IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(I) 11

Originating Summons No 1 of 2022 and Summons No 8 of 2022

Between

(1) CPU
(2) CPV
(3) CPW

… *Applicants*

And

CPX

… *Respondent*

JUDGMENT

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

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CPU and others
v
CPX and another matter

[2022] SGHC(I) 11

Singapore International Commercial Court — Originating Summons No 1 of 2022 and Summons No 8 of 2022
Sir Henry Bernard Eder IJ
1 April 2022

25 July 2022 Judgment reserved.

Sir Henry Bernard Eder IJ:

Introduction

1 The main application before the court, SIC/OS 1/2022, is an application by the three applicants under s 24(*b*) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "Act") and Art 34(2)(*a*)(i) of the UNCITRAL Model Law on International Commercial Arbitration as adopted in Singapore (the "Model Law"), to set aside the final award dated 26 July 2021 (the "Award") issued by the sole arbitrator (the "Arbitrator" or "Tribunal") in Singapore International Arbitration Centre ("SIAC") Arbitration No. XX of 20XX (the "Arbitration"), on the following grounds:

(a) the applicants were under some incapacity, and the relevant arbitration agreements were not valid under the law to which the parties have subjected it; and

(b) there has been a breach of the rules of natural justice due to a failure of the Tribunal to accord a fair hearing to the applicants.

2 In addition to SIC/OS 1/2022 (the "main application"), it is important to mention that there is (or at least was) a further application, SIC/SUM 8/2022, made on behalf of the applicants shortly before the hearing of the main application, whereby the applicants sought leave of the court to adduce a further affidavit from one Dr P in support of the main application. The respondent objected to the application for leave to adduce such further evidence. In the event, I heard arguments in relation to SIC/SUM 8/2022 on 1 April 2022, immediately prior to the commencement of the hearing of the main application. After considering the arguments raised by the parties, I dismissed the application in SIC/SUM 8/2022 for leave to adduce further evidence. So far as relevant, I give my brief reasons for that decision below. On the same day and after a short adjournment, the applicants then applied to the court to adjourn the hearing of the main application in order to allow them to seek leave of the Court of Appeal to appeal against my decision dismissing SIC/SUM 8/2022 and refusing the applicants leave to adduce further evidence. After hearing further argument, I informed the parties that I refused the application to adjourn the main hearing and that the hearing of the main application should proceed forthwith. With that brief introduction, I turn to consider the issues with regard to the main application.

3 The first applicant, CPU ("Mr U") is the father of the second applicant, CPV ("Mr V"). Mr U is a director of the third applicant, CPW, which is a company incorporated under the laws of Ruritania. The respondent is CPX, a company incorporated under the laws of Oceania. The managing director of CPX is one Mr B.

4 The Arbitration was commenced by CPX (*ie*, the respondent in the present proceedings) on 3 May 2019 pursuant to Rule 3.1 of the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the "SIAC Rules"). The claims advanced by CPX in the Arbitration pertained to various alleged breaches by the applicants of their obligations under a Settlement Agreement and a Supplemental Settlement Contract (both as defined below at [20] and [23], and collectively referred to as the "Contracts"). The Contracts each contained an arbitration agreement (individually, an "Arbitration Agreement" and collectively, the "Arbitration Agreements"). The governing law of the Contracts is the law of the Republic of India ("Indian Law"). The seat of the Arbitration is Singapore.

5 So far as relevant for present purposes, the applicants sought to resist the respondent's claims in the Arbitration on, amongst others, the following grounds:

(a) the Contracts were void and unenforceable as they had been entered into under duress and coercion;

(b) the Contracts were void as the first and second applicants had been of unsound mind when they signed the Contracts;

(c) the applicants were not liable to the respondent under the Contracts, as the respondent itself was in breach of certain other agreements referred to as the Preceding Transactions (as defined below at [9]); and

(d) the applicants were entitled to set off US$2.5m from the sums claimed by the respondent in the Arbitration.

6 The Tribunal published the Award on 26 July 2021. In the Award, the Arbitrator determined, amongst other things, that:

(a) The applicants had failed to discharge their burden of proving on a balance of probabilities that: (i) they had executed the Contracts under duress and coercion; and (ii) that they were of unsound mind at the time of executing the Contracts. Therefore, the Contracts were valid and enforceable.

(b) The Tribunal had no jurisdiction to examine and adjudicate on any disputes between the parties that related to a period prior to the Settlement Contract, including the Preceding Transactions.

(c) The applicants had breached their obligations under the Contracts and were therefore jointly and severally liable to pay the respondent damages in the sums of US$10m, US$2,283,333 and S$1,407,558, together with simple interest on such sums accruing at the rate of 2% per month payable from 7 March 2018 until full payment. The applicants had not discharged their burden of proving that US$2.5m should be set off.

7 As set out in the applicants' written submissions, the grounds relied upon in support of their application to set aside the Award are as follows:

(a) The Tribunal exceeded its jurisdiction as the Arbitration Agreements under the Contracts were invalid under Indian Law, due to the presence of coercion and/or duress exercised upon the first and second applicants. Further, the first and second applicants suffered mental illnesses that affected their ability to make a rational decision in the face of such coercion and/or duress.

(b) There was a breach of the rules of natural justice as the Tribunal had refused to allow the applicants to adduce further evidence in the form of two expert medical reports prepared by Dr P, detailing the mental illnesses suffered by the first and second applicants (the "Medical Reports"). This resulted in the Tribunal making a finding of fact against the applicants on the basis that insufficient medical evidence, including expert medical evidence, had been led by the applicants.

(c) There was a breach of the rules of natural justice as the Tribunal had failed to invite submissions on what the applicable law was, in relation to the question of whether the Tribunal had jurisdiction to adjudge issues arising out of the Preceding Transactions (as defined below). This led to the Tribunal applying the wrong law when coming to its conclusion on its jurisdiction.

(d) There was a breach of the rules of natural justice as the Tribunal had refused to allow the applicants to join ABC Ltd ("ABC"), the respondent's nominee and a key party mentioned in the Settlement Contract, to the Arbitration. ABC was vital to the applicants' claim that it was entitled to set off US$2.5m against the sums claimed by the respondent, and the applicants needed to cross-examine ABC. However, the Tribunal did not allow ABC's joinder and then proceeded to find against the applicants on the basis that insufficient evidence had been adduced as to the applicants' right to set off US$2.5m against the sums claimed by the respondent.

Summary of applicants' case as to relevant background

8 The admissibility, relevance and substance of the evidence adduced on behalf of the applicants in support of the present application was at least in part a matter of dispute between the parties. At this stage, it is sufficient to state that I bear well in mind the limited role of the court in considering an application to set aside an award on grounds of an alleged breach of natural justice. Nonetheless, I note that it was an important part of the applicants' case that to the extent that questions of jurisdiction are involved, this is a *de novo* hearing. So far as relevant, I consider these points further below. However, without prejudice to my conclusions with regard thereto, I summarise below what the applicants say is the relevant background, which I take largely from the affidavits and written submissions filed on behalf of the applicants.

The Preceding Transactions

9 Sometime towards the end of 2012, the first applicant was introduced to Mr B by a mutual friend. The introduction was done on the basis that Mr B was keen to be a strategic partner and investor in the third applicant's (*ie,* CPW's) business. During this meeting, Mr B represented to the first applicant that he had the expertise to raise funds, particularly in the Southeast Asia region, as well as Bangladesh, and that he desired to make an investment of up to US$10m in the third applicant's business. Mr B further represented that he had contacts with companies, institutions and individuals who would be willing to invest in the third applicant's business. Thereafter, the third applicant and the respondent entered into the following contracts and agreements:

(a) a memorandum of understanding dated 29 December 2012 (the "First MOU");

(b) the Binding Heads of Terms dated 10 January 2013 (the "BHOT");

(c) a memorandum of understanding dated 20 January 2013 (the "Second MOU"); and

(d) a joint venture agreement dated 22 January 2013 (the "JVA"), which contemplated the formation of a joint venture company known as CPW Singapore Ltd ("CPW Singapore");

(collectively, the "Preceding Transactions"). According to the applicants, these Preceding Transactions are vital to the culmination of the dispute between the parties as they relate closely to the dispute before the Tribunal.

10 Under the First MOU, the respondent had two obligations:

(a) to invest US$10m in the third applicant; and

(b) to bring in a further US$200m as an additional investment in the third applicant by 31 March 2013.

11 The obligation to invest US$10m in the third applicant was formalised by way of the BHOT on 10 January 2013. Under the terms of the BHOT, the third applicant was liable to pay the respondent an assured annual return of 8% on its investment for a period of three years from 1 April 2013 until 31 March 2016 on a monthly basis. This amounted to approximately US$66,667 per month. The applicants claim that it therefore logically followed that the respondent was obliged to make the investment of US$10m by 31 March 2013, but that the respondent however failed to do so. For completeness, I note that the respondent claims that it had in fact invested US$10m in the third applicant from January 2013 to May 2013. Separately, I also note that it was contended

in the Arbitration by the applicants that the BHOT had in fact been signed in *July* 2013 (despite the BHOT being dated 10 January 2013), though it is not entirely clear based on the evidence before me if the applicants maintain this challenge for the purposes of the present application. In any case, nothing in the present application turns on this.

12 Notwithstanding the fact that the respondent allegedly failed to make an investment of US$10m in the third applicant by 31 March 2013, the third applicant made payments "on account" totalling US$549,000 to the respondent from 1 April 2013 to June 2013. According to the applicants, this amounted to approximately eight months of payment due from the third applicant to the respondent, and was sufficient to cover the third applicant's obligations under the BHOT, given that the respondent had withdrawn from the business relationship sometime on or around January 2014. Therefore, although the third applicant had made payments for three months from 1 April 2013 to June 2013, it had met its obligations under the BHOT.

