IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 94

Civil Appeal No 106 of 2019

Between

(1) Bunge SA
(2) Grains and Industrial Products Trading Pte Ltd

… *Appellants*

And

Shrikant Bhasi

… *Respondent*

Civil Appeal No 107 of 2019

Between

(1) Grains and Industrial Products Trading Pte Ltd
(2) Bunge SA

… *Appellants*

And

Advantage Overseas Private Limited

… *Respondent*

Civil Appeal No 155 of 2019

Between

State Bank of India

… *Appellant*

And

Grains and Industrial Products Trading Pte Ltd

… *Respondent*

Civil Appeal No 157 of 2019

Between

(1) Advantage Overseas Private Limited
(2) Shrikant Bhasi

… *Appellants*

And

(1) Grains and Industrial Products Trading Pte Ltd
(2) Bunge SA

… *Respondents*

In the matter of Suit No 438 of 2018

Between

(1) Grains and Industrial Products Trading Pte Ltd
(2) Bunge SA

… *Plaintiffs*

And

(1) State Bank of India
(2) Advantage Overseas Private Limited
(3) Shrikant Bhasi

… *Defendants*

JUDGMENT

[Conflict of Laws] — [Natural forum]

TABLE OF CONTENTS

Bunge SA and another
v
Shrikant Bhasi and other appeals

[2020] SGCA 94

Court of Appeal — Civil Appeal Nos 106, 107, 155 and 157 of 2019
Steven Chong JA and Belinda Ang Saw Ean J

19 August 2020

30 September 2020 Judgment reserved.

Belinda Ang Saw Ean J (delivering the judgment of the court):

1 These four appeals – CA/CA 106/2019 ("CA 106"), CA/CA 107/2019 ("CA 107"), CA/CA 155/2019 ("CA 155"), and CA/CA 157/2019 ("CA 157") – arise out of the decision of the High Court judge in [2019] SGHC 292 ("the HC Judgment" or "the Judge", as the case may be) regarding the jurisdictional challenges mounted by the defendants in Suit No 438 of 2018 ("Suit 438"). We reserved judgment after hearing the parties and now deliver our decision allowing CA 106 and 107, and dismissing CA 155 and CA 157. The result is that all the claims in Suit 438 are ordered to be heard in Singapore.

Relevant background

2 The plaintiffs in Suit 438 were Grains and Industrial Products Trading Pte Ltd ("GRIPT") and Bunge SA ("BSA"). GRIPT and BSA are from the same company group (the "Bunge Group") and we will refer to them collectively as

the "Bunge Entities". The defendants were Advantage Overseas Private Limited ("AOPL"); AOPL's bank, the State Bank of India ("SBI"); and AOPL's one-time director and shareholder, Mr Shrikant Bhasi ("Mr Bhasi").

3 The claims in Suit 438 arose out of a merchanting trade structure between the Bunge Group and AOPL ("BMT structure"), under which goods would flow from GRIPT to BSA and funds from BSA to GRIPT, in both cases via intermediaries (including AOPL as the Indian merchanting trader). The purpose and precise mechanics of the BMT structure are disputed, and we set these out only as far as they constitute the necessary background to these appeals.

4 The BMT structure involved three back-to-back contracts per transaction, with each transaction being termed a "string sale". The "import leg" involved a contract between GRIPT as seller and AOPL as intermediary buyer ("GRIPT-AOPL contract"); the "intermediate leg" involved a contract between AOPL as seller and an offshore entity (being either Arabian Commodities FZE ("ACF") or Tracon General Trading LLC ("Tracon")) as buyer; and the "export leg" involved a contract between ACF or Tracon as seller and BSA as buyer. Not all legs of each string sale contract had the same governing law and exclusive jurisdiction ("EJ") clauses, a point we will return to below.

5 For each shipment of goods, BSA would transfer around 98.5% of the transaction's value to AOPL as payment. AOPL would place the funds in fixed deposits with SBI, and issue a mandate letter to SBI for the latter to issue an irrevocable payment undertaking ("IPU") in favour of GRIPT. The fixed deposits were originally for a term of one year. Sometime after late 2014, the funds were instead placed in two-year fixed deposits to secure higher interest rates. Under the IPU, SBI promised to either procure a letter of credit due for

payment within six months for 100% of the transaction's value, or, if the letter of credit was not issued, pay that sum to GRIPT within five days. Upon maturity of the fixed deposits, AOPL would retain some interest and return the balance to the Bunge Group. Because AOPL was required to maintain the two-year fixed deposits even whilst funds were paid out to GRIPT at six-month intervals, there was a need to periodically inject funds through "rollover" transactions, these being fresh transactions for new shipments of goods.

6 According to AOPL and Mr Bhasi, the true purpose of the BMT structure was interest arbitrage: The Bunge Group would engage in circular trade with itself, thereby bringing in large amounts of foreign funds to place in Indian banks in circumvention of Indian foreign exchange regulations. The Bunge Entities accepted that interest could be earned under the BMT structure but denied that the purpose was interest arbitrage.

Procedural history

7 The events leading to Suit 438 were essentially that one transaction for US$50m entered into around September 2015 (out of an alleged total of US$400m) had gone awry: SBI purportedly failed to issue a letter of credit for US$50m or pay this sum to GRIPT despite having entered into an IPU to do so. About two years later, AOPL through its Indian counsel issued a letter demanding US$277m in damages (the "Kantawala Letter" or "Kantawala Claims", as the case may be) for breach of certain assurances given by the Bunge Entities regarding the continuity of the rollover transactions ("the Assurances"). AOPL allegedly suffered loss because the promised rollover transactions did not materialise, leading to AOPL having insufficient funds for rolling over, breaking the fixed deposits with SBI, incurring late interest penalties, and making losses as it did not receive interest as expected. The

Kantawala Letter called upon the Bunge Group to reimburse AOPL's losses, failing which AOPL would "initiate appropriate legal action and/or proceedings in [the] Civil and Criminal Courts of India".

8 One month after receiving the Kantawala Letter, GRIPT and BSA commenced Suit 438. Five claims were brought, respectively by:

(a) GRIPT against AOPL, a claim for US$50m allegedly due and payable under a GRIPT-AOPL contract dated 14 September 2015 (the "AOPL US$50m Claim");

(b) GRIPT against SBI, a claim for US$50m or damages to be assessed, for SBI's alleged breach of an IPU dated 15 December 2015 (the "SBI IPU Claim");

(c) the Bunge Entities against AOPL, a claim for a declaration that they are "under no liability to AOPL (whether in contract, tort or otherwise) arising out of or in connection with any and all claims made by AOPL including claims arising out of or in connection with any Indian merchanting trade dealings between GRIPT, BSA and AOPL, whether as alleged or alluded to in the Kantawala Letter or at all" (the "Negative Declaration Claim");

(d) the Bunge Entities against Mr Bhasi, a claim for damages and profits for breach of contractual and fiduciary duties under the terms of two agency agreements with GRIPT dated 1 January 2009 and 1 January 2016 (the "First Agency Agreement" and "Second Agency Agreement") (the "Agency Claim"); and

(e) the Bunge Entities against Mr Bhasi, a claim for an indemnity for liability arising from the Kantawala Claims pursuant to both Agency Agreements (the "Indemnity Claim").

