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

[2024] SGHC 68

Originating Application 591 of 2023

Between

DDI

… *Applicant*

And

(1) DDJ

(2) DDK

… *Respondents*

JUDGMENT

[Arbitration — Award — Setting aside]

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v
DDJ and another

[2024] SGHC 68

General Division of the High Court — Originating Application 591 of 2023
Chua Lee Ming J
19 September 2023

14 March 2024

Chua Lee Ming J:

Introduction

1 This is an application to set aside an arbitral award under s 48 of the Arbitration Act 2001 (2020 Rev Ed) (the "Act") on the grounds of excess of jurisdiction, bias, and breach of the fair hearing rule.

2 The applicant and the respondents in these proceedings were the claimant and respondents, respectively, in the arbitral proceedings. The dispute in the arbitral proceedings concerned the sale and purchase of shares in a

company that owned a piece of jewellery which was named after and endorsed by a celebrity.

Facts

3 As of 26 January 2021, the applicant was the owner of 50% of the shares in a company ("Company DA"). At all material times, he was also the sole director of Company DA.

4 The first respondent was a businessman who resided in Singapore. He was the sole director and 100% shareholder of the second respondent, a company incorporated in Singapore.

5 Company DA purportedly owned and managed a piece of jewellery (the "Jewellery"), which had a piece of gemstone (the "Gem") set in it. The Gem was laboratory-grown, as opposed to naturally-mined. The Jewellery was named after and endorsed by a celebrity ("Celebrity BA"). In this judgment, the term "gemstone" will refer to gemstones of the same category as the Gem (whether laboratory-grown or naturally-mined), unless otherwise indicated.

6 On 9 December 2020, the second respondent entered into a fractional ownership and transfer agreement (the "2020 FOA") with the applicant to purchase a 10% share of the Jewellery for S$640,000.[1] The 2020 FOA stated that the Gem was certified by an international institute that graded gemstones ("FA") and insured for S$6.45m. A copy of the grading report was attached to the 2020 FOA (the "FA Digital Report"). The 2020 FOA also referred to an online article about the history of the Jewellery published by a well-known

[1] Applicant's 1st affidavit, exhibit [DDI]-3(B) ("[DDI]-3(B)"), at pp 2AB-11 to 2AB-15.

business magazine publisher (the "Online Article"). The Online Article stated that the Gem was mined in Ruritania.[2]

7 The 2020 FOA was subsequently superseded by two FOAs dated 5 and 6 January 2021 (the "2021 FOAs"),[3] pursuant to which Company DA purported to sell to the second respondent 4.7% of the Jewellery for $648,600, and 5.3% of the Jewellery for $1. The second respondent paid the sum of S$648,601 to the applicant. The 2021 FOAs removed all references to the Online Article and the FA Digital Report and stated that the Jewellery was insured for S$13.8m. The reasons for the 2021 FOAs are partially in dispute.

8 On or about 21 January 2021, the first respondent provided the applicant with two cryptocurrency storage devices (the "Trezor Keys") containing his cryptocurrencies (the "Coins") and the security recovery codes to the Trezor Keys (the "Seed Phrases"). Anyone having access to the Seed Phrases would be able to access and transfer the Coins out of the first respondent's cryptocurrency accounts. The applicant and the first respondent agreed to store the Trezor Keys and Seed Phrases in the applicant's safe deposit box (the "Safe").[4] The reason why the Trezor Keys and Seed Phrases came to be stored in the Safe, and the terms of the agreement between the applicant and the first respondent (the "Safe Agreement") are in dispute.

9 The Safe was managed by a company ("Company DG"). On the same day (21 January 2021), the applicant (using a sole proprietorship owned by him) signed a storage services agreement with Company DG (the "Storage & Service

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2 Applicant's 1st affidavit, exhibit [DDI]-3(D) ("[DDI]-3(D)"), at p 4AB-20.

3 [DDI]-3(B), at pp 2AB-17 to 2AB-20.

4 The safe deposit box is defined in para 16 of the Respondents' Response to Notice of Arbitration (Applicant's 1st affidavit, exhibit [DDI]-3(A) ("[DDI]-3(A)"), at p 1AB-67) as the "Safe". It is referred to in the Award as the "Vault".

Agreement").[5] The Storage & Service Agreement named the applicant as the "main depositor". The first respondent signed a Joint Authorization Form as an "Authorized person", which gave him access to the Safe.[6]

10 On or about 26 January 2021, the applicant and the respondents executed a sale and purchase agreement ("SPA"),[7] under which the applicant sold 47% of the shares in Company DA (the "Shares") to the first respondent for the sum of S$2,988,260. Under the SPA:

(a) it was agreed that the 2020 FOA and the 2021 FOAs were terminated;

(b) the sum of S$648,601 that had been paid by the second respondent pursuant to the 2021 FOAs, was treated as payment on behalf of the first respondent under the SPA; and

(c) the first respondent agreed to pay the amount equivalent to the sale price of the Shares less the amount of S$648,601 (the "Balance") to the applicant at completion.

The Balance worked out to S$2,339,659. The SPA left the applicant with 3% of the shares in Company DA. The circumstances leading to the SPA being entered into are in dispute.

11 On the same day, the applicant and the first respondents signed an option agreement (the "Option Agreement").[8] The Option Agreement gave the

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5 [DDI]-3(B), at pp 2AB-22 to 2AB-29.

6 [DDI]-3(B), at p 2AB-29.

7 [DDI]-3(B), at pp 2AB-32 to 2AB-46.

8 [DDI]-3(B), at pp 2AB-48 to 2AB-57.

applicant the option (the "Option") to require the first respondent to make payment of the Balance by transferring the Coins to the applicant. The Option was to be exercised by serving an Option Notice on the first respondent. The Option Agreement also provided that if the value of the Coins as of the date of the Option Notice was less than the Balance, the first respondent agreed and undertook to continue to be liable to the applicant for the shortfall.

12 On 15 February 2021, completion of the SPA took place. The applicant transferred the Shares to the first respondent. The applicant then dated the Option Agreement 15 February 2021.

13 On 16 February 2021, the applicant exercised the Option and signed an Option Notice,[9] which he handed to the first respondent. The Option Notice stated that the value of the Coins as of the date of the Option Notice was S$2m. As the Balance was S$2,339,659, this meant that there was an amount of S$339,659 still outstanding. In the Option Notice, the applicant erroneously stated the outstanding amount as S$988,260. The amount of S$988,260 did not give credit for the sum of S$648,601 which had already been paid (see [10(b)] above). The first respondent did not pay the outstanding amount of S$339,659.

14 The applicant then accessed the Safe, took a photograph of the Seed Phrases and provided the same to a third party; according to the applicant, this was done in order to transfer the Coins pursuant to the Option Agreement.[10] Whether the applicant was entitled to access the Safe and/or transfer the Coins without the first respondent's permission is in dispute.

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9 [DDI]-3(B), at p 2AB-59.

10 Applicant's Reply and Defence to the Respondents' Defence and Counterclaim in the Arbitration, at para 56, [DDI]-3(A), at p 1AB-125.

The arbitration proceedings

15 The SPA provided for all disputes arising out of or in connection with the SPA to be resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC (the "SIAC Rules"). The Option Agreement contained an identical arbitration agreement.

16 On 28 May 2021, the applicant filed his Notice of Arbitration.[11] The applicant sought an order requiring the first respondent to pay the sum of $339,659 and other expenses and damages to be assessed.

17 In their Response to Notice of Arbitration, which was dated 14 June 2021, the respondents denied liability and counterclaimed for:[12]

(a) the return of the Coins to the first respondent, alternatively damages in a sum equivalent to the value of the Coins;

(b) further damages in the sum of S$648,601; and

(c) a declaration that the SPA was void.

18 On 2 July 2021, the Court of Arbitration of SIAC appointed the applicant's nominee (whom the respondents had agreed to) as the sole arbitrator (the "Arbitrator").

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11 Applicant's 1st affidavit, exhibit [DDI]-3(A) ("[DDI]-3(A)"), at pp 1AB-23 to 1AB-27.

12 [DDI]-3(A), at pp 1AB-29 to 1AB-42.

19 On 23 August 2021, the applicant filed his Statement of Claim.[13] On 20 September 2021, the respondents filed their Defence and Counterclaim.[14] On 18 October 2021, the applicant filed his Reply and Defence to the Respondents' Defence and Counterclaim.[15]

20 On 20 April 2023, the Arbitrator issued the Final Award.[16]

The applicant's case in the Arbitration

21 The applicant's case in the arbitration proceedings (the "Arbitration") was as follows:

> (a) The first respondent knew the Jewellery was set with a laboratory-grown gemstone. In addition, it was clear from the FA Digital Report that the Gem was laboratory-grown because it stated that there was "Flux Remnant" present. "Flux" is a catalyst used in the process of creating laboratory-grown gemstones. Further, the 2021 FOAs removed all references to the Online Article and the FA Digital Report.[17]
>
> (b) The 2021 FOAs were entered into because (i) there were some differences between the FA Digital Report (attached to the 2020 FOA) and a copy of the report that the applicant downloaded from the website of FA, (ii) the Online Article wrongly stated that the Gem was mined in Ruritania, (iii) the applicant wanted to update the agreement to reflect

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13 [DDI]-3(A), at pp 1AB-48 to 1AB-63.

14 [DDI]-3(A), at pp 1AB-65 to 1AB-98.

15 [DDI]-3(A), at pp 1AB-100 to 1AB-129.