13 Following the execution of the BHOT, the respondent was interested in pursuing a joint venture with the third applicant for the purposes of expanding the third applicant's mining business in Southeast Asia. The joint venture would also facilitate the investment of a further US$200m by the respondent in the third applicant. Accordingly, the respondent and the third applicant entered into the Second MOU dated 20 January 2013. Shortly thereafter, the respondent and the third applicant executed the JVA dated 22 January 2013, which, *inter alia*, contemplated the formation of CPW Singapore. The JVA formalised the terms in the Second MOU, with the third applicant holding 80% of the shares in CPW Singapore, and the respondent holding the remaining 20%.

14 Specifically, cl 5.3 of the JVA stated that the respondent would be responsible for acquiring investors to fund CPW Singapore. This formalised the obligation of Mr B under the First MOU to bring in a further US$200m as an additional investment into the third applicant's business. The scope of the JVA included: (a) mining activities primarily in Southeast Asian countries; (b) oil and gas exploration and production; and (c) strategic investments in new or emerging businesses (primarily healthcare). The JVA was headquartered in Singapore and carried out through CPW Singapore. Under the JVA, the third applicant's obligations largely pertained to operating the mining assets, providing the requisite technical expertise for mining operations, and representing CPW Singapore at various international seminars and conferences. The respondent had control of the day-to-day management of CPW Singapore.

15 The applicants allege that from the onset of the JVA, the respondent failed to fulfil its obligations thereunder with regard to, amongst other things, procuring funding and/or investments and identifying potential mining asset proposals. The respondent's breaches resulted in, amongst other things, mining licenses expiring and the termination of concession agreement(s) in relation to healthcare businesses in India, causing huge losses to the third applicant and its group of companies.

16 Sometime around end 2013 or early 2014, the respondent decided to withdraw from the JVA despite the fact that there was a "lock-in period" of three years under the BHOT. According to the applicants, Mr B, the managing director of the respondent, expressed his inability to raise funds and insisted on exiting the JVA.

17 The applicants claim that they made overtures to the respondent to resolve matters amicably and to salvage the JVA. The respondent was in

agreement but soon after, allegedly started to put pressure improperly on the applicants by seeking to claim amounts that it had purportedly invested in the third applicant and CPW Singapore.

The Settlement Contract and Supplemental Settlement Contract

18 On 17 November 2015, a draft of a settlement agreement for the dispute above was circulated by one Mr X, a friend of Mr B, to the first applicant. This draft was sent to the applicants' legal counsel on the same day, who (according to the applicants) advised the applicants to *not* sign the settlement agreement under any circumstances.

19 The applicants claim that on 19 November 2015, Mr B, Mr X and one Mr Y attended the first applicant's residence unannounced; that during this meeting, Mr B, along with the other two gentlemen, threatened the first applicant with "dire consequences" should the applicants fail to sign the settlement agreement, and repay the respondent and/or Mr B the US$10m that they had invested in the third applicant; and that Mr B further made various allusions to his deep-rooted connections with the "underworld".

20 The next day (*ie*, on 20 November 2015), Mr B, Mr X, and one Dr K went to the first applicant's office and placed an agreement in front of the first applicant to sign. Given the alleged threats made by Mr B the day before, the first applicant complied by signing the settlement contract dated 20 November 2015 (the "Settlement Contract"). Following this, Mr B allegedly pressured the first applicant to procure the second applicant's signature to the Settlement Contract, even though the second applicant was not involved in the JVA. The second applicant was made to attend at the first applicant's offices immediately to sign the Settlement Contract. After procuring the signatures, Mr B left the office.

21 The material terms of the Settlement Contract are as follows:

> 1. [The applicants] hereby agrees and undertakes to purchase and acquire all [CPW] Shares, being the shares held by [the respondent] in [CPW Singapore], for an aggregate consideration of USD 10 million payable by [the applicants] to [the respondent] in one tranche, simultaneously with the transfer of shares in favour of [the applicants]. [The applicants] will purchase the shares from [the respondent] and pay the aforesaid agreed consideration of USD 10 million to [the respondent] on or before 31st March 2016, time being of essence in this agreement.
>
> …
>
> 7. This Contract shall be governed by and construed in accordance with the laws of the Republic of India.
>
> 8. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the [SIAC] in accordance with the [SIAC Rules] for the time being in force, which are deemed to be incorporated by reference to this clause.

22 Clause 3 of the Settlement Contract further provided that in consideration of the respondent forbearing to sue or to continue legal proceedings against the applicants for a period of six months, and upon the transfer of shares in CPW-1 and/or CPW-2 from CPW-3 and/or CPW-4 in favour of ABC, ABC would be liable to pay US$2.5m to the respondent. Upon ABC making such payment to the respondent, the applicants' liability to pay the respondents US$10m (as set out in cl 1 of the Settlement Contract) would "stand discharged and extinguished" to the extent of US$2.5m. CPW-1, CPW-2, CPW-3 and CPW-4 were various companies related to the third applicant. As noted above at [7(d)], ABC is a nominee of the respondent.

23 The applicants claim that following the signing of the Settlement Contract, they sought Mr B's indulgence to defer the payment obligations under the said Contract. Sometime later, on 7 February 2018, Mr B allegedly

demanded that the first applicant attend at his hotel room in Mumbai, India. The first applicant complied with the demand, again allegedly out of fear. According to the applicants, present in the hotel room were Mr B, his wife, and Dr K; once in the room, Mr B asked the first applicant to sign another document (the "Supplemental Settlement Contract") at knifepoint; and the second applicant was compelled to sign the Supplemental Settlement Contract under duress as well. In summary, the applicants agreed under the Supplemental Settlement Contract to fulfil their obligations under the Settlement Contract by 6 March 2018, and to provide the respondent with detailed particulars of all their assets by 26 February 2018. The respondent would also be entitled to pursue any remedies against the applicants jointly and/or severally, should the applicants breach the Settlement Contract or the Supplemental Settlement Contract. Further, cll 6 and 7 of the Supplemental Settlement Contract provided as follows:

> 6. This Contract shall be governed by and construed in accordance with the laws of the Republic of India.
>
> 7. The Arbitration Clause contained in the Settlement Contract is agreed to be incorporated herein and any dispute arising under this Agreement will be referred to arbitration as agreed under the Settlement Contract.

24 As can be seen from the clauses reproduced at [21] and [23] above, both the Settlement Contract and the Supplemental Settlement Contract provided that the governing law of the Contracts is Indian Law. Both Contracts also each contained an Arbitration Agreement, which provided that any disputes were to be resolved by way of a SIAC arbitration in Singapore.

25 According to the applicants, the terms of the Contracts are "peculiar" as they include an obligation from the second applicant in his personal capacity to be liable for the debts of the third applicant. The applicants submit that there is

no basis for such an obligation, as the second applicant has little relation to the case at hand.

Summary of respondent's case as to relevant background

26 The respondent does not dispute that the Preceding Transactions and the Contracts were entered into. However, as alluded to at [8] and [11] above, the respondent presents a different version of the circumstances under which the Contracts were entered into – in particular, the respondent disputes the allegations that it breached the Preceding Transactions, and that the Contracts were entered into under duress and/or coercion. Nonetheless, given that these factual disputes were not questions before me, it is unnecessary to set out the respondent's version of events for the purposes of this Judgment.

The proceedings before the Tribunal

27 I have already summarised the nature of the claims referred to arbitration and, so far as relevant, the main issues before the Tribunal. The procedural history is set out in Section G of the Award. In summary, following the exchange of pleadings, documentary disclosure, service of witness statements and various procedural skirmishes, the main hearing was conducted from 21 September 2020 to 29 September 2020. For present purposes, it is sufficient to highlight two particular parts of the procedural history which are directly relevant to the present application.

The application to join ABC

28 The first part of the procedural history that is of particular relevance concerns the period from August to October 2019, when the Tribunal considered an application by the applicants to join ABC as a respondent to the

Arbitration (the "Joinder Application"). I summarise below the relevant events before the Tribunal.

29 On 26 August 2019, the applicants made the Joinder Application under Rule 7.8 of the SIAC Rules on the basis that:

(a) ABC was a party to the Settlement Contract and was bound by the Arbitration Agreement contained therein;

(b) pursuant to cl 3 of the Settlement Contract, shares in CPW-1 and CPW-2 had been transferred in favour of ABC;

(c) according to recital G(c) read with cl 3 of the Settlement Contract, ABC was therefore liable to pay US$2.5m to the respondent; and

(d) given that the share transfer in favour of ABC had been duly completed, the applicants were entitled to set-off this amount against the respondent's claims against them, subject to the applicants' other defences and objections to the respondent's claims.

30 On 2 September 2019, the respondent submitted its objections to the Joinder Application. In summary, these were as follows:

(a) The respondent had not made any claim against ABC.

(b) The respondent had not received the sum of US$2.5m from ABC, and under the terms of the Settlement Contract, the applicants continued to remain liable to make good all their obligations under the Settlement Contract without any exception.

Neither was it the applicants' case that ABC had in fact paid the respondent the sum of US$2.5m.

(c) The respondent had only exercised its option under the Settlement Contract to have the shares in CPW-1 transferred to ABC, but not its option in relation to the shares in CPW-2. In any case, the respondent contended that the question of whether ABC had made payment to the respondent did not arise as certain underlying concession agreements in favour of CPW-1 and CPW-2 had been cancelled.

