagetia submits that if there had been a review, such review would have included the Annual Gross Base Salary, STI and Annual Benefits Package benchmarked against the CIPL and GBPL MDs' increments. His main reason is that his compensation package is to be taken as a whole, and that Mr Yeo's role in CSAPL's Remuneration Committee was to ensure that the remuneration of the CSAPLH nominated executives was on par with that of the CBAS nominated executives.[120]

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118 DWS at para 155.

119 Transcript dated 15 September 2021 at p 12, line 4; Transcript dated 16 September 2021 at p 96, line 7.

120 DWS at paras 158–164. Transcript dated 17 September 2021 at p 73, line 15.

130 From 2018 to 2019, the CIPL MD received a salary increment of 3% while the GBPL MD was recommended to receive a salary increment of 5%. As such, Mr Jagetia is of the view that he "should have received a salary increment of 4%" on his Gross Annual Base Salary and Annual Benefits Package.[121]

131 CSAPL's position is that while there is the obligation to review Mr Jagetia's Gross Annual Base Salary and the STI, there is no corresponding obligation to increase either component. Furthermore, there is "no standard increment across the Board of either CIPL or GBPL" and Mr Jagetia's pleading that CSAPL is "bound to provide an annual increment for 2019 of 5%" is misconceived.[122]

Findings

132 In respect of the scope of CSAPL's obligation under cl 6.2, I find that CSAPL is not obligated to review Mr Jagetia's Annual Benefits Package. The express wording of cl 6.2 clearly defines that the review and any revision is in respect of the "Gross Base Salary" and "STI" only. In that regard, even if (as I found) Mr Jagetia's compensation package is to be considered as a whole (*ie*, Gross Annual Base Salary, STI and Annual Benefits Package), this does not *ipso facto* mean that the obligation to review the compensation under cl 6.2 extends to reviewing the Annual Benefits Package as well.

133 In respect of the Gross Annual Base Salary, I find that Mr Jagetia has not proved on a balance of probabilities that a 4% increment would restore him

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121 DWS at paras 165–169; PJKA Exhibit PJK-151 at p 1536 and Exhibit PJK-150 at p 1531.

122 PWS at paras 181–186.

to the position he would be in had CSAPL reviewed his Gross Annual Base Salary. Unlike *Transco*, which involved some 75 employees, the present case involves the potential increment of only a handful of employees at some of the highest levels of management. Thus, quite apart from the case in *Transco*, I am not satisfied that Mr Jagetia was capriciously singled out by CSAPL such that only he was not entitled to an increment. Upon a review of Mr Jagetia's Gross Annual Base Salary, CSAPL could have reasonably awarded him an increment of less than 4% or none at all, without capriciously singling him out.

134 On the contrary, even on Mr Jagetia's own evidence, it is evident that other employees in CIPL holding senior management positions such as the Vice President of Corporate Affairs, Director of Business Development and Director of Legal were not offered any increment.[123] The evidence thus does not go so far as to demonstrate that Mr Jagetia must be awarded an increment, failing which it may be said that he was singled out capriciously. In any case, it is unclear why any increment to which Mr Jagetia is entitled must be the average of the increments offered to the CIPL and GBPL MDs without more. Indeed, Mr Jagetia's own inconsistent case on the increment he would have been offered following a review (about 5% in his pleaded case and 4% in his closing submissions) suggests the uncertainty of the damage he suffered as a result of the breach of cl 6.2.

135 Accordingly, I dismiss Mr Jagetia's pleaded claim for a 5% increment and reject his argument for a 4% increment of the Annual Benefits Package and the Gross Annual Salary.

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123 PJKA Exhibit PJK-151 at p 1536.

Whether Mr Jagetia is entitled to salary in lieu of notice

The parties' positions

136 CSAPL's position is that it was entitled to terminate Mr Jagetia's employment under cl 11.5 of the CSAPL SVP Contract.[124] CSAPL argues that given the phrasing of cl 11.5 (*ie*, "[i]n case of breach of this contract"), "**any breach** of the [CSAPL SVP Contract]" [emphasis in original] is "sufficient to entitle [CSAPL] to exercise its right of termination".

137 According to CSAPL, Mr Jagetia's "various breaches" which entitled it to terminate the CSAPL SVP Contract are as follows: (a) breach of the Relocation Obligation; (b) breach of cl 2.2 of the CSAPL SVP Contract by refusing to report to CSAPL's board on all matters concerning the Rabobank Loan Facility, including lying about the same as Mr Stollberg alleges; (c) breach of cl 2.2 of the CSAPL SVP Contract by blatantly disregarding the board's instructions; and (d) breach of cl 5.1 by spending more than some of his working time to further the interest of CSAPLH, based on his work calendar.[125]

138 Mr Jagetia's position is that CSAPL is not entitled to rely on cl 11.5 to dismiss him. Clause 11.5 must be interpreted to apply to repudiatory breach only.[126] In any event, Mr Jagetia denies the alleged breaches. As such, in lieu of three months' notice, he is entitled to three months' salary under cl 11.4.[127]

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124 PWS at para 171.