16 Final Award (Applicant's 1st affidavit, exhibit [DDI]-1 ("[DDI]-1")).

17 Applicant's Reply and Defence to the Respondents' Defence and Counterclaim in the Arbitration at paras 5, 40(b), 40(e), 45 ([DDI]-3(A) at pp 1AB-102, 1AB-118, 1AB-119, 1AB-121).

the fact that the Jewellery was insured for S$13.8m, and (iv) the applicant had given the first respondent a discount and he wanted to avoid these other investors questioning him about the discount.[18]

(c) Subsequently, the first respondent became interested in purchasing some of the applicant's shares in Company DA in order to leverage on and/or utilise the celebrity status of the Jewellery and/or the branding of Company DA to expand the develop the second respondent's wine business.[19]

(d) As a display of his commitment to purchase the applicant's shares in Company DA, the first respondent provided the applicant with the Trezor Keys and the Seed Phrases, which were stored in the Safe. The applicant was the "depositor" under the Storage & Service Agreement and the first respondent was granted access to the Safe. Based on the Joint Authorization Form, the applicant could unilaterally access, remove or dispose of property from the Safe without authorisation by the first respondent.[20] The annual fees for the exclusive use of the Safe would be borne by the applicant and the first respondent equally.[21]

(e) Over the course of the next few days, it was confirmed that the first respondent would purchase 47% of the shares in Company DA and

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18 Applicant's Witness Statement in the Arbitration, at para 113 (Applicant's 1st affidavit, exhibit [DDI]-3(E) ("[DDI]-3(E)"), at pp 34–35).

19 Applicant's Statement of Claim in the Arbitration, at para 7 ([DDI]-3(A) at p 1AB-50).

20 Applicant's Statement of Claim in the Arbitration, at para 11–12 ([DDI]-3(A) at p 1AB-51).

21 Applicant's Witness Statement in the Arbitration, at para 152 ([DDI]-3(E) at p 46).

the applicant would retain 3%.[22] The applicant arranged for the agreements to be drawn up. On 26 January 2021, the SPA and the Option Agreement were signed. The first respondent agreed to the sale price with full knowledge that the Jewellery was set with a laboratory-grown gemstone.[23]

(f) Completion of the SPA was to take place on 15 February 2021. The first respondent informed the applicant that he did not have enough cash to pay the Balance. It was agreed that the applicant would transfer the Shares to the first respondent and the applicant would exercise the Option and take ownership of the Coins after the Shares were transferred.[24]

(g) On 15 February 2021, the applicant transferred the Shares to the first respondent and dated the Option Agreement 15 February 2021. On 16 February 2021, the applicant exercised the Option and took possession of the coins. The value of the Coins was agreed at S$2m.[25]

(h) The first respondent was therefore liable to pay the applicant the outstanding sum of S$339,659.[26]

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22 Applicant's Witness Statement in the Arbitration, at para 157 ([DDI]-3(E) at p 47).

23 Applicant's Statement of Claim in the Arbitration, at para 14–19 ([DDI]-3(A) at pp 1AB-52 to 1AB-55).

24 Applicant's Statement of Claim in the Arbitration, at para 20–21 ([DDI]-3(A) at p 1AB-55).

25 Applicant's Statement of Claim in the Arbitration, at para 22, 25 ([DDI]-3(A) at pp 1AB-55 to 1AB-57).

26 Applicant's Statement of Claim in the Arbitration, at para 27 ([DDI]-3(A) at p 1AB-57).

The respondents' case in the Arbitration

22 The respondents' case in the Arbitration was as follows:

(a) The applicant held himself out as an entrepreneur and the director and owner of a business, purportedly a company based in Ruritania which was involved in mining, polishing and distributing gemstones ("Business DB").[27] The applicant also claimed to be the sole director and shareholder of another company (with a paid-up capital that exceeded S$300m) ("Company DC").[28]

(b) The applicant invited the first respondent to participate in an investment plan by purchasing a fraction of the Jewellery, which was valued in the millions of dollars. The applicant claimed that the Gem was mined by Business DB, a company that he was related to. The applicant claimed that he intended to sell the Jewellery for a profit to a third party.[29]

(c) The first respondent then signed the 2020 FOA. The 2020 FOA referred to the Online Article, stated that the Jewellery was insured for S$6.45m and attached the FA Digital Report. The FA Digital Report was "fraudulent, presumably forged by the [applicant]".[30] It did not state that

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27 Respondents' Defence and Counterclaim in the Arbitration at para 9 ([DDI]-3(A) at p 1AB-71).

28 First respondent's Witness Statement in the Arbitration at para 17 ([DDI]-3(E) at p 337).

29 Respondents' Defence and Counterclaim in the Arbitration at para 23–24 ([DDI]-3(A) at p 1AB-84 to 1AB-85).

30 Respondents' Defence and Counterclaim in the Arbitration at para 22 ([DDI]-3(A) at p 1AB-83).

the Gem was laboratory-grown.[31] In contrast, a copy of a report (bearing the same date as the FA Digital Report), which was downloaded from the website of FA, identified the Gem as laboratory-grown.[32]

(d) Subsequently, the applicant claimed that the Jewellery had risen in value to around S$13.8m and showed the first respondent a document from a different insurer indicating that it was insured for this amount.[33]

(e) In early January 2021, the applicant told the first respondent that the other investors would be upset if they found out that 10% of the Jewellery had been sold to the respondents for S$640,000, which was significantly less than what they had paid. As requested by the applicant, the first respondent signed the 2021 FOAs. The applicant's plan was to inform the other investors of the 2021 FOA which referred to the sale of 4.7% of the Jewellery for S$648,600.[34]

(f) In mid-January 2021, the applicant told the first respondent that he had found a prospective buyer for the Jewellery. However, the applicant stated that there was a conflict of interest issue between him and the prospective buyer because the applicant held 50% of the shares in Company DA which owned the Jewellery, and the prospective buyer was a friend of the applicant's uncle whom the applicant claimed was a billionaire in Ruritania and the CEO of Company DA. The applicant requested the first respondent to hold on to most of the applicant's shares

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31 [DDI]-3(B) at 2AB-15.

32 Applicant's 1st affidavit, exhibit [DDI]-3(C) ("[DDI]-3(C)"), at p 3AB-190.

33 Respondents' Defence and Counterclaim in the Arbitration at para 26 ([DDI]-3(A) at p 1AB-85).

34 Respondents' Defence and Counterclaim in the Arbitration at para 27–28 ([DDI]-3(A) at pp 1AB-85 to 1AB-86).

in Company DA temporarily with a view to returning the shares to the applicant after the sale went through (the "Plan"). The applicant asked the first respondent to provide some security in exchange for his temporary holding of the shares.[35]

(g) Acting on the applicant's request, on 21 January 2021, the first respondent deposited the Trezor Keys and Seed Phrases (which gave access to the Coins worth at least US$2m) in the Safe. The terms of the Safe Agreement were as follows:[36]

(i) Access to the Safe would require joint approval from the applicant and the first respondent, as confirmed by the Joint Authorization Form.

(ii) The annual fee for the exclusive use of the Safe would be borne by the applicant and the first respondent equally.

(iii) The Safe would be used for the sole purpose of storing the Trezor Keys and Seed Phrases.

(iv) The Coins would not be removed from the Safe without the first respondent's permission.

(h) On 26 January 2021, the first respondent signed the SPA and the Option Agreement. The applicant represented that the documents reflected the Plan as described in (f) above. In reliance on the applicant's representations regarding the Plan and the applicant's representations that the Gem was naturally-mined and that the Jewellery was worth

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35 Respondents' Defence and Counterclaim in the Arbitration at para 29–30 ([DDI]-3(A) at pp 1AB-86 to 1AB-87).

36 Respondents' Defence and Counterclaim in the Arbitration at para 31–34 ([DDI]-3(A) at pp 1AB-87 to 1AB-89).

around S$13.8m, the first respondent signed the SPA and Option Agreement without reading or reviewing the same.[37]

(i) On 16 February 2021, without the first respondent's knowledge, the applicant accessed the Safe, took a photograph of the Seed Phrases and sent it to an unknown third party. When confronted on 18 February 2021, the applicant admitted having taken the above steps. In a WhatsApp message on 18 February 2021, the applicant stated that he would take "full responsibility" for the Coins.[38] In another WhatsApp message on 8 March 2021, the applicant told the first respondent that "the crypto was in [his] possession. What happen[ed] to it now [was his] responsibility."[39]

(j) Subsequently, the applicant demanded that the first respondent pay the amount purportedly due under the Option Agreement. The applicant denied that the Plan existed despite having stated in his WhatsApp on 8 March 2021 that if he "had known there was a potential problem, [he] would have never wanted [the Coins] as collateral."[40]

The issues in the Arbitration and the Arbitrator's decision

23 In the Arbitration, there were nine agreed issues and two non-agreed issues. The nine agreed issues were as follows:

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37 Respondents' Defence and Counterclaim in the Arbitration, at para 35 ([DDI]-3(A), at pp 1AB-89 to 1AB-90).

38 Respondents' Defence and Counterclaim in the Arbitration, at paras 39–42 ([DDI]-3(A), at pp 1AB-91 to 1AB-92); [DDI]-3(B) at p 2AB-250 (1:01:31pm).

39 Respondents' Defence and Counterclaim in the Arbitration, at para 42 ([DDI]-3(A), at p 1AB-92); [DDI]-3(B), at p 2AB-267 (11:10:28am).

40 [DDI]-3(B), at p 2AB-450 (3:26:36am).

(a) Whether the first respondent had read and signed the SPA and Option Agreement?

(b) Whether the SPA and/or Option Agreement were valid and binding on the parties?

(c) Whether parties had agreed at a meeting on 16 February 2021 that the Coins would be valued at $2m?

(d) Whether the first respondent breached the SPA and was thus liable to pay the applicant the outstanding sum of $339,659?

(e) Whether the applicant had made fraudulent misrepresentations and/or defrauded the first respondent in respect of (i) the value of the Jewellery and/or (ii) the Gem being a mined gemstone (as opposed to laboratory-grown gemstone) (the "False Representations")?

(f) Whether the respondents had relied on: (i) the reference to the Online Article in the 2020 FOA (stating that the Gem was naturally mined); (ii) the FA Digital Report and/or (iii) the alleged False Representations in entering into the 2021 FOAs, the SPA, and/or the Option Agreement?

(g) Whether the applicant had made fraudulent representations and/or defrauded the first respondent as follows:

(i) the applicant's shares in Company DA would be transferred temporarily to the first respondent to facilitate the alleged sale of the Jewellery, and the shares in Company DA would be returned to the applicant after the alleged sale went through; and

(ii) this was due to "some unspecified concern over 'conflict of interest' as the prospective buyer would be a friend of the applicant's uncle whom the applicant claimed to be a Ruritanian billionaire and the CEO of Business DB,

and/or that the respondents had relied on them?