(d) The claim for set-off could be determined without ABC being joined. If the applicants had a separate claim against ABC, it was open to the applicants to file separate proceedings against ABC at their own cost and expense, particularly as the applicants had refused to pay their share of costs in the Arbitration.

31 On 5 September 2019, the applicants submitted their reply submissions. In summary, the applicants submitted that:

(a) ABC was a party to the Settlement Contract and was obliged to pay the respondent a sum of US$2.5m, upon the shares of CPW-1 and/or CPW-2 being transferred in favour of ABC. The shares of CPW-1 had been transferred to ABC.

(b) It was an "unknown fact" whether the respondent had received the sum of US$2.5m from ABC and it was for ABC to state and explain whether or not it had paid the respondent the US$2.5m. If ABC had not in fact paid the respondent the sum of US$2.5m, it would be in breach of the Settlement Contract. Had the applicants been able to ascertain if ABC had indeed paid the

respondent the said sum, there would be no need for the applicants to file the Joinder Application. The applicants alleged that ABC and the respondent had colluded against them, as ABC was allegedly a close associate of the respondent. The applicants also questioned why the respondent had not joined ABC as a party to the proceedings.

(c) The respondent's assertion that the applicants' claim for set-off could be determined in the absence of ABC's joinder was contrary to the position taken in the rest of the respondent's objections to the Joinder Application. On the one hand, the respondent asserted that it had not received US$2.5m, but on the other hand, the respondent sought to contend that the applicants' claim for set-off could be proceeded with in the absence of ABC.

(d) Whether the respondent had made any claims and/or sought relief against ABC was not relevant, as ABC was a party to the Arbitration Agreement in the Settlement Contract. Further, the applicants stated that they did not have a "separate" claim against ABC, as their claim against ABC arose out of the Settlement Contract and was "interlinked" with the substantive claims in the Arbitration.

32 On 6 September 2019, the respondent enquired if the Tribunal was willing to decide the Joinder Application by way of written submissions. On 9 September 2019, the applicants indicated that they did not object to the determination of the Joinder Application on the basis of written submissions. Thus, the Tribunal agreed to determine the Joinder Application based on the parties' written submissions without convening an oral hearing in view of parties' agreement on the issue.

33 On 12 September 2019, the Tribunal referred the parties to the following contentions:

(a) the respondent's submission that no relief was sought by it against ABC;

(b) the respondent's contention that any claim for set-off by the applicants could be determined even in the absence of ABC as a party to the Arbitration, and that if the applicants had any separate claim against ABC, it was open for them to file separate proceedings against ABC; and

(c) the applicants' response submission that the applicants did not have any separate claim against ABC.

34 The Tribunal drew the parties' attention to the wording of Rule 7.8 of the SIAC Rules, which stipulates that an additional party is to be joined either as "a Claimant or a Respondent". Further, the Tribunal highlighted commentary from John Choong, Mark Mangan & Nicholas Lingard, *A Guide to the SIAC Arbitration Rules* (Oxford University Press, 2nd Edition, 2018) ("A Guide to the SIAC Rules") at para 7.22, which states that the wording of Rule 7.8 of the SIAC Rules means that there is no option for an additional party, who has no claims in the arbitration or against whom no claims have been made, to be joined as an intervening party. The Tribunal invited the parties to address it on this point in further written submissions.

35 On 18 September 2019, the applicants submitted their additional submissions for the Joinder Application. In summary, the applicants submitted that:

(a) While Rule 7.8 of the SIAC Rules contemplated the joinder of a party as either a claimant or a respondent, it did not stipulate any further qualification as regards the manner in which the party may be joined, as that party can be joined on the sole basis that it was *prima facie* bound by the arbitration agreement under which the proceedings was initiated.

(b) The commentary from A Guide to the SIAC Rules was at best a suggestion.

(c) ABC should be joined as a co-respondent for the purposes of claiming a set-off by the applicants against the respondent. A set-off was a substantive relief arising out of the Settlement Contract, being an amount payable by ABC to the respondent, out of the total amount claimed by the respondent against the applicants. A set-off could also be adjusted as between co-respondents. The issue of whether payment of US$2.5m had been made was a triable matter and it was necessary for ABC to be joined as a party so that the Tribunal could deal substantively with the issue of the set-off raised by the applicants.

36 On 24 September 2019, the respondent submitted its response to the applicants' additional submissions. In summary, the respondent submitted that:

(a) Rule 7.8 of the SIAC Rules contemplated the joinder of a party to an arbitration either as a claimant or a respondent. The proposition raised by the authors of A Guide to the SIAC Rules (as highlighted by the Tribunal) was correct in that it was plain and clear that there was no option for an additional party, who

has no claims in the arbitration or against whom no claims have been made, to be joined as an intervening party.

(b) The concept of a "side-party", where a party was joined to the proceedings to assist one party, was not appropriate in international arbitrations, and the SIAC Rules did not contemplate the concept of a "side-party".

(c) If the applicants' reasoning were correct, other companies related to the third applicant (such as CPW-3 and CPW-4) should be joined as parties to the Arbitration, but they had not been so joined.

(d) The applicants had confirmed that they were not making any claim for monies against ABC. The respondent reiterated that any claim for set-off could be decided by the Tribunal without joining ABC to the proceedings.

37 By Procedural Order No. 2 dated 8 October 2019, the Tribunal refused the Joinder Application for the following reasons:

> 12. The Tribunal observes that it has been pleaded at [III.5.vii] of the Statement of Defence submitted on behalf of [the third applicant], that [ABC] is liable to pay USD $2.5 million to [the respondent] upon the transfer of shares in [CPW-1 and CPW-2], that such shares were transferred to [ABC] (although stated to be 'under coercion and/or duress') and that [the third applicant] is entitled to a set-off to the extent of this amount. This claim for a set-off was further pleaded at [IV.5.i] and [V.1.iii] of the Statement of Defence submitted on behalf of [the third applicant], as against the claims made by [the respondent]. The Statements of Defence submitted on behalf of [the first and second applicants] both wholly adopted the points pleaded in the Statement of Defence submitted on behalf of [the third applicant].
>
> 13.The [applicants'] case is that as the sum of USD $2.5 million is liable to be paid by [ABC] to [the respondent], such sum should be set-off against the sums claimed by [the respondent]

against the [applicants]. The [applicants] advance the position that [ABC] should be joined as a party to this arbitration so that these issues as to whether the USD $2.5 million has in fact been paid to [the respondent] by [ABC] and whether its claim for set-off premised on such payment of the USD $2.5 million is made out, can be properly resolved, and especially as [ABC] is also a party to the arbitration agreement under the Settlement Contract.

14. There is no dispute that one of the criteria set out in Rule 7.8 of the SIAC Rules – i.e. that the additional party to be joined is *prima facie* bound by the arbitration agreement (under sub-para a.) – is satisfied.

15. However, the Tribunal is also required to consider the circumstances of the case and determine whether it will in fact be appropriate to allow an additional party to be joined.

16. Having carefully considered all the submissions made by the Parties, ***the Tribunal accepts the contentions made by the [respondent] and is of the view that the proposition set out at [7.22] of* A Guide to the SIAC Arbitration Rules *... is valid and operative. An additional party should only be joined into an arbitration (even if the additional party is bound by the underlying arbitration agreement) if the existing party in the arbitration seeking to join the additional party is proposing to either advance a claim against it or is seeking some legal and/or equitable relief against it.*** The consequence of a joinder is that orders (including costs orders) may be made against the additional party. If no relief is being sought against the additional party, the additional party is effectively not joined as a Respondent (as provided in Rule 7.8 of the SIAC Rules itself).

17. ***[The respondent has] confirmed that they are not seeking any relief against [ABC]. The [applicants] have also confirmed that they are not making any claim against [ABC]. Instead, [the applicants] require the joinder only so as to assist it in proving its claim that [ABC] has in fact made payment of the sum of USD $2.5 million.*** Presumably, the [applicants] had in mind the scenario where [ABC] had to appear in the proceedings and state its position on whether it had or had not made payment of the sum of USD $2.5 million. ***The Tribunal is of the view that this would not be sufficient to justify the joinder of [ABC]. The issue of whether a set-off can be established is a matter to be determined at the Main Hearing and can be resolved without joining [ABC] as a party to this arbitration.***

18. In these circumstances, the Tribunal is of the view that the application by the [applicants] to join [ABC] as an additional

> party to this arbitration (without any claims being brought against [ABC]) ought to be dismissed with costs. …
>
> [emphasis added in bold italics]

The exclusion of Dr P's Medical Reports

38 The second part of the procedural history which requires explanation concerns a much shorter period, occurring between the submission of the parties' reply witness statements on 16 July 2020 and the commencement of the main hearing. I summarise these events below.

39 On 10 September 2020, the respondent sought leave to adduce four letters (the "Four Letters") on the basis that the letters were referred to and relied upon by both the respondent and the applicants in their witnesses' statements. The applicants consented to the request, subject to the applicants reserving their right to make further document requests and/or to adduce documents in rebuttal, if any. Given the parties' consent, the Tribunal admitted the Four Letters into the record.

40 On 14 September 2020, the applicants submitted three applications and requested the Tribunal to determine their applications before the main hearing. One of the applications was to strike out para 32 of Mr B's reply witness statement, where he had made reference to an indemnity agreement entered into by the parties (the "Indemnity Agreement"), on the basis that the Indemnity Agreement did not form part of either party's pleaded case.

41 On 16 September 2020, the respondent submitted its response in relation to the applicants' applications. In relation to the striking-out application, the respondent submitted, among others, that para 32 of Mr B's reply witness statement and the Indemnity Agreement related to the applicants' pleaded defence that they had executed the Contracts under duress or coercion. The

proper course of action for the applicants to deal with any points resulting from Mr B's reply witness statement or the evidence tendered in support was to make submissions in respect of such evidence or test it by way of cross-examination.