9 SBI, AOPL and Mr Bhasi entered appearance without filing their defences. Instead they sought variously to set aside the orders for service out of jurisdiction, to stay the proceedings on *forum non conveniens* ("FNC") grounds, or to stay the proceedings in favour of arbitration.

10 CA 155 is SBI's appeal against the Judge's decision in Registrar's Appeal No 227 of 2018 to dismiss SBI's application to stay the SBI IPU Claim on FNC grounds.

11 The remaining appeals arise from Summons No 3235 of 2018, in which AOPL and Mr Bhasi applied to set aside the orders for service out of jurisdiction against them or, in the alternative, to stay proceedings against them on FNC grounds. Without prejudice to the former application, Mr Bhasi also sought to stay the Agency Claim and Indemnity Claim in favour of arbitration. The Judge refused to set aside the service out orders and refused to stay the AOPL US$50m Claim on FNC grounds, but stayed the Negative Declaration Claim in favour of India and stayed both claims against Mr Bhasi in favour of arbitration. CA 157 is AOPL's and Mr Bhasi's appeal against the Judge's refusal to set aside the service out orders for the claims against them and refusal to stay the AOPL US$50m Claim and claims against Mr Bhasi on FNC grounds. CA 106 and CA 107 are, respectively, the Bunge Entities' appeals against the stay of the claims against Mr Bhasi in favour of arbitration, and the stay of the Negative Declaration Claim on FNC grounds.

12 After the HC Judgment was handed down, as foreshadowed in the Kantawala Letter, AOPL commenced proceedings in India against GRIPT, BSA and Bunge India Private Limited. In its Plaint filed in the Bombay High Court ("BHC"). AOPL sought damages for both the loss arising from the fixed deposits having to be broken, and the shortfall under 33 specific invoices issued under several intermediate leg contracts. Counsel for AOPL and Mr Bhasi, Mr Sarjit Singh Gill SC ("Mr Gill") informed us at the hearing that there were five applications before the BHC for stay of the BHC proceedings. These had been put on hold pending the parties' negotiations and the four Singapore appeals before us. Subsequent to the hearing of these appeals on 19 August 2020, we were informed that the BHC had on 21 September 2020 granted AOPL's application, filed on 17 September 2020, to discontinue the BHC proceedings. The BHC also dismissed all pending interim applications.

Arguments and decision below

13 In respect of the AOPL US$50m Claim, AOPL sought to set aside the service out order or, alternatively, to stay the proceedings in favour of India. The Judge declined to grant both reliefs as she found Singapore to be the natural forum: HC Judgment at [109]. The strong cause test applied as there was a Singapore EJ clause in the relevant AOPL-GRIPT contract. There were no special circumstances that amounted to strong cause for not enforcing the Singapore EJ clause. The connections of parties to the dispute and witness availability factor were both finely balanced and split across Singapore and India, the express choice of law was Singapore law, and the Judge was not persuaded by AOPL's argument that the AOPL US$50m Claim should be stayed to prevent fragmentation in light of how Negative Declaration Claim would on their case (and as the Judge eventually held) be litigated in India. We observe here that the EJ clause also entailed a waiver of FNC arguments, by its

wording "The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and *accordingly no Party will argue to the contrary*" [emphasis added]. We will return to the correctness of examining connecting factors in light of the waiver of FNC below (at [40]).

14 In respect of the Negative Declaration Claim, AOPL similarly sought to set aside the service out order or, alternatively, to stay the proceedings in favour of India. The Judge found it unnecessary to consider whether the service out order should be set aside, since she had found that the Bunge Entities had established a basis for leave for service out of jurisdiction on AOPL based on the AOPL US$50m Claim: HC Judgment at [111]. However, she granted a stay in favour of India applying the principles in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*"). At stage one of *Spiliada*, AOPL had discharged its burden of showing that India was clearly the more appropriate forum. The applicable law was likely to be Indian law, as the Kantawala Claims were founded on Assurances that pertained to the overarching relationship between the parties. That relationship was "born of dealings in India, using Indian intermediaries and Indian banks, and involving funds kept in Indian bank accounts": HC Judgment at [114]. The key facts disputed in the Negative Declaration Claim were also separate and distinct from the US$50m Claim. The Negative Declaration Claim related more to the fact and quality of the alleged Assurances given, and less to the specific contracts entered into by the parties. At stage two of *Spiliada*, the Bunge Entities had not discharged their burden to show that justice nevertheless required that a stay be denied. The only factor relied on was substantial delay in the Indian courts, but to the Judge this did not suffice given the evidence placed before her.

15 In respect of the Agency Claim and the Indemnity Claim, Mr Bhasi sought alternatively to set aside the service out orders against him, to stay the

proceedings in favour of India, or to stay the proceedings in favour of arbitration. The Judge declined the first two reliefs sought as the Singapore courts had jurisdiction over Mr Bhasi but decided to stay the proceedings in favour of arbitration.

(a) *Vis-à-vis* the jurisdiction question, there was some dispute as to which Agency Agreement applied. The First Agency Agreement contained both an arbitration clause and a non-exclusive jurisdiction ("NEJ") clause, an apparent inconsistency the Judge resolved by construing the jurisdiction clause as a reference to the *lex arbitri*, applying the approach in *PT Tri-MG Intra Asia Airlines v Norse Air Charter Limited* [2009] SGHC 13 ("*Norse Air*"). The Second Agency Agreement contained a Singapore EJ clause. However, it was unnecessary to decide which was the applicable Agreement. If the First Agency Agreement governed, there would be no jurisdiction clause in favour of Singapore as the reference to the Singapore courts was in relation to the supervisory role of the court in arbitration: HC Judgment at [149]. Applying the *Spiliada* test, the connecting factors pointed towards Singapore. Conversely, if the Second Agency Agreement governed, strong cause would need to be shown and this was *a fortiori* not established.

