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

[2021] SGHC 53

Originating Summons No 854 of 2020

Between

CIX

… *Plaintiff*

And

CIY

… *Defendant*

GROUNDS OF DECISION

[Arbitration] — [Award] — [Recourse against award] — [Setting aside]

TABLE OF CONTENTS

CIX
v
CIY

[2021] SGHC 53

General Division of the High Court — Originating Summons No 854 of 2020
Andre Maniam JC
16 December 2020

5 March 2021

Andre Maniam JC:

Introduction

1 I dismissed the plaintiff's application to set aside certain findings in a partial arbitration award ("Award").[1] The plaintiff has appealed, and these are my grounds of decision.

2 The plaintiff applied for setting-aside under s 48 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("the AA"), on the grounds of:

(a) breach of natural justice (s 48(1)(a)(vii) of the AA); and

(b) exceeding the scope of submission to arbitration (s 48(1)(a)(iv) of the AA).

---

[1] Partial Award dated 3 June 2020 ("the Award") in Defendant's Bundle of Cause Papers ("DBCP") at pp 73–120.

3 The challenged findings in the Award were: Finding 3, Finding 6, Finding 8 and part of Finding 9.[2] The plaintiff said all these findings were made in breach of natural justice, in that he had allegedly been deprived of the right to be heard, by the tribunal failing to consider his contentions. There was also an allegation of bias, but that appeared to be premised on the deprivation of the right to be heard (see [95]–[98] below).

4 Further, the plaintiff alleged that the tribunal had exceeded the scope of submission to arbitration, for two of the findings (Finding 8 and part of Finding 9).

5 Pursuant to sealing and redaction orders, names and identifying details in this judgment have been anonymised.

Background

6 The plaintiff sold the defendant a company ("the Company") in the widget industry, pursuant to a Share Purchase Agreement ("SPA"). The SPA provided for the purchase consideration to be adjusted depending on the Company's "Final Valuation" as defined in the SPA.[3]

7 In the arbitration:

(a) the plaintiff (the claimant in the arbitration) claimed payment of a certain sum or such other amount as determined by the tribunal, as well

---

2 The 12 Findings are in the dispositive section of the Award at para 83 in DBCP at pp 118–120.

3 DBCP at p 128.

as damages for breach of contract, conspiracy and procuring/inducing breach of contract;[4] and

(b) the defendant (the respondent in the arbitration) denied the plaintiff's claims and put forward three claims by way of a counterclaim, one of which was for the plaintiff to pay the defendant a certain sum.[5]

8 In the Award, the tribunal made certain findings:[6]

(a) Findings 1 to 7 related to the Company's Final Valuation;

(b) Finding 8 was a dismissal of the plaintiff's claim against the defendant for breaches of the Shareholders' Agreement ("SHA");

(c) Finding 9 was a dismissal of the plaintiff's claims against the defendant for inducing breach of the SHA and in conspiracy;

(d) Finding 10 was a dismissal of the defendant's counterclaims for an indemnity, and for an account;

(e) the tribunal did not specifically state what either party should pay the other; instead, in Finding 11, the tribunal stated that it would hear the parties further if they cannot agree on the final amount that is payable by one party to the other as it was agreed at the hearing that the tribunal should determine the above questions and the parties would thereafter work out the numbers;

---

4 The Award at para 3 in DBCP at p 75.

5 The Award at para 4 in DBCP at p 76.

6 The Award at para 83 in DBCP at pp 118–120.

(f) in Finding 12, the tribunal reserved its jurisdiction on costs and consequential orders.

General observations

9 The plaintiff asserted that the tribunal had failed to consider his contentions. In cases where this is complained of, there may be an *explicit indication* that this has happened, or an *inference* may have to be drawn.

10 *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 ("*Front Row*") is an example of *explicit indication*: the tribunal stated in the award that the respondent in the arbitration ("Front Row") had ceased to rely on a number of the points pleaded, and so it did not consider them. However, in fact, Front Row had *not* ceased to rely on those points; by failing to consider them, the tribunal failed to accord Front Row natural justice (see *Front Row* at [14], [45]–[46] and *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [40]–[46] ("*AKN v ALC (No 1)*") where the Court of Appeal revisited *Front Row*).

11 Where the applicant seeks to rely on a matter of inference, however, the inference, "if it is to be drawn at all, must be shown to be *clear and virtually inescapable*" (*AKN v ALC (No 1)* at [46]) [emphasis added].

12 As the court in *Front Row* stated (at [39]):

> … the court will look at the face of documents and the tribunal's decision to determine whether the tribunal has in fact fulfilled its duty to apply its mind to the issues placed by the parties before it and considered the arguments raised.

13 The court will not draw an inference that the tribunal has failed to consider a party's contentions if the facts are also consistent with (*AKN v ALC (No 1)* at [46]):

(a) the tribunal simply having misunderstood the aggrieved party's case;

(b) the tribunal having been mistaken as to the law; or

(c) the tribunal having chosen not to deal with a point because it thought it unnecessary (notwithstanding that this view may have been formed based on a misunderstanding of the aggrieved party's case).

14 Even if a decision is inexplicable, it does not necessarily follow that the tribunal has failed to consider a party's contentions: the tribunal may have applied its mind to those contentions but failed to comprehend them or comprehended them erroneously (*TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 at [88]–[91] ("*TMM*")).

15 In the present case, there is no *explicit indication* in the Award that the tribunal failed to consider the contentions in question. The plaintiff's case thus rests on an *inference* to this effect being drawn. I found that this was not "clear and virtually inescapable". To the contrary, it appeared that the tribunal *had* considered the plaintiff's contentions, in making the challenged findings.

The challenged findings

Finding 3

16 Finding 3 was: "The [Managing Director] of [C1, a subsidiary of the Company] was Ms Granger only."[7]

17 The tribunal noted the SPA definition of "Final Valuation", and that it involved determination of the "Average Adjusted PATMI" (as defined in the SPA).[8] "PATMI" meant profit after tax and minority interests of the Group – comprising the Company and the subsidiaries as listed in the SPA ("the Group").[9] The tribunal also noted that Schedule 10 of the SPA contained the "Principles of Adjustments to Actual PATMI" ("the Schedule 10 Principles of Adjustments") by which the "Adjusted PATMI" (and thereafter the "Average Adjusted PATMI") can be arrived at from the "Actual PATMI".[10]

18 The tribunal framed as one of the issues to be determined in the Award:[11]

> What is the 'Final Valuation' as defined in Clause 1.1 of the SPA? To determine this the Tribunal must ascertain the applicable Actual PATMI and the adjustments (if any) to be made to it; the individuals who constituted the key management roles; the Actual Compensation Cost for the key management roles; the appropriate market benchmark…

19 As the tribunal noted in the Award, "[o]ne important element [of the Schedule 10 Principles of Adjustments] relates to the compensation cost of key

---

7 The Award at para 83(3) read with paras 27–39 in DBCP at pp 95–99 and 119.

8 The Award at para 10 in DBCP at pp 77–78; DBCP at p 128.

9 DBCP at pp 128 and 130.

10 The Award at paras 10, 20 and 24 in DBCP at pp 125–126 and 182–184.

11 The Award at para 18(i) in DBCP at p 91.

management. This was one of the important areas of contention between the [parties]".[12] That concerned, among others, Finding 3 and Finding 6.