42 On 17 September 2020, the applicants submitted a reply to the respondent's submissions. In view of the respondent's submission that the proper course of action for the applicants to deal with the points resulting from Mr B's reply witness statement or evidence was to make submissions in respect of such evidence or test it by way of cross-examination, the applicants sought leave of the Tribunal to file a short supplementary witness statement from the first applicant in relation to the Indemnity Agreement.

43 At the hearing on 17 September 2020, the applicants confirmed that they would not be pursuing the application to strike out para 32 of Mr B's reply witness statement, if leave were given to the applicants to submit a supplementary witness statement from the first applicant. The respondent had no objections to the applicants' proposal, provided that the first applicant's supplementary witness statement was strictly in reply to para 32 of Mr B's reply witness statement and the Indemnity Agreement.

44 On 18 September 2020, the Tribunal issued its determination on the applicants' striking-out application in Procedural Order No. 9. In consideration of the consensus reached between the parties, the Tribunal gave leave to the applicants to submit a supplementary witness statement from the first applicant, which was to contain matters strictly in reply to para 32 of Mr B's reply witness statement and the Indemnity Agreement. The supplementary witness statement was to be submitted by 19 September 2020. As such, the applicants' application was withdrawn.

45 On 20 September 2020, *ie*, just one day before the main hearing for the Arbitration, the applicants submitted to the Tribunal a finalised draft of the first applicant's supplementary witness statement ("VSS") purportedly pursuant to the leave granted in Procedural Order No. 9. Notably, para 2 of VSS stated as follows:

> 2. Before I deal with the contents of paragraph 32, I place on record emails dated 19th 2020 [*sic*] of [Dr P], under whose treatment, both [the second applicant] and I have been since 2010. A copy of [Dr P's] emails along with the attachment thereto and extract of the weblink mentioned therein are annexed hereto as Annexure 'I' and Annexure 'II' respectively.

46 Annexures I and II to VSS were the two Medical Reports prepared by Dr P in August 2020, for the first and second applicants respectively. In addition, paras 10 to 12 of VSS detailed a trip to Bangladesh made by the first applicant, allegedly at Mr B's insistence. The respondent immediately objected to VSS being taken on record on the following grounds:

(a) Paragraphs 2, 10, 11 and 12 of VSS traversed beyond what the Tribunal had permitted and the remaining contents were not strictly in response to para 32 of Mr B's reply witness statement, though couched as such.

(b) The applicants did not have leave to adduce the Medical Reports, which had no relevance or correlation to para 32 of Mr B's reply witness statement.

(c) Parties were at the eve of the main hearing and opening submissions and bundles of documents had been filed. It would therefore be prejudicial to the respondent to allow the applicants to produce fresh evidence at this stage.

47 Later that same day, *ie*, on 20 September 2020, the applicants responded to the respondent's contentions by stating, among others, that:

(a) Two new documents which ought to have been produced earlier had similarly only been introduced in Mr B's reply witness statement.

(b) The respondent had recently produced the Four Letters, and the applicants had agreed to their admission on the basis that they reserved their right for further document requests and/or to adduce documents in rebuttal, if any.

(c) VSS was limited to dealing with para 32 of Mr B's reply witness statement, and any new documentary evidence was limited to only the two Medical Reports.

(d) The Medical Reports were only a continuation of the medical records already produced by the first applicant. The respondent would also have the opportunity to cross-examine the first applicant on the same.

(e) It was open in any case to the first applicant to adduce further evidence under examination-in-chief, and the respondent would be entitled to cross-examine him on all aspects of VSS.

(f) Upholding the respondent's objections would cause serious prejudice to the applicants as they would not have an opportunity to deal with the new documents that had been adduced in Mr B's reply witness statement for the first time. The opportunity of cross-examining Mr B on these documents was only a limited opportunity without the first applicant having his say on the same.

48 The Tribunal issued its determination in Procedural Order No. 12, ordering that paras 2, 10 and 12 of VSS, as well as the Medical Reports, be struck out. The Tribunal's decision was as follows:

> 5. Rule 19.1 of the [SIAC Rules] mandates that ***the Tribunal is to conduct the arbitration in such manner as it considers appropriate to ensure the fair, expeditious, economical and final resolution of the dispute. Further, under Rule 19.2 of the SIAC Rules, the Tribunal has the discretion to determine the relevance, materiality and admissibility of all evidence sought to be introduced.***
>
> ***6. Procedural fairness dictates that any orders issued by the Tribunal are to be strictly complied with***.
>
> 7. The terms of Procedural Order No. 9 are clear in that [the applicants] are permitted to only submit [VSS] on the specific aspects as stated in the order. ***Leave was not given for [the first applicant] to set out his evidence on any other matters***.
>
> 8. After carefully considering the submissions of the Parties and reviewing [VSS], the Tribunal accepts that [6] to [9] of [VSS] would broadly fall within the permissible scope of the terms of Procedural Order No. 9.
>
> 9. However, [2] of [VSS] clearly do not [*sic*] relate to the matters set out in [32] of [Mr B's reply witness statement] or the Indemnity Agreement. These documents may well be additional documents which are related to the [applicants'] earlier document production concerning the medical records of [the first and second applicants], but the [applicants] are not permitted to have them adduced into the evidence as part of [VSS].
>
> 10. Further, [10] to [12] of [VSS] are also not matters which relate to the matters set out in [32] of [Mr B's reply witness statement] or the Indemnity Agreement but instead, as acknowledged at [12] of [VSS] itself, concerned matters set out at [35] to [37] of [Mr B's reply witness statement]. The [applicants] are therefore also not permitted to have these matters adduced into the evidence as part of [VSS].
>
> [emphasis added in bold italics]

49 Finally, so far as the procedural history is concerned, it is important to mention that following the hearing in September 2020, there was a further hearing on 10 December 2020 ("Further Hearing"), when counsel for the parties

delivered their oral closing speeches before the Tribunal. At the end of the Further Hearing, there was the following exchange:

> ARBITRATOR: I suppose I wasn't in any way seeking to elicit compliments from either side, but rather I just wanted to be sure that, certainly in terms of the process and the procedure, both sides have no issues with how it's been conducted.
>
> MR CHONG [counsel for the respondent]: No issues.
>
> MR NANKANI [counsel for the applicants]: No issues.
>
> ARBITRATOR: Thank you very much. I don't have anything else on my list. Mr Chong, Mr Nankani, anything else you would need to raise?
>
> MR CHONG: Nothing from me, sir.
>
> MR NANKANI: Nothing from us.

50 Thereafter, on 23 April 2021, the Tribunal wrote to the parties' counsel to propose to declare the proceedings closed pursuant to Rule 32.1 of the SIAC Rules, and invited the parties to provide any comments that they may have on the proposed closure of the proceedings by 29 April 2021. No objections were raised by the parties and on 29 April 2021, the Tribunal declared the proceedings closed pursuant to Rule 32.1 of the SIAC Rules. As stated above, the Award was subsequently made and dated 26 July 2021.

The application to set aside the Award

51 Against that background, I turn at last to consider the main grounds of challenge to the Award. However, before considering the particular grounds of challenge, it is important to emphasise that it is axiomatic that there is no right of appeal from arbitral awards under the Act; that the role of the court is one of minimal curial intervention; that the court will not interfere with the merits of the case; and that the setting aside application is not an opportunity for the applicant to take a second bite of the cherry: see, in particular, *BLC and others*

v BLB and another [2014] 4 SLR 79 at [51]; *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN v ALC*") at [37]–[39].

52 It is important to understand that there were two main threads to the applicants' case which, although overlapping to some extent, are important to differentiate.

53 The first thread concerns the applicants' submission that the Award should be set aside pursuant to the power in s 24(*b*) of the Act, which provides that the court may set aside an award if "a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced". As submitted by the respondent:

> (a) In order to succeed in setting aside an arbitral award on the basis that the rules of natural justice have been breached, the applicant must establish: (i) which rule of natural justice has been breached; (ii) how the rule has been breached; (iii) in what way the breach was connected to the making of the award; and (iv) how the breach prejudiced its rights: *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [29].
>
> (b) The threshold for finding a breach of natural justice is a high one, and it is only in exceptional cases that a court will find that threshold crossed: *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*") at [87] and *Soh Beng Tee* at [54]. There must be a real basis for alleging that the tribunal has conducted the arbitral process "either irrationally or capriciously", or the tribunal's conduct of the proceedings must be "so far removed from what could reasonably be expected of the arbitral process that it must be rectified": *China Machine* at [103].

(c) The overarching enquiry is whether "what the tribunal did (or decided not to do) falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done": *China Machine* at [98]. As submitted by the respondent, this inquiry will necessarily be a fact-sensitive one, and much will depend on the precise circumstances. The corollary to that is twofold: (i) the tribunal's conduct and decisions will only be assessed by reference to what was known to the tribunal at the material time, and hence the alleged breach of natural justice must have been brought to the attention of the tribunal at the material time; and (ii) the court will accord a margin of deference to the tribunal in its exercise of procedural discretion and will not intervene simply because it might have done things differently (*China Machine* at [104(d)]).

(d) Since an assertion that a tribunal has acted in breach of natural justice is very serious, it is clear that if a party "intends to contend that there has been a fatal failure in the process of the arbitration, then there *must* be fair intimation to the tribunal that the complaining party intends to take that point at the appropriate time if the tribunal insists on proceeding" [emphasis in original]: *China Machine* at [168] and [170].

