**IN THE APPELLATE DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC(A) 29**

Civil Appeal No 52 of 2022

Between

Carlsberg South Asia Pte Ltd

… *Appellant*

And

Pawan Kumar Jagetia

… *Respondent*

In the matter of Suit 114 of 2020

Between

Carlsberg South Asia Pte Ltd

… *Plaintiff*

And

Pawan Kumar Jagetia

… *Defendant*

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# JUDGMENT

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

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# Carlsberg South Asia Pte Ltd
# v
# Pawan Kumar Jagetia

**[2023] SGHC(A) 29**

Appellate Division of the High Court — Civil Appeal No 52 of 2022
Belinda Ang Saw Ean JCA, Debbie Ong Siew Ling JAD and Aedit Abdullah J
16 March 2023

24 August 2023 Judgment reserved.

**Debbie Ong Siew Ling JAD (delivering the judgment of the court):**

1 This case involves an employment contract. AD/CA 52/2022 ("AD 52") is an appeal against the decision of a Judge in the General Division of the High Court ("the Judge") in HC/S 114/2020 ("Suit 114"). The Judge's decision is published as *Carlsberg South Asia Pte Ltd v Pawan Kumar Jagetia* [2022] SGHC 74.

2 The appellant is Carlsberg South Asia Pte Ltd ("CSAPL"), an entity that is part of the global brewery group known as "the Carlsberg Group". The respondent is Mr Pawan Kumar Jagetia ("Mr Jagetia"). Between 26 September 2014 and 26 June 2019, Mr Jagetia was employed by various entities within the Carlsberg Group. This culminated in his final appointment as Senior Vice President ("SVP") of CSAPL between 1 April 2018 and 26 June 2019.

3 In the proceedings below, CSAPL sued Mr Jagetia to recover sums that were paid to him pursuant to an alleged implied term in his employment contract that obligated him and his family to relocate to Singapore. CSAPL also sought to recover these sums on an alternative ground of a claim in unjust enrichment. CSAPL alleged that it paid Mr Jagetia these sums on the basis that he and his family would relocate to Singapore, but that this basis had failed since Mr Jagetia and his family failed to relocate. We shall refer to this claim collectively as "the Relocation Claim". Mr Jagetia denied that there was an obligation for him to relocate to Singapore and he further defended his entitlement to the sums received. He countersued CSAPL on several grounds. These included: (a) that his employment had been wrongfully terminated by CSAPL ("the Wrongful Termination Claim"); and (b) that CSAPL failed to pay him a short-term incentive ("STI") that he had earned while employed by another entity within the Carlsberg Group ("the STI Claim").

4 The Judge dismissed CSAPL's claim and allowed both of Mr Jagetia's counterclaims stated above. CSAPL now brings an appeal against the Judge's decision on the Relocation Claim, the Wrongful Termination Claim and the STI Claim.

5 Having considered the parties' submissions and the evidence, we allow CSAPL's appeal in relation to the Relocation Claim and the STI Claim but not in relation to the Wrongful Termination Claim.

**Background facts**

6 Central to AD 52 is an employment contract between CSAPL and Mr Jagetia which we shall refer to as "the CSAPL Contract". To understand the background behind the CSAPL Contract, it is necessary for us to briefly

summarise Mr Jagetia's employment history within the Carlsberg Group. We also set out a diagrammatic illustration of the corporate structure of the Carlsberg Group in Annex A of this Judgment.

***Background to the CSAPL Contract***

7 Prior to Mr Jagetia's employment with CSAPL, he was employed as a Deputy Managing Director in one of CSAPL's subsidiaries, Carlsberg India Pte Ltd ("CIPL"), between 26 September 2014 and 31 March 2018. Mr Jagetia's employment with CIPL was governed by a contract we shall refer to as "the CIPL Contract". In January 2018, Mr Jagetia began negotiations with representatives from CSAPL, Mr Low Chong Lim ("Mr Low") and Mr Graham Fewkes ("Mr Fewkes"), pertaining to a new role as SVP with CSAPL. After negotiations, the CSAPL Contract was signed on 19 April 2018 and Mr Jagetia was appointed as SVP.

***The CSAPL Contract***

8 The CSAPL Contract provided that Mr Jagetia would receive as remuneration:

(a) a gross annual base salary of S$410,000;

(b) a STI;

(c) a gross annual benefits package of S$290,000 *per* annum ("Annual Benefits Package");

(d) a one-time "Relocation Allowance" of S$5,000 to be paid with the first salary payout; and

(e) a "Repatriation Allowance" of S$5,000 to be paid at the end of the CSAPL Contract with the last salary payout.

9 It is pertinent that the CSAPL Contract also made multiple references to Mr Jagetia relocating and being based in Singapore. However, it did not go further to explicitly and specifically state that Mr Jagetia had to relocate to Singapore with his family. This ostensible ambiguity forms the factual backdrop of the parties' dispute in the proceedings below and in AD 52.

***The termination of Mr Jagetia's employment with CSAPL***

10 Unfortunately, issues soon arose within CSAPL and between CSAPL and Mr Jagetia. On 26 June 2019, Mr Troels Libak Stollberg (a CSAPL board member) ("Mr Stollberg") proposed that Mr Jagetia's employment be terminated with immediate effect for various reasons, including the fact that Mr Jagetia had failed to relocate to Singapore. A vote was called for Mr Jagetia's employment to be terminated and was passed with a two-thirds majority.

***Procedural history***

11 On 11 November 2019, CSAPL commenced Suit 114 against Mr Jagetia. CSAPL claimed that it was an implied term of the CSAPL Contract that Mr Jagetia would relocate to Singapore with his family ("the Relocation Obligation"), and that he had breached this term. From this, CSAPL claimed a total of S$367,500 ("the Relocation Sum"). This consisted of the sums paid pursuant to the Annual Benefits Package from 1 April 2018 to 30 June 2019 and the Relocation Allowance. Alternatively, CSAPL claimed that the Relocation Sum was owing to it because there had been a total failure of basis (given that Mr Jagetia had failed to relocate) and that Mr Jagetia had been unjustly enriched.

12 On 4 December 2019, Mr Jagetia filed his Defence & Counterclaim. Therein, the existence of the Relocation Obligation was denied, and Mr Jagetia averred that he was never told that he and his family would be required to

become ordinarily resident in Singapore. Further, Mr Jagetia sued CSAPL on several grounds. What is of relevance to AD 52 are his counterclaims that: (a) under the CSAPL Contract he was entitled to the STI he earned while employed with CIPL amounting to S$114,800 ("the CIPL STI"); and (b) there were no grounds for his termination, and thus he was entitled to three months' salary in lieu of notice and the Repatriation Allowance (see [4] above).

**Decision of the Judge**

13 The Judge dismissed CSAPL's claim for the Relocation Sum (henceforth referred to as "the Relocation Claim"), and partially allowed Mr Jagetia's counterclaim. On appeal, CSAPL has only challenged the Judge's decision on the following:

(a) Mr Jagetia's claim for the CIPL STI from CSAPL – the STI Claim;

(b) the Relocation Claim; and

(c) Mr Jagetia's entitlement to three months' salary in lieu of notice and the Repatriation Allowance because of his wrongful termination by CSAPL – the Wrongful Termination Claim.

We now set out in brief the Judge's decision on these three claims.

***The STI Claim***

14 With respect to the STI Claim, the parties did not dispute that Mr Jagetia was entitled to receive the CIPL STI. Instead, the two issues that arose for consideration were: (a) whether it was CIPL or CSAPL that ought to pay this sum to Mr Jagetia; and (b) what the exact quantum of the CIPL STI ought to be.