20 The tribunal understood that the "Actual Compensation Cost"[13] for "Key Management Roles" ("KMRs")[14] would be compared to the "Market Benchmark"[15] for the purposes of adjusting the "Actual PATMI". In the Award, on the issue of "compensation costs for key management", the tribunal stated:[16]

> 27. Paragraph 1.1 of [the Schedule 10 Principles of Adjustments] states that Actual PATMI for such ['Relevant Financial Years'] will be reduced or increased by an amount equal to the difference between the actual compensation cost recorded in the audited consolidated accounts of the Group ("the Actual Compensation Cost") for such ['Relevant Financial Years'] and the "Market Benchmark" (as determined in paragraph 1.2 of [the Schedule 10 Principles of Adjustments]) for such ['Relevant Financial Years'] for various [KMRs] listed in the said paragraph 1.1.
>
> 28. The said paragraph 1.2 provides that the Market Benchmark for the [KMRs] for such ['Relevant Financial Years'] "*shall be determined by an independent human resource consultant to be appointed by mutual agreement between the [plaintiff] and the [defendant]. Such human resource consultant shall act in such determination as expert and not as arbitrator and its determination shall be final and binding on the Parties.*"
>
> 29. Paragraphs 1.3 and 1.4 of [the Schedule 10 Principles of Adjustment] go on to provide that in the event that the Actual Compensation Cost for a [KMR] in such ['Relevant Financial Years'] exceeds the Market Benchmark for such [KMR] in such ['Relevant Financial Years'], the Actual PATMI would be increased by an amount equal to such excess. Should the Actual Compensation Cost for such a role be less than the Market Benchmark, the Actual PATMI for the ['Relevant Financial Years'] would be reduced by an amount equal to such shortfall.

---

12 The Award at para 10 in DBCP at p 78.

13 DBCP at p 125.

14 DBCP at p 129.

15 DBCP at p 129.

16 The Award at paras 27–29 in DBCP at pp 95–96.

[italics in original]

21 The tribunal observed that of the six KMRs, the parties disagreed on two:[17]

(a) who occupied the role of Managing Director ("MD") of C1 ("the MD issue"); and

(b) who occupied the role of Chief Financial Officer ("CFO") of the Group (which was the subject of Finding 4 and is not challenged in these proceedings).

22 The tribunal set out the parties' respective positions regarding the MD issue:[18]

(a) the plaintiff contended that Ms Granger occupied the role *jointly* with Mr and Mrs Potter;

(b) the defendant contended that Ms Granger *alone* occupied that role.

23 In the event, the tribunal decided in favour of the defendant, explaining that it "prefers [the defendant's interpretation] as the [t]ribunal does not think that the SPA contemplated considering the collective compensation of a group of persons rather than having one person who fulfilled the role of MD."[19]

---

17 The Award at para 30 in DBCP at p 96.

18 The Award at paras 31, 35–38 in DBCP at pp 96 and 98–99.

19 The Award at para 38 in DBCP at p 99; Plaintiff's Written Submissions ("PWS") at paras 105–106.

24 First, the plaintiff contended that the tribunal had failed to consider his submissions on one key aspect: "the ultimate purpose for which the person(s) occupying the … respective KMR needs to be determined under [the Schedule 10 Principles of Adjustments]."[20] The plaintiff thus argues: "[t]he question is … who occupied the position of MD … for the purpose of [the Schedule 10 Principles of Adjustments] and not who held or occupied the title of MD … *per se*" [emphasis in original].[21]

25 The tribunal, however, knew full well that it was not deciding in abstract who the MD was; it knew it was deciding that issue for the purpose of the Schedule 10 Principles of Adjustments – indeed, it expressly recognised this in the Award (see above at [20]).[22] The court cannot *infer* that the tribunal failed to consider a point, where there is *explicit indication* in the Award that the tribunal had considered it.

26 Second, the plaintiff contended that the tribunal had miscategorised his position based on an extract from the Redfern Schedule submitted by him.[23] In the Award, the tribunal referred to the plaintiff's Redfern Schedule, which stated, "[MD] of C1 – position occupied by Ms Granger (and assisted by Mr and Mrs Potter)".[24] The tribunal went on to say: "[b]oth [p]arties have approached the issue on the basis that Ms Granger was the MD with the only

---

20 1st Affidavit of the Plaintiff ("1st Affidavit") at paras 62–63.

21 PWS at para 119(b).

22 The Award at paras 27–29 in DBCP at pp 95–96

23 PWS at para 119(c).

24 The Award at para 36 in DBCP at p 98.

dispute being whether Mr and Mrs Potter should also be regarded as effectively occupying the role jointly with Ms Granger".[25]

27 The plaintiff's Redfern Schedule is in the same vein as his witness statement in the arbitration, where he said, "[Mr and Mrs Potter] remained as directors of [C1] with a fixed annual fee payable to them to serve as *consultants* to this company and assist Ms Granger to perform ***her*** *responsibilities and duties as [MD]*" [emphasis added].[26]

28 The tribunal did not miscategorise the plaintiff's position: it *was* his position that Ms Granger occupied the position of MD of C1, and that she was assisted by Mr and Mrs Potter; and that all three of them should thus be regarded as occupying the role jointly.[27]

29 Even if the tribunal had miscategorised the plaintiff's position (as stated in his Redfern Schedule), the tribunal had addressed its mind to the plaintiff's contention that the three individuals should be regarded as occupying the MD role jointly, and he rejected that: there was no breach of natural justice.

30 Third, the plaintiff argued that the tribunal incorrectly found that no alternative argument was made, that "[Mr Potter's] compensation should be taken as the reference point in the absence of any other person appointed to [the MD role]".[28] The plaintiff said he had made this very argument, but the tribunal failed to consider it.