(e) Even if there has been a breach of natural justice, a causal nexus must be established between the breach and the award made: *Soh Beng Tee* at [73].

(f) The applicant must show that the breach of natural justice denied the tribunal the benefit of arguments or evidence that had a real as opposed to a fanciful chance of making a difference to its deliberations. The issue is whether the material *could reasonably* have made a difference to the arbitrator, rather than whether it *would necessarily* have

made a difference. Where it is evident that there is no prospect whatsoever that the material if presented would have made any difference because it wholly lacked any legal or factual weight, then it could not seriously be said that the complainant has suffered actual or real prejudice in not having had the opportunity to present this to the arbitrator: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [54]; *Soh Beng Tee* at [86].

54 Separately, the applicants also seek to set aside the Award under Art 34(2)(*a*)(i) of the Model Law, which provides that:

> Article 34. Application for setting aside as exclusive recourse against arbitral award
>
> …
>
> (2) An arbitral award may be set aside by the court specified in Article 6 only if:
>
> > (*a*) the party making the application furnishes proof that:
> >
> > > (i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State …

55 In the context of the present application, there is obviously an important difference between the scope and effect of, on the one hand, s 24(*b*) of the Act and, on the other hand, Art 34(2)(*a*)(i) of the Model Law. The main focus of the former is on events that occurred in connection with the actual making of the award. In particular, these would be, *inter alia*, the decision of the Tribunal refusing the joinder of ABC, as well as the decision of the Tribunal to strike out various paragraphs of VSS and to refuse admission of the Medical Reports. Any matters which occurred after the making of the Award would in principle be irrelevant in the context of an application under s 24(*b*) of the Act, whereas

under Art 34(2)(*a*)(i) of the Model Law, the enquiry is not necessarily so constrained.

56 A further important difference between the two provisions concerns the nature and scope of the enquiry conducted by the court in each case. Thus, under s 24(*b*), the court is concerned exclusively with matters which occurred in the course of the arbitration itself. In contrast, the enquiry under Art 34(2)(*a*)(i) is essentially concerned with the existence or validity of an arbitration agreement, and consequently the issue of whether the arbitral tribunal has jurisdiction: see *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 ("*Astro*") at [152]–[158] and *BXH v BXI* [2020] 1 SLR 1043 at [90]–[92]. In that context, the applicants submitted that it is trite law that where a jurisdictional challenge is concerned, the review undertaken by the court is *de novo*. Both parties cited the following passage from *AQZ v ARA* [2015] 2 SLR 972 at [57]:

> 57 Additionally, the statement in [*Astro*] that the 'tribunal's own view of its jurisdiction has no legal or evidential value before a Court that has to determine that question' does not mean that all that transpired before the Tribunal should be disregarded, necessitating a full re-hearing of all the evidence. I am of the view that it simply means that the court is at liberty to consider the material before it, unfettered by any principle limiting its fact-finding abilities.

57 Against that rather lengthy background of the relevant facts (as asserted by the applicants), the procedural history and applicable legal principles, I turn to the particular grounds relied upon by the applicants in support of their application to set aside the Award. I will deal with the applicants' grounds of challenge in the following order:

(a) Did the Tribunal breach the rules of natural justice by excluding the Medical Reports ("Issue 1")?

(b) Were the applicants under some incapacity, and/or were the Arbitration Agreements invalid under Indian Law ("Issue 2")?

(c) Did the Tribunal breach the rules of natural justice by refusing the Joinder Application ("Issue 3")?

(d) Did the Tribunal breach the rules of natural justice by failing to invite submissions on the applicable law, when determining whether it had jurisdiction to adjudge issues arising out of the Preceding Transactions ("Issue 4")?

Issue 1: Did the Tribunal breach the rules of natural justice by excluding the Medical Reports?

58 The applicants complain that by refusing to admit the Medical Reports, the Tribunal denied the applicants their right to a fair hearing. Had the Medical Reports been admitted into evidence, the Tribunal may not have found that there was a "clear lack of proper evidence" that the first and second applicants had been suffering from mental illnesses at the time the Contracts were entered into. Instead, upon considering the Medical Reports, the Tribunal could (and should) have found that the first and second applicants were labouring under some incapacity at the material time, and that accordingly, the Contracts (and the Arbitration Agreements therein) were invalid. As such, the applicants allege that they have been prejudiced by the exclusion of the Medical Reports.

59 In my view, the applicants' complaint is fatally flawed for at least four main reasons, which I detail below.

60 First, the decision of the Tribunal to exclude the Medical Reports was an exercise of a case management power within the jurisdiction of the Tribunal. The reasons given by the Tribunal (as quoted above at [48]) for reaching that decision were, in my view, unobjectionable and entirely justified. At the very least, the decision fell well within the range of what a reasonable and fair-minded tribunal in those circumstances might have done. In particular, as submitted by the respondent:

(a) The Tribunal's duty was to conduct the Arbitration in such a manner as it considers appropriate to ensure the fair, expeditious, economical and final resolution of the dispute.

(b) The Tribunal had the discretion to determine the relevance, materiality and admissibility of all evidence sought to be introduced.

(c) Procedural fairness dictated that any orders issued by the Tribunal were to be strictly complied with. The terms of Procedural Order No. 9 made it clear that the applicants were only permitted to submit VSS in response to the matters set out in para 32 of Mr B's reply witness statement. The applicants were not granted leave to submit evidence on any other matters.

(d) The two Medical Reports were additional documents that related to the applicants' earlier document production concerning the medical records of the first and second applicants. The applicants had ample opportunity to disclose the two Medical Reports in the course of the Arbitration during discovery or the exchange of witness statements, but had inexplicably failed to do so.

(e) The Medical Reports were submitted on the very eve of the evidentiary hearing. To allow them to be adduced in evidence at such a late stage would have caused the respondent severe and irreparable prejudice which could not be compensated in costs. At the very least, the respondent would have been entitled to a proper opportunity to consider these reports which would have severely disrupted the hearing timetable.

(f) The applicants' explanation that the two Medical Reports could not have been adduced earlier due to Dr P's alleged unavailability is irrelevant, as such an explanation was not known to the Tribunal at the material time: *China Machine* at [99]. It is not disputed that the applicants did not provide any explanation during the Arbitration for the late submission of the two Medical Reports. I am unconvinced by the applicants' claim that they did not provide any explanation to the Tribunal because they had not been asked to do so. On the applicants' own case, the two Medical Reports were "a continuation of the evidence that needed to be adduced in the course of the Arbitration". On this basis, one would reasonably expect the applicants to explain the basis for its late disclosure.

61 Second, the applicants did not raise any objections to the Tribunal's decision at the time, nor at any time before publication of the Award. Adapting what was said in *China Machine* at [168] and [170], the applicants did not provide any fair – nor indeed any – intimation to the Tribunal prior to the publication of the Award that they intended to assert that the Tribunal had acted in breach of the rules of natural justice, in excluding Dr P's Medical Reports. On the contrary, as already noted above at [49], the applicants confirmed at the

end of the Further Hearing on 10 December 2020 that they had no issues with how the hearings had been conducted.

62 Third, even if it might be said that the Tribunal should have allowed the Medical Reports to be admitted in evidence and that the Tribunal thus acted in breach of the rules of natural justice, the contents of such reports lacked any legal or factual weight, such that they could *not* have reasonably made a difference to the findings of the Tribunal. It is fair to say, as submitted by the applicants, that the Medical Reports show that Dr P diagnosed the first applicant with Depressive Disorder and Attention Deficit Disorder, and the second applicant with Schizoaffective Disorder. Further, the applicants emphasise that the Medical Reports state that the first applicant "has not coped well with stressful situations" and that the second applicant has "often been erratic and irrational in his decision making-processes and at other times, he has procrastinated or avoided pieces of work".

63 However, in my view, the views expressed by Dr P in the Medical Reports fall far short of evidence that might show, whether on a balance of probabilities or otherwise, that the first and second applicants were suffering from some "incapacity" at the relevant time. Crucially, while the Medical Reports make general observations about the first and second applicants' mental conditions and treatment history, there is nothing in the reports to suggest that they were suffering from mental illnesses of such severity and extent, that they were *incapable* of understanding the effect of the Contracts (or of making a rational decision) at the material time. On this basis, I find that the applicants have suffered no relevant prejudice. (Moreover, as I understand, Dr P was not agreeable to depose as a witness – although there was some possible dispute between the parties as to whether this was indeed the case.) It is also important

to note that the Tribunal had the benefit of seeing and hearing the first applicant give evidence. As to that, the Tribunal stated at para 420 of the Award:

> 420. The Tribunal is satisfied from the evidence of [the first applicant] given under cross-examination that he appeared to have been capable of understanding the Settlement Contract and the Supplemental Settlement Contract, and of forming a rational judgment as to their effect. There was in any case no evidence adduced, especially from an expert medical witness, supporting the contention that the psychiatric depression that [the first applicant] stated that he had suffered from had affected his understanding and/or in forming a rational judgment as to their effect upon his interests.

64 As for the second applicant, the Tribunal stated at para 421 of the Award as follows:

> 421. [The second applicant] chose not to give evidence in the proceedings and, more significantly, there was also no evidence, especially from an expert medical witness, concerning his alleged conditions other than the prescription documents which on its face were of little evidential value with respect to the contentions advanced relating to his alleged unsoundness of mind. …

65 I bear well in mind that the applicants strongly criticise both these paragraphs in the Award because, according to the applicants, the reason why there was no evidence from an expert medical witness was simply because the Tribunal itself had decided to exclude Dr P's Medical Reports which the applicants had sought to adduce in evidence. As formulated, that is correct. However, the Medical Reports were adduced far too late and, as I have stated above, it seems to me that the decision to exclude them was unobjectionable and entirely justified in the circumstances of the case, for the reasons given by the Tribunal. Moreover, at the risk of repetition, the contents of such reports fell far short of showing that the applicants suffered from any relevant "incapacity".