(h) Whether the applicant and first respondent agreed that access to the Safe would require joint approval from the applicant and the first respondent, and that:

(i) the first respondent would co-share with the applicant half of the annual fee for exclusive use of the Safe;

(ii) the Safe would be used for the sole purpose of storing the Trezor Keys and Seed Phrases; and

(iii) the Coins would not be removed from the Safe without the first respondent's permission?

(i) Assuming there was an agreement as set out in (h) above, whether the applicant had breached the same?

24 The two non-agreed issues (which were proposed by the respondents) were:

(a) What was the value of the Jewellery at the material time?

(b) Whether Company DA owned the Jewellery at the material time and the consequences?

25 The Arbitrator determined all of the agreed issues in favour of the respondents, dismissed the applicant's claim and allowed the respondents' counterclaim. Specifically, the Arbitrator:

(a) declared that the SPA was null and void and of no effect; and

(b) ordered:

(i) the applicant to refund the first respondent the sum of S$648,601 with interest and in exchange, the first respondent was to transfer the applicant's shares in Company DA back to him;

(ii) the applicant to pay damages quantified at S$2,380,993.23 to the first respondent for the lost Coins, with interest; and

(iii) the applicant to pay costs to the respondents.

The grounds for the present application

26 The applicant seeks to set aside the Final Award on the following grounds:[41]

(a) That the Final Award contains decisions on matters that were beyond the scope of submission to arbitration: s 48(1)(*a*)(iv) of the Act.

(b) That the applicant was prevented from effectively presenting his case during the Arbitration as a result of the Arbitrator's prejudgment or bias: s 48(1)(*a*)(iii) of the Act.

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[41] Applicant's 1st affidavit, at para 3.

(c) That there has been a breach of the rules of natural justice, in particular the fair hearing rule and the rule against bias, in connection with the making of the Final Award, by which the rights of the applicant have been prejudiced: s 48(1)(*a*)(vii) of the Act.

The applicant's reliance on unofficial transcripts of the Arbitration

27 In the Arbitration, the respondents paid for and had the full official transcripts of the Arbitration. The applicant refused to pay for the official transcripts of the Arbitration and instead sought to rely on unofficial transcripts. In response to the applicant's request, the respondents provided (out of goodwill) extracts of the official transcripts.[42]

28 In the present proceedings, the applicant adduced (in his affidavit) extracts of his unofficial transcripts as well as the extracts of the official transcripts that had been provided by the respondents. The applicant's submissions before me continued to refer to his unofficial transcripts. This is most unsatisfactory given that the official transcripts were available except that the applicant refused to subscribe to and pay for them. That said, the respondents have accepted that the unofficial transcripts relied upon by the applicant *broadly reflect* the contents in the official transcripts; the respondents have also accepted that the Arbitrator did use the word "fake" once during the hearing to describe laboratory-grown gemstones. In the circumstances,

(a) the official transcripts will be referred to the extent that they have been produced; and

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42 Applicant's 1st affidavit, exhibit [DDI]-3(F) ("[DDI]-3(F)"), at pp 661–871.

(b) where the relevant extracts of the official transcripts are not available or are incomplete, the applicant's unofficial transcripts will be referred to for the *substance* of what was said during the Arbitration.

In my view, it is not appropriate to refer to the unofficial transcripts as a verbatim record of what was said during the Arbitration.

Whether the Final Award contains decisions on matters beyond the scope of submission to arbitration

The law

29 Section 48(1)(*a*)(iv) of the Act reads:

> (1) An award may be set aside by the Court —
>
> > (*a*) if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that —
> >
> > > (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;

30 Section 48(1)(*a*)(iv) of the Act is *in pari materia* to Art 34(2)(*a*)(iii) of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") as found in the First Schedule to the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"). The following passage from *CJA v CIZ* [2022] 2 SLR 557 ("*CJA*") (at [38]), which dealt with Art 34(2)(*a*)(iii) of the Model Law, is equally applicable to s 48(1)(*a*)(iv) of the Act:

> 38 A two-stage enquiry is followed in assessing whether an arbitral award should be set aside for an excess of jurisdiction: (a) first, the court must identify what matters were within the

> scope of submission to the arbitral tribunal; and (b) second, whether the arbitral award involved such matters or whether it involved a "*new difference* … outside the scope of the submission to arbitration and accordingly would have been *irrelevant to the issues requiring determination*" [emphasis in original] (*CDM* at [17]; *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 at [40]). Further, in *CDM*, this court held (at [18]) that the question of what matters were within the scope of the parties' submission to arbitration would be answerable by reference to five sources: the parties' pleadings, the list(s) of issues, opening statements, evidence adduced, and closing submissions at the arbitration. This was an elaboration of the principle that in considering whether the jurisdiction has been exceeded, the court must look at matters in the round to determine whether the issues in question were live issues in the arbitration. In doing so, it does not apply an unduly narrow view of what the issues were: rather, it is to have regard to the totality of what was presented to the tribunal whether by way of evidence, submissions, pleadings or otherwise and consider whether, in the light of all that, these points were live.

The applicant's submissions

31 The applicant submitted that the Arbitrator wrongly considered and decided on the following matters, which were outside the scope of the submission to the Arbitration:[43]

(a) that Company DA did not own the Jewellery; and

(b) that there were misconceptions about the parties' financial status, including the existence of Business DB's mine in Ruritania, the applicant's billionaire uncle, and the financial position of Company DC.

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43 Applicant's Written Submissions, at para 96; Applicant's 1st affidavit, at paras 49–50 and 61.

The finding as to ownership of the Jewellery

32 In para 198 of the Final Award, the Arbitrator found that the applicant failed to prove that Company DA owned the Jewellery.[44] The applicant contended that the Arbitrator's finding was outside the scope of the Arbitration as the issue of ownership was never pleaded by the respondents.[45] I disagree with the applicant's contention. As the Court of Appeal pointed out in *CJA*, the question of what matters were within the scope of the parties' submission to arbitration would be answerable by reference to the parties' pleadings, the list(s) of issues, opening statements, evidence adduced, and closing submissions, and the court must look at matters in the round (see [30] above).

33 In my view, it is clear that the ownership of the Jewellery was a live issue in the Arbitration.

34 First, the issue was raised in the pleadings. The applicant's statement of claim pleaded that Company DA owned the Jewellery.[46] In their defence and counterclaim, the respondents did not admit that Company DA owned the Jewellery.[47] As the Arbitrator found in para 194 of the Final Award, the burden therefore fell on the applicant to prove Company DA's ownership of the Jewellery.

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44 [DDI]-1.

45 Applicant's Written Submissions, at para 96(a) read with paras 82–86.

46 Statement of Claim in the Arbitration, at para 4 ([DDI]-3(A), at p 1AB-49).

47 Defence and Counterclaim in the Arbitration, at para 8 ([DDI]-3(A), at p 1AB-71).

35 Second, in their opening statement, the respondents stated that the applicant had failed to produce any documentary evidence that Company DA owned the ring.[48]

36 Third, one of the Non-Agreed Issues submitted by the respondents in the Arbitration was whether Company DA owned the Jewellery at the material time (see [24(b)] above).

37 Fourth, as the respondents submitted before me, the applicant's witnesses were cross-examined on their knowledge of Company DA's ownership of the Jewellery.[49]

38 Fifth, in their closing submissions, the respondents submitted that it had become even clearer that Company DA did not in fact own the Jewellery at the material time.[50]

39 The applicant also submitted that the Arbitrator's finding that Company DA did not own the Jewellery was effectively a finding that the applicant had defrauded the respondents, which was an issue that was not pleaded.[51] In my view, this is no cause for complaint. The fact that the applicant would have defrauded the respondents was simply the inevitable conclusion that the finding that Company DA did not own the Jewellery would lead to.

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48 Respondents' Opening Statement in the Arbitration, at paras 10–13 ([DDI]-3(F), at pp 46–48).

49 Respondents' Written Submissions, para 21.3 and fn 30.

50 Respondents' Closing Submissions in the Arbitration, at para 70 ([DDI]-3(F), at p 656).

51 Applicant's Written Submissions, at para 96(a) read with para 82.

40 The applicant further submitted that the respondents did not discharge their burden of proving that Company DA did not own the Jewellery.[52] As stated earlier, the burden was on the applicant to prove Company DA's ownership of the Jewellery. In any event, it is clear that this argument (even if correct) merely points to an error in the Arbitrator's finding. It is trite that errors by the Arbitrator would not suffice to warrant setting aside an award.

The finding as to the non-existence of the mine, the uncle and Company DC

41 In para 217 of the Final Award, the Arbitrator found that "each party … had a misconception of the other party's financial status" and in para 215 of the Final Award, the Arbitrator found that Business DB's mine in Ruritania (see [22(a)] and [22(b)] above), the applicant's billionaire uncle (see [22(f)] above) and Company DC (see [22(a)] above) were "non-existent".

42 The applicant submitted that the Arbitrator's findings were on issues that were outside the scope of submission to arbitration. The applicant submitted that (a) the first respondent did not allege that the applicant had misrepresented his financial status as the basis for his entering into the FOAs and/or the SPAs, and (b) these issues were not raised in the pleadings or the Agreed or Non-agreed Issues.[53]

43 I disagree with the applicant. The Arbitrator's findings were on matters that were well within the scope of submission to the Arbitration. First, in their defence and counterclaim in the Arbitration, the respondents pleaded as follows:

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52 Applicant's Written Submissions, at para 96(a) read with para 85.

53 Applicant's Written Submissions, at para 96(b) read with paras 88–91.

(a) The applicant represented that (i) the Gem was mined by Business DB, a Ruritanian-based company that he was related to, (ii) he was the director and owner of Business DB, and (iii) he had a prominent Ruritanian uncle who was a billionaire and the CEO of Business DB.[54]

(b) An article by an industry analytical agency had exposed Business DB as a fraud with the applicant as its mastermind; the article noted that (i) Business DB led by the applicant was the owner of a non-existent mine in Ruritania, and (ii) the CEO of Business DB, presumably the fictitious Ruritanian uncle of the applicant, was "non-existent".[55]

44 Second, in his witness statement in the Arbitration, the first respondent said that the applicant told him that (a) he was the director of Business DB, a Ruritania-based company mining gemstones, and (b) he was the sole director and shareholder of Company DC, with a paid-up capital that exceeded S$300m.[56] The first respondent said that he was impressed and believed that the applicant was wealthy.[57]

45 Third, in their opening statement in the Arbitration, the respondents submitted that the applicant dazzled the first respondent with his apparent wealth, showing off (among other things) his association as sole director and shareholder of Company DC (with a paid-up capital exceeding S$300m), and

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54 Respondents' Defence and Counterclaim in the Arbitration, at paras 6, 9, 20.4 and 29 ([DDI]-3(A), at pp 1AB-69 to 1AB-71, 1AB-82, 1AB-86 to 1AB-87).

