IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 83

Suit No 709 of 2019

Between

(1) Raffles Education Corporation Limited
(2) Raffles Education Investment (India) Pte Ltd
(3) Raffles Design International India Pvt Ltd

… *Plaintiffs*

And

(1) Shantanu Prakash
(2) Lui Yew Lee Dennis Paul

… *Defendants*

JUDGMENT

[Conflict Of Laws] — [Natural forum]
[Tort] – [Conspiracy]
[Tort] – [Misrepresentation] – [Fraud and deceit]

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v
Shantanu Prakash and another

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High Court — Suit No 709 of 2019 (Summonses Nos 3947 and 4432 of 2019)
Audrey Lim J
8 November 2019, 12 February, 6 April 2020

28 April 2020 Judgment reserved.

Audrey Lim J:

1 These are the defendants' applications to stay Suit 709 of 2019 ("Suit 709") on the grounds of *forum non conveniens*.

Background

2 The first plaintiff, Raffles Education Corporation Limited ("P1"), is a Singapore company and wholly owns the second plaintiff, Raffles Education Investment (India) Pte Ltd ("P2"), a Singapore company, and the third plaintiff, Raffles Design International India Pvt Ltd ("P3"), an India company. The plaintiffs are private education providers and will be collectively referred to as the Raffles Education Group ("REG") or the Plaintiffs in this judgment.

3 The first defendant, Shantanu Prakash ("D1"), is an Antiguan national and a Singapore permanent resident. He is the founder of the Educomp group of companies ("Educomp Group"), which includes: (a) Educomp Solutions Ltd

("Educomp Solutions"), a publicly-listed India company; (b) Educomp Asia Pacific Pte Ltd ("Educomp Asia"), a Singapore company; (c) Educomp Professional Education Limited ("Educomp Professional"), an India company; and (d) Edulearn Solutions Limited ("Edulearn"), a BVI company.[1] Educomp Asia and Educomp Professional are wholly owned by Educomp Solutions, whilst Edulearn is owned by the second defendant, Dennis Lui ("D2").[2] D2 is a Singapore lawyer and Singapore citizen; a director of Educomp Asia and Edulearn at the material time; and a shareholder of Edulearn.[3] D1 and D2 will be collectively referred to as the Defendants in this judgment.

JVA and ERHEL

4 On 16 May 2008, P1 and Educomp Solutions entered into a joint venture agreement ("the JVA") to establish and run higher education institutions in India. They were to hold equal shares in the joint venture entities established in India for this purpose. They subsequently incorporated Educomp-Raffles Higher Education Limited ("ERHEL") in India as their joint venture vehicle. P2 and P3 jointly held REG's interests in ERHEL.[4]

Noida College and the JRRES SPA

5 The Jai Radha Raman Education Society ("JRRES") is a private non-profit society in the business of running educational institutions. Pursuant to its

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1 D1's 1st affidavit dated 7 September 2019 ("D1's 1st Affidavit") at para 6.

2 Agreed List of Directors and Shareholders, S/Ns 5, 6 and 9.

3 D2's 1st affidavit dated 6 August 2019 ("D2's 1st Affidavit") at paras 1, 6 and 7; Agreed List of Directors and Shareholders, S/N 9.

4 Rick John Tham's 1st affidavit dated 3 September 2019 ("John's 1st Affidavit") at para 11(a) and p 208–211; D1's 1st Affidavit at paras 16 and 17 and pp 73–108.

rules and regulations, the JRRES shall have a maximum of 16 members ("JRRES General Body"), from whom a governing body of up to 10 members ("JRRES Governing Body") shall be drawn.[5]

6 On 1 July 2009, ERHEL and JRRES entered into a loan agreement whereby ERHEL loaned JRRES INR500 million for JRRES to establish Noida College in the Greater Noida Area in India.[6] According to the Plaintiffs, the loan was disbursed to JRRES in 2009 by P1 / REG. Subsequently, the loan agreement was amended to provide for an additional loan facility of INR100 million (which was provided by P1 / REG).[7]

7 The construction of Noida College lacked funds and fell behind schedule. In January 2010, ERHEL incorporated Millennium Infra Developers Limited ("MIDL"), its wholly owned subsidiary. In February 2010, MIDL and JRRES entered into an agreement, whereby MIDL took over the construction of Noida College for a fee. Noida College was completed in 2011 and started operations thereafter.[8]

8 In around 2013 or 2014, P3 entered into a sale and purchase agreement to purchase JRRES's 99-year lease over the land in the Greater Noida Area ("the JRRES SPA") for INR3 billion, of which P3 was required to pay an advanced sale consideration to JRRES of INR180 million in three tranches until September 2014.[9]

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5 SOC Amd 1 at para 17.