15 The Judge found that it was CSAPL and not CIPL that was obligated to pay the CIPL STI. The Judge observed that on a textual interpretation of the CSAPL Contract – specifically Clauses 1.2, 1.3 and 7.1 – payment of the CIPL STI was not excluded from the CSAPL Contract and this was fortified by contemporaneous evidence. The Judge referenced an email of 17 April 2018 from Mr Fewkes to Mr Jagetia ("the 17 April Email") which, in her view, expressly represented that the CIPL STI was incorporated into the CSAPL Contract. The Judge also observed that: (a) Clause 4.3 of the CIPL Contract prohibited Mr Jagetia from claiming the CIPL STI from CIPL after he left CIPL's employment; and (b) CSAPL was of the view that there was no intention for Mr Jagetia to forfeit the CIPL STI. The Judge found that the upshot of these observations was that "CSAPL had undertaken CIPL's liability for the CIPL STI".

16 As for the quantum of the CIPL STI, the Judge accepted Mr Jagetia's proposed calculations, noting that the 17 April Email (partly reproduced at [37] below) suggested that the CIPL STI would "simply be pro-rated". She also considered that CSAPL's conduct showed that it did not object to the method of calculation.

17 For these reasons, the Judge allowed Mr Jagetia's counterclaim for the CIPL STI for the sum of S$114,800.

***The Relocation Claim***

18 With respect to the Relocation Claim, the Judge found that the Relocation Obligation could not be implied because there was no "true gap". While the Judge observed that the parties had contemplated the Relocation Obligation, she was of the view that the parties "chose not to clearly provide

any term requiring relocation". The key issue was thus whether the parties had reached a common understanding that Mr Jagetia was contractually obligated to relocate with his family to Singapore. The Judge found that this question was answered in the negative for four reasons:

(a) First, the language of the CSAPL Contract contradicted such a common understanding.

(b) Second, the Annual Benefits Package was not solely for the purpose of compensating Mr Jagetia and his family for their relocation to Singapore.

(c) Third, Mr Low had explained to Mr Jagetia that the Annual Benefits Package was structured as a cash benefits package in order to provide Mr Jagetia with flexibility on how best to meet his personal needs. In other words, there was no explicit communication that the Annual Benefits Package was tied to the Relocation Obligation.

(d) Fourth, CSAPL's representatives had agreed during cross-examination that there were certain components of the Annual Benefits Package, such as pension benefits, that did not relate to the cost of living in Singapore.

19 As for the alternative claim in unjust enrichment, the Judge found that the Annual Benefits Package was not tied to Mr Jagetia and his family relocating to Singapore and the claim therefore failed on this basis. In relation to CSAPL's claim for the Relocation Allowance, the Judge accepted that payment of this sum was contingent upon relocation to Singapore but noted that since Mr Jagetia had spent a "substantial period" of time in Singapore, there was no *total* failure

of consideration. She thus dismissed CSAPL's claim based on unjust enrichment.

***The Wrongful Termination Claim***

20 With respect to the Wrongful Termination Claim, the Judge found that contrary to CSAPL's submission, Clause 11.5 of the CSAPL Contract did not entitle Mr Jagetia to be terminated for *any* breach and noted that not every breach entitled the innocent party to terminate a contract. In any event, the Judge observed that none of the breaches alleged by CSAPL, including Mr Jagetia's failure to relocate, would amount to a repudiatory breach. As such, the Judge concluded that CSAPL was not entitled to terminate Mr Jagetia's employment without notice and that Mr Jagetia was entitled to three months' salary in lieu of notice and the Repatriation Allowance.

**Issues on appeal**

21 As mentioned at [13] above, CSAPL's appeal involves the STI Claim, the Relocation Claim, and the Wrongful Termination Claim:

(a) On the STI Claim, it argues that there is nothing within the CSAPL Contract that imposes an obligation on CSAPL to pay Mr Jagetia the CIPL STI. It argues that the Judge's interpretation of the CSAPL Contract is strained, and that in any event, there are practical issues in calculating the quantum of the STI.

(b) On the Relocation Claim, it argues that the Judge erred in finding that there was no true gap and that the Relocation Obligation should be implied; alternatively, it argues that its claim in unjust enrichment should be allowed.

(c) On the Wrongful Termination Claim, it argues that the Judge's interpretation of Clause 11.5 was wrong and that it was entitled to terminate Mr Jagetia for *any* breach. Further, it argues that in any event, Mr Jagetia's breaches of the CSAPL Contract, including his failure to relocate to Singapore with his family, were serious enough to justify terminating his employment.

## Our Decision

### *The STI Claim*

22 We begin with the STI Claim. In finding that CSAPL was obligated to pay Mr Jagetia the CIPL STI, the Judge relied primarily on the 17 April Email and three clauses within the CSAPL Contract (see [15] above). With respect, we do not agree with the Judge's interpretation of the relevant clauses of the CSAPL Contract or the 17 April Email. In our view, neither the CSAPL Contract nor the 17 April Email contains an obligation for CSAPL to pay Mr Jagetia the CIPL STI. We explain our conclusion by analysing the relevant clauses of the CSAPL Contract and the 17 April Email in sequence.

#### *The interpretation of the CSAPL Contract*

23 In interpreting the relevant clauses within the CSAPL Contract, we consider the following principles as distilled by the Court of Appeal in *Leiman, Ricardo v Noble Resources* [2020] 2 SLR 386 ("*Noble Resources*") at [59]–[60] to be relevant:

(a) First, the starting point is that the court looks to the text that the parties have used.

(b) Second, the court may have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties. The utility of the contextual approach is to place the court in the best possible position to ascertain the parties' objective intentions by interpreting the expression used by the parties in their proper context.

(c) Third, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear.

(d) Fourth, the exercise of ascertaining what the parties objectively intended should generally be rooted in the context of the contractual purpose. Due consideration therefore ought to be given to the commercial purpose of the transaction or provision, and, more narrowly, to why a particular obligation was undertaken.

(e) Fifth, and in addition to what was observed by the Court of Appeal in *Nobel Resources*, while extrinsic evidence can be relied on to aid in the interpretation of a contract, it must go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon. Extrinsic evidence is thus admissible so long as it is: (i) relevant; (ii) reasonably available to all the contracting parties; and (iii) relates to a clear or obvious context: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [132].

24 With these principles in mind, we turn now to consider the three clauses in question.

(1) Clause 1.2 of the CSAPL Contract

25 Clause 1.2 provides as follows:

> This contract *supersedes* the current employment contract dated 24 September 2014 and any addendum employment agreements signed between Employee and [CIPL]. In the event of any inconsistency between this contract and previous employment contract or other documents, this contract will prevail. [emphasis added]

26 The Judge was of the view that Clause 1.2 was included to show that certain aspects of the CIPL Contract were being replaced by the CSAPL Contract due to the term "supersedes" that was used. The effect of this finding appears to be that this clause imposed a liability on CSAPL to pay the CIPL STI, amongst other obligations that CSAPL took over under the CSAPL Contract.

27 With respect, we do not agree with this interpretation of Clause 1.2. In our view, there is nothing within Clause 1.2 that states that CSAPL undertook any outstanding payment obligations of CIPL or that it is intended to novate any obligations from CIPL to CSAPL. The text of Clause 1.2 goes no further than to clarify that it is the CSAPL Contract that will govern Mr Jagetia's relationship with CSAPL and not any other previous contract that Mr Jagetia might have had with other entities of the Carlsberg Group. As such, we do not agree that Clause 1.2 imposes an obligation on CSAPL to pay the CIPL STI to Mr Jagetia.

(2) Clause 1.3 of the CSAPL Contract

28 Clause 1.3 provides:

> [Mr Jagetia's] length of employment will count from 26 September 2014.