55 Respondents' Defence and Counterclaim in the Arbitration, at paras 10.2, 10.2.1 and 10.2.3 ([DDI]-3(A), at pp 1AB-73 to 1AB-74).

56 First respondent's Witness Statement in the Arbitration, at paras 11 and 17 ([DDI]-3-(E), at pp 334 and 337).

57 First respondent's Witness Statement in the Arbitration, at para 12 ([DDI]-3(E), at p 335).

his family connections – a billionaire Ruritanian uncle who traded in gemstones.[58]

Whether the applicant was prevented from presenting his case

46 Under s 48(1)(*a*)(iii) of the Act, an award may be set aside if a party was unable to present his case. This ground overlaps with the fair hearing rule, which is dealt with below. In any event, the applicant's case is that he was prevented from presenting his case as a result of the Arbitrator's prejudgment or bias. As will be seen later in this judgment, I find that the applicant has failed to show prejudgment or bias. It follows that the applicant's challenge under s 48(1)(*a*)(iii) fails.

Whether the rules of natural justice were breached

The law

47 Under s 48(1)(*a*)(vii) of the Act, an arbitral award can be set aside if the party who applies to the court to set aside the award proves to the satisfaction of the court that 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.

48 There are two pillars of natural justice: the first is that the arbitrator must be disinterested and unbiased (the "rule against bias"); the second is that parties must be given adequate notice and opportunity to be heard (the "fair hearing rule"). Sub-branches of the fair hearing rule are that each party must be given a fair hearing and a fair opportunity to present its case (*Soh Beng Tee & Co Pte*

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58 Respondents' Opening Statement in the Arbitration, at para 1.3 ([DDI]-3(F), at p 39).

Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86 ("*Soh Beng Tee*") at [43]).

49 A party challenging an arbitration award as being contrary to the rules of natural justice must establish which rule of natural justice was breached, how it was breached, in what way the breach was connected to the making of the award, and how the breach prejudiced its rights (*Soh Beng Tee* at [29]).

50 The threshold for finding a breach is a high one. In so far as the right to be heard is concerned, the failure of an arbitrator to refer every point for decision to the parties for submissions is not invariably a valid ground for challenge; there must be a real basis for alleging that the arbitrator has conducted the arbitral process either irrationally or capriciously: *Soh Beng Tee* at [65(d)].

51 It is not the function of the court to assiduously comb an arbitral award microscopically in attempting to determine if there was any blame or fault in the arbitral process; rather, an award should be read generously such that only meaningful breaches of the rules of natural justice that have actually caused prejudice are ultimately remedied: *Soh Beng Tee* at [65(f)]. To attract curial intervention, it must be established that the breach of the rules of natural justice must, at the very least, have actually altered the final outcome of the arbitral proceedings in some meaningful way; the bare fact that the arbitrator might have inadvertently denied one or both parties some technical aspect of a fair hearing would almost invariably be insufficient to set aside the award: *Soh Beng Tee* at [91].

52 A breach of the fair hearing rule can arise from a tribunal's failure to apply its mind to the essential issues arising from the parties' arguments.

However, as the Court of Appeal pointed out in *BZW and another v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(a)]:

> (a) The court accords the tribunal fair latitude to determine what is and is not an essential issue.
>
> (b) That a tribunal's decision is inexplicable is but one factor that goes towards establishing that the tribunal failed to apply its mind to the essential issues arising from the parties' arguments.
>
> (c) The fact that an award fails to address one of the parties' arguments expressly does not, without more, mean that the tribunal failed to apply its mind to that argument: there may be a valid alternative explanation for the failure. An award will therefore not be set aside on the ground that the tribunal failed to apply its mind to an essential issue arising from the parties' arguments unless such failure is a "clear and virtually inescapable" inference from the award.

53 A breach of the fair hearing rule can also arise from the chain of reasoning that the tribunal adopts in its award; the chain of reasoning must be (a) one which the parties had reasonable notice that the tribunal could adopt, and (b) one which has a sufficient nexus to the parties' arguments: *BZW* at [60(b)].

54 As for bias, in *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*"), the Court of Appeal stated the principles in relation to the doctrine of apparent bias as follows (at [103]):

> (a) The applicable test is whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer. …
>
> (b) … the test is necessarily objective …

> (c) A reasonable suspicion or apprehension arises when the observer would think, from the relevant circumstances, that bias is *possible*. It cannot be a fanciful belief, and the reason for the suspicion must be capable of articulation by reference to the evidence presented …
>
> (d) In establishing whether the observer would harbour a reasonable suspicion of bias, the court must be mindful not to supplant the observer's perspective by assuming knowledge outside the ken of reasonably well-informed members of the public … The observer would be informed – that is, he or she would be apprised of all relevant facts that are capable of being known by members of the public generally … The observer would also be fair-minded, he or she would be neither complacent nor unduly sensitive and suspicious. He or she would know the traditions of integrity and impartiality that administrators of justice have to uphold, and would not jump to hasty conclusions of bias based on isolated episodes of temper or remarks taken out of context …
>
> (e) In line with (d) above, the relevant circumstances which the court may take into account in finding a reasonable suspicion of bias would be limited to what is available to an observer witnessing the proceeding …
>
> [emphasis in original]

55 The Court of Appeal in *BOI* also stated the following with respect to prejudgment and excessive interference:

> 109 To establish prejudgment amounting to apparent bias, therefore, it must be established that the fair-minded, informed and reasonable observer would, after considering the facts and circumstances available before him, suspect or apprehend that the decision-maker had reached a final and conclusive decision before being made aware of all relevant evidence and arguments which the parties wish to put before him or her, such that he or she approaches the matter at hand with a closed mind.
>
> 110 To this, we would add the following. Judges are obliged to make the effort to prepare for a hearing beforehand and inevitably, provisional views and conclusions would be formed during such preparations … an open mind does not mean an empty mind and it is consistent with judicial function to pose provisional views and concerns to counsel for them to be addressed. … prejudgment could not be made out solely because tentative views reflecting a certain tendency of mind were expressed during exchanges with counsel.

> 111 Quite apart from apparent bias, there is also the separate ground of whether the Judge excessively interfered with the proceedings. …it would suffice for present purposes to set out the summary of principles …:
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> …
>
> (b) … the judge must be careful *not* to descend (and/or be perceived as having descended) into the arena, thereby clouding his or her vision and compromising his or her impartiality as well as impeding the fair conduct of the trial by counsel and unsettling the witness concerned.
>
> …
>
> (d) … The ultimate question for the court is whether or not there has been the possibility of a denial of justice to a particular party (and, correspondingly, the possibility that the other party has been unfairly favoured). …
>
> (e) Mere discourtesy by the judge is insufficient to constitute excessive judicial interference, although any kind of discourtesy by the judge is to be eschewed.
>
> …
>
> (g) The court will only find that there has been excessive judicial interference if the situation is an *egregious* one. Such cases will necessarily be *rare*.
>
> 112 Although the facts of any given case may give rise to *both* apparent bias and a finding of excessive judicial interference, it is important to note the difference between the two grounds. The "excessive judicial interference" ground guards against the risk of a fair trial being compromised because of the failure of a decision-maker to observe his proper role and his duty not to descend into the arena. … the resolution of a complaint of excessive judicial interference depends not on appearances or what impressions a fair-minded observer might be left with, but rather on whether the reviewing court is satisfied that the manner in which the challenged tribunal or judge acted was such as to impair its ability to evaluate and weigh the case presented by each side.
>
> [emphasis in original]

56 An award may be set aside under s 48(1)(*a*)(vii) of the Act for breach of the rules of natural justice only if the breach has caused prejudice. The prejudice must be actual or real: *L W Infrastructure Pte Ltd v Lim Chin San Contractors*

Pte Ltd and another appeal [2013] 1 SLR 125 at [51]. This is similar to the test under s 24(*b*) of the IAA: *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305 at [37] – [38]. Section 48(1)(*a*)(vii) of the Act is *in pari materia* to s 24(*b*) of the IAA.

Whether the Arbitrator breached the fair hearing rule

57 As stated in [52] above, a breach of the fair hearing rule can arise from a tribunal's failure to apply its mind to the essential issues arising from the parties' arguments. The applicant submitted as follows:

(a) The Arbitrator did not address the evidence on the Plan and instead determined the case solely based on credibility.

(b) The Arbitrator failed to address the necessary elements of fraudulent misrepresentation.

(c) The Arbitrator was fixated on the unpleaded issue of ownership of the Jewellery.

(d) The Arbitrator disregarded relevant evidence annexed to the applicant's closing submissions.

(e) The Arbitrator had unfairly disregarded the 14 Investor FOAs.

Whether the Arbitrator failed to address evidence on the Plan

58 The respondents' case in the Arbitration was that the applicant represented that the documents reflected the Plan and in reliance on the applicant's representations regarding the Plan and the applicant's representations that the Gem was naturally-mined and that the Jewellery was

worth around S$13.8m, the first respondent signed the SPA and Option Agreement without reading or reviewing the same (see [22(h)] above).

59 The Arbitrator answered "No" to the first agreed issue (*ie*, whether the first respondent read *and signed* the SPA).[59] The applicant pointed out that the first respondent admitted that he did sign the SPA and Option Agreement.[60] The applicant was correct in saying that the first respondent had admitted signing the SPA and Option Agreement. The first respondent merely denied reading the documents before signing them.[61] The parties should have framed the first agreed issue without the reference to signing the SPA. In any case, the Arbitrator's answer to the first agreed issue was incorrect in so far as it suggested that the first respondent did not sign the SPA and Option Agreement. That was probably a mistake. Elsewhere in the Final Award, the Arbitrator had correctly set out the first respondent's averment that he signed, but did not *read* either the SPA or the Option Agreement,[62] and found that the first respondent did not *read* either document.[63] In any event, the finding that the first respondent did not sign the SPA is an error which is not a ground for setting aside the Final Award.