(b) The Judge eventually stayed both claims against Mr Bhasi in favour of arbitration under the arbitration clause in the First Agency Agreement. Mr Bhasi had not repudiated the arbitration agreement and both claims fell within the scope of the arbitration agreement applying the "pith and substance" test in *Oei Hong Leong v Goldman Sachs International* [2014] 3 SLR 1217 ("*Oei Hong Leong*"). Regarding the Agency Claim, a far larger proportion of the period during which

> Mr Bhasi was allegedly acting in conflict of interest, and the vast majority of transactions tainted by this conflict of interest (425 out of 534), fell to be covered by the First Agency Agreement: HC Judgment at [187]. Regarding the Indemnity Claim, it was clear from the allegations in the Kantawala Letter that the alleged Assurances would have been given in 2015, when the First Agency Agreement was in force: HC Judgment at [191].

16 In respect of the SBI IPU Claim, SBI argued that India was the proper forum. The Judge disagreed, finding that Singapore was the proper forum applying the *Spiliada* principles. At stage one of *Spiliada*, the connecting factors relied on by SBI were insufficient to show that India was clearly or distinctly more appropriate than Singapore. Additionally, the fact that the AOPL US$50m Claim was to be heard in Singapore made it overwhelmingly clear that Singapore was the natural forum for the SBI IPU Claim: HC Judgment at [205]–[206]. The factual issues were intricately intertwined. With AOPL remaining a party in the proceedings relating to the AOPL US$50m Claim, key witnesses of AOPL would be available in Singapore.

17 Overall, the Judge observed that while the fragmentation of proceedings was unfortunate, this in no small part arose from the various jurisdiction and arbitration agreements between the parties to which effect had to be given: HC Judgment at [209].

Summary of parties' cases

18 Notwithstanding their wide-ranging written submissions, the parties significantly streamlined their arguments by the time of the hearing before us. We will deal in detail below with the key points maintained by counsel for the

Bunge Entities, Mr Toby Landau QC ("Mr Landau"); counsel for AOPL and Mr Bhasi, Mr Gill; and counsel for SBI, Mr Gary Leonard Low ("Mr Low"). It suffices here to outline the positions taken by the parties for each claim.

Claim	**Where the claim should be heard**	
	Bunge Entities	***Suit 438 defendants***
AOPL US$50m Claim	Singapore	Singapore
Negative Declaration Claim	Singapore	India
SBI IPU Claim	Singapore	India
Agency Breach Claim and Indemnity Claim	Singapore	Arbitration

CA 157 – AOPL US$50m Claim

19 Before us, Mr Gill explained that his client no longer took issue with the AOPL US$50m Claim being heard in Singapore, though he was careful to avoid framing this as a concession.

20 Since the point was not vigorously pursued and parties were content to rely on their written submissions, we say no more about the AOPL US$50m Claim save to note that we agree with the Judge's application of the strong cause test and conclusion that this claim should be heard in Singapore. AOPL has not raised anything in its written submissions that would warrant a contrary finding. Accordingly, we dismiss CA 157 as far as the AOPL US$50m Claim is concerned.

CA 107 and CA 157 – Negative Declaration Claim

21 The Negative Declaration Claim is relevant to both CA 107 and CA 157, which are mirror images of each other as far as this claim is concerned. The

service out enquiry encompasses the natural forum stay enquiry, since according to *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [79]–[80], where a foreign defendant makes both a jurisdictional challenge and a stay application based on the same material, the court will collapse the issue of proper forum into one question considered in the round.

22 The Bunge Entities' position was that the Negative Declaration Claim should be heard in Singapore. The Judge erred in applying the *Spiliada* principles to conclude that the claim should be stayed. Instead, she should have applied the strong cause test by virtue of the Singapore EJ clauses in the import leg contracts and to a smaller extent the export leg contracts. The Bunge Entities relied on the Plaint filed by AOPL in the BHC proceedings, which allegedly made clear that AOPL's claim was one for a debt that arose under 33 string sales (made up of 99 sale and purchase contracts across their three legs). Of these, the 66 contracts to which GRIPT and BSA or their affiliates within the Bunge Group were a party (these being the import and export leg contracts) were expressly subject to a Singapore EJ clause that applied to dispute "arising out of or in connection with" the contract. AOPL had not discharged its burden of showing strong cause.

23 AOPL's position was that the Negative Declaration Claim should be stayed in favour of India. The Judge correctly applied the *Spiliada* test; the jurisdiction clauses in the string sale contracts were irrelevant because AOPL was suing not on any single contract in the string sale but on the Assurances. The oral and written Assurances *led to* the string sale contracts being entered into and did not *arise out of or in connection with* these contracts. In any event, each leg of the string sale was governed by different laws so no meaningful conclusion could be drawn. If the contractual jurisdiction clauses in the string contracts were to be considered, Mr Gill argued that the intermediate leg of the

string contracts would be the most relevant one and the EJ clauses therein provided for Indian governing law and jurisdiction.

Good arguable case under O 11 r 1

24 Before dealing with the question of whether the strong cause or the *Spiliada* test applies to the Negative Declaration Claim, we note that the Judge incorrectly assumed that service out was justified for the Negative Declaration Claim because this was so for the US$50m Claim (HC Judgment at [111]):

> Given my finding that the plaintiffs had established basis for leave for service out of jurisdiction on AOPL based on the AOPL US$50m Claim, it was no longer necessary for me to deal with the question of whether the order for service out ought to be set aside. In the O 11 r 1 analysis, the court is concerned only with whether it has *some* basis for establishing personal jurisdiction over the foreign defendant. … [emphasis in original]

25 With respect, this approach is contrary to that in *Man Diesel & Turbo SE and another v IM Skaugen SE and another* [2020] 1 SLR 327, where this court clarified that the sufficiency of jurisdictional connections must be assessed in relation to *each separate claim* (at [65]).

26 That said, a good arguable case under at least one head of jurisdiction in O 11 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") is established because AOPL has property in Singapore in the form of a share in its Singapore subsidiary, even though (as AOPL emphasised) that subsidiary does not feature in the Negative Declaration Claim. In *Lehman Brothers Special Financing Inc v Hartadi Angkosubroto* [1998] 3 SLR(R) 664, the court held that the property in Singapore need not have anything to do with the facts in dispute to establish a good arguable case under O 11 r 1(*a*) of the ROC, though the lack of nexus might affect the subsequent natural forum analysis in terms of the strength of the connections (at [28] and [34]). Moreover, in view of our findings below that

the Singapore law and jurisdiction clauses in the import leg of the string sale contracts apply to the Negative Declaration Claim, a good arguable case under O 11 r 1(*d*)(iii) and (iv) of the ROC would also have been established.