29 The Judge observed that the purpose of Clause 1.3 was to confer "seniority" to Mr Jagetia that was commensurate with his employment with the Carlsberg Group. She was of the view that the insertion of this "'seniority clause' begs the question of the entitlement which Mr Jagetia would enjoy due

to his seniority" and that this could "potentially include the non-forfeiture of the CIPL STI".

30 While we agree with the Judge that Clause 1.3 was included so that Mr Jagetia's employment with CSAPL would reflect the length of his employment within the Carlsberg Group, we do not think it goes to the extent of imposing an obligation on CSAPL to pay Mr Jagetia's CIPL STI. Applying the principles outlined at [23] above, we are of the view that the plain wording of Clause 1.3 only goes so far as to state that Mr Jagetia's length of employment with CSAPL would be measured from 26 September 2014. There is nothing on the face of the text to suggest any obligation being imposed on CSAPL. Thus, Clause 1.3 appears to be limited to recording how the parties intended to measure the total length of Mr Jagetia's employment with CSAPL.

31 The extrinsic evidence also supports such an interpretation of Clause 1.3. In this regard, we note that Mr Stollberg had explained in the proceedings below that the length of employment of an employee within the Carlsberg Group would affect privileges such as retrenchment benefits. Clause 1.3 was thus a boilerplate clause in employment agreements within the Carlsberg Group to ensure that employees who moved around entities within the group would have the length of time spent in their previous roles count towards their total length of employment so that they would not be prejudiced in how their benefits are computed.

32 For these reasons, Clause 1.3 of the CSAPL Contract cannot be taken to impose an obligation on CSAPL to pay the CIPL STI.

(3) Clause 7.1 of the CSAPL Contract

33 Clause 7.1 provides as follows:

> The Employee will participate in the [STI Plan] with a target bonus of 40% of the Gross Annual Base Salary. STI mechanics and calculations will be discussed each year with the Board of CSAPL with oversight by EVP, Asia. For base assumption, the STI structure will reflect financial performance of [CIPL] and Gorkha Brewery Pvt Ltd and CSAPL priorities in equal proportions.

34 The Judge found that the operation of Clause 7.1 was not confined to any time period and that it would include the entire period of Mr Jagetia's employment under the CSAPL Contract, including the period when Mr Jagetia was employed with CIPL. As such, the Judge was of the view that the "payment of any outstanding STI is not excluded from the [CSAPL Contract]".

35 With respect, we do not agree with the Judge's reading of Clause 7.1. First, the plain meaning of Clause 7.1 is to provide the agreed mechanism on how the STI should be calculated. Specifically, we note that the STI that is referenced therein refers to a *prospective* bonus. This is clear from the phrases such as "will participate" and "will be discussed each year" that are used. Second, the context of Clause 7.1 also points towards the STI referenced to be one that is earned during Mr Jagetia's employment with CSAPL and not a previous STI that accrued while Mr Jagetia was employed with CIPL. This is seen from the fact that it is the "Board of CSAPL" that determines the quantum of STI payable each year. As such, we similarly conclude that Clause 7.1 also does not impose an obligation on CSAPL to pay the CIPL STI to Mr Jagetia.

36 For these reasons, we disagree with the Judge's conclusion that clauses 1.2, 1.3 and 7.1, read together, impose a liability on CSAPL to pay the CIPL STI to Mr Jagetia. We turn now to consider the 17 April Email that was also relied on by the Judge.

*The interpretation of the 17 April Email*

37 The salient portions of the 17 April Email read as follows:

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

38 The Judge was of the view that the 17 April Email provided context to the three clauses of the CSAPL Contract highlighted above and fortified her conclusion that CSAPL's obligation to pay the CIPL STI to Mr Jagetia was "contemplated within the [CSAPL Contract]". The Judge found that the 17 April Email showed that Mr Fewkes had expressly represented to Mr Jagetia that the CIPL STI payable for January to March 2018 would be incorporated into the CSAPL Contract.

39 Respectfully, we do not agree with this interpretation of the 17 April Email. There is nothing within the 17 April Email that states that CSAPL would take on the obligation to pay Mr Jagetia the CIPL STI for January to March 2018 or any other time period. The 17 April Email from Mr Fewkes only

contains a question to Mr Low as to whether the CIPL STI should be *budgeted* by CIPL or CSAPL. There was no conclusion expressed within the 17 April Email as to whether it was CIPL or CSAPL that would have to bear the cost of the CIPL STI. Moreover, we note that there is also no evidence adduced by Mr Jagetia to suggest that Mr Low or Mr Fewkes had subsequently confirmed to Mr Jagetia after the 17 April Email that the cost of the CIPL STI would be borne by CSAPL. As such, we are of the view that the 17 April Email does not assist Mr Jagetia's case.

*Conclusion on the STI Claim*

40 For these reasons, we conclude that the CSAPL Contract does not contain an obligation for CSAPL to pay Mr Jagetia the CIPL STI. We therefore allow CSAPL's appeal on the STI Claim and reverse the Judge's decision to award Mr Jagetia the CIPL STI sum of S$114,800 and interest of 5.33% *per* annum.

***The Relocation Claim***

41 We turn now to the Relocation Claim advanced by CSAPL, which relates to Mr Jagetia's entitlement to the Relocation Sum given that he and his family did not relocate to Singapore. As noted at [11] above, this claim comprises the Annual Benefits Package and the Relocation Allowance, as provided in Clause 6.3 and Clause 6.5 of the CSAPL Contract respectively.

42 CSAPL's arguments on the Relocation Claim can be summarised as follows: since the factual basis (*ie*, the contingency) for the payments was not triggered or had not materialised at all (*ie*, Mr Jagetia failed to relocate to Singapore with his family), Mr Jagetia was never entitled to the Relocation

Sum. Consequentially, Mr Jagetia cannot lawfully retain the Relocation Sum that he received.

43 On the other hand, Mr Jagetia resists the Relocation Claim on the ground that he is entitled to keep the money received as part of the overall remuneration payable under his total employment package which did not impose a contractual obligation for him and his family to reside in Singapore. If anything, a relocation to Singapore with his family was an *option* but not an *obligation.*

*Preliminary observations on the fundamental antecedent question*

44 Having read the written submissions and heard the oral arguments of the parties, we are of the view that a fundamental antecedent question in resolving the Relocation Claim is whether the Relocation Sum is a *discrete* part of the CSAPL Contract that is *divisible* from the total employment package. This question is particularly relevant to the issue of a claim in unjust enrichment for a grounding of such a claim is dependent on a total failure of basis; a partial failure of basis is insufficient. It thus becomes necessary to determine whether the non-relocation of Mr Jagetia and his family on the facts (as determined by the Judge) was a failure that was total rather than partial. This in turn requires an analysis of Clauses 1.4, 6.3 and 6.5 of the CSAPL Contract. At this juncture, it suffices for us to note that the terms expressed in Clause 1.4 in particular can aid the court's inquiry into whether the Annual Benefit Package is objectively ascertainable as a discrete part of the CSAPL Contract such that the legal implication(s) which follow could be considered within the alternative plea in unjust enrichment.

45 We have no doubt that the parties were alive to these aspects of the dispute – we discern this from their respective arguments on whether, on the

factual evidence before the Judge, Mr Jagetia himself had relocated to Singapore such that there was partial performance on his part. Besides, by joining issues in pleadings, Mr Jagetia was put on notice that he had to address the pleaded alternative claim for relief in unjust enrichment. This relief lends itself to a two-part inquiry: (a) what was the basis for the payment of the Relocation Sum; and (b) did that basis fail (see *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 ("*Benzline*") at [46]). Regarding the second part of the inquiry, the parties were also alive to the fact that CSAPL's Relocation Claim was dependent upon establishing its case of a total failure of basis of a discrete part of the contract since a partial failure would not permit recovery.