60 The Arbitrator also found that:

(a) the Plan hatched by the applicant prompted the first respondent to enter into the SPA (para 202 of the Final Award);

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59 Final Award ([DDI]-1), at para 242(a).

60 Applicant's Written Submissions, at para 59(a).

61 See Defence and Counterclaim in the Arbitration, at para 35 ([DDI]-3(A), at pp 1AB-89 to 1AB-90).

62 Final Award ([DDI]-1), at para 55.

63 Final Award ([DDI]-1), at para 240.

(b) the first respondent had been very naïve – he reposed absolute trust and blind faith in the applicant who unfortunately abused that trust (para 234 of the Final Award); and

(c) the first respondent was not someone who was capable of conjuring up the Plan unless it existed (para 241 of the Final Award).

61 The applicant submitted that:

(a) the respondents' case on the Plan was made of bare assertions;[64]

(b) in finding that the first respondent did not read the SPA, the Arbitrator disregarded the principles of *non est factum*;[65] and

(c) in concluding that the only reason why the first respondent entered into the SPA was because of the Plan, the Arbitrator failed to address the fact that:[66]

(i) the first respondent entered into the SPA because he decided that it was beneficial to him to have a stake in the company as opposed to simply owning a fractional share in the Jewellery; and

(ii) the first respondent had done his own due diligence before entering into the SPA.

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64 Applicant's Written Submissions, at para 66.

65 Applicant's Written Submissions, at para 69.

66 Applicant's Written Submissions, at para 75.

The applicant submitted that if the Arbitrator had considered all the evidence, she would not have found that the first respondent entered into the SPA because of his naivete and blind faith in the applicant. I disagree.

62 With respect to [61(a)] above, the applicant's submission merely challenges the correctness of the Arbitrator's finding that the Plan existed. It is irrelevant in this setting-aside application.

63 With respect to [61(b)] above, in my view, the applicant's submission regarding *non est factum* is misplaced. The respondents' case was that they were induced to enter into the SPA and Option Agreement by the applicant's fraudulent representations that the Gem was natural-mined and about the value of the Jewellery.[67] The respondents did not seek to void the SPA or the Option Agreement on the ground of *non est factum*. In truth, the applicant's argument was that the Arbitrator's finding that the first respondent did not read the SPA was wrong. Again, the Arbitrator's error (if there was one) is irrelevant in this setting-aside application.

64 As for the applicant's submission in [61(c)] above, it is incorrect to say that the Arbitrator concluded that the Plan was the *only* reason why the first respondent entered into the SPA. The Arbitrator found that the Plan hatched by the applicant "prompted" the first respondent to enter into the SPA.[68] However, the Arbitrator also concluded that the respondents relied on (among other things) the applicant's false representations about the value of the Jewellery and that the Gem was naturally mined, in entering into the SPA.[69]

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67 Defence and Counterclaim in the Arbitration, at para 52 ([DDI]-3(A), at pp 1AB-96 to 1AB-97).

68 Final Award ([DDI]-1), at para 202.

69 Final Award ([DDI]-1), at para 242(f).

65 In any event, with respect to [61(c)(i)] above, in his supporting affidavit in the present proceedings, the applicant explained that Arbitrator failed to consider the first respondent's reasons for entering into the SPA, which were: (a) to leverage the network and celebrity status of the Jewellery, and (b) to be the largest shareholder of Company DA and be involved in matters such as the nomination of a new director and gain access to financial statements.[70] In my view, the applicant's allegations are inconsistent with the evidence.

(a) The Arbitrator had noted the applicant's case that the first respondent was keen to leverage on the celebrity status of the Jewellery and to tap on the applicant's network.[71] The Arbitrator also noted the first respondent's denial of the applicant's allegation.[72] There is no reason to think that the Arbitrator did not consider the applicant's case in this regard. The Arbitrator is not required to expressly deal with each and every specific point or argument canvassed (see [50] above).

(b) The Arbitrator expressly considered the applicant's allegation that the first respondent wanted to be involved in Company DA's matters (*eg*, nominating a new director and having access to financial statements) but found that the applicant's allegation did not accord with the legal position since with just a 47% stake in Company DA, the first respondent was in no position to control the company.[73]

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70 Applicant's 1st Affidavit, at para 92 (referred to in Applicant's Closing Submissions in the Arbitration, at para 35–38 ([DDI]-3(F), at pp 237–238)).

71 Final Award ([DDI]-1), at paras 36, 75.

72 Final Award ([DDI]-1), at para 57.

73 Final Award ([DDI]-1), at paras 200–201.

66 With respect to [61(c)(ii)] above, the applicant had merely submitted in the Arbitration that the respondents "would certainly have conducted their own enquiries, checks and due diligence on the [Jewellery]".[74] The applicant merely sought to draw an inference that the respondents must have conducted due diligence. Again, there is no reason to think that the mere fact that the Arbitrator did not expressly deal with this point meant that she failed to consider it.

67 In any event, for the Final Award to be set aside for breach of natural justice, the applicant also has to show that the alleged breaches cause actual or real prejudice to his rights. In my view, there is no causal nexus between the alleged breaches discussed above and the Final Award and therefore the applicant's rights would not have been prejudiced in any case.

Whether the Arbitrator failed to address the necessary elements of fraudulent misrepresentation.

68 In paras 242(e) and 242(f) of the Final Award, the Arbitrator found that the applicant had made fraudulent misrepresentations and/or defrauded the first respondent in respect of (a) the value of the Jewellery and/or (b) the Gem being a mined gemstone, and that the respondents had relied on (among other things) these false representations in entering into the 2021 FOAs and the SPA.

69 The applicant submitted that the Arbitrator failed to consider the pleaded issue of whether the elements of fraudulent misrepresentation had been established. The applicant argued that there were no findings in the Final Award on:[75]

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74 Applicant's Closing Submissions in the Arbitration, at para 195 ([DDI]-3(F), at p 292).

75 Applicant's Written Submissions, at para 80.

(a) whether the applicant made the representations on the dates alleged (save for the representation allegedly found in the FA Digital Report);

(b) whether the first respondent had acted in reliance of the representation when the sequence of events contradicted his assertion that he had; and

(c) whether the first respondent had suffered damage by acting on the representation when the Jewellery and the shares are still in Company DA's and the first respondent's respective possessions.

70 With respect to [69(a)] above, as stated earlier, the Arbitrator found that the applicant had made fraudulent misrepresentations and/or defrauded the first respondent in respect of the value of the Jewellery and the Gem being a mined gemstone.[76] The applicant's complaint appears to be that there was no express finding as to when the representations were made (save for the representation in the FA Digital Report). In my view, the Arbitrator's finding has to be read in context. The Arbitrator's finding was by way of her answer to the fifth agreed issue (see [23(e)] above). Seen in the light of the sixth agreed issue (see [23(f)] above), the fifth agreed issue must be understood to refer to the representations that the first respondent alleged they had relied on when entering into the SPA and Option Agreement. In this regard, the respondents had pleaded that:

(a) on 11 May 2020, the applicant said to the first respondent and his wife that the Gem was mined in Ruritania by Business DB;[77]

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76 Final Award ([DDI]-1), at para 242(e).

77 Defence and Counterclaim in the Arbitration, at para 20.4 ([DDI]-3(A), at p 1AB-82).

(b) around May 2020, the applicant represented to the first respondent that the Gem was mined from Business DB's mines in Ruritania;[78]

(c) on 9 December 2020, the first respondent signed the [FOA], which referred to the Online Article stating that the Gem was naturally mined and annexed the FA Digital Report;[79] and

(d) on 31 December 2020, the applicant represented to the first responded that the Jewellery had risen in value to around S$13.8m and showed the first respondent a document from a different insurer indicating that the Jewellery was insured to this value.[80]

71 There is no reason to think that the Arbitrator did not have these dates in mind. In any case, the alleged failure to make an express finding on when the representations were made, at best, amounts to an error which is irrelevant for purposes of this setting-aside application. The applicant has also not shown how the alleged failure caused him prejudice.

72 With respect to [69(b)] above, the Arbitrator found (by way of answer to the sixth agreed issue (see [23(f)] above)) that the respondents had relied on the applicant's representations. The applicant's submission that the sequence of events contradicted the first respondent's assertion merely amounts to a disagreement with the finding and is irrelevant in this setting-aside application.

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78 Defence and Counterclaim in the Arbitration, at para 23 ([DDI]-3(A), at p 1AB-84).

79 Defence and Counterclaim in the Arbitration, at para 25 ([DDI]-3(A), at p 1AB-85).

80 Defence and Counterclaim in the Arbitration, at para 26 ([DDI]-3(A), at p 1AB-85).

73 With respect to [69(c)] above, the Arbitrator found that the applicant had made false representations about the value of the Jewellery and that the Gem was naturally-mined. It cannot be seriously suggested that the respondents had not suffered damage or that the Arbitrator failed to consider whether the respondents had suffered damage.

74 I therefore reject the applicant's submission. In my view, it cannot be said that it is a clear and virtually inescapable inference from the Final Award that the Arbitrator failed to apply her mind to the elements of fraudulent misrepresentation.

Whether the Arbitrator was fixated on the unpleaded issue of ownership of the Jewellery

75 The applicant's submission in this regard overlaps with his submission that the Arbitrator went outside the scope of the Arbitration in finding that the applicant failed to prove that Company DA owned the Jewellery. This submission has nothing to do with whether the Arbitrator failed to consider essential issues in the Arbitration. In any event, I have found that the ownership of the Jewellery was a live issue in the Arbitration (see [33] above).

Whether the Arbitrator disregarded relevant evidence annexed to the applicant's closing submissions.