---

25 The Award at para 37 in DBCP at p 98.

26 Claimant's Witness Statement ("Claimant's WS") at para 217 in DBCP at p 708.

27 The Award at paras 31, 35–38 in DBCP at pp 96 and 98–99.

28 The Award at para 37 in DBCP at p 98.

31 The plaintiff cited his various arguments: that it was reasonable to expect that any successor to the title of MD would have a similar job description and compensation package to that of Mr Potter;[29] that the combined compensation of Ms Granger and Mr and Mrs Potter was approximately the same salary that Mr Potter previously had as MD;[30] that it would be reasonable to assume that if an external party were appointed as a replacement for Mr Potter as MD, a similar compensation to that of Mr Potter's would be provided;[31] that it would be unfair to simply take Ms Granger's basic salary as general manager and compare that with the median "Market Benchmark" salary in the general industry for the position of MD;[32] and that on the issues of Mr and Mrs Potter's salaries being included, this was not unfair and in fact the combined salary of the three individuals would be closer to the salary that Mr Potter was paid as MD.[33]

32 None of these, nor all of them taken together, is an alternative argument that *Mr Potter's previous salary as MD* should be used for the purposes of the Schedule 10 Principles of Adjustments, which is what the tribunal mentioned had not been raised in the arbitration (see [30] above). The plaintiff's various arguments (set out at [31] above) were put forward only to support the plaintiff's position that *the combined compensation of Ms Granger and Mr and Mrs Potter* is what should be used for the Schedule 10 Principles of Adjustments, and that Ms Granger should not be regarded solely as the MD for that purpose.

---

29 Claimant's Post-Hearing Submissions ("CPHS") at para 38 in DBCP at p 1099.

30 DBCP at p 1413.

31 CPHS at para 47 in DBCP at p 1103.

32 CPHS at para 48 in DBCP at p 1103.

33 CPHS at para 47 in DBCP at p 1103.

33 Fourth, the plaintiff complained that the independent human resource consultant Phoenix only provided "Market Benchmark" data for the MD role from the general industry, but not that from the widget industry.[34] This is not a criticism of Finding 3 – rather, it is a criticism of Finding 6 (the tribunal's finding on the appropriate "Market Benchmark"). In any event, the tribunal noted the various possible "Market Benchmarks" put forward by Phoenix, and the criticisms levelled by the plaintiff and his expert against the Phoenix reports.[35]

34 The plaintiff quite rightly did not allege that the tribunal had failed to consider the lack of Phoenix "Market Benchmark" data for the MD role from the widget industry. There is no breach of natural justice in this regard. Just complaining that the tribunal's decision is wrong because Ms Granger's compensation in the widget industry should not be compared to a general industry benchmark, is an attempted appeal rather than a ground for setting-aside.

35 In any event, if there were any breaches of natural justice, I was not persuaded that the plaintiff had been prejudiced thereby: it would not reasonably have made a difference to the outcome had the tribunal considered what it had allegedly failed to consider: see *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [86] ("*Soh Beng Tee v Fairmount*") and *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [54] and [91]–[92] ("*L W Infrastructure v Lim Chin San*"), both recently cited in *CHH v CHI* [2020] SGHC 269 at [45].

---

34 PWS at paras 112–116.

35 The Award at paras 47–55 in DBCP at pp 102–105.

36 In the circumstances, I rejected the challenge to Finding 3.

Finding 6

37 Finding 6 was: "[t]he Appropriate Market Benchmark is the median Market Benchmark provided by [Phoenix]."[36]

38 Paragraph 1.2 of the Schedule 10 Principles of Adjustments provides that the "Market Benchmark" for the KMRs shall be determined by an independent human resource consultant to be appointed by mutual agreement between the plaintiff and the defendant, and "[s]uch human resource consultant shall act in such determination as expert and not as arbitrator and its determination shall be final and binding on the [p]arties".[37]

39 Phoenix was appointed as that independent human resource consultant. In its reports, however, Phoenix did not give a *single figure* for the "Market Benchmark" for each of the KMRs; instead, Phoenix provided a *range* of possible "Market Benchmarks" for KMRs for the general industry and the widget industry.[38]

40 The defendant's position was that the *most appropriate* of the "Market Benchmark" values *put forward by Phoenix* should be chosen – the defendant's expert chose the median "Market Benchmark".[39]

---

36 The Award at para 83(6) read with paras 24-29 and 46–55 in DBCP at pp 94–96, 102–105 and 119.

37 The Award at paras 28 and 48 in DBCP at pp 95 and 102; DBCP at p 182.

38 The Award at paras 47–49 in DBCP at pp 102–103.

39 The Award at para 49 in DBCP at p 103.

41 On the other hand, the tribunal found that the plaintiff's expert may have departed materially from what Phoenix did.[40] The plaintiff's expert agreed that his report was based on a different data set from the Phoenix reports, and did not take headcount into account as a factor.[41] The plaintiff's expert did not give his opinion (as the defendant's expert did) on what the appropriate "Market Benchmark" should be, *based on whatever information was available in the Phoenix reports*; the plaintiff's expert also did not pick from the range of benchmarks provided by Phoenix.[42]

42 In the event, the tribunal accepted the median "Market Benchmark" as advanced by the defendant's expert.[43] The tribunal explained ("the tribunal's Explanation"):[44]

> Essentially, the Tribunal holds the view that the [Phoenix] reports have to provide the basis from which the appropriate Market Benchmarks should be derived given the [p]arties' agreement that [Phoenix] (and not someone else) would be appointed as the independent expert. In addition, both [p]arties seem to be agreed that the Tribunal has to make sense of the [Phoenix] reports, not that the [Phoenix] reports are so fundamentally flawed that they should be disregarded entirely.

43 The tribunal set out the defendant's expert's explanation of why it had adopted the median "Market Benchmark",[45] and said that that approach had the benefit of clarify and adopted one of the possible "Market Benchmarks" set out in the Phoenix reports.[46] The tribunal also noted that for one of the KMRs, the

---

40 The Award at para 53 in DBCP at pp 104–105.

41 The Award at para 52 in DBCP at pp 103–104.

42 The Award at para 53 in DBCP at pp 104–105.

43 The Award at para 54 in DBCP at p 105.

44 The Award at para 53 in DBCP at pp 104–105.

45 The Award at para 51 in DBCP at p 103.

46 The Award at para 52 in DBCP at pp 103–104.

plaintiff's expert's recommended benchmark was based on the P50 "Market Benchmark" (*ie*, the average "Market Benchmark") and the tribunal said that indicated that choosing the median "Market Benchmark" (as advanced by the defendant's expert) was not in itself absurd or unreasonable.[47]

44 The tribunal concluded the section in the Award on this issue by saying ("the tribunal's Conclusion"):[48]

> The Tribunal wishes to add that in the absence of [Phoenix] being called to give evidence, including of the questions that the [plaintiff's] expert would have liked [Phoenix] to answer, the Tribunal is not in a position to determine if there was any bias or manifest error on [Phoenix's] part.