Whether the strong cause test applies to the Negative Declaration Claim

27 The question of whether the *Spiliada* test or strong cause test applies was not addressed explicitly in the HC Judgment, prompting us to ask Mr Gill and Mr Landau whether arguments on the applicability of the EJ clauses in the string sale contracts were advanced before the Judge. Though we were eventually directed to portions of the Bunge Entities' written submissions that raised the point, we remind parties that it is incumbent upon them to be clear about their primary and alternative submissions and to highlight the salient points to the coram, particularly in factually complex matters such as those in the present appeals.

28 We will approach the Negative Declaration Claim on the footing that it covers the same ground as the Plaint – that is, on the basis that the declaration of non-liability is in relation to the allegations made in the Plaint. It has not been suggested that the Negative Declaration Claim would, practically speaking, refer to anything other than proceedings commenced by AOPL, of which the only instance is the Plaint. Treating the Negative Declaration Claim in this manner also dovetails with the tenor of this court's judgment in *Ivanishvili, Bidzina and others v Credit Suisse Trust Limited* [2020] SGCA 62. There, the majority of this court stated that when a matter has not gone for trial and no evidence has been taken, the fact that an amendment to pleadings is for the purpose of strengthening the appellant's prospects on appeal in the light of the rulings made by the court below will not in itself render the application an abuse of process. An appellate court has the discretion to allow amendments to the

pleadings if doing so would allow the real issue in controversy between the parties to be determined, and this includes amendments to reflect subsequent changes in the factual circumstances (at [37], [40] and [43]). Though we are not presently concerned with an amendment to pleadings, the court's approach is similar in so far as it cannot ignore the reality of changed circumstances after the delivery of the HC Judgment in ascertaining the scope of the Negative Declaration Claim in the present appeals. The BHC proceedings had not been commenced when the matter was before the Judge. The Bunge Entities should not be regarded as having impermissibly obtained some advantage or benefit from AOPL's filing of the Plaint in terms of tailoring their case, even as they may now focus their originally widely-framed case on the Negative Declaration Claim (see their pleadings at [8(c)] above) towards the allegations in the Plaint. Nor does the withdrawal of the BHC proceedings erase the fact that the Plaint identified AOPL's complaints, which sharpened the arguments before us on the Negative Declaration Claim.

29 Thus understood, the Negative Declaration Claim is for a declaration of non-liability in respect of the allegations raised by AOPL in the BHC proceedings, to the effect that the Bunge Entities gave and breached the Assurances leading to AOPL suffering loss. For completeness, the Bunge Entities deny the existence of the Assurances.

30 Mr Gill contended that because AOPL's claim is for breach of *the Assurances* and not tied to any *string sale contracts* or their constituent legs, none of the EJ clauses in the string sale contracts potentially applied. We disagree. In our judgment, the two are inextricably linked, so much so that they form part of the same package. Assuming, on AOPL's best case, that the Assurances were indeed given, they would have been the reason why AOPL agreed to participate in the BMT structure in the way that it did (that is, as the

Indian merchanting trader). In this connection, the string sale contracts were the ***mechanism*** *for implementing the BMT structure*, and that mechanism comprised three legs – the import and intermediate legs which AOPL participated in, and the import and export legs which GRIPT and BSA respectively participated in. The contracts for each leg contained EJ clauses, albeit with the import leg contracts' clauses being Singapore EJ clauses, the intermediate leg contracts' clauses being mainly Indian EJ clauses, and the export leg contracts' clauses being initially Indian and subsequently Singapore EJ clauses. The interconnectedness between the Assurances and the string sale contracts (hence the EJ clauses contained within them) is undeniable. Arguably, the legal relationship derived from the interconnectedness of the Assurances and the string sale contracts, thus rendering the relationship including both matters susceptible to the same governing law and jurisdiction to settle legal disputes.

31 Following from this, two questions arise, which we address in turn:

(a) Are the words "arising out of or in connection with" in principle broad enough to encompass disputes arising from pre-contractual conduct (given that on AOPL's case the Assurances pre-dated and induced its entry into the string sale contracts)?

(b) If so, which EJ clause applies?

Scope of "arising out of or in connection with"

32 If the phrase "arising out of or in connection with" is not *prima facie* wide enough to encompass any disputes arising from pre-contractual conduct, the Bunge Entities' case fails at the outset because none of the EJ clauses in the string sale contracts, which all contain this standard phrase, can potentially

apply. Because of the fact-specific nature of contractual interpretation, the cases go both ways and we cite some illustrative decisions.

33 In *Batshita International (Pte) Ltd v Lim Eng Hock Peter* [1996] 3 SLR(R) 563, the Singapore Court of Appeal held that a dispute as to whether there was a prior separate oral agreement constituting a condition precedent to a tenant executing the tenancy agreement was one that arose "in connection with" the tenancy agreement, and was accordingly referable to arbitration (at [16]).

34 Similarly, in *Overseas Union Insurance Ltd v AA Mutual International Insurance Co Ltd* [1988] 2 Lloyd's Rep 63, Evans J held that the issue of a collateral oral agreement between the plaintiff reinsurer and the defendant insurer's parent company that the plaintiff need not make payment to the defendant until it received payment from the parent company fell within scope of an arbitration clause in the contract between the plaintiff and defendant. The oral agreement had been entered into before or at the same time as the written agreement, and the arbitration clause in the latter required all disputes "in respect of this Reinsurance" to be referred to arbitration. The reasoning was that (at 70):

> … The context is a reinsurance transaction which the parties have agreed to record in writing at least in part. There is no clear indication that they intended the arbitrators to have no jurisdiction outside the written terms and *there are good commercial reasons, in my judgment, why they should envisage that all disputes concerning the transaction generally would be regarded as coming within the words "in respect of this Reinsurance". This commercial consideration is strongest in a situation where the same factual dispute viz. whether there was or was not an oral agreement, not recorded in the written agreement, which either was or was not intended to be included therein, may give rise to different classifications of their legal rights. In my judgment, this clause in this context does include the plaintiffs' disputed claims, not only that there was an implied*

> *term of the reinsurance agreement, but also, alternatively, that there was a collateral contract or that the agreement should be rectified by the addition of an express term.* [emphasis added]

35 On the other hand, the Singapore Court of Appeal in *S A Shee & Co (Pte) Ltd v Kaki Bukit Industrial Park Pte Ltd* [2000] 1 SLR(R) 192 held that a subsequent collateral agreement between a developer and contractor that the developer need not make payment on interim certificates until certain sums were paid to the developer by the contractor's associated company fell outside the words "arising under or out of or in connection with". In the court's view, these collateral agreements, though they could affect the right to payment under the interim certificates, were really separate issues, being "matters outside the contract" (at [30]–[31]). Significantly, the contractor had pointed to correspondence that indicated the developer itself treated the alleged agreement as a collateral matter that stood apart from the contract itself (at [29]).