76 The Arbitrator set page limits of 75 pages for closing submissions and 30 pages for reply submissions. The applicant's closing submissions comprised 75 pages for the submissions proper, 51 pages of annexures and 225 pages of unofficial transcripts of the Arbitration. His reply submissions comprised 31 pages for the submissions proper, 43 pages of annexures and 31 pages of

unofficial transcripts.[81] The Arbitrator proceeded on the basis that she would ignore the annexures and unofficial transcripts in considering the applicant's closing submissions and reply submissions.[82]

77 The applicant submitted that it was "completely unfair" to him for the Arbitrator to ignore the annexures and unofficial transcripts. I cannot agree with the applicant. First, as the Arbitrator noted, the annexures circumvented her directions and there were no objections to the page limits proposed by the Arbitrator.[83] It was the applicant's unilateral decision to ignore the Arbitrator's directions. The applicant argued before me that it was reasonable for him to presume that there were no issues because the Arbitrator did not give notice that she would be disregarding the pages in excess of the page limits.[84] I find this argument wholly lacking in any merit. The purpose behind the imposition of page limits is self-explanatory.

78 In any event, I cannot see how the Arbitrator's decision to ignore the annexures and unofficial transcripts resulted in any actual or real prejudice to the defendant. The Arbitrator did not ignore his submissions proper. Further, according to the applicant, the annexures were either compilations of existing evidence or documents referred to during the cross-examination of the witnesses.[85] These documents were therefore already part of the record in the Arbitration.

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81 Final Award ([DDI]-1), at para 158.

82 Final Award ([DDI]-1), at para 160.

83 Final Award ([DDI]-1), at para 160.

84 Applicant's Written Submissions, at para 94.

85 Applicant's Written Submissions, at para 93.

79 As for the unofficial transcripts, it must be noted that official transcripts for the hearing in the Arbitration were provided by Opus 2. However, the applicant refused to subscribe to and share the costs of the transcription service with the respondents because he considered the transcription costs to be an "unnecessary expense".[86] Further, as the Arbitrator noted, there was no explanation as to who prepared the unofficial transcripts; the Arbitrator therefore decided that she could only rely on the official transcripts.[87] The respondents had produced extracts of the official transcripts on a goodwill basis in response to the applicant's request.[88] I simply cannot see how the Arbitrator's decision to rely only on the official transcripts in these circumstances can be said to be unfair.

Whether the Arbitrator had unfairly disregarded the 14 Investor FOAs.

80 As stated earlier, pursuant to the 2020 FOA dated 9 December 2020, the second respondent purchased a 10% share of the Jewellery for S$640,000. In January 2021, the 2020 FOA was superseded by the 2021 FOAs under which the second respondent paid S$648,600 for 4.7% of the Jewellery and S$1 for 5.3% of the Jewellery (see [6] above).

81 In the Arbitration, the applicant produced 14 FOAs entered into between Company DA and other investors (the "14 Investor FOAs").[89] These showed that 14 investors had each purchased a one per cent share in the Jewellery for US$100,000. The names, identity card numbers and signatures were redacted but the year of execution was shown to be 2019. The applicant claimed that the

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86 Final Award ([DDI]-1), at paras 161–162.

87 Final Award ([DDI]-1), at para 164.

88 [DDI]-3(F), at pp 661–871.

89 [DDI]-3(C), at 3AB-540 to 3AB-581.

redaction was to protect the confidentiality of the other investors' details.[90] The applicant relied on the 14 Investor FOAs as evidence of the value of the Jewellery.[91]

82 In para 197 of the Final Award, the Arbitrator said:

> 197 … Due to the heavy redactions, the Arbitrator is unable to ascertain whether the 14 agreements represent genuine sales and/or if they had indeed paid US$1,400,000 to [Company DA]. Even if the sales/the agreements are genuine, that does not mean by extrapolation the Jewellery is worth US$10,000,000 as a whole … .

The Arbitrator rejected the 14 Investor FOAs as evidence of (a) Company DA's ownership of the Jewellery,[92] and (b) the value of the Jewellery.[93]

83 The applicant submitted that the Arbitrator's rejection of the 14 Investor FOAs on the basis of authenticity was inexplicable for the following reasons:

> (a) The authenticity of the 14 Investor FOAs was not an issue in the Arbitration.[94] The respondents' counsel had confirmed that his concern was not with the authenticity of the 14 Investor FOAs.[95] Further, the applicant had offered to provide unredacted copies of the 14 Investor FOAs but the Arbitrator did not take up the offer.[96]

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90 [DDI]-3(F), at pp 999–1004.

91 Applicant's Written Submissions, at para 42.

92 Final Award ([DDI]-1), at para 198.

93 Final Award ([DDI]-1), at para 199.

94 Applicant's Written Submissions, at para 44.

95 Applicant's Written Submissions, at para 47.

96 Applicant's Written Submissions, at para 48.

(b) Whether the co-investors had made payment under the 14 Investor FOAs was not an issue and the claimant and his witness (the representative of Company DA's bookkeeping services provider) were not cross-examined on the same.[97] The applicant had offered to provide the Arbitrator with bank records for the payments but this was not taken up.[98]

84 In my view, even if the Arbitrator had breached the fair hearing rule in connection with her findings relating to the 14 Investor FOAs, the applicant has not established that the breach has actually altered the final outcome of the Arbitration in some meaningful way. A finding that the 14 Investor FOAs were authentic would not have altered the Arbitrator's conclusions that the applicant had not proved Company DA's ownership of the Jewellery or that the Jewellery was not worth what the applicant claimed, for the following reasons:

(a) The main reason for the Arbitrator's conclusion that the applicant had not proved Company DA's ownership of the Jewellery was that the person who was supposed to have injected the Jewellery as an asset into Company DA did not own the Jewellery.[99] In addition, the Arbitrator also rejected the 14 Investor FOAs as evidence because they were "self-serving documents".[100]

(b) It is also clear that the Arbitrator was not persuaded that the 14 Investor FOAs were evidence as to the value of the Jewellery. In para 197 of the Final Award, the Arbitrator expressly found that even if the

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97 Applicant's Written Submissions, at para 51.

98 Applicant's Written Submissions, at para 54.

99 Final Award ([DDI]-1), at para 186.

100 Final Award ([DDI]-1), at para 198.

14 Investor FOAs were genuine, that did not mean by extrapolation that the Jewellery was worth US$10m.

Whether the Arbitrator breached the rule against bias

85 The applicant alleged that the Arbitrator had displayed apparent bias against him. The applicant alleged that the Arbitrator had predetermined material issues adversely against him and that she harboured a preconceived and misguided view that he was selling synthetic gemstones (which to her were "fake") to unwitting investors.[101]

86 The applicant submitted that the following evidenced the Arbitrator's alleged bias and/or apparent bias:

(a) the Arbitrator had prejudged and was biased against laboratory-grown gemstones;

(b) the Arbitrator descended into the arena to elicit evidence to validate her views;

(c) the Arbitrator imposed her personal views on celebrity status; and

(d) the Arbitrator prejudged other issues.

87 It is worth emphasising at this juncture that:

(a) to establish prejudgment amounting to apparent bias, the applicant must show that there is a reasonable suspicion that the Arbitrator reached a final and conclusive decision before being made

101 Applicant's Written Submissions, at para 3.

aware of the evidence and arguments, such that she approached the matter with a closed mind; and

(b) an open mind does not mean an empty mind; prejudgment cannot be made out solely because tentative views were expressed during exchanges with counsel.

See [55] above.

Whether the Arbitrator prejudged and was biased against laboratory-grown gemstones

88 The applicant alleged that the Arbitrator had formed her view "from the very get-go" that comparing naturally-mined gemstones with laboratory-grown ones was not "comparing like with like", that she viewed laboratory-grown gemstones as being "fake" gemstones, and that there was no basis for the applicant to peg the price of the Jewellery (set with a laboratory-grown gemstone) to naturally-mined gemstones.[102] The applicant submitted that the Arbitrator's preconceived view of a man-made gemstone being "fake" sealed her mind from the evidence presented by the applicant.[103] I disagree with the applicant's submission.

89 The applicant made several allegations against the Arbitrator in support of his submission that the Arbitrator had "sealed her mind" from the applicant's evidence.

90 First, the applicant alleged that the Arbitrator was "not interested" in understanding his approach to pricing because she refused to consider his

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102 Applicant's Written Submissions, at para 18.

103 Applicant's Written Submissions, at para 19.

evidence regarding a certain company ("Company DD").[104] In my view, the evidence does not support the applicant's allegation. The applicant has taken the Arbitrator's words out of context. The unofficial transcripts show that:[105]

(a) the Arbitrator had questioned the applicant whether he was "comparing like with like" after the applicant referred to a naturally-mined gemstone with a similar saturation that had apparently been known to fetch over $2 million in the past;

(b) in his answer, the applicant went on to explain his approach to pricing and referred to Company DD;

(c) the Arbitrator then asked the applicant to focus on the question (*ie*, whether he was "comparing like with like") and it was in that context that she said she was "not interested in [Company DD]";

(d) the applicant went on to explain his approach to pricing and the comparisons he was making; the Arbitrator did not stop him.

91 Second, the applicant accused the Arbitrator of being impervious to any view other than her own pre-set judgment because the Arbitrator (a) "interrupted" his expert to point out that his expert was "not comparing like with like", and (b) concluded in para 207 of the Final Award that it was "absurd" of his expert to compare the Jewellery with a rare stamp since a synthetic gemstone could be bought off the shelf be easily duplicated in a laboratory.[106] This allegation is unmeritorious. The Arbitrator was obviously troubled with the comparison between natural and synthetic gemstones. I do not see anything

104 Applicant's Written Submissions, at para 19.

105 Applicant's Written Submissions, Annex A, at s/n 305–310.

106 Applicant's Written Submissions, at para 20.

wrong in the fact that she expressed her view to the expert that he was not comparing like with like. It was for the expert to explain and justify his opinion. As for the Arbitrator's conclusion in para 207 of the Final Award, that can hardly be said to establish prejudgment.

92 Third, the applicant submitted that the Arbitrator was unable to grasp the concept of how endorsement by a celebrity would garner a higher price for any item regardless of its intrinsic value and refused to listen to his expert witness.[107] In my view, the applicant has not shown evidence of the Arbitrator's refusal to listen to his expert. The fact that the Arbitrator disagreed with or was not persuaded by the expert does not mean that she refused to listen.