45 The plaintiff complained that the tribunal had not allowed him a reasonable opportunity to present his case as well as to respond in respect of the fact that Phoenix had not been called to give evidence.[49]

46 First, the plaintiff argued that Finding 6 predominantly rested on the fact that Phoenix did not give evidence in the arbitration.[50] This is not so, as a perusal of the Award shows (see [39]–[44] above).[51] It is noteworthy that the tribunal's Conclusion, which expresses what "[t]he [t]ribunal wishes to *add*" [emphasis added] about Phoenix's absence is the very last paragraph in the section,[52] coming after the tribunal's acceptance of the median "Market Benchmark" as

---

47 The Award at paras 53–54 in DBCP at pp 104–105.

48 The Award at para 55 in DBCP at p 105.

49 1st Affidavit at para 91; PWS at para 139.

50 1st Affidavit at paras 82 and 89; PWS at para 133.

51 The Award at paras 46–55 in DBCP at pp 102–105.

52 The Award at para 55 in DBCP at p 105.

advanced by the defendant's expert.[53] Furthermore, the tribunal referred to Phoenix's absence only in relation to whether there was any bias or manifest error on Phoenix's part. The tribunal still had to (and did) consider the Phoenix reports, and what the parties and their respective experts said about them, in deciding on the appropriate "Market Benchmark".

47 Second, the plaintiff said that the tribunal had failed to consider his arguments about Phoenix's lack of independence and the flaws in Phoenix's reports (such that they were non-conclusive and non-binding).[54]

48 However, the tribunal's Conclusion ([44] above) points the other way: by saying that it was *not* in a position to determine if there was any bias or manifest error on Phoenix's part, the tribunal indicated that it was aware that the plaintiff *had* contended that Phoenix lacked independence and that its reports were flawed. Indeed, the tribunal had noted criticisms of Phoenix's reports made by the plaintiff and his expert.[55] As the plaintiff himself said, with reference to the tribunal's Explanation ([42] above), "the [t]ribunal *acknowledged* the flaws in Phoenix's [r]eport" [emphasis added].[56] The plaintiff cannot sustain a complaint that the tribunal failed to consider his contentions about flaws in Phoenix's reports, while saying the tribunal had agreed with him that there were such flaws.

49 Moreover, the tribunal was right to note that both parties seemed to be agreed that the tribunal had to make sense of the Phoenix reports, and not that

---

53 The Award at para 54 in DBCP at p 105.

54 PWS at paras 137–141.

55 The Award at paras 47–48, 50 and 53 in DBCP at pp 102–104.

56 1st Affidavit at para 82(b).

the Phoenix reports are so fundamentally flawed that they should be disregarded entirely. In these proceedings, the plaintiff still says "I should emphasise that it is not my position that the [Phoenix] [r]eports should be disregarded. Rather, expert evidence is necessary to assist parties with the determination of the appropriate market benchmark".[57]

50 That is precisely what the tribunal did: it did not disregard the Phoenix reports; it considered both sides' expert evidence, and it determined that the appropriate "Market Benchmark" was the median "Market Benchmark" as advanced by the defendant and its expert.

51 Third, the plaintiff said that he had no opportunity to be heard on the issue of Phoenix's absence; he even said he made no submission regarding the non-attendance of Phoenix.[58] This is factually wrong. In his post-hearing submissions in the arbitration, the plaintiff submitted: "[t]he [defendant's] complaint that the [plaintiff] had '*decided not to call [Phoenix]*' and should '*stand or fall by that decision as far as [Phoenix's] non-presence here*' is disingenuous … if the [defendant] intended to rely solely on the Phoenix [r]eports, it ought to have called Phoenix as an expert witness to provide context to and explanations for its reports".[59] Further, in his responsive post-hearing submissions in the arbitration, the plaintiff contended, "[i]t is ridiculous for the [defendant] to suggest that the [plaintiff] must subpoena a representative of Phoenix to give evidence on his behalf".[60]

---

57 2nd Affidavit of the Plaintiff ("Plaintiff's 2nd Affidavit") at para 26(d).

58 PWS at para 138.

59 CPHS at para 105 in DBCP at p 1121.

60 Claimant's Responsive Post-Hearing Submissions ("CRPHS") at para 81(c) in DBCP at p 1333.

52 Phoenix's absence was in issue, the plaintiff had the opportunity to be heard on it, and the plaintiff made submissions on it.

53 Fourth, the plaintiff argued that the tribunal was wrong to say that the plaintiff's expert had not given his opinion (as the defendant's expert did) on what the appropriate "Market Benchmark" should be, *based on whatever information was available in the Phoenix reports*. The plaintiff said his expert did just that.[61]

54 That is, however, not what the plaintiff's expert did:

(a) as the tribunal noted in the Award, the plaintiff's expert did not confine itself to "whatever information was available in the Phoenix reports"[62] – for a particular sector, it came up with a substantially different peer group with only two of the 19 companies chosen falling within Phoenix's list of 30 companies for that sector; the plaintiff's expert also did not take headcount into account as a factor;[63] and

(b) the plaintiff's expert did not simply select one of Phoenix's "Market Benchmarks", *eg*, P25 or P50 or P75; instead it put forward its own suggested "Market Benchmarks" and then expressed those as a percentage of the Phoenix "Market Benchmarks"; this "positioning against [the] Phoenix ['Market Benchmarks']" resulted in the P41, P36,

---

61 1st Affidavit at paras 96–97 in DBCP at pp 49–51; Witness Statement of Plaintiff's Expert Witness in DBCP at p 804; CPHS at para 136 in DBCP at p 1130; CRPHS at para 44 in DBCP at pp 1322–1323; PWS at paras 152–153.

62 The Award at para 53 in DBCP at p 104.

63 The Award at para 52 in DBCP at pp 103–104.

P37, P38 benchmarks, which were not any of the Phoenix "Market Benchmarks".[64]

55 The tribunal evidently considered the plaintiff's expert's report: in the Award, it cited it[65] and commented on its methodology.[66]

56 There is no breach of natural justice, and in any event, no prejudice to the plaintiff. I thus rejected the challenge to Finding 6.