6 D1's 1st Affidavit at paras 18–19 and pp 110–132.

7 SOC Amd 1 at para 18(b).

8 D1's 1st Affidavit at para 20 and pp 134–148; SOC Amd 1 at para 18(c)(iii).

9 D1's 1st Affidavit at para 21; SOC Amd 1 at paras 8(c) and 18(d).

SPA and BAA

9 On 12 March 2015, P2 and P3 entered into a share purchase agreement with Educomp Asia and Educomp Professional to purchase the latter's stake in ERHEL for INR986.4 million ("the SPA").[10] The SPA involved the following:[11]

(a) P2 and P3 paying an upfront deposit of 10% of the purchase price and being allowed thereafter to take control of ERHEL and JRRES;

(b) P2 and P3 assuming responsibility for the funding of the operation of the joint venture entities;

(c) Educomp Asia and Educomp Professional procuring the resignation of their nominees in JRRES's General Body (including D1);

(d) D1 resigning as JRRES's president.

10 In conjunction with the SPA, P2 and Edulearn executed a business advisory agreement ("the BAA") on 12 March 2015 for the provision of advisory services by Edulearn (through its board of directors including D1) to P2 for a consideration of INR100 million. On the same date, D2 (in his capacity as Edulearn's solicitor) provided P2 with an undertaking, *inter alia*, confirming that D1 had been appointed director of Edulearn from 10 February 2015.[12]

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10 SOC Amd 1 at para 22.

11 John's 1st Affidavit at para 11(e) and pp 217–259.

12 John's 1st Affidavit at paras 11(f)–11(g) and pp 260–267.

Breach of SPA and SIAC Award

11 Pursuant to the SPA, Educomp Asia and Educomp Professional were required to satisfy certain conditions precedent before the execution of the transfer of shares, particularly the delivery of the completion documents required under clauses 4.1, 4.3 and 4.4 of the SPA. This was not done.[13] In September 2015, P2 and P3 commenced arbitration in Singapore against them for breaches of the SPA. On 31 March 2017, the arbitral tribunal held in favour of P2 and P3 and awarded them damages of INR163.2 million ("the SIAC Award").[14]

Proceedings in India

12 The Noida College closed in November 2017.[15] Between 2017 and 2018, the Plaintiffs commenced various proceedings in India ("the Parallel Proceedings"), which I will elaborate on later.

Plaintiffs' claim in Suit 709

13 On 15 July 2019, the Plaintiffs commenced Suit 709 against the Defendants for the torts of conspiracy, fraudulent misrepresentation and misrepresentation under s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act").

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13 D1's 1st Affidavit at paras 25–26.

14 D1's 1st Affidavit at para 27.

15 SOC Amd 1 at para 33.

Conspiracy to injure the plaintiffs

14 The Plaintiffs claimed that the JVA envisaged that each party would share equally in the financing of the joint venture entities. However, the Educomp Group started defaulting on their obligation to make equal contributions and the burden of funding fell increasingly on the Plaintiffs. When P1 approached D1 to rationalise this mismatch, the Plaintiffs alleged that the "Conspiring Parties" – who were initially stated in the Plaintiffs' Statement of Claim ("SOC") to be D1, D2 and/or associates of D1 and/or the Educomp Group (or any two or more of them together) – began to conspire and devise a plan through which the Plaintiffs would be misled into believing that Educomp Solutions / the Educomp Group were agreeable to a buy-out of the latter's stake in the joint venture even though they had no intention to do so. This is so that the Plaintiffs would continue to fund the joint venture exclusively while D1 would continue to retain control of JRRES and Noida College ("the Conspiracy").[16] The Plaintiffs alleged three main conspiracies on the Defendants' part: the "SPA conspiracy", the "BAA conspiracy", and a conspiracy to engage in wrongful conduct *vis-à-vis* JRRES and Noida College (see [15]–[19] below). It should be noted that the Plaintiffs subsequently amended their SOC to remove the associates of D1 and Educomp Group as part of the Conspiring Parties – a matter I will return to later.