46 In adopting the approach described above, we begin by putting together the key assertions that the parties were each advancing. Next, after accepting the assertions from both sides, we then identify the fundamental antecedent question that would arise for determination of the Relocation Claim as expressed at [44] above. The approach outlined is uncontroversial since a court is entitled to make reasonable inferences of fact, finding of facts or adopt lines of arguments to reach a conclusion that lies somewhere between the positions taken by the parties even though not specifically addressed by the parties. This happens whenever the evidence does not support the versions advanced by the parties and instead shows a different version or the court departs in its reading of the evidence (documentary or otherwise) from the version advanced by the parties in support of their pleaded positions (see generally *Koon Seng Construction Pte Ld v Chenab Contractor Pte Ltd and another* [2008] 1 SLR(R) 375 at [9] and *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [32]). In the end, after matters are put into perspective, it is proper and acceptable for a court to arrive at a

conclusion based on the different factual picture and legal consequences that emerged.

47 In the present appeal, when this court puts together Mr Jagetia's primary contention that the Relocation Sum was a "total package" under his employment contract on the one hand, and CSAPL's opposing contention of failure of basis on the other hand, a reasonable inference that arises is the question identified at [44] above of whether the Relocation Sum is a *discrete* part of the CSAPL Contract that is *divisible* from the total employment package.

48 In our view, this question must be answered with reference to the terms of the CSAPL Contract. In particular, we consider the construction of Clauses 1.4, 6.3 and 6.5 to be pertinent. We thus begin by setting out these clauses for ease of reference:

> **1 COMMENCEMENT**
>
> …
>
> 1.4 This contract shall come into force subject to [Mr Jagetia] being granted residence and work permit in Singapore ("**Part 1**"). [CSAPL] is responsible for assisting [Mr Jagetia] and accompanying family, if any, in obtaining proper documentation (passport, visa, work permit, residence permit etc.) prior to the start of this role ("**Part 2**"). For reasons beyond [CSAPL's], [Mr Jagetia's] and his family's control to secure work and residency permit in Singapore, [CSAPL] shall provide alternative employment arrangements which will allow [Mr Jagetia] to perform [the] same duties and receive similar remuneration under this contract ("**Part 3**").
>
> …
>
> **6 COMPENSATION AND BENEFITS**
>
> …
>
> 6.3 [Mr Jagetia] shall receive a **Gross Annual Benefits Package** of SGD 290,000 per annum payable on 1st April 2018. This annual Gross Benefits Package covers housing, children's education, pension, life & accident/disability insurance,

> transport allowances, home leave travel and miscellaneous benefits.
>
> …
>
> 6.5 Upon relocation to Singapore, a **Relocation Allowance of Gross SGD 5,000** will be paid with the first available payroll. At the end of this Contract, a repatriation allowance equalling to Gross SGD 5,000 is paid to [Mr Jagetia] together with the last salary payout.
>
> [emphasis in original]

49 We consider Clause 1.4 to be of particular importance and we thus consider in greater detail its constituent parts (identified above as "Part 1", "Part 2" and "Part 3"). Indeed, we note that the relevance of Clause 1.4 was not lost on counsel for both parties in the proceedings below and before us. In particular, counsel for Mr Jagetia, Mr Calvin Liang ("Mr Liang") had engaged extensively with the interpretation of this clause during the hearing of the appeal in a bid to persuade us that this clause contemplated the possibility for Mr Jagetia to perform his duties and receive the same remuneration regardless of whether he is working in Singapore. This argument was consistent with the case run by Mr Jagetia in the proceedings below, that the phrase "accompanying family, if any" meant that there was no requirement for Mr Jagetia to relocate. However, we are ultimately unpersuaded in spite of Mr Liang's robust advocacy, as we are of the view that the meaning of this clause is clear from the language used and the commercial context in which the CSAPL Contract was concluded: *Noble Resources* at [62]. In our judgment, the plain reading of Clause 1.4 objectively indicates the link between Mr Jagetia and his family's relocation to Singapore and Mr Jagetia's entitlement to the Annual Benefits Package and the Relocation Allowance. The benefits provided in the Annual Benefits Package and Relocation Allowance respectively are enumerated in Clauses 6.3 and 6.5.

50 We turn now to consider the three parts of Clause 1.4.

51 In our view, the meaning derived from the words used in the portion identified as Part 3 of Clause 1.4 for convenience is plain in that Mr Jagetia is only entitled to the Annual Benefits Package in two situations. First, if Mr Jagetia and his family relocate to Singapore. Second, if the failure to relocate is due to limited circumstances that are beyond the control of the parties. The upshot of this interpretation is that the payment of the Annual Benefits Package is clearly linked to the relocation of Mr Jagetia *and* his family to Singapore. In short, Mr Jagetia would only be entitled to have this benefit if he relocated with his family, or if his and his family's failure to relocate was due to circumstances that were beyond the control of the parties. This is an important qualification that we will return to in the context of CSAPL's submissions on its contractual claim for the recovery of the Annual Benefits Package at [89]–[93] below. At this point, it suffices for us to point out that this interpretation of Clause 1.4 makes it clear that CSAPL and Mr Jagetia had intended for the Annual Benefits Package to be tied to the relocation of Mr Jagetia and his family to Singapore, and that Mr Jagetia was aware of this requirement given that he was a party to the CSAPL Contract and he had duly signed the same with these terms.

52 In relation to the portion of Clause 1.4 identified as Part 2 for convenience – "[CSAPL] is responsible for assisting [Mr Jagetia] and accompanying family, if any, in obtaining proper documentation (passport, visa, work permit, residence permit etc.) prior to the start of this role" – in particular the phrase "accompanying family, if any" the short point is that this deals with immigration matters. We therefore disagree with Mr Liang's submissions that Part 2 suggests that there was no requirement for Mr Jagetia and his family to move to Singapore. Given that Part 2 has nothing to do with the matter of the employee's entitlement to the Annual Benefits Package or the Relocation

Allowance, we are of the view that the phrase "accompanying family, if any" has no bearing or influence on our interpretation of Part 3 of Clause 1.4.

53 Finally, the portion of Clause 1.4 identified as Part 1 for convenience makes clear that the position of SVP assumed by Mr Jagetia is one that is *based in Singapore*. In other words, it envisaged that Mr Jagetia and his family would relocate to Singapore. The Annual Benefits Package was therefore included in the CSAPL Contract as an expatriate package for the specific purpose of Mr Jagetia and his family living in Singapore. Our analysis is supported by three reasons:

(a) First, Mr Jagetia had personally negotiated with CSAPL on the quantum of the Annual Benefits Package with his and his family's relocation to Singapore in mind. We elaborate on this point below at [60].

(b) Second, the email correspondence between Mr Jagetia and CSAPL indicates that the Annual Benefits Package in particular was specifically included to offset the costs of expatriate living in Singapore for Mr Jagetia and his family. We elaborate on this point below at [65]–[66].

(c) Third, the general tenor of Clause 1.4 of the CSAPL Contract links entitlement to the Annual Benefits Package and Relocation Allowance under the CSAPL Contract to relocation to Singapore.

54 With the construction of these three clauses in mind, we turn now to consider whether these clauses allow Mr Jagetia to retain the Relocation Allowance and Annual Benefits Package on the present facts.

*The Relocation Allowance*

55 The Judge found that Mr Jagetia's family did not relocate to Singapore and we see no basis to depart from this finding. In this regard, it is pertinent that Mr Jagetia does not challenge the Judge's finding on appeal. He had at different times acknowledged that his family had at all material times resided in India.