36 Likewise, a strict delineation between matters before and after the entry into the contract was drawn in *Hi-Fert Pte Ltd and another v Kiukiang Maritime Carriers Inc (No 5) and another* [1999] 2 Lloyd's Rep 782. In this case, the appellants were consignor and consignee of cargo. The defendants were the charterer and owner of a ship. The cargo could not be discharged due to contamination by disease and the appellants sued for breach of contract, negligence, and misrepresentation and breach of collateral warranties. The defendants applied for a stay relying on an arbitration clause in the charterer-consignee contract, which required disputes "arising from this charter" to be arbitrated. The court held that the breach of contract and negligence claims were caught by the clause, but the claims for misrepresentation and breach of collateral warranties were not. Essentially, the representations and misleading or deceptive conduct occurred *before* the entry into the contract and so fell outside the phrase "arising from". Emmett J reasoned (at 796–797):

> … where there is a dispute as to a claim in respect of conduct which is antecedent to the making of a contract, I do not consider that such a dispute can be said to arise *from* the contract in question. In relation to the Addendum Contract, for example, the conduct complained of by Hi-Fert was antecedent to and did not depend upon the contractual relationship that existed by reason of the Addendum Contract. That latter contractual relationship was induced by the conduct complained of. In the present case, the Non-contractual Claims are not generated by the Charter Contract. They will not be resolved by examining the Charter Contract but by considering and assessing evidence external to it. They do not *arise out of* the charter contract nor do they *arise from* the charter contract.
>
> [emphasis in original in italics; emphasis added in underline]

37 In more recent times, however, the courts have recognised an important overarching principle – that the wording of arbitration and jurisdiction clauses should be given a broad or generous interpretation, based on the presumption that rational businessmen are likely to have intended that all the questions which arise out of the relationship which they have entered into or purported to enter into, are to be submitted to the same forum: *Fiona Trust & Holding Corporation v Privalov* [2007] 4 All ER 951 ("*Fiona Trust*"), endorsed in *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 at [30]. Although *Fiona Trust* was concerned with an arbitration clause, the principle applies equally to jurisdiction clauses: Adrian Briggs, *Civil Jurisdiction and Judgments* (Informa Law, 5th Ed) at pp 433–434. Pertinently for current purposes, the following paragraph from *Fiona Trust* supports the view that no strict cut-off line should be drawn depending on whether the dispute concerns repudiation or inducement by misrepresentation – in other words, whether the conduct leading to the dispute predates or post-dates the entry into the contract (*Fiona Trust* at [7]):

> … [The construction of an arbitration clause] must be influenced by whether the parties, as rational businessmen, were likely to have intended that only some of the questions arising out of their relationship were to be submitted to

> arbitration and others were to be decided by national courts. *Could they have intended that the question of whether the contract was repudiated should be decided by arbitration but the question of whether it was induced by misrepresentation should be decided by a court*? If, as appears to be generally accepted, there is no rational basis upon which businessmen would be likely to wish to have questions of the validity or enforceability of the contract decided by one tribunal and questions about its performance decided by another, one would need to find very clear language before deciding that they must have had such an intention. [emphasis added]

38 In line with the above approach, we find that the phrase "arising out of or in connection with" adopted in the various string sale contracts is not temporally specific. As a matter of contractual interpretation, this phrase is *in principle* broad enough to cover disputes arising from a legal relationship derived from specific pre-contractual conduct that may have led to parties entering into the contract that contains a dispute resolution clause with this wording, and we were not pointed to any circumstances in this case that would warrant a different interpretation. Therefore, any disputes regarding the Assurances would fall within the scope of such wording.

Which exclusive jurisdiction clause applies?

39 Next, which of the several different EJ clauses that contain the words "arise out of or in connection with" apply to the dispute concerning the Assurances? As explained above, there are three contracts in each string sale transaction. Neither side produced full documentation for all the relevant string sale contracts. Instead, the Bunge Entities pointed to nine sample string sales dating between 2014 and December 2016 (each with three legs and therefore comprising 27 contracts) contained in an affidavit filed on behalf of the Bunge Entities in Suit 438. Of these 27 contracts (see the Annex to this judgment), all the import leg contracts contain Singapore EJ clauses with a waiver of FNC, though there is some variation in terms of whether the EJ clause is bilateral or

for the benefit of GRIPT only. Most of the intermediate leg contracts contain Indian EJ clauses with similar waivers. Most of the export leg contracts contain English EJ clauses (some of which are for the benefit of BSA only) with similar waivers, save for the latest two which contain Singapore EJ clauses. For its part, AOPL supplied one set of sample BMT structure transactions dated 12 April 2017 in its Plaint. The import and export leg contracts contain Singapore EJ clauses, while the intermediate leg contracts contain an Indian EJ clause.

40 We observe that by the waiver of FNC proviso in the relevant EJ clauses, parties have expressly agreed not to rely on *forum non conveniens* arguments in resisting the jurisdiction of the court named in the EJ clause. Therefore, grounds founded on convenience cannot amount to strong cause to resist enforcing the parties' agreed-on choice of jurisdiction. Properly interpreted, a waiver of FNC clause in the form agreed upon by the parties complements the EJ clause.

41 If it is possible to connect the Negative Declaration Claim to any particular leg in the string sale and the contracts of that leg generally contain an EJ clause for one jurisdiction, the strong cause test would apply in favour of that jurisdiction.

42 In our judgment, the Singapore EJ clauses in the import leg contracts should apply to the Negative Declaration Claim. In *Oei Hong Leong*, the court held that where there are two competing modes of dispute resolution clauses, the question is which clause the parties objectively intended to apply and this is the one with which the dispute has the closest connection bearing in mind the "pith and substance" of the dispute (at [25]–[26], [36]–[37]). We consider that a similar approach applies in this case in view of the multiple potentially applicable EJ clauses. The parties would objectively have intended to apply the Singapore EJ clauses in the import leg contracts to the Negative Declaration

Claim; the import leg clauses are the most relevant because the Negative Declaration Claim arises between AOPL and the Bunge Entities, and the import leg contracts are the only contracts to which both AOPL and at least one of the Bunge Entities (which are the entities that allegedly gave the Assurances) are parties to.

43 In contrast, little significance should be accorded to the intermediate leg contracts (and the Indian EJ clauses therein). The BHC proceedings did not name Tracon or ACF as a party. They were solely between AOPL on the one hand and the Bunge Entities and their Indian subsidiary on the other. Moreover, AOPL's case in the BHC was *not* that it was *suing on those contracts* – the invoices from the 33 intermediate leg contracts cited by AOPL in its Plaint appeared to be relied on primarily to *quantify part of its loss* in the BHC proceedings.