66 For the avoidance of doubt, I should make plain that the application in SIC/SUM 8/2022 to adduce in these present proceedings a further affidavit from

Dr P (as referred to at [2] above) is, in my view, irrelevant to this ground of challenge under s 24(*b*) of the Act for the simple reason that there was no application before the Tribunal to admit in the Arbitration any further evidence from Dr P beyond the two Medical Reports which he had previously prepared. Thus, such application can have no bearing on the issue under this head of challenge as to whether the Tribunal acted in breach of natural justice in the course of the Arbitration. (However, I accept that such application is potentially relevant to Issue 2. Accordingly, I deal with such application in that context.)

67 Finally, and in any case, I note that the applicants concede that they could have adduced the Medical Reports during the first applicant's examination-in-chief, notwithstanding the Tribunal's decision to exclude the copies of the Medical Reports that were annexed to VSS. I am not sure myself whether this would have been permissible. Be this as it may, this was not done during the first applicant's examination-in-chief because according to the applicants' own evidence in support of the present application, the applicants had "missed doing so". In other words, on the basis of the applicants' own evidence in support of the present application, the fact that the Medical Reports were not ultimately admitted into evidence was at least partly (if not wholly) a result of the applicants' own conduct during the evidentiary hearing. In my view, this provides further reason why the applicants are not entitled to say that they were denied a fair opportunity of presenting their case, and that the rules of natural justice have therefore been breached, on the basis that the Tribunal had decided to exclude the Medical Reports.

68 For these reasons, it is my conclusion that the application to set aside the Award under s 24(*b*) of the Act on the basis that the Tribunal acted in breach of natural justice in excluding the Medical Reports should be dismissed.

Issue 2: Were the applicants under some incapacity, and/or were the Arbitration Agreements invalid under Indian Law?

69 I turn to the applicants' next ground of challenge, which is that the Award should be set aside under Art 34(2)(*a*)(i) of the Model Law. It is important to note that, as submitted on behalf of the respondent, the applicants did not elaborate on this ground of challenge in the two affidavits filed in support of the main application. Prior to the filing of the applicants' written submissions, only a passing reference was made to the Tribunal's jurisdiction (or the alleged lack thereof) in the first applicant's affidavit filed at the commencement of SIC/OS 1/2022. Likewise, counsel for the applicants only made brief mention of this ground of challenge at the case management conference held on 14 March 2022 for the purpose of the present proceedings. In other words, the *first* time that the applicants fleshed out their ground of challenge under Art 34(2)(*a*)(i) of the Model Law was in their written submissions filed on 29 March 2022, a few days before the hearing of the main application on 1 April 2022. In *BTN and another v BTP and another and other matters* [2021] SGHC 271, it was suggested that an applicant who fails to detail the grounds on which he seeks to set aside an arbitral award in the affidavit served with the originating summons may well be precluded from relying on such grounds (at [62]–[63]):

> 62 In my judgment, the affidavit(s) in support *served with* the originating summons must reasonably contain all the facts, evidence and grounds relied upon in support of an application under O 69A r 2(1)(*d*) of the [Rules of Court (2014 Rev Ed) ("ROC")] to set aside an award. This coheres with the procedure set out in O 69A r 2(4C) of the ROC in which the defendant must, if he wishes to oppose the application, file an affidavit stating the grounds on which he *opposes* the application 14 days after being served with the originating summons. When the defendant is served with the originating summons (and any affidavit or affidavits in support which are required to be served with the originating summons), the originating summons *and* the affidavit(s) in support are meant, *compendiously*, to inform the defendant of the specific grounds on which the arbitral

> award is being challenged. The facts and circumstances and the grounds relied upon to challenge the award should therefore be detailed with sufficient particularity in the affidavit or affidavits that are served on the defendant with the originating summons. Having been served with that compendious 'package' comprising the application, and the supporting grounds and evidence for the application, the defendant will then know the case being mounted and will put forth its defence or opposition to the application by way of an affidavit or affidavits in reply filed in accordance with O 69A r 2(4C) of the ROC.
>
> 63 While it may be common practice for a plaintiff to file further reply affidavits after the defendant has filed its affidavit in opposition to the application, this does not mean that the plaintiff should be permitted to advance *new grounds* in *subsequent affidavits* by introducing new facts and circumstances that could and should have been raised at first instance. That does not sit well with the procedure contemplated in O 69A r 2 of the ROC, and does violence to the clear language in O 69A r 2(4A)(*d*) requiring any supporting affidavit *to be served* ***with*** *the originating summons*. Similarly, even in cases where there is a related appeal pending, a plaintiff ought not to be permitted to hedge its bets by drafting the initial affidavit in support in vague terms and then introducing new grounds in subsequent reply affidavits. Not only would that amount to springing a surprise on the defendant, but such conduct would also contribute to greater inefficiency by prolonging the proceedings, and possibly also encourage abuse of process. In such a scenario, a plaintiff/applicant should be forewarned that the court may well preclude it from raising such new grounds belatedly.
>
> [emphasis in original]

70 It was not disputed by the applicants that O 69A r 2(4A) of the ROC is applicable to the present application, the applicants having filed their originating summons in SIC/OS 1/2022 pursuant to that provision. Given the circumstances detailed above at [69], I agree with the respondent that the applicants' omission to elaborate on its ground of challenge under Art 34(2)(*a*)(i) of the Model Law indeed left the respondent "none the wiser" about the applicants' case until the eleventh hour. On that basis alone, I consider it arguable that the applicants should be precluded from relying on this ground of challenge. Nonetheless, I do not see a need to make a specific finding on whether the applicants are indeed

so precluded, as even if I were to consider the merits of the applicants' challenge under Art 34(2)(*a*)(i) of the Model Law, I find the applicants' challenge to be unmeritorious. I detail my reasons for saying so below.

71 In summary, it is the applicants' case that at the time the Contracts (and the Arbitration Agreements therein) were entered into, both the first and second applicants were under an "incapacity", as they suffered from mental illnesses that impeded their ability to make rational decisions, especially at times of immense stress. As noted above at [58], the applicants contend that the first and second applicants' mental incapacity is evidenced by the Medical Reports. Further, the applicants rely on the fact that a mere two days before signing the Settlement Contract, the first applicant had been advised by his legal advisors not to sign the Settlement Contract under any circumstances. Accordingly, according to the applicants, the very fact that the first and second applicants signed the Settlement Contract demonstrates their lack of mental capacity.

72 In addition, the applicants say (and have consistently maintained) that the Contracts were entered into under coercion and are therefore invalid under Indian Law. In particular, they rely on the first applicant's evidence that Mr B had attended the first applicant's residence unannounced and threatened "dire consequences" should the applicants fail to sign the Settlement Contract; and that it was only because of these threats that the first and second applicants signed the Settlement Contract on 20 November 2015. Similarly, for the Supplemental Settlement Contract, it was submitted that the first applicant had been forced to sign it under extreme coercion. On this basis, the applicants argued that in line with ss 15 and 19 of the Indian Contract Act 1872, the Arbitration Agreements in the Contracts were invalid and unenforceable under Indian Law, and that the Award should therefore be set aside under Art 34(2)(*a*)(i) of the Model Law.

73 In my view, this ground of challenge is unmeritorious for the following reasons.

74 The starting point is to emphasise that this ground is relied upon by way of an objection to the Tribunal's jurisdiction. As such, the respondent raised a threshold point, *viz*, that the applicants were in effect precluded from raising such objection because they had not raised any objection to the Tribunal's jurisdiction within the time limits specified in Art 16(2) of the Model Law (which states in material part that "[a] plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence"). Nor had the applicants raised an objection within the time limit specified in Rule 28.3(a) of the SIAC Rules, which similarly provides in material part that "[a]ny objection that the Tribunal does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim". In fact, the applicants had not objected to the Tribunal's jurisdiction even at any stage prior to the publication of the Award. As submitted on behalf of the respondent, the applicants' allegation that the first and second applicants lacked mental capacity to enter into the Contracts was framed as one of the applicants' substantive defences to the claims for substantive reliefs under the Contracts, and not as a challenge to the Tribunal's jurisdiction.

75 In this context, I was referred by counsel for the respondent to *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131 ("*Rakna Arakshaka*"). In that case, the Court of Appeal observed at [51] that it was clear that the drafters of the Model Law intended for a party who had failed to raise an objection to the tribunal's jurisdiction by the appropriate time provided for in Art 16(2), to be precluded from raising a challenge at a later stage (*eg*, in a setting aside application). In addition, the

Court of Appeal referred to the following extract from United Nations Commission on International Trade, *Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration* (A/CN.9/264, 25 March 1985) at p 39 (at [61] of *Rakna Arakshaka*), which I reproduce below:

> 8. The model law does not state whether a party's failure to raise his objections within the time-limit set by article 16(2) has effect at the post-award stage. ***The pertinent observation of the Working Group was that a party who failed to raise the plea as required under article 16(2) should be precluded from raising such objections not only during the later stages of the arbitral proceedings but also in other contexts, in particular, in setting aside proceedings or enforcement proceedings,*** subject to certain limits such as public policy, including those relating to arbitrability.
>
> [emphasis added in bold italics]

76 I was also referred to a number of other texts and cases to similar effect. Although this point was not the subject of any detailed oral submissions, my tentative view is that Art 16(2) of the Model Law and also Rule 28.3(a) of the SIAC Rules do indeed have a preclusive effect on a party who fails to raise a jurisdictional challenge within the time limit contained in either provision. If that is correct, it necessarily follows that this part of the applicants' challenge fails at the first hurdle.