56 In relation to Mr Jagetia however, the Judge stated that whether "Mr Jagetia himself had relocated to Singapore is a more vexed question". Notwithstanding this comment, we note that she did not make any finding on whether Mr Jagetia had in fact relocated to Singapore. Instead, she reasoned that CSAPL "was agreeable" to Mr Jagetia being a tax resident in Singapore as fulfilment of the "relocation" in Clause 6.5 and in spite of his travelling to Singapore and staying in India for significant periods. This leads us to Clause 6.5 on the Relocation Allowance and the Judge's decision on the matter.

57 The Judge found that the claim for the Relocation Allowance was "contingent upon relocation to Singapore". We agree with the Judge's conclusion and observe that Clause 6.5 of the CSAPL Contract makes this clear. However, and with respect, we disagree with the following aspects of the Judge's reasoning and conclusion that the Relocation Allowance was due to Mr Jagetia.

(a) First, we do not agree with the Judge's conclusion that CSAPL agreed that Mr Jagetia's trips to and from Singapore would fulfil the relocation requirement in Clause 6.5. There is no evidence that CSAPL waived the relocation requirement or accepted this situation as fulfilling the relocation requirement for the purpose of Clause 6.5. Instead, it appears to us that CSAPL was unaware of the fact that Mr Jagetia had not relocated to Singapore with his family until a board meeting on

6 May 2019. The minutes of that meeting recorded the objections of several directors of the board to the payment of Mr Jagetia's benefits after Mr Jagetia's stated that he had not moved his family to Singapore and that he was still living in India.

(b) Second, Mr Jagetia himself conceded in an email dated 7 May 2019 that he had no intention of relocating to Singapore.

(c) Third, we are of the view that the 70 days that Mr Jagetia was present in Singapore does not amount to relocation since he was living out of a hotel and did not permanently reside in Singapore.

58 Given that the Relocation Allowance is premised on Mr Jagetia *and* his family's relocation to Singapore (and this is derived from a reading of Clauses 1.4, 6.3 and 6.5) and that this relocation did not materialise, it is clear to us that Mr Jagetia cannot lawfully retain the Relocation Allowance.

*The Annual Benefits Package*

59 We turn now to consider the second and larger component of the Relocation Sum – the Annual Benefits Package – and begin by examining the relevant background to the inclusion of the Annual Benefits Package in the CSAPL Contract.

60 We find it significant that Mr Jagetia had expressly negotiated for the Annual Benefits Package with his and his family's relocation to Singapore as expatriates in mind.

61 In this regard, Mr Low testified that Mr Jagetia had requested for the Annual Benefits Package in order to cover his and his family's living expenses

in Singapore as expatriates. As a result of Mr Jagetia's request, the Annual Benefits Package included: (a) a provision for accommodations totalling S$90,000 (S$7,500 *per* month) that was meant for a family of four; and (b) school fees totalling S$90,000 (S$45,000 *per* child) because Mr Jagetia had indicated his preference to send his children to a British school. Mr Low also clarified during re-examination that a pension was part of the Annual Benefits Package because it was an "expat benefit" that was paid on the basis that the expat in question would have gotten a pension if they had continued working in their country of origin. Mr Low added that since there was "no way for [CSAPL] legally to actually pay" the pension, it was given as part of a cash allowance so that Mr Jagetia could use the money to invest in his own retirement plan or spend it in the manner he wished.

62 These negotiations were also documented in an email dated 16 January 2018 from Mr Low to Mr Fewkes ("the 16 Jan Email"). The 16 Jan Email records Mr Low relaying to Mr Fewkes the summary of a phone call Mr Low had with Mr Jagetia. In the phone call, Mr Low explained to Mr Jagetia that the Annual Benefits Package was paid specifically for the purpose of the latter's living expenses in Singapore and that it would be paid in one lump sum so as to "simplify and reduce any admin load in Singapore". Mr Low also recorded that Mr Jagetia had tried to increase the quantum of the Annual Benefits Package to US$300,000 based on what Mr Jagetia claims to have heard from his "internal network of friends". It is pertinent that Mr Jagetia does not dispute the veracity of the contents of this email. His only clarification during cross-examination was that he had obtained this figure of US$300,000 from a single friend who worked in a bank in Singapore. We append below the relevant extracts from the 16 Jan Email for ease of reference:

> I spoke to Pawan today and discussed on the following with his comments/remarks:
>
> > a. Package: He preferred a SGD package …
> >
> > b. Benefits: *He did share that his internal network of friends have singled down to US$300,000 p.a. for living expenses.* In my proposal, you will see the details of his expat benefits from schooling to accommodation to pension etc.
> >
> > c. …
> >
> > d. …
> >
> > e. He also mentioned that CSAPL will hire him and asked if this holding company will be able to secure Employment Pass for him and family. He will also hire one more CSAPL analyst/manager to help him. I will check with Immigration Vendor on this.
> >
> > f. He also asked if he will get a physical office in Singapore for him and new manager. I said I will check as space in Singapore is scarce as I told him I sit in an open cubicle and rooms are not available …
>
> Building on his sharing, please see the updated proposal for him (please refer from Column K onwards).
>
> > a. …
> >
> > b. Provided expat benefits and we can consider lumping all this benefits into one lump sum called "Assignment allowances" where he manages the housing etc. Will simplify and reduce any admin load in Singapore.
> >
> > c. …
>
> * *It is administratively simple for us if we can give him allowances for his expat benefits as lump sum, he being paid in SGD and he manages his own SG taxes etc.*
>
> [emphasis added]

63 In our judgment, there are two consequential observations that flow from this negotiation process recorded in the 16 Jan Email. First, it is clear to us that the Annual Benefits Package was included in the CSAPL Contract for the sole purpose of Mr Jagetia *and* his family's relocation. Second, Mr Jagetia, being a party to these negotiations and the one who had provided benchmarks for the

quantum of the Annual Benefits Package, would have been aware of this purpose. We return to the significance of this second point at [74] below. We are of the view that this negotiation process alone puts paid to the notion that the Annual Benefits Package was not linked to the relocation of Mr Jagetia *and* his family. Equally, the contingency to trigger Mr Jagetia's entitlement to the Annual Benefits Package is the relocation of Mr Jagetia with his family to Singapore.

64 With this in mind, we next consider whether the Annual Benefits Package is divisible from the total remuneration package and conclude that this answer must be answered in the affirmative. Indeed, we have already dealt with this inquiry in our discussion on Clause 1.4 at [49]–[53] above. Clearly, the email correspondence between Mr Jagetia and CSAPL in the negotiations leading up to the conclusion of the CSAPL Contract buttresses our assessment that the Annual Benefits Package is an expatriate benefit that is divisible from the other components of the total remuneration employment package. We therefore do not agree with Mr Jagetia that the Annual Benefits Package forms part of the total lump sum remuneration package. Put differently, the Annual Benefits Package is separable from his total lump sum remuneration package.