125 PWS at paras 172–180, 78–95, 25–35, and 32–34; TLSA Exhibit TLS-120 at pp 1723–1789.

126 PWS at paras 171–172.

127 DWS at para 124.

Findings

139 The crux of the issue is thus whether CSAPL is entitled to rely on cl 11.5 to terminate Mr Jagetia for breach of the CSAPL SVP Contract. The factual circumstances surrounding Mr Jagetia's termination have been set out earlier and will not be repeated here. However, it is worth mentioning at the outset that Mr Jagetia's position that he was being punished for the Collateral Purposes is not determinative of the issue.

140 I am wholly unconvinced by CSAPL's submission that cl 11.5 of the CSAPL SVP Contract entitles it to terminate the same on any breach. While the phrase "including gross non-fulfilment of duties" may suggest that it is "**not limited to** gross non-fulfilment of duties" [emphasis in original] as CSAPL contends, such a phrase clearly does not go so far as to suggest that any breach would entitle CSAPL to terminate the CSAPL SVP Contract under cl 11.5.

141 On the contrary, it is trite that not every breach of contract entitles the innocent party to terminate the contract. Even where a term in the contract expressly provides that "any breach" would entitle a party to terminate the contract at hand, such a phrase has been interpreted to mean "any repudiatory breach" where the contract concerns a "myriad of obligations of differing importance and varying frequency" (*Rice v Great Yarmouth Borough Council* [2000] All ER (D) 902 at [18] and [24]; *Dominion Corporate Trustees Ltd and others v Debenhams Properties Ltd* [2010] EWHC 1193 at [25] and [32]). This is because to read "any breach" literally flies in the face of commercial and business common sense.

142 In *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*"), the Court of Appeal set out four situations which would amount to a repudiatory breach:

(a) Situation 1: where the contract clearly and unambiguously states that in the event of a certain event or events occurring, the innocent party will be entitled to terminate the contract (at [91]);

(b) Situation 2: where a party, by his words or conduct, simply renounces his contract inasmuch as he clearly conveys to the other party to the contract that he will not perform his contractual obligations at all (at [93]);

(c) Situation 3(a): the condition/warranty approach where the focus is on the nature of the term breached and, in particular, whether the intention of the parties to the contract was to designate that term as one that is so important that any breach, regardless of the actual consequences of such a breach, would entitle the innocent party to terminate the contract (at [97]); and

(d) Situation 3(b): where the focus is on the nature and consequences of the breach, in particular, where the breach in question will give rise to an event which will deprive the innocent party of substantially the whole benefit which it was intended that he should obtain from the contract (at [99]).

143 Turning to the four alleged breaches now relied on by CSAPL, I agree with Mr Jagetia's position that only the justification put forth by CSAPL at the material time would be relevant to the inquiry of whether CSAPL was entitled to so terminate him under cl 11.5. Lying and subordination were not among the reasons that the CSAPL board had actually put forth at the board meeting on 26 June 2019 (see [30] above). It would be incorrect to consider these belated grounds that surfaced after the CSAPL board had already come to its decision,

because they could not possibly have been part of the actual reasons for which CSAPL terminated Mr Jagetia's employment.

144 I turn to the four grounds which were raised in the board meeting on 26 June 2019, upon which the CSAPL board resolved to terminate Mr Jagetia's employment as SVP (see [30] above). In this regard, I have already found that there is no Relocation Obligation under the CSAPL SVP Contract and that the purpose of the Annual Benefits Package is not remuneration for the fulfilment of any Relocation Obligation. This deals with two of the grounds. I turn now to deal with the two remaining grounds (which are also allegations CSAPL now relies on). First, that Mr Jagetia breached cl 2.2 by refusing to answer the CSAPL board. Second, that Mr Jagetia failed to devote most of his working capacity to CSAPL in breach of cl 5.1.

145 In my judgment, the incidents which the CSAPL board relies on (*ie*, the discussion over the Rabobank Loan Facility at the board meeting on 7 February 2019 and, allegedly, correspondence over e-mail) do not amount to repudiatory breach within Situations 1–3(b) of *RDC Concrete*. In that regard, cl 2.2 provides that Mr Jagetia "will report to the **Board of CSAPL** with daily oversight **by Executive Vice President, Asia**" [emphasis in original] (see [10] above). On the evidence before me, it is not the case that Mr Jagetia failed to report to the CSAPL board. Indeed, the minutes of the board meeting on 7 February 2019 state: [128]

> … Mr Troels Libak Stollberg asked Mr Pawan Jagetia if the latest 2018 CSAPL financial statement including of its subsidiaries have been provided to the banks. Mr Pawan Jagetia said that he would not answer any more questions from the board members, before he had legal advice if he had to answer questions from the Board of every detail on his daily work. Mr Troels Libak Stollberg pointed out that he was not

[128] 4AB at p 1636.