77 However, it is perhaps unnecessary to determine finally that point for the following reason. As a start, I assume in the applicants' favour that under Indian Law, a contract entered into under duress will be invalid and unenforceable. Further, given that a challenge to a tribunal's jurisdiction should be heard by way of *de novo* hearing (as noted at [56] above), I assume in favour of the applicants that I can – and should – have regard to any admissible evidence, including the Medical Reports that were excluded by the Tribunal. However, in my view, the limited evidence before me, as contained in the affidavits filed on behalf of the applicants, fell far short of establishing any

relevant conduct that might amount to duress or coercion that would or even might vitiate the Contracts; and I did not have the benefit of any oral evidence from the applicants. To the extent that the applicants sought to rely upon the Medical Reports, I would refer back to my conclusions with regard thereto as stated above at [62]–[64] which are unnecessary to repeat.

SIC/SUM 8/2022

78 It was presumably in light of the foregoing and in an attempt to fill the evidential gap that the applicants filed SIC/SUM 8/2022 (to which I have already referred to at the beginning of this Judgment) on 17 March 2022, very shortly before the hearing of SIC/OS 1/2022. In summary, the applicants sought leave of the court to adduce further evidence in these present proceedings in the form of an affidavit from Dr P. The lateness of such an application is to a certain extent a re-run of exactly what happened in the Arbitration. In support of the application before this court in SIC/SUM 8/2022, it was submitted on behalf of the applicants that Dr P's affidavit would cover the following points: (a) Dr P would confirm and expound on the contents of the Medical Reports that the Tribunal excluded from evidence in the Arbitration; (b) Dr P would briefly set out the history of his treatment and care of the first and second applicants and the nature of the mental disorders they have been diagnosed with; and (c) Dr P would explain that at the time the first and second applicants signed the Settlement Contract and Supplemental Settlement Contract, their judgment and ability to think rationally was significantly impaired.

79 I am prepared to assume in the applicants' favour that further evidence from Dr P would or at least might be admissible in the context of the present application to the extent that it was relevant to the issue of "incapacity" and therefore the jurisdiction of the Tribunal. However, in my view, such

application was fatally flawed and indeed an abuse of process for at least three main reasons.

80 First, any such affidavit from Dr P should have been filed at the outset at the time when SIC/OS 1/2022 was originally filed. Instead, the application contained in SIC/SUM 8/2022 for leave to file such affidavit was filed at a very late stage, barely twelve working days before the hearing of the main application. There was no satisfactory reason as to why such application could not have been filed earlier.

81 Second, an application for leave to file further evidence should, at the very least, generally be accompanied by a draft of the affidavit in question. However, even at this very late stage, the applicants did not proffer any draft affidavit from Dr P himself when SIC/SUM 8/2022 was filed on 17 March 2022 – nor even at the time of the hearing of the main application on 1 April 2022. As stated above, the applicants merely indicated in broad terms what it was said would be contained in Dr P's affidavit. In my view, this is unacceptable in circumstances where the applicants had more than ample time to obtain an affidavit from Dr P and the hearing on 1 April 2022 had been fixed for some time. Moreover, the indications given on behalf of the applicants as to what Dr P's affidavit would contain (for example, that Dr P would "confirm and expound on the contents of the Medical Reports that the Tribunal excluded from evidence in the Arbitration") were entirely general and vague. In my view, it would be wholly exceptional for a court to give leave to allow such belated further evidence in the abstract without seeing precisely the contents of the affidavit at least in draft form; and there were here no exceptional circumstances that might justify the granting of leave in such circumstances.

82 Third, the inevitable consequence of granting leave to allow an affidavit from Dr P to be adduced in evidence would have been an adjournment of the hearing of the main application on 1 April 2022, further delay to allow time for service of Dr P's affidavit and, of course, further time to allow the respondent to consider such affidavit and, if necessary, respond appropriately. It is not inconceivable, for instance, that depending on whatever Dr P might have stated in such affidavit, counsel for the respondent may have wished to seek leave to cross-examine him.

83 It is for these reasons that I decided that the application in SIC/SUM 8/2022 was quite hopeless and should be dismissed.

84 For all these reasons, I would dismiss this ground of challenge to the Award.

Issue 3: Did the Tribunal breach the rules of natural justice by refusing the Joinder Application?

85 I have already set out the procedural history relating to the decision of the Tribunal refusing the joinder of ABC and the reasons given by the Tribunal for its decision. In summary, the applicants submit that such refusal constitutes a breach by the Tribunal of the rules of natural justice, because it denied the applicants the opportunity to adduce oral evidence on the status of the US$2.5m allegedly payable by ABC.

86 In support of that submission, it was contended on behalf of the applicants as follows:

(a) Under cl 3 of the Settlement Contract, it was agreed that ABC would pay the respondent the sum of US$2.5m, and in return CPW-3 and/or CPW-4 would be liable to transfer their respective shares in

CPW-1 and/or CPW-2 to ABC. Clause 3 further stated that upon such payment by ABC to the respondent, the applicants' obligation to pay US$10m to the respondent under the Settlement Contract would be discharged by US$2.5m.

(b) There is no dispute that the shares in CPW-1 have been transferred to ABC. Accordingly, in line with cl 3 of the Settlement Contract, ABC was obliged to pay US$2.5m to the respondent, and the applicants were at liberty to set off this amount.

(c) ABC was the respondent's nominee. The applicants have no control or further information as to the running of ABC or their operations. As far as the applicants are concerned, their obligation was to ensure the transfer of shares in CPW-1 and CPW-2 to ABC, which they have complied with.

(d) Given that the applicants have no control over ABC, the applicants sought to join ABC to the Arbitration given that ABC may have breached its obligation under the Settlement Contract regarding the payment of US$2.5m to the respondent.

(e) In Procedural Order No. 2, the Tribunal acknowledged that the applicants' intention for joining ABC was for the purpose of ABC stating its position on whether it had made payment of US$2.5m. Yet, the Tribunal decided that this was an insufficient reason to allow the Joinder Application. The Tribunal also found that ABC could not be joined as either a "claimant" or "respondent" in the Arbitration, and that the issue of set-off could be determined without ABC.

(f) However, when it came to the making of the Award, the Tribunal went on to state that the onus was on the applicants to prove that the US$2.5m had been paid by ABC, as follows:

> 535. In respect of the [applicants'] claim for a set-off for the sum of USD 2.5 million, ***the Tribunal considers that the burden of proof*** in proving that [the respondent's] claim ought to be reduced by the sum of USD 2.5 million, ***lies on the [third applicant].*** Recital G(b) of the Settlement Contract firstly provides that at the option of [the respondent], the shares in [CPW-1] and [CPW-2] are to be transferred to either [the respondent] or its nominees. Recital G(c) then provides that 'subject to the transfer of shares of [CPW-1] and [CPW-2]' to [ABC], [ABC] will pay [the respondent] within six months the sum of USD 2.5 million and upon such payment, the [applicants'] liability to the extent of USD 2.5 million 'will stand discharged'. This settlement obligation is accordingly set out at clause 3 of the Settlement Contract.
>
> 536. There is no dispute that the shares in [CPW-1] have been transferred but not the shares in [CPW-2]. Based on a plain reading of the relevant provisions of the Settlement Contract, the set-off defence will only be sustained if payment had in fact been made to [the respondent], and the fact of transfer of one set of shares by itself does not give rise to the right to have the Aggregate Outstanding Sum reduced by the sum of USD 2.5 million.
>
> 537. The [third applicant] has the onus of proving that [the respondent] has received the sum of USD 2.5 million. The Tribunal notes that [the respondent] has denied that it has received any payment from [ABC]. The Tribunal notes that no evidence in respect of the [applicants'] set-off claim was in fact adduced in any of the witness statements. ***The Tribunal also notes the very limited cross-examination made on this issue of the witnesses.*** The Tribunal therefore finds that the [third applicant] has not proven its claim for a set-off for the sum of USD 2.5 million.
>
> [emphasis added in bold italics]

87 The applicants say that an analogy can be drawn between this alleged "incongruency" in the Tribunal's reasoning and the facts of *Phoenixfin Pte Ltd*

and others v Convexity Ltd [2022] SGCA 17 ("*Phoenixfin*"). In *Phoenixfin*, the tribunal had disallowed the respondent's application to amend its pleadings, which would have introduced a new issue in the arbitration (the "Penalty Issue"). However, the tribunal then unilaterally re-introduced the Penalty Issue at the oral reply hearing, without calling for amendments to the pleadings on both sides which were needed to flesh out the issue (at [47]). The Court of Appeal found that this amounted to a breach of natural justice, as the respondent did not know the case it had to meet in respect of the Penalty Issue, and therefore had not been afforded a proper opportunity to present its case on the Penalty Issue (at [68]).

88 The applicants submit that the present case is similar to *Phoenixfin* in that the Tribunal's reasoning was inherently contradictory. As noted above at [86], the applicants highlight that the Tribunal found that the onus was on the third applicant to establish that ABC had paid the respondent the sum of US$2.5m, but that the Tribunal also deprived the applicants of an opportunity to prove this fact by refusing the Joinder Application. Had the Tribunal permitted the Joinder Application, the applicants say that they would have had the opportunity to obtain the relevant evidence and information from ABC (which was at the material time and remains the respondent's nominee), including the opportunity to cross-examine ABC's witnesses. On this basis, the applicants argue that this clearly amounts to a breach of its right to a fair hearing, and that the Award should therefore be set aside.