65 A key piece of correspondence that supports our conclusion is an email dated 19 January 2018, from Mr Low to Mr Jagetia ("the 19 Jan Email"), the relevant portions of which we set out below:

> The package will be employed by CSAPL:
>
> > a. Annual Base Salary (SGD 350,000 Gross)
> >
> > b. STI based on the CSAPL KPI's (target 40% = SGD 140,000). KPIs for STI will be determined by CSAPL board for the mission/purpose of your SVP role.
> >
> > c. A cash benefits package (SGD 255,000 Gross)*

> *The above* ***reflects a 10% delta difference*** between current MD, [CIPL] and your new role.
>
> **Benefits package as a cash allowances p.a. will provide flexibility on how best you spend to meet your personal needs.* Cash allowances is meant to cover:
>
> a. Housing 90,000 p.a. (SGD 7,500 x 12 months)
>
> b. Pension 47,600 p.a. (10% of Total Target Cash p.a.)
>
> c. Kids' schooling 90,000 (SGD 45,000 x 2 kids) p.a.
>
> d. Car Benefit 18,000 (SGD 1,500 per month)
>
> e. Others - Tax services, medical SGD 9,400 p.a.
>
> *All numbers in gross unless stated otherwise. You will be responsible for Singapore taxes (estimated to be 15-18%).
>
> [emphasis added in italics and bold italics]

66 In our view, the 19 Jan Email states in clear terms that the Annual Benefits Package was to cover Mr Jagetia and his family's "personal needs" living as expatriates in Singapore. These needs were specifically tied to expenses associated with the relocation of Mr Jagetia and his family to Singapore. For example, a housing component of S$90,000 *per* annum was included while another S$90,000 was included to provide for the school fees of two children *in Singapore*.

67 We note that the Judge also found the 19 Jan Email to be pertinent. However, she took the bolded portion cited above to mean that all three components (the annual base salary, STI and Annual Benefits Package) were to be taken together to reflect a 10% difference between Mr Jagetia's current compensation package and that of the managing director of one of CSAPL's subsidiaries, Mr Nilesh Patel ("Mr Patel"). As such, she concluded that the Annual Benefits Package was a part of Mr Jagetia's overall compensation package and was not specifically tied to the relocation of Mr Jagetia and his family to Singapore.

68 With respect, we are of the view that the Judge read the 19 Jan Email incorrectly, which led her to draw the conclusions she did. In our judgment, we agree with counsel for CSAPL, Mr Nicholas Poon ("Mr Poon") that the 10% difference refers *only* to the annual base salary component of Mr Jagetia's remuneration and not to the Annual Benefits Package. In particular, Mr Poon submits that the Judge did not reconcile her interpretation of the 10% delta with a comparison of the actual figures between the overall package offered to Mr Jagetia against Mr Patel's package. Mr Poon submits that the only way of producing a 10% delta is to use Mr Patel's net salary of S$319,355 and reduce it by 10% to give a figure of S$287,419. Re-grossing this amount to account for Singapore income tax of 18% would then produce a figure of S$350,000 – Mr Jagetia's annual base salary as reflected in the 19 Jan Email.

69 We note that Mr Poon's contention is supported by a table that was sent as an attachment in a separate email of 14 January 2018 from Mr Fewkes to Mr Low ("the First 14 Jan Email"). The first row of this table sets out the proposed annual base salary (inclusive of allowances) of Mr Jagetia as SVP at CSAPL. Pertinently, the "Remarks" column states that this is a "10% delta below MD, India". A subsequent email of 18 January 2018 with the accompanying email thread ("the 18 Jan Email Thread") from Mr Low to one Mr Morten Broekner (the Vice President of Compensation and Benefits) makes clear that the reference in the table to "MD, India" was to Mr Patel and that the 10% delta was in relation to the annual base salary only. Mr Patel was the new managing director of CIPL at the material time and had concluded negotiations on his employment agreement with Mr Fewkes and Mr Low in early 2018.

70 Thus, the correct and reasonable reading of the 19 Jan Email must be that the Annual Benefits Package was independent of Mr Jagetia's base salary

and was included in the CSAPL Contract on the premise that Mr Jagetia and his family would be relocating to Singapore.

71 At this juncture, it is appropriate for us to address an argument raised by Mr Liang during the hearing of the appeal. Mr Liang contends that CSAPL should not be allowed to rely on the First 14 Jan Email or the 18 Jan Email Thread to prove that the 10% delta only applied to the base salary component of Mr Jagetia's remuneration package. Mr Liang submits that Mr Jagetia was not privy to the contents of these emails as they were *internal correspondence* between CSAPL executives (*ie*, these are not reasonably available to all contracting parties and thus not admissible extrinsic material for interpreting the contract). Mr Liang emphasises that even if CSAPL's representatives had discussed the 10% delta in relation to CIPL MD's annual base salary, this was not conveyed to Mr Jagetia in the 19 Jan Email. For ease of reference, we shall refer to Mr Liang's arguments as summarised in this paragraph as "the Internal Communication Point".

72 We do not agree with the Internal Communication Point as it ignores the wider body of evidence that shows Mr Jagetia to be aware of the purpose for the inclusion of the Annual Benefits Package within the CSAPL Contract. We highlight in particular two emails which record CSAPL's representatives communicating the *purpose* of the Annual Benefits Package to Mr Jagetia and his specific requests in response to CSAPL's proposals in relation to the quantum of the Annual Benefits Package.

73 The first email is dated 14 January 2018 from Mr Low to Mr Fewkes ("the Second 14 Jan Email"). In the Second 14 Jan Email, Mr Low stated that he would call Mr Jagetia the next day to understand the latter's work preferences and arrangements. From this email, it is clear to us that CSAPL's intention for

the 10% delta to be based on Mr Patel's *base salary* was present from the beginning of the discussions on Mr Jagetia's compensation package. The relevant extracts of the Second 14 Jan Email are as follows:

> On [Mr Jagetia's] package, I did one version for him, all paid in SGD which includes all his allowance. I will re-do another proposal building on your guidance:
>
> > a. *Base salary (10% less than Nilesh)*
> >
> > b. STI (40%) based on specific KPIs for him only
> >
> > c. I suggest a cash allowance (gross) to cover housing, kids' education – this will be specific to him without any reference to our Global Mobility
> >
> > d. Tax – will need Deloitte's help on India, Singapore, Nepal depending on his work arrangements
>
> Will call him tomorrow to hear what are his work preferences/arrangements.
>
> [emphasis added]

74 The second email is the 16 Jan Email. As we have already pointed out at [63] above, Mr Jagetia was the one who had requested for the Annual Benefits Package and would thus have been aware of its purpose. We would also revisit the fact that Mr Jagetia had tried to increase the quantum of the Annual Benefits Package to US$300,000 so that his expat benefits would be on par with his social circle (see [62] above). In our judgment, this shows Mr Jagetia to have been aware that the reference point of the Annual Benefits Package is to the figure of US$300,000 that he had proposed and not to Mr Patel's salary.

75 We highlight that the discussion between Mr Jagetia and Mr Low on the Annual Benefits Package and its quantum took place prior to 16 January 2018 (this being the date of the 16 Jan Email that records the parties' discussions). As such, by the time the 19 Jan Email was sent by Mr Low to Mr Jagetia, Mr Jagetia would already have been informed of the background to the Annual Benefits

Package. Indeed, it appears to us that the 19 Jan Email was a formal summary of what the parties had discussed several days earlier.

76 As such, even if Mr Liang is right in arguing that Mr Jagetia did not receive an email explaining that the 10% delta was only in relation to the base salary figures, this is ultimately inconsequential to the question of whether Mr Jagetia was aware of the purpose of the Annual Benefits Package. We therefore are of the view that the Internal Communication Point does not change the conclusion that Mr Jagetia had a common understanding with CSAPL that the Annual Benefits Package was for the purpose of his and his family's relocation.

77 In conclusion, for these reasons, we are persuaded that: (a) the parties were both aware that the Annual Benefits Package was tied specifically to Mr Jagetia and his family's relocation to Singapore; (b) based on Clause 1.4, Mr Jagetia's entitlement to the Annual Benefits Package is dependent on his and his family's relocation to Singapore; and (c) the Annual Benefits Package is a discrete part of the CASPL Contract.