44 Finally, as for the export leg, we observe that the earlier export leg contracts contained English EJ clauses and the later ones, Singapore EJ clauses. This potentially suggests an inclination over time to have disputes settled in Singapore, though the weight attributable to this analysis is necessarily limited by the dearth of full records of all the string sale contracts at issue, and by the fact that the export leg contracts are between ACF or Tracon and BSA. They would not therefore show any *bilateral* intention on their part to shift their forum for dispute resolution to Singapore.

45 Consequent upon our holding that the Singapore EJ clauses in the import leg contracts apply, AOPL must show strong cause to depart from the parties' contractual choice of forum. Bearing in mind the provisos in the Singapore EJ clauses that expressly waive *forum non conveniens*, we find that AOPL has not demonstrated strong cause. We therefore affirm for different reasons the Judge's

refusal to set aside the service out order for the Negative Declaration Claim; but reverse her decision to stay this claim in favour of India. The fact that the BHC proceedings have been withdrawn avoids any tension that could potentially have arisen from parallel proceedings in Singapore and India.

CA 155 – SBI IPU Claim

46 SBI's position was that India is the natural forum. At stage one of *Spiliada*, the events and transactions pointed to India and the parties had strong connections to India. Mr Low emphasised before us that the SBI IPU Claim was sensitive to witness testimony and the Judge placed insufficient weight on the fact that some witnesses, including one Ms Jadhav, were not compellable in Singapore. Moreover, even if the court held that the AOPL US$50m Claim should be heard in Singapore, it should not follow as a matter of course that the SBI IPU Claim should be heard here.

47 GRIPT argued that SBI had not shown how the Judge erred in her exercise of discretion in applying the *Spiliada* principles. In particular, regarding witness availability, it was for SBI to show that Ms Jadhav was unwilling to testify even by video-link from India, but SBI had not done so. Significant weight should also be given to the fact that the AOPL US$50m Claim would be heard in Singapore, and SBI had not tipped the scales towards India.

48 In our judgment, there are no grounds for interfering with the Judge's exercise of discretion to conclude that Singapore is the more appropriate forum. We generally agree with the Judge's reasoning, and only highlight the following points.

49 As far as the related proceedings factor at stage one of *Spiliada* is concerned, the fact that the AOPL US$50m Claim will be heard in Singapore is, as the Judge considered, a weighty factor in favour of Singapore though not in itself determinative. GRIPT's allegation in the AOPL US$50m Claim is that AOPL breached its obligation to arrange for SBI to issue a letter of credit for US$50m to GRIPT's benefit or to pay the same to GRIPT. Their allegation in the SBI IPU Claim is that SBI breached its obligation to pay US$50m to GRIPT under the IPU. The degree of factual overlap is undeniable, even though Mr Low rightly pointed out that the obligations claimed to be breached differ as between SBI and AOPL.

50 We also note that considerations of witness availability and compellability must be specific to both the prevailing external situation and a party's own case. Regarding availability, a side-effect of the ongoing coronavirus pandemic is that witnesses will increasingly have to give evidence by video-link due to travel and other restrictions, and so their places of residence will be less important. Regarding compellability in Singapore, the issue of compellability only arises if there is some indication that the relevant witness is unwilling to testify. SBI's own case is not that Ms Jadhav would be *unwilling* to testify in the Singapore proceedings, but that she would *more likely* testify if the claim were heard in India. This contention even if valid must recede to the background now that AOPL is not entirely against litigating the US$50m claim in Singapore.

51 We therefore dismiss CA 155, affirming the Judge's decision that Singapore is the more appropriate forum for the SBI IPU Claim.

CA 106 and CA 157 – Claims against Mr Bhasi

52 The Bunge Entities contended that the Singapore EJ clause was the *only* operative dispute resolution provision for the claims against Mr Bhasi because the Second Agency Agreement superseded the First Agency Agreement (the "supersession argument"). The Judge erred in applying the "pith and substance" test in *Oei Hong Leong* to determine which agreement had the closer connection to the claim, as there was only ever one agreement in force at any one time. Hence CA 106 should be allowed because the Judge incorrectly stayed the claim in favour of arbitration. By the same token, CA 157 should be dismissed because the strong cause test should apply, AOPL has not demonstrated strong cause, and so the service out order should stand.

53 AOPL's position was that the arbitration clause in the First Agency Agreement remained operative. The wording of the Second Agency Agreement did not show that the parties clearly intended for this agreement to supersede its predecessor. On this view, the Judge correctly found that the arbitration clause in the First Agency Agreement was valid and binding, that the claims against Mr Bhasi were more closely connected to the First Agency Agreement, and that the claims against Mr Bhasi fell within the scope of the arbitration clause.

New point on appeal

54 In our view, it is not quite fair of the Bunge Entities to criticise the Judge for a wrong ruling based on the "pith and substance" test when the supersession argument was never raised and argued below. The Bunge Entities' supersession argument was a new point that should not ordinarily have been raised on appeal without leave of court. That said, we permitted Mr Landau to raise the point even without a formal leave application in the circumstances of this appeal but have denied the Bunge Entities in respect of costs incurred below.

55 In connection with the procedural omission, we note the recent decision of this court in *Zyfas Medical Co (Sued as a firm) v Millennium Pharmaceuticals, Inc* [2020] SGCA 84 where leave was sought and granted without formally taking out a summons. In the case before us, counsel for Mr Bhasi had ample opportunity to – and did – address the supersession argument in written and oral submissions. Indeed, the need for leave was not even identified as a potential procedural roadblock until this court directed attention towards the issue at the hearing before us. This was also a point for which leave would have been granted had an application been made, given the non-factual nature of this submission and the lack of prejudice to Mr Bhasi.