89 I do not accept these submissions for the following brief reasons.

90 First, in considering this part of the applicants' case, it is important to bear in mind that, as stated above, the overarching enquiry is whether "what the tribunal did (or decided not to do) falls within the range of what a reasonable

and fair-minded tribunal in those circumstances might have done": *China Machine* at [98]. Here, it cannot be said that the decision of the Tribunal to refuse the joinder of ABC fell outside such range. On the contrary, having regard to the relevant SIAC Rules and the circumstances of the case, the reasons given by the Tribunal in refusing to allow such joinder (as detailed above at [37]) were, in my view, unobjectionable and entirely justified.

91 Second, contrary to the applicants' case, I do not accept that *Phoenixfin* provides much, if any, assistance. The question as to whether there is any breach of natural justice is highly fact-sensitive and depends on the relevant circumstances of each case. Here, I do not consider that there was any relevant "incongruency". The fact that the Tribunal held that the onus was, in effect, on the third applicant to establish that ABC had duly paid to the respondent the sum of US$2.5m is not necessarily inconsistent with its previous decision refusing the Joinder Application. As pointed out by the respondent, there is nothing to suggest that joinder was the *only* means possible to prove the payment of the US$2.5m by ABC, nor have the applicants shown any other attempts or steps taken by them to procure evidence from ABC. In the circumstances, it cannot be said that the Tribunal's refusal of the Joinder Application necessarily deprived the applicants of a reasonable opportunity to present their case, and still less that the rules of natural justice were therefore breached.

92 Third, once again, the fact remains that the applicants did not provide any fair – nor indeed any – intimation to the Tribunal prior to the publication of the Award that they intended to assert that the Tribunal had acted in breach of natural justice. On the contrary, as already noted above at [49], the applicants confirmed at the end of the Further Hearing on 10 December 2020 that they had no issues with how the hearings had been conducted.

93 Fourth, as submitted by the respondent, it is entirely speculative as to whether ABC would have participated in the Arbitration, what kind of evidence ABC would have provided (if any), and how such evidence would have had a real as opposed to a fanciful chance of making a difference to the final outcome of the Arbitration. On this basis, even on the assumption that it might be said (contrary to my conclusion as stated above) that the Tribunal had acted in breach of natural justice in refusing the Joinder Application, it cannot be said that this has caused the applicants any relevant prejudice.

94 For these reasons, I reject the applicants' challenge to set aside the Award on this ground.

Issue 4: Did the Tribunal breach the rules of natural justice by failing to invite submissions on the applicable law, when determining whether it had jurisdiction to adjudge issues arising out of the Preceding Transactions?

95 I confess that I struggled to understand the applicants' challenge under this head, the main focus of which was three paragraphs in the Award as follows:

> 228. Having carefully considered and reviewed the Parties' submissions, the Tribunal accepts [the respondent's] contention that all disputes and differences between the Parties which may have existed prior to the execution of the Settlement Contract were resolved and culminated in the Settlement Contract. The Settlement Contract had effectively superseded all prior agreements entered into between the Parties and discharged all disputes and original claims between the Parties, whether relating to the BHOT, [the Second MOU] and/or the JVA which existed prior to the execution of the Settlement Contract and the Supplemental Settlement Contract.
>
> 229. The Tribunal finds that any original causes of action and/or defences with respect to the BHOT, [the Second MOU] and/or JVA were discharged and the Parties' remaining rights and obligations only arise from the Settlement Contract, and as further supplemented by the Supplemental Settlement Contract. ***The Tribunal therefore finds that it does not have***

> ***jurisdiction to adjudicate and/or examine disputes which had existed prior to the execution of the Settlement Contract.***
>
> …
>
> 236. Having considered the Parties' submissions, ***the Tribunal does not find that it is constrained from considering any other agreements that were entered into prior to the Settlement Contract and the Supplemental Settlement Contract, insofar as those agreements had provided the factual backdrop to the Parties' contractual relationship. However, as found with respect to Issue 1 above, the Tribunal does not have the jurisdiction to adjudicate upon any alleged disputes relating to such agreements prior to the Settlement Contract and the Supplemental Settlement Contract.*** Accordingly, the Tribunal accepts the arguments of [the respondent] that for the purposes of considering the claims of [the respondent], it should only consider the contractual rights and obligations as set out in the Settlement Contract and the Supplemental Settlement Contract.
>
> [emphasis added in bold italics]

96 In summary, the applicants say that the main crux of their defence in the Arbitration was that the respondent had breached its obligations under the Preceding Transactions. The applicants' position was that the disputes under the Contracts were inextricably linked to the Preceding Transactions (as defined above at [9]), and that the Tribunal ought to have considered the disputes and issues holistically as "one composite transaction" in the Arbitration. However, the applicants complain that although the Tribunal found that the Preceding Transactions provided the "factual backdrop" to the Contracts, it held that it did not have the jurisdiction to determine the issues relating thereto. According to the applicants, both these positions are manifestly incompatible. Further, the applicants complain that the Tribunal reached its decision by applying Singapore law, mainly the decision of *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("*Turf Club*"). According to the applicants, the Tribunal should

have invited the parties to address it on the applicable law, and then applied Indian Law which is the governing law of the Contracts.

97 In considering this head of challenge, it is important to bear in mind that, as formulated, the essential thrust of the applicants' case does not pertain to the Tribunal's decision that it lacked jurisdiction to adjudicate and/or to examine disputes which had existed prior to the execution of the Settlement Contract. Rather, the applicants' case is that the Tribunal acted in breach of natural justice in failing to invite submissions on the applicable law in relation to that issue.

98 In my view, such complaint is baseless for the following reasons:

(a) During the evidentiary hearing for the Arbitration on 21 September 2020, counsel for the respondent made the following argument:

> MR CHONG: … Once the settlement agreement is entered into, sir, of course the old issues are resolved and new obligations come about through the settlement agreement. This is trite, sir, but of course, if authority is needed, there is a Court of Appeal decision of [*Turf Club*]. I don't intend to bring you, Mr Arbitrator, through it, but this is trite law as far as settlement is concerned, that once you have a settlement, the obligations contained in the settlement agreement will override the previous dispute between parties.
>
> ARBITRATOR: The settlement agreement is expressly governed by Indian law?
>
> MR CHONG: Yes, sir.
>
> ARBITRATOR: Is the Indian law position the same as the Singapore authority?
>
> MR CHONG: Yes, that's our submission, it's the same.
>
> ARBITRATOR: Yes.

(b) At para 214 of the Award, the Tribunal stated that when it had asked counsel for the respondent "if the propositions of law held in *Turf*

Club are also the position under Indian law … [c]ounsel for [the respondent] stated that it was and counsel for the [applicants] did not take issue with this submission". Contrary to the applicants' submission, this is, in my view, a fair statement of what happened during the hearing before the Tribunal (according to the transcript), even though the applicants did not expressly confirm at the time that they accepted that *Turf Club* reflected the position under Indian Law.

(c) The argument now advanced by the applicants is that there was some "obligation" on the part of the Tribunal to invite submissions on (i) the appropriate law and in particular whether the appropriate law was Singapore law or Indian Law; (ii) whether the position under Singapore law was the same as Indian Law; and (iii) if Singapore law applied, the applicability of *Turf Club* to the present facts. This submission is, in my view, completely unfounded. Procedural fairness does not require an arbitral tribunal *expressly* to invite a party to address a particular point raised by the other party, provided of course, that the party has a fair opportunity of so doing if it so wishes. Certainly, I know of no authority to the contrary.

(d) Here, there is no suggestion that the applicants were deprived of such opportunity. If the applicants had wanted to make submissions on the law applicable to the Contracts, there was nothing to prevent or to hinder them from so doing in the Arbitration. The applicants had ample opportunity to address this issue and to respond to the respondent's submissions in (i) the two rounds of written closing submissions filed after the hearing on 14 November 2020 and 4 December 2020 respectively; and (ii) the oral closing submissions made thereafter at the Further Hearing on 10 December 2020.

(e) Thus, the suggestion that the Tribunal can be said to have acted in breach of natural justice is, in my view, quite hopeless.

(f) For the sake of completeness, I should mention that I am unpersuaded that the conclusions reached by the Tribunal would have been any different if it had applied Indian Law; nor (on the assumption that Singapore law applied) that the Tribunal was in error in applying the principles enunciated in *Turf Club* to the circumstances in the present case. However, whether that is correct or not matters not in the present context. At best, such conclusions might amount to an error of fact (so far as Indian Law is concerned) and/or an error of law (so far as Singapore law is concerned). However, any such errors are not the proper basis of a challenge to an arbitral award under Singapore law and are not open to review in this court: *AKN v ALC* at [47]; *CDX and another v CDZ and another* [2021] 5 SLR 405 at [158]. On any view, they cannot, in and of themselves, constitute a breach of natural justice.

Conclusion

99 For all these reasons, I dismiss the application to set aside the Award. It follows that the applicants must pay the costs. I hope that such costs may be agreed failing which, the respondent shall serve its schedule of costs and any written submissions in support thereof (limited to five pages) within 28 days of the date of this Judgment; and the applicants are to serve any response within

14 days thereafter (limited to five pages) following which I shall make such order as may be appropriate.

Sir Henry Bernard Eder IJ
International Judge

Nakul Dewan (Twenty Essex) (instructed), Clement Julien Tan Tze Ming, Ng Pi Wei and Niranjanaa Ram (Selvam LLC) for the first, second and third applicants;
Chong Yee Leong and Sheryl Lauren Koh Quanli (Allen & Gledhill LLP) for the respondent.