Finding 8

57 Finding 8 was: "[t]he [plaintiff's] claim against the [defendant] for breaches of the SHA is disallowed."[67]

58 Finding 9 was: "[t]he [plaintiff's] claims against the [defendant] for inducing a breach of the SHA and in [c]onspiracy are disallowed."[68]

59 The plaintiff only challenged part of Finding 9, namely, the dismissal of his claim for inducing breach of the SHA. He did not challenge the dismissal of his claim in conspiracy.

60 The plaintiff addressed his challenge to Finding 8 together with his challenge to part of Finding 9,[69] and I do likewise.

---

64 CPHS at paras 135–136 in DBCP at p 1130.

65 The Award at paras 53–54 in DBCP at pp 104–105.

66 The Award at para 52 in DBCP at pp 103–104.

67 The Award at para 86(8) read with paras 58–69 in DBCP at pp 106–113 and 119.

68 The Award at para 86(9) read with paras 70–76 in DBCP at pp 114–116 and 119.

69 PWS at paras 166–188.

61 In the Award, the tribunal found that "as [the defendant] is not a contracting party under the SHA, [the defendant] cannot *prima facie* be liable for any breach of the SHA that may be established".[70] It went on to hold that the burden was on the plaintiff to establish why such *prima facie* position did *not* apply, and concluded that:

(a) there was no "implied term of good faith" in the SPA which the defendant had breached;[71]

(b) the defendant was not liable for inducing breach of the SHA;[72]

(c) the defendant was not liable in conspiracy;[73] and

(d) it was a subsidiary of the defendant ("D1"), and not the defendant, who signed the SHA and had obligations (and rights) under the SHA.[74]

62 The tribunal noted that it was the plaintiff's case that the SPA and SHA must be read together as one contractual agreement setting out the rights and responsibilities of the parties; and that it was envisaged originally that the defendant would be the contracting party under the SHA.[75] The tribunal found that:[76]

---

70 The Award at para 60 in DBCP at p 107.

71 The Award at paras 61–64 in DBCP at pp 107–109.

72 The Award at paras 65–69 in DBCP at pp 110–113.

73 The Award at paras 70–75 in DBCP at pp 114–116.

74 The Award at paras 60 and 62–64 in DBCP at pp 107–110.

75 The Award at para 58 in DBCP at pp 106–107.

76 The Award at para 59 in DBCP at p 107.

> … the SHA was eventually signed by [D1] at the request of [the defendant] to which the [plaintiff] acceded to. Accordingly, the [t]ribunal is of the view that this constituted a variation of the SPA that is effective since it complied with Clause 15.7 of the SPA as being in writing and signed by or on behalf of each of the [p]arties as the [plaintiff] asserts that [D1] was [the defendant's] nominee for the purposes of the SHA.

63 The plaintiff challenged Finding 8 and part of Finding 9 on the following grounds:

(a) the tribunal's finding that there was a variation of the SPA was made in breach of natural justice as the issue of whether the SPA had been varied was not before it;[77]

(b) the tribunal failed to consider the plaintiff's submissions that D1 is the *alter ego* of the defendant, and related submissions;[78]

(c) the tribunal failed to consider the plaintiff's submissions as to an implied term that the rights of D1 and/or the defendant under the SHA had to be exercised in good faith, must not be exercised unreasonably, and ought not to be exercised in a manner that would adversely affect the "Actual PATMI" and the "Final Valuation".[79]

Variation of the SPA

64 It is important not to put the cart before the horse. The tribunal's observation that "[the defendant] cannot *prima facie* be liable for any breach of the SHA that may be established" as it is "not a contracting party under the

---

77 1st Affidavit at paras 108–111; PWS at paras 165, 166 and 169.

78 PWS at paras 174 and 177–179.

79 1st Affidavit at paras 119–123; PWS at paras 180–188.

SHA" (see [61] above) was *not dependent* on a finding that the SPA had been varied.

65 If the SPA had not been varied, then the defendant had arguably breached the SPA (subject to considerations such as waiver and estoppel) when the defendant did not sign the SHA but nominated D1 to do so instead. It, however, remains the case that D1, not the defendant, was the party that contracted with the plaintiff in the SHA; indeed, this was done at the request of the defendant and the plaintiff acceded to it.[80] The tribunal went on to say, "by agreeing to substitute [D1] for [the defendant] in the SHA, the [plaintiff] must have known and accepted that the obligations under the SHA were to be owed by [D1] to the [plaintiff]".[81]

66 In expressing its view that the SPA had been varied by agreement between the plaintiff and the defendant, the tribunal was simply responding to the plaintiff's submission that the SPA and SHA must be read together (with the SPA contemplating that the defendant would sign the SHA). That was, however, not a link in the chain of reasoning which the tribunal relied on to arrive at the conclusion that D1 had signed the SHA, and so D1 (and not the defendant) would *prima facie* be liable for any breach of the SHA.

67 Although neither party had expressly suggested that the SPA had been varied, they could reasonably have foreseen that the tribunal might reach that conclusion by reading the SPA and SHA together as the plaintiff had *invited* the tribunal to do.[82] As such, the tribunal's finding that the SPA had been varied by

---

80 The Award at para 59 in DBCP at p 107.

81 The Award at para 64 in DBCP at pp 109–110.

82 Claimant's Opening Statement ("COS") at para 38 in DBCP at p 1000.

agreement can hardly be said to be surprising or unexpected, and that indicates that, contrary to the plaintiff's submissions,[83] there was no breach of the fair hearing rule (see *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 at [54] ("*Glaziers*")). Furthermore, since the plaintiff chose not to specifically address whether the SPA had been varied, waived, or breached, *despite* it being reasonably foreseeable that the tribunal might decide on this, there can be no breach of natural justice (see *Glaziers* at [60]).

68 On the tribunal's view that the SPA had been varied, the defendant had not breached the SPA by not signing the SHA. But the plaintiff had not brought a claim for breach of the *SPA* against the defendant for it not signing the SHA; the plaintiff's claim was that the defendant was liable for breaches of the *SHA* notwithstanding that D1 (and not the defendant) had signed the SHA. It was to that end that the plaintiff suggested that the SPA and SHA be read together. The "variation" finding did not impinge on the case which the plaintiff had advanced.