*CSAPL's recovery of the Relocation Sum in unjust enrichment*

78 In light of our conclusion above, we turn to CASPL's reliance on unjust enrichment to recover the Relocation Sum. The recovery is grounded on the basis that Mr Jagetia's right to retain the Relocation Sum was not fulfilled and therefore he must return the money. The Court of Appeal in *Benzline* set out the requirements for a claim in unjust enrichment (at [45]):

> (a) First, there must be an enrichment of the defendant.
>
> (b) Second, this enrichment must be at the expense of the plaintiff.
>
> (c) Third, there must be an "unjust factor" that is present.

79 In the present case, it is uncontested that the first two requirements are satisfied as Mr Jagetia was enriched by CSAPL's payment of the Annual Benefits Package to him. Thus, only the third requirement is in issue.

80 The specific unjust factor that CSAPL relies on is that of failure of basis. According to the authors of *Goff & Jones: The Law of Unjust Enrichment* (Charles Mitchell, Paul Mitchell and Stephen Watterson eds) (Sweet & Maxwell, 9th Ed, 2016) at para 12-01, and cited with approval in *Benzline* at [46], "[t]he core underlying idea of failure of basis is simple: a benefit has been conferred on the joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit." For conceptual clarity, we also state that the term "failure of basis" is synonymous with "failure of consideration" and use both terms interchangeably in our reasons below: *Benzline* at [46].

81 In considering whether the specific unjust factor of failure of basis can be made out, the court will consider two sub-issues:

(a) First, what is the basis for the transfer in respect of which the restitution is sought?

(b) Second, has that basis failed?

82 In relation to the first sub-issue, we have previously established at [77] above that the basis for CSAPL's payment of the Annual Benefits Package is the relocation of Mr Jagetia and his family to Singapore. On the second sub-issue, we have said that the basis was not fulfilled and we stated our reasons.

83 We are cognisant that restitutionary principles are ordinarily supplemental to the law of contract where the parties are in a contractual

relationship and that the rationale behind this general rule is that the law of restitution should not redistribute the risks which the parties have, by contract, already allocated: *Max Media FZ LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 ("*Max Media*") at [24]. Nonetheless, the recognised exception where restitution may apply is where there is total failure of consideration. In this regard, the following observations in *Benzline* at [53] and [54] are directly relevant:

> 53 Having identified the basis of the transfer, the next step is to determine whether that basis has failed. The prevailing position is that the failure must be total, not partial. The exception, if it can be called one, is where a contract is divisible such that it can be said that there has been a total failure of the consideration for/basis of a discrete part of that contract: see *Max Media FZ LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 at [24], citing *Fibrosa* at 77.
>
> 54 It has been argued that the requirement of a total failure is artificial, and that the law should evolve to recognise *partial* failure of consideration/basis as a ground of restitution even in indivisible contracts. Prof Burrows in *The Law of Restitution* contends at pp 325–326 that *Rowland* and similar cases should be reinterpreted as allowing restitution of money for partial failure of consideration. Such arguments were not, however, raised by the parties in the present dispute, nor does it appear that they would make a difference in the result. We therefore proceed on the footing that the failure must be total, without necessarily foreclosing the possibility of future developments in this regard.
>
> [emphasis in original]

84 With these principles in mind, we consider CSAPL's case in relation to whether the basis has failed. CSAPL's pleaded position is found at paragraph 36 of its Statement of Claim and we reproduce it in its entirety for ease of reference:

> Further or alternatively, for the same reasons set out at paragraphs 32 to 35 above, *the Defendant has been unjustly enriched as a result of the failure of the basis* for the [Annual Benefits Package] and the One-Off Relocation Allowance. [emphasis added]

On appeal, CSAPL's position in its Appellant's Case appeared to be that failure of consideration need not be total. However, Mr Poon clarified during the oral hearing before us that CSAPL was "rely[ing] on unjust enrichment on the basis of total failure of consideration".

85 This is an important clarification as the Court of Appeal in *Benzline* had stated at [54] that "failure must be total".

86 At the hearing, Mr Poon's clarification was aligned with our preliminary observations at [44]–[47] as well as our interpretation of Clause 1.4 at [49]–[53] above. In other words, while CSAPL acknowledges that Mr Jagetia performed his other obligations within the CSAPL Contract (therefore its arguments on partial performance), CSAPL maintains that Mr Jagetia failed to perform the basis for the Annual Benefits Package in its entirety. Such an argument is in keeping with the exception in *Benzline* at [53], where the total failure of consideration can be in relation to a *discrete* portion of the contract.

87 With this in mind, the question of whether the basis of the Annual Benefits Package failed is thus limited specifically to whether Mr Jagetia and his family had relocated to Singapore. In our view, this question must be answered firmly in the affirmative as we had earlier concluded that Mr Jagetia and his family had failed to relocate to Singapore (see [58] above). For completeness, the second situation triggering entitlement to the Relocation Sums was not engaged on the evidence (see also [92]). Thus, it appears to us that there was a total failure of basis for CSAPL's payment of the Annual Benefits Package. This being the case, CSAPL is entitled to a return of this sum from Mr Jagetia.

88 For these reasons, we allow CSAPL's appeal in relation to the Relocation Claim. Mr Jagetia is thus liable to repay the Relocation Sum consisting of the Relocation Allowance and the Annual Benefits Package to CSAPL, with interest at the rate of 5.33% *per* annum from the date of the writ to the date of judgment.

*CSAPL's recovery of the Relocation Sum in contract*

89 Having reached the conclusion that CSAPL succeeds in its Relocation Claim in restitution, there is no need to decide on the contractual claim. However, as parties had spent much time on this claim and the Judge had ruled on it, we propose to offer our views in connection with this appeal.

90 Briefly, CSAPL's claim in contract is that there is an implied term that obligates Mr Jagetia and his family to relocate to Singapore. First, there is no necessity to imply such a term following the three-step process that was laid out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*") at [101] because Clause 1.4 clearly provides for the basis of Mr Jagetia's entitlement to the Annual Benefits Package and Clause 6.5 is also clear on when the Relocation Allowance is payable.

91 It follows that CSAPL's contractual claim based on an implied term would fail at the first step of the *Sembcorp* framework because there is no "true gap" (see *Sembcorp* at [94]). We agree with the Judge's conclusion that there was no "true gap" in the CSAPL Contract but on different grounds. We are of the view that there is no gap because the express words of the CSAPL Contract in Clause 1.4 provide the situations in which the benefits under the CSAPL Contract could be retained by Mr Jagetia: *Sembcorp* at [93]. As such, this is

more accurately understood as a matter of *interpretation* of the express terms of Clause 1.4 than it is an exercise of *implication of terms* by filling “gaps” in the contract.

92 As we have already observed at [51] above, Clause 1.4 of the CSAPL Contract should be interpreted as setting out the two situations in which Mr Jagetia is entitled to the Annual Benefits Package. Given that neither of these situations has materialised – *ie,* Mr Jagetia did not relocate to Singapore with his family and this failure to relocate was not due to reasons that were beyond the control of the parties, the Annual Benefits Package cannot be retained by Mr Jagetia.

93 We therefore are of the view that based on this construction of the CSAPL Contract, the appropriate approach for the recovery of the Annual Benefits Package is that of CSAPL’s second ground of unjust enrichment.

***Wrongful Termination Claim***

94 Finally, we turn to consider the Wrongful Termination Claim.

95 We find it helpful to begin our analysis by outlining the four situations contemplated in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 (“*RDC Concrete*”) which would amount to a repudiatory breach that would allow the innocent party to terminate the contract:

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

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

(c) Situation 3(a) focuses on the *nature* of the term that is breached and in particular, whether the intention of the parties to the contract was to designate that term as one that is so important that any breach, regardless of the actual consequences of such breach, would entitle the innocent party to terminate the contract. This situation has also been termed the "condition/warranty approach": *RDC Concrete* at [97]–[98].