56 In this regard, the case of *JWR Pte Ltd v Edmond Pereira Law Corporation and another* [2020] SGCA 68 is distinguishable and illustrates how a stricter approach usually applies where an appellant is, in contrast with the case before us, not merely raising an additional legal point. That case concerned a claim by a firm against its former solicitors for negligent conduct of a High Court action. On appeal, the appellant sought to leave to raise a new point that was to form the *sole basis* of its appeal, being the new allegation that the respondents were negligent because they were unaware of the possibility of making a certain individual personally liable for her torts. The Court of Appeal declined to grant leave, noting that if leave were granted the court would not have all the relevant evidence and findings of fact because the trial below had not been conducted on this basis (at [30]). Granting leave would lead not to an appeal but a second trial:

> 31 It must be emphasised that *the appellant's case on appeal sought to do much more than merely raise an additional legal point in support of its appeal against the decision of the Judge.* It was actually seeking to discard the entire basis on which its case proceeded during the three days of trial and to begin afresh with a new allegation of negligence before us. … We would not know how the Judge would have decided this

> entirely new case because it was never before him and all the views and findings in his GD were premised on facts and arguments that have now been abandoned.
>
> 32 … *In reality, there would be no appeal at all because the Court of Appeal would not be considering whether the Judge was wrong or otherwise in reaching the conclusions set out in his GD. Instead, the Court of Appeal would be effectively conducting a second trial.* …
>
> [emphasis added]

Has the arbitration clause been superseded?

57 The relevant provisions of the First Agency Agreement read:

> **12. Governing Law**
>
> 11.1 This Agreement shall be governed by, and construed in accordance with, the law of Singapore.
>
> 11.2 The Parties agree to submit to the non-exclusive jurisdiction of the Courts of Singapore.
>
> **13. Arbitration**
>
> Any dispute shall be referred to the final and binding arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre …

58 The relevant provisions of the Second Agency Agreement read:

> **12. Governing Law**
>
> 12.1 This Agreement shall be governed by, and construed in accordance with, the law of Singapore.
>
> 12.2 The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement … The Parties agree that the courts of Singapore are the most appropriate and convenient forum to settle Disputes and accordingly no Party will argue to the contrary.
>
> …
>
> **15. Miscellaneous**
>
> 16.1 This Agreement shall govern all relationships between the Parties with respect to the activities mentioned in this Agreement and *shall supersede the Agency Agreement dated 1 January 2009 (as amended) between the Parties and all other*

> *prior written or oral agreements, understandings and/or commitments.*
>
> [emphasis added in italics]

59 Preliminarily, an issue arises as to how the arbitration clause and NEJ clause in the First Agency Agreement should be reconciled. The Judge followed *Norse Air*, holding that where a jurisdiction clause and arbitration clause are found in the same contract, the jurisdiction clause should be construed as relating purely to curial issues. We do not need to decide whether the Judge's reasoning was correct, given our finding, explained immediately below, that the effect of cl 16.1 of the Second Agency Agreement is that the *only* operative dispute resolution mechanism open to the parties at the point of commencing Suit 438 was the Singapore EJ clause in the Second Agency Agreement. We did not find persuasive any of the arguments to the contrary raised on behalf of Mr Bhasi.

60 Mr Gill pointed to the fact that cl 16.1 was under a "Miscellaneous" clause and argued that such a clause could not displace the clearly stated intention of the parties in a prior agreement to refer disputes to arbitration. We fail to see how the "Miscellaneous" heading dilutes the contractual effect of cl 16.1 or changes the meaning of the clear words therein.

61 Mr Gill also argued that cl 16.1 has no retrospective effect, and that all this clause means is that *from the time of entry* into the Second Agency Agreement, the parties' relationship was to be governed by that agreement. But there is no question of retrospective effect if cl 16.1 is understood as governing all ***future*** *attempts at dispute resolution* (that is, those commenced after the Second Agency Agreement comes into force), even if the *facts* giving rise to the dispute occurred during the lifetime of the First Agency Agreement.

62 Finally, Mr Gill relied on the notion of separability to argue that a dispute resolution provision can survive the termination of the substantive contract. The present case, however, deals not with the survival of a provision after termination of the main contract but the effect of a new dispute resolution mechanism that purports to supersede a previous one.

63 In our judgment, the effect of cl 16.1 must be that the Singapore EJ clause in cl 12.2 of the Second Agency Agreement supersedes the arbitration clause in cl 13 of the First Agency Agreement. This is apparent not only from the wording of cl 16.1, which seeks expressly to "supersede the Agency Agreement dated 1 January 2009 (as amended) between the Parties", but also the context of the Agency Agreements – in particular, the fact that these are not purely *transactional* agreements but ones pertaining to the parties' *ongoing relationship*. Clause 16.1 provides that "[t]his Agreement shall govern *all relationships* between the Parties with respect to *the activities mentioned* in this Agreement" [emphasis added]. The relationship between Mr Bhasi and GRIPT was an ongoing and continuing one, in which the parties' activities and obligations were substantially similar across both Agency Agreements. Clause 16.1 clearly envisages and caters for the possibility of continuing breaches. In light of the difficulty of pinpointing when precisely a breach starts or ends and the complexities that may arise from having multiple concurrent dispute resolution mechanisms, the most sensible explanation and interpretation of this clause is that the parties intended for only one dispute resolution mechanism to be in force at any one time, to govern the *disputes* arising from their ongoing relationship *as they materialised*. This would be so, regardless of whether the *facts* giving rise to that dispute occurred during the lifetime of the predecessor or successor agreement.

64 *Econ Piling Pte Ltd v NCC International AB* [2007] SGHC 17 is instructive on the correct way to approach the supersession argument given the close relationship between contracts with differing dispute resolution clauses and the irreconcilable risk of overlapping claims being fought out in different places. The parties in that case entered into a joint venture agreement containing an arbitration clause. Subsequently they entered into a variation agreement containing a Singapore EJ clause. Sundaresh Menon JC (as he then was) held that the latter dispute resolution provision superseded the former, even without an express supersession clause similar to cl 16.1 of the Second Agency Agreement. One reason for his decision was that (at [17]):

> … A different approach would result in the wholly uncommercial position that some disputes under what is in substance a *composite* agreement between the parties, are to be referred to arbitration while others are to be resolved in court. This difficulty becomes especially acute, even impossible, in situations such as the present where a subsequent agreement varies an earlier agreement, and where it is therefore conceivable, even likely, that many disputes might straddle both contracts. … [emphasis in original]

65 Accordingly, we hold that the claims against Mr Bhasi are subject to the Singapore EJ clause in the Second Agency Agreement. As Mr Bhasi has not discharged the burden of showing strong cause for not enforcing the Singapore EJ clause, both the Agency Claim and Indemnity Claim will remain in Singapore. Thus, we reverse the Judge's decision to stay these claims in favour of arbitration; but affirm her decision that the service out orders in respect of Mr Bhasi are to stand.

66 Counsel for both sides did not dispute that the Indemnity Claim would follow the Negative Declaration Claim if the latter was heard in Singapore, given that the Indemnity Claim would only become live if the Negative Declaration Claim were decided in favour of AOPL. On this basis, we

additionally order that the Indemnity Claim be stayed pending the resolution of the Negative Declaration Claim or until further order whichever is the earlier.