69 Indeed, the tribunal's view that the SPA had been varied, made no difference to its finding that it was D1, and not the defendant, that had contracted with the plaintiff in the SHA. That is plain from the SHA itself: D1 (not the defendant) is named together with the plaintiff and the Company on the cover of the document;[84] the SHA is described as an agreement made between the plaintiff, D1, and the Company;[85] recital (A) states that the SHA is entered by the "Parties" pursuant to the SPA made between the plaintiff and the

---

83 PWS at para 165.

84 DBCP at p 237.

85 DBCP at p 240.

defendant;[86] and "Parties" is defined in the clause 1.1 of the SHA to mean the plaintiff, D1, and the Company.[87]

70 The plaintiff himself admitted that he had entered into the SHA with D1, and not with the defendant. In the plaintiff's statement of claim in the arbitration ("SOC"), he referred to the SHA as "the Shareholders' Agreement … entered into between the [plaintiff] and [the defendant's] nominated entity, [D1]",[88] and he said, "[t]he parties to the SHA were the [plaintiff] and [the defendant's] nominee, [D1]".[89]

71 The plaintiff gets nowhere complaining about the tribunal having said that the SPA had been varied.

Alter ego *and related contentions*

72 The plaintiff pleaded in the SOC that D1 is the *alter ego* of the defendant (the "First Contention"),[90] and that the defendant is the purchaser and beneficial owner of shares in the Company held in D1's name (the "Second Contention").[91] The plaintiff also made post-hearing submissions in the arbitration that the defendant had, in response to the plaintiff's pleadings, accepted that it was the defendant (as opposed to D1) that had made certain decisions that led to the breaches of the SHA complained of (the "Third Contention")[92] and that the

---

86 DBCP at p 240.

87 DBCP at p 242.

88 Statement of Claim ("SOC") at p 2 in DBCP at p 468.

89 SOC at para 11 in DBCP at p 472.

90 SOC at para 15(b) in DBCP at p 473.

91 SOC at para 15(c) in DBCP at p 473.

92 CPHS at paras 170 and 173 in DBCP at pp 1138–1139.

defendant (and not D1) had sought relief for alleged breaches of the SHA by the plaintiff (the "Fourth Contention").[93]

73 The plaintiff submitted that these Contentions were not expressly mentioned in the Award, and so the tribunal had failed to consider them. That does not follow. A tribunal is not obliged to cite and respond to every point raised: *TMM* ([14] *supra*) at [72]–[74] and [76]; *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733 at [60]; see also *AKN v ALC (No 1)* ([13] *supra*) at [46].

74 The plaintiff acknowledged that the tribunal did consider some of his arguments, in so far as the tribunal expressly dealt with them in arriving at its decision that the defendant was not liable for any breaches of the SHA, or for inducing breach of the SHA.

75 The tribunal's reasoning and findings, however, necessarily also dispose of all the four Contentions which the plaintiff alleged the tribunal failed to consider ([72] above). I highlight the following from the Award:

(a) "…the fact that [the defendant] has a controlling majority in the board of directors of [D1] and is its sole shareholder is irrelevant in itself";[94]

(b) "[i]t was not suggested that the SHA was a sham in the sense that it did not represent the true agreement between the parties to the SHA [citing *Snook v London and West Riding Investments Ltd* [1967] 2 QB

93 CPHS at para 172 in DBCP at p 1139.

94 The Award at paras 60 and 65 in DBCP at pp 107 and 110.

786] and that the real agreement was between [the defendant] and the [plaintiff] with [D1] merely a cipher for the former";[95]

(c) "[the defendant] and its subsidiary [D1] are separate legal entities";[96]

(d) "having control of a subsidiary cannot of itself mean that the parent is liable for breaches of contract by its subsidiary based on the tort of interference with contractual relations";[97] and

(e) "there is no sufficient basis to find that [the defendant] acted beyond what it was entitled to do as a shareholder of [D1]".[98]

76 The tribunal did not use the term *alter ego*, but by its reasoning and findings, it decided that D1 was not the *alter ego* of the defendant – instead, they were separate legal entities. That disposes of the plaintiff's First Contention.

77 An incident of separate legal personality is that a company's property is owned by it, and not by its shareholders (*Macaura v Northern Assurance Co Ltd* [1925] AC 619 at 626; *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 at [8]). The fact that the defendant was the shareholder of D1 did not make the defendant the beneficial owner of D1's property (specifically, D1's shares in the Company). That disposes of the plaintiff's Second Contention.

---

95 The Award at para 62 in DBCP at p 108.

96 The Award at para 65 in DBCP at p 110.

97 The Award at paras 65–67 in DBCP at pp 110–112.

98 The Award at paras 68–69 in DBCP at pp 112–113.

78 The tribunal's finding that the defendant was not liable under the SHA for what it did as D1's shareholder disposes of the Third Contention.

79 The tribunal also addressed whether the defendant had rights under the SHA, observing that "[the defendant] does not *prima facie* have any rights under the SHA since it is not a party to it".[99] That was recognised by the plaintiff in his submissions.[100] That disposes of the Fourth Contention – whatever rights (under the SHA) the defendant may have asserted against the plaintiff, the tribunal found that the defendant had no such rights under the SHA. For completeness, I note that the tribunal dismissed the defendant's counterclaim for an account, albeit on grounds other than the defendant not having rights under the SHA.[101]

80 Moreover, the plaintiff's complaint that the tribunal failed to consider his *alter ego* and related arguments rings hollow. The plaintiff himself recognised that "there were several practical reasons for incorporating [D1] as the holding company, such as tax benefits and transparency".[102] This is fundamentally inconsistent with D1 being the *alter ego* of the defendant.

81 Further, the plaintiff had pleaded that D1 was the *alter ego* of the defendant, but he did not mention that again (at least not in those terms). The defendant pointed out that the plaintiff had adduced no evidence or submissions

---

99 The Award at para 62 in DBCP at p 108.

100 PWS at para 178.

101 The Award at paras 80–82 in DBCP at pp 117–118.

102 Claimant's WS at para 42 in DBCP at p 651.

to meet the high threshold for lifting the corporate veil,[103] and that was accepted by the tribunal who expressed it thus:[104]

> [t]he [t]ribunal notes, as pointed out by [the defendant], that no argument has been made by the [plaintiff] that the corporate veil between [the defendant] and [D1] should be lifted.

82 The plaintiff contended that although he had not used the phrase *alter ego* after mentioning it in the SOC, he had said that certain things were done by the defendant "*via* [D1]".[105] This however adds nothing to the plaintiff's contentions (which the tribunal expressly dealt with) that D1 was the defendant's nominee for the purposes of the SHA; that D1 was the defendant's wholly owned subsidiary, with the defendant having a controlling majority on the board of D1; and above all that the defendant was liable for breaches of the SHA.[106]

83 There is no magic in the use of Latin terms like "*alter ego"* or "*via*". The tribunal disposed of those points perfectly well in plain English.