> asking for details on the daily work but very specific on which banks Mr Pawan Jagetia has been in contact with regarding the refinancing which material has been shared with these banks. Mr Pawan Jagetia replied that he has already shared with the Board, why RABOBANK was the most attractive bank to consider.
>
> Mr Troels Libak Stollberg asked Mr Pawan Jagetia what the urgency is to push for the loan refinancing. Mr Pawan Jagetia commented that we are incurring 100,000 USD extra interest per week under the CBAS loan facility as compared to the more attractive rate from RABOBANK. …
>
> Mr Peter Steenberg could not give Mr Pawan Jagetia mandate to continue negotiation with RABOBANK before certain material was presented, discussed and agreed to in the Board. This included the comparison between the current facility and the one currently being proposed by RABOBANK in their draft term sheet … Mr Pawan Jagetia agreed to prepare this material with the help from the external counsel …
>
> In conclusion … it was agreed that Mr Pawan Jagetia together with the legal counsel should work on the internal lines preparing the legal and financial material for the Board for the next meeting…

146 From the foregoing, it is plain that Mr Jagetia did not fail to report to the board but rather insisted that he had "already shared with" the board about the Rabobank Loan Facility. Also, Mr Jagetia continued to work with the CSAPL board in respect of the Financing Efforts. After the meeting, Mr Jagetia followed up with external counsel and reported back to the board on the same.[129] In that regard, Mr Jagetia's response in the midst of the heated exchange, cannot be objectively construed to be a failure to report to the CSAPL board in the totality of the circumstances. As such, Mr Jagetia's conduct does not fall within Situation 2, Situation 3(a) or Situation 3(b) in the *RDC Concrete* framework. For completeness, Situation (1) plainly does not apply in the present case since the CSAPL SVP Contract does not clearly and unambiguously stipulate that the

[129] PKJA at paras 53–54.

innocent party will be entitled to terminate the contract upon a certain event occurring.

147 As regards the alleged breach of cl 5.1, the CSAPL board was of the view that he was "devoting most of his time to further the interests of CSAPLH" such as his involvement in a "potential investment" project as well as "being named as the representative of CSAPLH as the claimant in the ongoing SIAC arbitration commenced by CSAPLH against [CBAS]".[130] In my judgment, such an assessment is not borne out by the objective contemporary evidence before me. The CBAS nominated directors were aware of Mr Jagetia's role in the potential investment project as early as September 2018, but did not raise an issue with the amount of time Mr Jagetia was spending on such project at that material time.[131] Furthermore, by the time Mr Jagetia received feedback from the board on his SVP performance on 6 May 2019, the board would have been well aware of both the arbitration proceedings. Nevertheless, the feedback did not mention that the board considered Mr Jagetia's conduct to be in breach of cl 5.1.

148 Accordingly, CSAPL is not entitled to rely on cl 11.5 to terminate Mr Jagetia without notice. In this regard, Mr Stollberg agreed that if there were no grounds to terminate Mr Jagetia under cl 11.5, he should have been served with three months' notice under cl 11.4.[132] In lieu of such notice, Mr Jagetia is entitled to three months' salary.

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130 4AB at p 1777.

131 PKJA Exhibit PKJ-145 at p 1450.

132 Transcript dated 13 September 2021 at p 151, line 8.

Conclusion

149 By the above, I dismiss CSAPL's claim against Mr Jagetia in its entirety.

150 I allow Mr Jagetia's counterclaim in part, as follows:

(a) S$5,000 in respect of the Repatriation Allowance;

(b) S$171,864.21 in respect of the 2018 CSAPL STI;

(c) S$114,800 for the CIPL STI; and

(d) S$102,500 in lieu of three months' notice.

I dismiss Mr Jagetia's counterclaim for the remainder of the Annual Benefits Package and the annual increments.

151 On the sums awarded, I also award interest at the rate of 5.33% per annum from the date of counterclaim to date of judgment. Parties shall submit their costs submissions within two weeks.

Hoo Sheau Peng
Judge of the High Court

Poon Guokun Nicholas and Tan Zhi Min Ashton (Breakpoint LLC) for the plaintiff;
Chenthil Kumar Kumarasingam and Lim Chong Hian (Withers KhattarWong LLP) for the defendant.