Conclusion

67 For the foregoing reasons, we:

(a) allow CA 106 and 107 and dismiss CA 157, since the AOPL US$50m Claim, Negative Declaration Claim, and claims against Mr Bhasi are ordered to be heard in Singapore;

(b) dismiss CA 155, since the SBI IPU Claim is ordered to be heard in Singapore; and

(c) order that the Indemnity Claim be stayed pending the resolution of the Negative Declaration Claim or until further order whichever is the earlier.

68 Having regard to the outcomes of the appeals:

(a) The costs orders below are to stand except for the costs of $10,000 awarded to AOPL by the Judge for the Negative Declaration Claim (as to which see [68(b)] below).

(b) For CA 106, CA 107 and CA 157, we award costs of $70,000 (taking into consideration the reversal of the $10,000 awarded to AOPL below) and disbursements capped at $20,000 to the Bunge Entities.

(c) For CA 155, costs of $35,000 all-in are awarded against SBI.

(d) Where applicable, upon payment of the costs orders the parties' solicitors are to be released from their undertakings pertaining to security for costs.

Steven Chong
Judge of Appeal

Belinda Ang Saw Ean
Judge

Toby Landau *QC* and Rachel Low Tze-Lynn (instructed), and Ang Hui Ming Vivian, Ho Pey Yann and Douglas Lok Bao Guang (Allen & Gledhill LLP) for the appellants in CA/CA 106/2019 and CA/CA 107/2019, and respondents in CA/CA 155/2019 and CA 157/2019;
Sarjit Singh Gill *SC*, Jamal Siddique Peer and Jason Leong (Shook Lin & Bok LLP) for the appellants in CA/CA 157/2019, and respondents in CA/CA 106/2019 and CA/CA 107/2019;
Gary Leonard Low, Vikram Ranjan Ramasamy and Kellyn Lee Miao Qian (Drew & Napier LLC) for the appellant in CA/CA 155/2019.

Annex

	Date	Seller	Buyer	Wording of clause
1	08/05/2014	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties agree that the courts of Singapore shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract[.] The parties hereto waive any defence of forum inconveniences. …
2	08/05/2014	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
3	08/05/2014	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
4	08/01/2015	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties agree that the courts of Singapore shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract[.] The parties hereto waive any defence of forum inconveniences. …
5	08/01/2015	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance

	Date	Seller	Buyer	Wording of clause
				with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
6	08/01/2015	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
7	02/10/2014	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties agree that the courts of Singapore shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract[.] The parties hereto waive any defence of forum inconveniences. …
8	02/10/2014	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
9	02/10/2014	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this

	Date	Seller	Buyer	Wording of clause
				contract. The parties hereto waive any defence of forum inconveniences. …
10	30/03/2015	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties irrevocably agree that the Singapore courts shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Seller to take proceedings against the Buyer in the courts of any country in which the Buyer has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences …
11	30/03/2015	AOPL	Tracon	Governing law. This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
12	30/03/2015	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Buyer to take

	Date	Seller	Buyer	Wording of clause
				proceedings against the Seller in the courts of any country in which the Seller has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
13	24/11/2015	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties irrevocably agree that the Singapore courts shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Seller to take proceedings against the Buyer in the courts of any country in which the Buyer has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
14	24/11/2015	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …

	Date	Seller	Buyer	Wording of clause
15	24/11/2015	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Buyer to take proceedings against the Seller in the courts of any country in which the Seller has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
16	08/06/2015	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties irrevocably agree that the Singapore courts shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Seller to take proceedings against the Buyer in the courts of any country in which the Buyer has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …

	Date	Seller	Buyer	Wording of clause
17	08/06/2015	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
18	08/06/2015	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Buyer to take proceedings against the Seller in the courts of any country in which the Seller has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
19	11/12/2015	GRIPT	AOPL	Governing law: This contract shall be governed by and construed in accordance with Singapore law. The parties irrevocably agree that the Singapore courts shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Seller to take proceedings against the Buyer in the courts of any country in which the Buyer has assets or in

	Date	Seller	Buyer	Wording of clause
				any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
20	11/12/2015	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
21	11/12/2015	Tracon	BSA	Governing law: This contract shall be governed by and construed in accordance with the English laws. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this contract but nothing in this clause shall (or shall be construed so as to) limit the right of the Buyer to take proceedings against the Seller in the courts of any country in which the Seller has assets or in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law. The parties hereto waive any defence of forum inconveniences. …
22	09/06/2016	GRIPT	AOPL	Governing law and jurisdiction:

	Date	Seller	Buyer	Wording of clause
				1. This contract is governed by Singapore law. 2. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this contract (including a dispute regarding the existence, validity or termination of this contract) (a "Dispute"). The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary. This Clause is for the benefit of the Seller only. As a result, the Seller shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller may take concurrent proceedings in any number of jurisdictions. …
23	09/06/2016	AOPL	Tracon	Governing law: This contract shall be governed by and construed in accordance with the Indian laws. The parties agree that the courts of Mumbai shall have exclusive jurisdiction to settle any disputes arising out of o[r] in connection with this contract. The parties hereto waive any defence of forum inconveniences. …
24	09/06/2016	Tracon	BSA	Governing law and jurisdiction: 1. This contract is governed by Singapore law. 2. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this contract (including a dispute regarding the existence, validity or termination of this contract) (a "Dispute"). The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly no Party will

	Date	Seller	Buyer	Wording of clause
				argue to the contrary. This Clause is for the benefit of the Seller only. As a result, the Seller shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller may take concurrent proceedings in any number of jurisdictions. …
25	07/12/2016	Universal Mercantile Trading DMCC	AOPL	Governing law and jurisdiction: 1. This Contract is governed by Singapore law. 2. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract) (a "Dispute"). The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary. This Clause is for the benefit of the Seller only. As a result, the Seller shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller may take concurrent proceedings in any number of jurisdictions. …
26	07/12/2016	AOPL	Tracon	Governing law and jurisdiction: 1. This Contract is governed by Singapore law. 2. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this contract) (a "Dispute"). The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle

	Date	Seller	Buyer	Wording of clause
				Disputes and accordingly no Party will argue to the contrary. This Clause is for the benefit of the Seller only. As a result, the Seller shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Seller may take concurrent proceedings in any number of jurisdictions. …
27	07/12/2016	Tracon	BSA	Governing law and jurisdiction: 1. This Contract is governed by Singapore law. 2. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this contract) (a "Dispute"). The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary. This Clause is for the benefit of the Buyer only. As a result, the Buyer shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Buyer may take concurrent proceedings in any number of jurisdictions. …