84 I could not infer that the tribunal failed to consider the plaintiff's *alter ego* and related arguments – it is evident that the tribunal did. In any event, given the findings the tribunal made, any failure by it to consider the points mentioned would have made no difference to the result: the plaintiff has not suffered any prejudice thereby.

---

103 Respondent's Post-Hearing Reply Submissions at paras 52–54 in DBCP at pp 1386–1387.

104 The Award at para 60 in DBCP at p 107.

105 COS at paras 42 and 46 in DBCP at pp 1001–1005.

106 The Award at paras 2, 59–60 and 65 in DBCP at pp 2, 107 and 110-111.

Implied term

85 The plaintiff complained that the tribunal had failed to consider his position on the implied term, as pleaded in the SOC[107] and as set out in his opening statement in the arbitration.[108]

86 The implied term which the plaintiff had contended for was:[109]

> [t]he rights of [D1] and/or [the defendant] under the SHA:-
>
> (a) had to be exercised in good faith;
>
> (b) must not be exercised unreasonably; and
>
> (c) ought not to be exercised in a manner that would adversely affect the Actual PATMI and the Final Valuation.

87 The plaintiff argued that the tribunal focused exclusively only on whether a duty of *good faith* should be implied, and failed to consider the second and third limbs of the proposed implied term.[110]

88 In fact, the tribunal considered *all three aspects* of the proposed implied term. The tribunal said:[111]

> [a] reason given for [the defendant's] liability for the alleged breaches of the SHA is that there is an implied term of good faith in the SPA and [the defendant] has breached such implied term by acting in bad faith, *unreasonably* and *in a manner that was intended or otherwise to decrease the Actual PATMI and the Final Valuation.*
>
> [emphasis added]

---

107 SOC at paras 21–24 in DBCP at pp 476–477.

108 COS at paras 13–14 and 36–42 in DBCP at pp 987–988 and 1000–1001.

109 SOC at para 21 in DBCP at p 476; PWS at para 180.

110 PWS at para 181.

111 The Award at para 61 in DBCP at pp 107–108.

89 In articulating the manner in which the defendant had allegedly breached the implied term, the tribunal referred to all three aspects of the implied term:

(a) acting in bad faith;

(b) acting unreasonably; and

(c) acting in a manner that was intended or otherwise to decrease the "Actual PATMI" and the "Final Valuation".

90 Although the tribunal had described the implied term as "an implied term of good faith",[112] he obviously meant that compendiously to include *all three limbs* of the proposed implied term, as put forward by the plaintiff.

91 Moreover, the tribunal's reasoning and findings dispose of all three limbs of the proposed implied term:

(a) allowing the plaintiff to claim against both the defendant and D1 would be contrary to what the parties intended when they agreed to substitute D1 for the defendant as the contracting party to the SHA;[113]

(b) it is not necessary to imply such a term, for if the alleged breaches occurred, the plaintiff can enforce his rights under the SHA against D1;[114]

---

112 The Award at paras 63–64 and 68 in DBCP at pp 108–109 and 112.

113 The Award at para 63 in DBCP at pp 108–109.

114 The Award at para 64 in DBCP at pp 109–110.

(c) if the basis for an assertion of an inducement to breach a contract is that the defendant is liable *through* D1 as a result of an implied term, that is rejected for reasons given earlier (see [78] above);[115]

(d) if the plaintiff's contention about the defendant's conduct as a shareholder of D1 is conditional upon establishing breach of an implied term, the tribunal had already found that there was no such term;[116]

(e) the defendant did not act beyond what it was entitled to do as a shareholder of D1; the defendant was entitled to pursue its own interest as a shareholder of its subsidiary (D1), and it did not act in bad faith in doing so.[117]

92 In so far as the proposed implied term pertains to the rights of the defendant under the SHA, that does not help the plaintiff in this arbitration, given the tribunal's findings that D1 and the defendant were separate legal entities, with the defendant having no rights or obligations under the SHA (see [76] and [79] above). As the tribunal stated: "…to the extent that the implied term is premised on [the defendant] being entitled to directly exercise rights under the SHA, the [t]ribunal does not find this made out as [the defendant] does not *prima facie* have any rights under the SHA since it is not a party to it".[118]

93 There is nothing in the complaint that the tribunal failed to consider the second and third limbs of the proposed implied term. Even if the tribunal had

---

115 The Award at para 65 in DBCP at pp 110–111.

116 The Award at para 68 in DBCP at p 112.

117 The Award at para 68 in DBCP at p 112.

118 The Award at para 62 in DBCP at p 108.

failed in this regard, its reasons for rejecting an implied term of good faith (see [91] above) – if that were limited to the first limb of the proposed term – apply equally against the other two limbs: no prejudice was caused to the defendant.

94 The matters discussed above relate both to Finding 8 and part of Finding 9 (where the plaintiff's claim for inducing a breach of the SHA was dismissed). Moreover, the tribunal expressly addressed, and rejected, the plaintiff's contentions in relation to inducement of breach of contract.[119] I thus rejected the challenge to Finding 8 and part of Finding 9.

Bias

95 In relation to breach of natural justice, the plaintiff focused on the alleged deprivation of the right to be heard. However, he also stated in his 1st affidavit supporting the present application: "[i]n addition to depriving my right to be heard as aforesaid, the [Award] is affected by apparent bias".[120] He concluded his 1st affidavit as follows:

(a) "the Award is affected by *apparent bias*" [emphasis added];[121]

(b) "the issues overlooked by the [t]ribunal are of such major consequence and so much to the forefront of my submissions that no adjudicator attempting to address the issues in *good faith* could conceivably have regarded them as requiring no specific examination in the reasons for determination" [emphasis added];[122] and

---

119 The Award at paras 60 and 65–68 in DBCP at pp 107 and 110–112.

120 1st Affidavit at para 54 in DBCP at pp 31–32.

121 1st Affidavit at para 135(b)(v) in DBCP at p 66.

122 1st Affidavit at para 135(c) in DBCP at p 66.