93 Fourth, the applicant alleged that the Arbitrator usurped the experts' role. I disagree with the applicant's allegation.

(a) The unofficial transcripts show that:[108]

(i) the applicant's expert said that the Jewellery was a rare piece which fell under the same asset class as a Picasso painting;

(ii) the Arbitrator reminded him that the Gem was synthetic whereas a Picasso was a Picasso and stated her view that the applicant's expert has to moderate his opinion as he was not comparing like with like.

The applicant submitted that the Arbitrator "warned" his expert to moderate his opinion and "accept her view", as though she was an expert

107 Applicant's Written Submissions, at para 21.

108 Applicant's Written Submissions, Annex C, at s/n 1216–1217.

in valuation.[109] I disagree. The applicant's interpretation of the evidence is not justified on the evidence. The Arbitrator may have been robust in challenging the expert's view but that does not justify the submission that she warned him to accept her view or that she usurped his role.

(b) The unofficial transcripts show that:[110]

(i) the applicant's expert was asked about the raw cost of a 1-cent stamp that was sold for millions of dollars; and

(ii) the Arbitrator said that she knew about the 1-cent stamp, that it was one of a kind and that she used to collect stamps.

The applicant submitted that the Arbitrator had usurped the experts' role.[111] I cannot see how the Arbitrator's statement means that she was usurping the expert's role. The expert was free to disagree with the Arbitrator's view that the transaction involving the stamp was "one of a kind".

(c) The official transcripts show that during the exchange between the Arbitrator and the applicant's expert, the Arbitrator commented "It doesn't help me, does it?".[112] The applicant picked on this phrase and alleged that the Arbitrator was dismissive of his expert's evidence, supplanting his expert's view instead of seeking clarifications.[113] In my view, the applicant's allegation has no merit. The relevant extract of the

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109 Applicant's Written Submissions, at para 25.

110 Applicant's Written Submissions, Annex D, at s/n 528, 533–534.

111 Applicant's Written Submissions, at para 28.

112 Applicant's Written Submissions, Annex D (Respondents), at line 14.

113 Applicant's Written Submissions, at para 28.

official transcripts does not show the full context but the unofficial transcripts show the following:[114]

(i) the applicant's expert gave the example of how certain curtains were transacted at more than four times their value because of what the curtains were used for;

(ii) the Arbitrator noted that there was nothing in his report or attachments about these curtains and so she had no materials to go on;

(iii) the expert confirmed that he did not attach any such materials to his report; and

(iv) the Arbitrator then made the comment that it did not help her.

I do not see how this is of any assistance to the applicant's case. The Arbitrator was dismissive of the applicant's expert's evidence in respect of the curtains and for perfectly good reason.

94 In my view, the applicant has not shown that the Arbitrator had closed her mind to the evidence presented by the applicant in the Arbitration. I also note that the Arbitrator expressed her view that she did not think the applicant was comparing like with like but told him that he could disagree and then asked him again whether it was a like with like comparison.[115] This shows that the Arbitrator had not approached the matters at hand with a closed mind.

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114 Applicant's Written Submissions, Annex D, at s/n 528–536.

115 Applicant's Written Submissions, Annex A, at s/n 309.

Whether the Arbitrator descended into the arena to elicit evidence to validate her views

95 This issue relates to the "excessive judicial interference" ground, which guards against the risk of a fair trial being compromised because of the failure of a decision-maker to observe his proper role and his duty not to descend into the arena. The question is not about the impressions that a fair-minded observer might have. Rather, the applicant has to demonstrate that the manner in which the Arbitrator acted was such as to impair her ability to evaluate and weigh the case presented by each side: *BOI* at [112] (see [55] above).

96 The applicant's first allegation against the Arbitrator related to an exchange between the Arbitrator and the applicant's expert. The official transcripts of the Arbitration show the following exchange ("RC" refers to the respondents' counsel and "AE" refers to the applicant's expert):[116]

> RC: … what is [Company DH]? …
>
> AE: It's a retail, retail store, retail front.
>
> ARBITRATOR: Retail store selling what sort of [gemstones]?
>
> AE: Yes, it's selling [gemstones]. Yeah, mainly [gemstones].
>
> ARBITRATOR: What sort of [gemstones], Mr [AE]? Listen to my question. Natural, lab-produced?
>
> AE: Lab, lab [gemstones]. Lab-grown [gemstones].
>
> ARBITRATOR: Yes. Anything to add? I need to ask [the respondents' expert] a question.
>
> AE: No. Their [gemstones] are appealing to the mass market. Again, it's of no comparables to what we are referring to, the [Gem], in this aspect. And if you ---- on the side, if you Google to look for something similar, you won't be able to find it online, the [Gem].

116 [DDI]-3(F), at pp 863:14–864:11.

> ARBITRATOR: It's like the [Celebrity BA] jewellery that I asked earlier of [the respondents' expert], isn't it? These are mass market products. In other words, you are comparing champagne with Coke. Am I right?
>
> AE: Yes, your Honour.

97 In para 203 of the Final Award, the Arbitrator referred to the above exchange and stated that the applicant's expert had agreed that comparing natural gemstones to synthetic ones would be like comparing "champagne with Coke".

98 The applicant alleged that:[117]

(a) the Arbitrator sought to obtain a concession from his expert that comparing natural gemstones with laboratory-grown ones would be like "comparing champagne with Coke"; and

(b) in her single-mindedness to show that the applicant's expert had accepted her views, she misinterpreted his evidence and concluded that he had accepted that the expression "comparing champagne with Coke" referred to a comparison between naturally mined gemstones and laboratory-grown gemstones; according to the applicant, his expert's concession was in relation to Celebrity BA's line of jewellery which was made from different materials compared to the Jewellery.

99 In my view, the evidence does not support the applicant's allegations. With respect to the allegation in [98(a)] above, the Arbitrator sought clarifications of the applicant's expert's evidence. It can hardly be said that the

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117 Applicant's Written Submissions, at para 32.

Arbitrator descended into the arena to obtain a concession from the applicant's expert.

100 With respect to the allegation in [98(b)] above, the applicant did not substantiate his submission that his expert's concession was related to jewellery made from other materials. Further, it is not clear what the Arbitrator had asked the respondents' expert earlier in relation to the Celebrity BA jewellery; the applicant has not explained what that evidence was about. The applicant's expert could very well have been conceding to a comparison between natural and synthetic gemstones. The most that can be said in the applicant's favour is that the evidence is not clear. At any rate, even if the Arbitrator was wrong in her view as to what the applicant's expert had agreed to, that is an error in fact-finding which is irrelevant to this setting-aside application.

101 The applicant's second allegation related to another exchange between the Arbitrator and the applicant's expert relating to the latter's valuation of the Jewellery. In his report, the applicant's expert had applied a reduction of 25% to the price of natural gemstones to derive the value of synthetic gemstones.[118] The official transcripts show the following exchange between the Arbitrator and the applicant's expert:[119]

> ARBITRATOR: Why the magic figure 25 per cent?
>
> A: … I would give a very conservative price, conservative number of 25 per cent for the fact that this is … not a mass-market kind of business.
>
> ARBITRATOR: What I'm saying is, you don't have a scientific basis for your 25 per cent, do you?
>
> A: No. Yes.

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118 [DDI]-3(E), at p 145–146 (para 31) and p 375 (para 33).

119 Applicant's Written Submissions, Annex C (Respondent) (at lines 1–13).

> ARBITRATOR: It is arbitrary, is what you agreed? As I say to you, it could be 35, it could be 40 per cent. So why the magic number of 25 and not any other percentage?
>
> A: Okay. So that is based on my own assessment and my valuation.

102 The applicant complained that the Arbitrator cursorily dismissed his expert's explanation of his approach in pricing the Jewellery, by suggesting to him that it was a "magic figure" or an "arbitrary" figure.[120] Again, it is necessary to consider the context. The respondents' expert had taken issue with the applicant's expert's methodology, pointing out (among other things) that it was not clear where the 25% figure came from.[121] The applicant's expert agreed that there was no scientific basis for the 25% figure and did not take issue with the Arbitrator's description of the 25% figure as arbitrary (see [101] above). He merely said that it was "based on his own assessment". In my view, the applicant has no cause for complaint.

103 In para 203 of the Final Award, the Arbitrator described the applicant's expert's valuation of the Jewellery as "unscientific, arbitrary and above all absurd" and said that it "suffers from the fundamental flaw of comparing a laboratory-grown [gemstone] with naturally mined [gemstones] …". The applicant complained that the Arbitrator misinterpreted the applicant's expert's evidence because the latter had recognised that the general market perception that laboratory-grown gemstones are less valuable than natural ones was a factor which should be taken into account.[122] That may be so but the applicant's expert did compare laboratory-grown gemstones with naturally-mined ones. The

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120 Applicant's Written Submissions, at para 33.

121 Respondents' Expert's Report, at para 33 ([DDI]-3(E), at p 375 (para 33)).

122 Applicant's Written Submissions, at para 33.

Arbitrator was simply pointing out that, in her view, it was a fundamental flaw to do. There is nothing in the Arbitrator's statement that suggests that she misinterpreted the applicant's expert's evidence.

104 In para 205 of the Final Award, the Arbitrator stated that the applicant's expert had agreed that his 25% discount was arbitrary and had no scientific basis. The applicant submitted that there was no such agreement by his expert and that the Arbitrator's statement was the result of her "own hardened views".[123] I reject the applicant's submission. It is wholly unmeritorious. The Arbitrator's statement is supported by the evidence (see [101] above).

105 The applicant's third allegation related to certain questions that the Arbitrator asked the respondents' expert in relation to a certain Company DD. The applicant's expert had referred to Company DD as one of the world's market leaders in manufacturing laboratory-grown gemstones and to a statement made by Company DD that laboratory-grown gemstones cost the same as mined gemstones.[124] The unofficial transcripts show that:[125]

(a) the Arbitrator asked the respondents' expert about Company DD and the respondents' expert said he did not know about the company;

(b) the Arbitrator then asked if it was not well known in the industry, regardless of whether it was for synthetic or natural gemstones;

(c) the respondents' expert said the company was just founded in 2013;

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123 Applicant's Written Submissions, at para 33.