(d) Situation 3(b) focuses on the nature and consequences of the breach and, in particular, whether the breach in question will give rise to an event which will deprive the innocent party of substantially the whole benefit which it was intended that he should obtain from the contract. This situation has also been termed as the "*Hongkong Fir* approach": *RDC Concrete* at [99].

96 On our facts, the preliminary issue is whether the CSAPL Contract allows CSAPL to terminate Mr Jagetia's employment for "any breach". This relates to Situation 1 of *RDC Concrete*. The relevant portion of the CSAPL Contract that CSAPL relies on is Clause 11.5, which reads as follows:

> In case of breach of this contract – *including gross non-fulfilment of duties* – the Company reserves the right to dismiss the Employee. In the event of dismissal this shall also be regarded termination/dismissal of any employment with [CSAPL] or other Carlsberg associated company. All expenses in connection with return journey and transport of the Employee's belongings are to be borne by the Employee.

97 CSAPL's submission is that this clause could be interpreted as stating that any breach, "including gross non-fulfilment of duties" would justify termination. On the contrary, Mr Jagetia's submission is that the inclusion of the phrase "including gross non-fulfilment of duties" was to make clear that only serious or gross breaches justify termination.

98 In furtherance of its expansive reading of Clause 11.5, CSAPL relies on the case of *Phosagro Asia Pte Ltd v Piattchanine, Iouri* [2016] 5 SLR 1052 ("*Phosagro*"). CSAPL submits that *Phosagro* stands for the proposition that the phrase "including gross non-fulfilment of duties" in Clause 11.5 of the CSAPL Contract entitles an employer to terminate the employment as long as there is a wilful breach of any term of the contract.

99 We do not agree with CSAPL's characterisation of *Phosagro* and in any event, are of the view that the Court of Appeal's observations in *Phosagro* are not relevant to the present facts. In *Phosagro*, the Court of Appeal considered the interpretation of a termination clause in an employment contract that provided that an employee's employment could be terminated without notice if he is found to be: (a) guilty of serious misconduct; or (b) guilty of any wilful breach or non-observance of any of the stipulations of the contract. The relevant clause in *Phosagro* read as such:

> If at any time during his employment, hereunder the employee [the Respondent] shall be guilty of [1] any serious misconduct or [2] *any wilful breach or non-observance of any of the stipulations herein contained and on his part to be observed or performed* or [3] shall compound with his creditors generally or [4] shall have a Receiving order in bankruptcy made against him then in any such case, the Company [the Appellant] may terminate the employee's employment hereunder without any notice or payment in lieu of notice.
>
> [emphasis added]

100 The Court of Appeal held that for there to be "serious misconduct", it must be misconduct which is so serious as to constitute a "repudiatory breach" and that "***all the principles*** laid down by the court in *RDC Concrete*" [emphasis in original] would continue to apply: *Phosagro* at [51]–[52]. As for a "wilful breach" of the employment contract, the Court of Appeal held that there had to be "some form of intentionality or deliberateness in the commission of the breach": *Phosgaro* at [63]. As can be seen, there is nothing in *Phosagro* that speaks to the termination of employment for a breach of *any* term in the contract.

101 Returning to the present facts, we agree with the Judge that Clause 11.5 of the CSAPL Contract does not allow CSAPL to terminate Mr Jagetia's employment for "any breach". In our view, a plain textual reading of Clause 11.5 is ambiguous as to whether the CSAPL Contract can be terminated for "any breach". For a clause to justify the termination of a contract for "any breach", it should be drafted clearly so that the court can give effect to its literal language. Absent such clarity, a court should be slow to allow for the termination of a contract for trivial or technical breaches. For these reasons, we are satisfied that Clause 11.5 therefore does not fall within Situation 1 of *RDC Concrete.* This being the case, the next question is whether Situations 2, 3(a) or 3(b) of *RDC Concrete* apply on the present facts.

102 In our view, Mr Jagetia's conduct does not fall within Situation 2 since he did not renounce the CSAPL Contract by conveying that he will not perform his contractual obligations. We are also of the view that Situation 3(a) of *RDC Concrete* would not apply since the focus of the inquiry is on the intentions of the parties as to the nature of the term breached: *RDC Concrete* at [97].

103 We turn then to consider Situation 3(b). Here the inquiry is directed towards the nature and consequences of the breach. Where it can be established

that the breach in question will deprive the innocent party of "substantially the whole benefit which it was intended that he should obtain from the contract", the innocent party would be entitled to terminate the contract: *RDC Concrete* at [99].

104 In our view, the breaches that CSAPL alleged were committed by Mr Jagetia were either not committed or did not justify his termination. CSAPL has argued that Mr Jagetia was obligated to relocate with his family and this obligation was breached. Given our conclusion that the relocation of Mr Jagetia and his family is linked to his receipt of the Relocation Sum and that this forms a separate and discrete portion of the CSAPL Contract, it follows that CSAPL's "remedy" for Mr Jagetia's failure to relocate with his family is the refund of the Relocation Sum.

105 For these reasons, we agree with the Judge that there was no repudiatory breach of the CSAPL Contract by Mr Jagetia that would have allowed CSAPL to terminate the contract. We therefore do not allow CSAPL's appeal on the Wrongful Termination Claim. Mr Jagetia is thus entitled to retain the three months' salary in lieu of notice. However, given that Mr Jagetia did not relocate with his family, we disagree with the Judge's conclusion that Mr Jagetia is also entitled to the Repatriation Allowance as part of his compensation for termination. We reverse the Judge's decision to award Mr Jagetia S$5,000 in respect of the Repatriation Allowance and interest at the rate of 5.33% *per* annum on this sum.

**Conclusion and Costs**

106 In summary, our conclusions are as follows:

(a) We allow the appeal in relation to the STI Claim and reverse the Judge's decision to award Mr Jagetia the CIPL STI sum of S$114,800 and interest of 5.33% *per* annum.

(b) We allow the appeal in relation to the Relocation Claim. Mr Jagetia is not entitled to the Relocation Sum of S$367,500 as there was a total failure of basis in that he and his family failed to relocate to Singapore. We therefore order that Mr Jagetia repay the sum of S$367,500 with interest at the rate of 5.33% *per* annum from the date of the writ to the date of judgment, with post-judgment interest to follow in the usual course.

(c) We do not allow the appeal in relation to the Wrongful Termination Claim. In our view, Clause 11.5 of the CSAPL Contract does not allow CSAPL to terminate Mr Jagetia for just any breach; none of the alleged breaches of the CSAPL Contract by Mr Jagetia, even if true, were of sufficient severity to amount to repudiatory breaches of the contract. We therefore uphold the Judge's decision that Mr Jagetia is entitled to retain his three months' salary in lieu of notice. However, Mr Jagetia is not entitled to retain the Repatriation Allowance of S$5,000 as compensation for wrongful termination given our conclusion that he did not relocate to Singapore with his family in the first place. We therefore reverse the Judge's decision to award Mr Jagetia S$5,000 in respect of the Repatriation Allowance and interest at the rate of 5.33% *per* annum on this sum.

107 The parties should endeavour to resolve the matter of costs amicably by agreement. If this is not possible despite their best efforts, they may make

written submissions on costs to the court, limited to two pages, within ten days from the date of this judgment.

Belinda Ang Saw Ean
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

Poon Guokun Nicholas and Chan Michael Karfai (Breakpoint LLC) for the appellant;
Calvin Liang (Calvin Liang LLC) (instructed), Yu Kexin (Yu Law) for the respondent.

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**ANNEX A: CARLSBERG GROUP'S CORPORATE STRUCTURE**