(c) "[f]urther, when the [t]ribunal's conduct of ignoring my submissions on a few critical issues is considered, *apparent bias* on the face of the [Award] is clear" [emphasis added].[123]

96 The plaintiff's 2nd affidavit however made no mention of bias, and neither did his written submissions, which ran to some 90 pages. In his written submissions, he recognised that it is trite law that a party seeking to set aside an arbitral award on the breach of natural justice ground must identify (among other things) the relevant rule of natural justice that was breached (citing *Soh Beng Tee v Fairmount* ([35] *supra*) at [29] and *L W Development v Lim Chin San* ([35] *supra*) at [48]).[124] There is then a reference to s 22 of the AA: "[t]he arbitral tribunal shall act fairly and impartially and shall give each party a reasonable opportunity of presenting his case".[125] Whilst that refers to the tribunal acting fairly and impartially, the subsequent discussion in the plaintiff's submissions was focused on the right to be heard, rather than on bias.[126]

97 At the hearing, no oral submissions on bias were made on behalf of the plaintiff. Counsel for the defendant queried whether bias was still being pursued, but counsel for the plaintiff did not clarify this in reply.

98 From the scant references to bias in the plaintiff's 1st affidavit, the allegation of bias appeared premised on him being deprived of the right to be heard. I found that there was no breach by the tribunal in that regard. In any event, no actual or apparent bias was made out. I also noted that the plaintiff

---

123 1st Affidavit at para 136 in DBCP at p 67.

124 PWS at para 57.

125 PWS at para 58.

126 PWS at paras 59–87, 97, 134 and 165.

sought an order that the arbitration proceedings be remitted for re-hearing before the *same* tribunal (which the court may do under s 48(3) of the AA, where appropriate and so requested by a party, suspending the setting-aside proceedings in the interim).[127] That is inconsistent with the plaintiff truly believing that there was actual or apparent bias on the part of the tribunal.

Remission

99 As mentioned in the preceding paragraph, the plaintiff sought remission of the arbitration proceedings back to the same tribunal. Counsel for the plaintiff clarified at the hearing that the plaintiff wanted the challenged findings to be set aside; remission was only sought in the alternative. The prayer for remission was thus included just in case the court regarded it appropriate to suspend the setting-aside proceedings and remit the matters in question back to the tribunal.

100 It was common ground that the court has no power to remit an award *after* it has been set aside: *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 ("*AKN v ALC (No 2)*") at [34].

101 Moreover, s 44 of the AA provides that upon an award being made (including a partial award), the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award. Here, the plaintiff was seeking to set aside findings the tribunal had already made in the Award. Remission pursuant to the AA would not avail the plaintiff: the tribunal could not revisit the issues in question and reach the opposite conclusion.

---

127 Prayer 2 of Originating Summons in DBCP at p 4.

102 In the circumstances, I did not think it was appropriate to suspend the setting-aside proceedings. I proceeded to dismiss the plaintiff's setting-aside application.

Was this just a backdoor appeal?

103 The Award was issued on 3 June 2020. The plaintiff made an abortive attempt to appeal against the findings he was dissatisfied with, by filing an earlier originating summons on 1 July 2020 seeking leave to appeal. This was then discontinued on 15 July 2020 after the defendant pointed out that the plaintiff had waived any right of appeal: the plaintiff had agreed (pursuant to the SPA[128] and SHA[129] respectively) to arbitrate pursuant to the rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, and rule 32.11 of the SIAC Rules (SIAC, 6th ed, 2016) ("the Rules") provides that the parties, by agreeing to arbitrate under the Rules, irrevocably waive their rights to any form of appeal.

104 On 2 September 2020, the plaintiff then filed the present application, seeking to set aside the findings he was dissatisfied with.

105 Given this history, the defendant submitted that the present application was not a *bona fide* setting-aside application – it was really a backdoor attempt to appeal, given the similarity between the matters raised here and in the earlier originating summons. The plaintiff evidently wished to challenge the

128 DBCP at p 170.

129 DBCP at p 223.

correctness of the Award. Nevertheless, I considered the present application on its own merits, and dismissed it.

106 I should say, however, that much of what the plaintiff had to say concerned the correctness of the challenged findings, against which he has no right of appeal. At best, he could try to argue: "How could the tribunal make such a wrong decision? It must have failed to consider my arguments."

107 As the court in *TMM* ([14] *supra*) observed at [88]–[91], though, even if a decision may fall to be characterised as inexplicable, that does not necessarily mean that there was a breach of natural justice: the tribunal might, after applying its mind, have failed to comprehend the submissions, or comprehended them erroneously. In the present case, I did not consider any of the challenged findings to be inexplicable. As much as the plaintiff wished to reargue the merits of his case, "the substantive merits of the arbitral proceedings are *beyond* the remit of the court" [emphasis in original] (*BLC and others v BLB and another* [2014] 4 SLR 79 at [3]), and "the courts do not and must not interfere in the merits of an arbitral award" (*AKN v ALC (No 1)* ([10] *supra*) at [37]).

Costs

108 As the successful party, the defendant sought legal costs in the sum of $27,000, plus disbursements. The defendant explained the $27,000 sought as: $20,000 for the setting-aside aspect of this application, $4,000 for the issue of staying enforcement of the Award (the third prayer of this application, which was not pursued in the event), and $3,000 for the issue of staying the arbitration (the fourth prayer of this application, which was also not pursued in the event).

The defendant suggested that the circumstances might even attract an order of indemnity costs.

109 The plaintiff submitted that only $10,000 should be awarded in legal costs, plus disbursements.

110 In the circumstances of this case, I awarded the defendant $24,000 in legal costs on a standard basis, plus disbursements in the sum of $4,696.60.

Conclusion

111 I would echo the observations of the court in *TMM* ([14] *supra*) at [125]:

> [e]specially for challenges against an award founded on the breach of natural justice, the court's role is, in very general terms, to ensure that missteps, if any, are more than arid, hollow, technical and procedural ([*Soh Beng Tee v Fairmount* ([35] *supra*)] at [98]). Any real and substantial cause for concern should be demonstrably clear on the face of the record without the need to pore over thousands of pages of facts and submissions. Otherwise, curial recourse against an award will be used (and abused) as an opportunity to invite the court to judge the full merits and conduct of the arbitration.

112 In the present case, the grounds for setting-aside were not demonstrably clear; what emerged instead was that there was no real and substantial cause for concern.

Andre Maniam
Judicial Commissioner

Deborah Barker, SC, Ushan Premaratne, Yvonne Mak, Jonathan Tan (Withers KhattarWong LLP) for the plaintiff;
Harpreet Singh, SC (Audent Chambers LLC) (instructed), Jerald Foo and Xide Low (Cavenagh Law LLP) for the defendant.