124 [DDI]-3(E), at p 88 (para 301).

125 Applicant's Written Submissions, Annex G, at s/n 639–644.

(d) the Arbitrator then asked if the respondents' expert would put Company DD on the same level as [Company DE] or [Company DF] which were famous in the industry;

(e) the respondents' expert answered he would not because [Company DE] and [Company DF] were too far away and had more than 130 years.

106 The applicant complained that the Arbitrator's questions were clearly leading questions designed to elicit affirmative answers from the respondents' expert to solidify her preconceived views.[126]

107 No doubt, it would have been preferable if the Arbitrator had asked open questions rather than leading questions. However, the mere fact that leading questions were asked does not necessarily lead to the conclusion that the Arbitrator was biased.

108 The crucial question in respect of the applicant's allegations remains whether the Arbitrator's conduct was such as to impair her ability to evaluate and weigh the case presented by the parties. The threshold is a high one. I am not satisfied that the applicant's allegations cross this threshold. The Final Award should be read generously such that only meaningful breaches of the rules of natural justice (including the rule against bias) that have actually caused prejudice are ultimately remedied (see [51] above).

109 The applicant also submitted that:[127]

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126 Applicant's Written Submissions, at para 35.

127 Applicant's Written Submissions, at para 34.

(a) the Arbitrator completely disregarded the applicant's expert's reference to an article (published on a well-known financial news website) stating that laboratory-grown gemstones cost the same as mined gemstones; and

(b) yet, in para 204 of the Final Award, to support her view that natural gemstones are not on par with their synthetic counterparts, the Arbitrator relied on a statement in the same article about how natural gemstones are made.

The applicant submitted that this demonstrated bias as the Arbitrator utilised evidence selectively to validate her views.

110 I reject the applicant's submission. The applicant's submission is misleading. The statement in the article that laboratory-grown gemstones cost the same as mined gemstones was a statement made by Company DD which was then reported in the article.[128] The statement that the Arbitrator had relied on was a statement made by the author of the article.[129] There is nothing inconsistent in the Arbitrator's treatment of the article. Further, the respondents' expert testified that Company DD could not be compared to two well-known companies in the industry (see [105(a)] above). The Arbitrator was entitled to disregard the statement made by Company DD and even if she was wrong in doing so, that is an error which is irrelevant to this setting-aside application.

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128 [DDI]-3(D), at p 4AB-31.

129 [DDI]-3(D), at p 4AB-29.

Whether the Arbitrator imposed her personal views on celebrity status

111 The unofficial transcripts show an exchange between the Arbitrator and the applicant's expert during which:[130]

(a) the Arbitrator asked the applicant's expert whether he accepted that Celebrity BA was not as bankable a star as, for example, Julia Roberts and the applicant's expert agreed;

(b) the Arbitrator then asked the applicant's expert whether he wanted to temper his view about the celebrity status of the Jewellery with some reality;

(c) the Arbitrator then commented that in the greater scheme of things, Celebrity BA was a celebrity in inverted commas.

112 The applicant submitted that the Arbitrator sought to impose her own personal views on his expert and that she "warned" his expert to temper his views with reality.[131] I disagree. The Arbitrator asked the applicant's expert whether he agreed that Celebrity BA was as bankable as, for example, Julia Roberts. The expert agreed although it was clearly open to him to disagree. In that context, the Arbitrator commented that the applicant's expert should temper his view about Celebrity BA's celebrity status with reality. The Arbitrator did not mince words but that does not mean that she sought to impose her own views or to warn the applicant's expert against maintaining his view.

130 Applicant's Written Submissions, Annex H, at s/n 1354–1359.

131 Applicant's Written Submissions, at para 36.

113 The unofficial transcripts also show that the Arbitrator had referred to another actress and stated that she knew this other actress personally.[132] The applicant submitted that the Arbitrator had attempted to rank the celebrity status of Celebrity BA against the actress whom she knew personally.[133] The applicant's submission mischaracterises the evidence. The Arbitrator mentioned the other actress as someone who had acted in a role similar to one that Celebrity BA was known for. The Arbitrator's comment that she knew this other actress personally was neither here nor there.

114 Next, the applicant submitted that the Arbitrator completely missed the point that his expert was not ranking celebrities or valuing the Jewellery based on the subjective bankability of a celebrity, and that the Arbitrator misunderstood his expert's views.[134] The applicant submitted that his expert was simply demonstrating that the celebrity endorsement of an item could significantly enhance the value of the item. I disagree. It is clear from the applicant's expert's report that he relied on the endorsement by Celebrity BA as one of four factors considered by him in his valuation of the Jewellery.[135] The extent to which the endorsement by Celebrity BA could support his valuation was clearly in issue. In any event, even if the Arbitrator misunderstood the applicant's expert's point, that is an error that is irrelevant to this setting-aside application.

115 In his oral testimony, the respondents' expert referred to a necklace which had belonged to a well-known personality in Singapore and that was

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132 Applicant's Written Submissions, Annex H, at s/n 1358–1358B.

133 Applicant's Written Submissions, at para 37.

134 Applicant's Written Submissions, at para 38.

135 [DDI]-3(E), at p 142 (para 7).

auctioned off for about ten times its actual value. The unofficial transcripts show that:[136]

(a) the respondents' expert agreed with the applicant's counsel that the price fetched at the auction was due to the personality involved;

(b) the Arbitrator noted that the necklace was auctioned off for charity and that that was another factor;

(c) the *applicant's counsel* agreed that charity was a factor and asked the respondents' expert whether the personality involved was a huge factor; and

(d) the respondents' expert said that the personality involved was one of the factors.

The applicant alleged that the Arbitrator rejected outright the concept of a celebrity causing an enhancement of the price even though the respondents' expert accepted it as a factor.[137] The applicant submitted that nothing could change the Arbitrator's views which were already set in stone. In my view, the premise for this submission is wrong. The Arbitrator had merely pointed out that in the example of the necklace, the fact that it was auctioned off for charity was *another* factor, to which the applicant's counsel had agreed. There is simply no evidence or basis for the applicant's submission that the Arbitrator had rejected outright the concept that the involvement of a celebrity could enhance the value of an item. At most, the Arbitrator disagreed with the applicant and his expert as to the celebrity status of Celebrity BA.

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136 Applicant's Written Submissions, Annex I, at s/n 1092–1110.

137 Applicant's Written Submissions, at para 40.

Whether the Arbitrator had prejudged other issues

116 The unofficial transcripts show that:

(a) During the applicant's opening in the Arbitration, the Arbitrator indicated to the applicant's counsel that she may have some questions for the applicant regarding the Safe Agreement.[138]

(b) During cross-examination of the applicant:[139]

(i) the respondents' counsel asked the applicant what he thought the Joint Authorization Form meant;

(ii) the applicant explained that the Joint Authorization Form came after the document which he signed (*ie*, the Storage & Services Agreement);

(iii) the Arbitrator told the applicant that she would be taking him to the Storage & Services Agreement and asked him to answer counsel's question, and

(iv) the applicant then said that his understanding was that he and his sole proprietorship were granting the first respondent access to the Safe.

117 The applicant alleged that after re-examination of the applicant was completed, the Arbitrator asked the applicant whether he had expressly told the first respondent about the terms and conditions to determine if the same was brought to the first respondent's attention.[140] The applicant alleged that the

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138 Applicant's Written Submissions, Annex Q, at s/n 90–91.

139 Applicant's Written Submissions, Annex R, at s/n 187–202.

140 Applicant's Written Submissions, at para 56(a).

Arbitrator had decided on this line of questioning right from the start and undertaken an inquisitorial role that went beyond discharging her judicial function, in questioning the applicant.

118 One of the documents in the Arbitration was an agreement under which Business DB agreed to purchase an "exclusive dining experience" which included the Jewellery, and to immediately inject the Jewellery as an asset to Company DA.[141] During the Arbitration, the respondents' counsel thought this was difficult to understand and that it was confusing that Company DA was not a party to the agreement. The Arbitrator then described this as a "full circle. I buy the [Jewellery]. I buy the experience, and I put it back into a company that belongs to you".[142] In the Final Award at para 227, the Arbitrator said that the "question of round tripping did occur to her" but that she made no comment or finding on the issue as it was neither necessary nor relevant. The applicant submitted that the issue of whether the applicant was party to a round tripping scheme clearly weighed on her mind from the very start of the Arbitration.[143]

119 The applicant submitted that the above instances showed that the Arbitrator had formed preconceived views against the applicant and that her questions were designed to elicit answers to validate her view that the entire transaction was a scam/fraud.[144] I disagree. The evidence does not support the applicant's submission.

120 I see nothing wrong with the fact that the Arbitrator, having read the documents, had some questions in mind and wanted to raise them with the

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141 [DDI]-3(C), at p 3AB-218.

142 Applicant's Written Submissions, Annex S (Respondent), at 666:7–25.

143 Applicant's Written Submissions, at para 56(b).

144 Applicant's Written Submissions, at para 56.

applicant. The question as to whether the applicant had told the first respondent about the terms and conditions in the Storage & Services Agreement was a relevant question. I also do not see why doing so means that the Arbitrator undertook an inquisitorial role beyond her judicial function. The Arbitrator was entitled to ask the applicant questions to clarify the evidence relating to the applicant's authority to access the Safe.

121 As for the Arbitrator's comments about round tripping, the Arbitrator was cognisant that the issue of round-tripping was not relevant to its determination of the case. The Arbitrator expressly stated that she made no comment or finding. It is a stretch to say that the Arbitrator's comment about round tripping weighed on her mind from the very start of the Arbitration or that her comment somehow evidences her preconceived views against the applicant.

Conclusion

122 For the reasons stated above, I dismiss the applicant's application to set aside the Final Award. I order the applicant to pay costs to the respondents fixed at $25,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Ho Pei Shien Melanie, Chang Man Phing Jenny, Tang Shangwei (Zheng Shangwei) and Goh Sher Hwyn, Rebecca (WongPartnership LLP) for the applicant;
Devathas Satianathan, Yeo En Fei, Walter and Thawdar Soe Moe @ The Sandi Tun (Rajah & Tann Singapore LLP) for the first respondent and the second respondent.