SPA conspiracy and representations

15 The Plaintiffs claimed that, from in or around late 2014, in furtherance of the Conspiracy, the Defendants made the following false representations to induce P2 and P3 to enter into the SPA with Educomp Asia and Educomp

16 SOC Amd 1 at paras 19–20.

Professional, which the Defendants never intended for Educomp Asia and Educomp Professional to comply with and did subsequently induce Educomp Asia and Educomp Professional to breach (the "Pre-SPA Representations"):[17]

> (a) Educomp Solutions and/or the Educomp Group would give up their stake in or control of the joint venture entities (including ERHEL and JRRES);
>
> (b) Educomp Solutions and/or the Educomp Group were in a position to, and would, ensure that complete control over JRRES would be ceded to the Plaintiffs following their exit from the joint venture. Specifically, they were able to procure the resignations of their nominee members in the JRRES Governing Body and JRRES General Body and to provide for the Plaintiffs' nominees to take over those positions.

16 Following the execution of the SPA (and contrary to it), P2 and P3 continued to fund the joint venture exclusively while D1 continued to retain control of JRRES by refusing to resign as JRRES's president.

BAA conspiracy and representations

17 The Plaintiffs also claimed that, in furtherance of the Conspiracy, the Defendants made the following false representations to induce P2 to enter into the BAA with Edulearn (in conjunction with the SPA), which the Defendants never intended Edulearn to comply with and did subsequently induce Edulearn to breach (the "Pre-BAA Representations"):[18]

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17 John's 1st Affidavit at paras 11(d)–11(e); SOC Amd 1 at paras 21–22.

18 John's 1st Affidavit at para 11(f); SOC Amd 1 at para 27.

(a) the Defendants and/or Educomp Asia and/or Educomp Professional would take steps to ensure that closing under the SPA would materialise;

(b) Edulearn would abide by the terms of the BAA, specifically, cl 3.2.5.1, which required it to refund the initial 10% payment of INR10 million to P2 if closing under the SPA did not materialise due to Educomp Asia and Educomp Professional's default ("initial BAA payment").

18 Consequently, Edulearn, in breach of the BAA, retained the initial BAA payment for D1's benefit following non-completion under the SPA.

Wrongful conduct conspiracy

19 The Plaintiffs also claimed that the Conspiring Parties engaged in wrongful conduct *vis-à-vis* JRRES and Noida College by, *eg*, causing JRRES to default on its contractual obligations (including the repayment of loans extended to it by P1 / REG), its obligations under the JRRES SPA with P3, and its obligation to make payment to employees, faculty members and essential service providers of Noida College.[19] The Plaintiffs claimed that the conspiracy was achieved through unlawful means because the Defendants breached their duties as directors owed to Educomp Asia / Educomp Professional / Edulearn by participating in the conspiracy, and the conspiracy was brought about through fraudulent misrepresentations.[20]

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19 SOC Amd 1 at paras 8(c) and 40.

20 SOC Amd 1 at para 39.

20 The Plaintiffs claimed that they suffered the following losses:[21]

(a) the sums awarded to P2 and P3 in the SIAC Award, which remain unpaid by Educomp Asia and Educomp Professional;

(b) the initial BAA payment of S$221,080, which Edulearn had failed to refund;

(c) the advance sale consideration of INR140 million paid by P3 under the JRRES SPA, which has not been refunded to P3;

(d) the payments made by P3 (for and on behalf of JRRES) to ensure the continued operation and functioning of Noida College, which remains unpaid and owing to P3;

(e) time, money and effort expended to investigate, and/or to mitigate, the conspiracies;

(f) time, money and efforts expended to restore ERHEL and MIDL on the Indian Registry of Companies after they were struck off as a result of D1's / the Educomp Group's failure to grant approval of corporate compliance processes in India;

(g) the loans and funding extended by P1 / REG to JRRES.

Fraudulent misrepresentation

21 The Plaintiffs also pleaded that the Defendants are liable for fraudulent misrepresentation or, alternatively, misrepresentation under s 2 of the

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[21] SOC Amd 1 at para 42.

Misrepresentation Act for making the false Pre-SPA and Pre-BAA Representations to induce P2 and P3 to enter into the SPA, and to induce P2 to enter into the BAA.[22]

Parties' case on stay of proceedings

Defendants' position

22 D1 submitted that India is clearly the more appropriate forum to hear the action for the following reasons below (which D2 agreed with).[23]

23 First, the parties to the action are more closely connected to India.[24] P1's only involvement in the matter was to provide funds to ERHEL. Whilst P2 is a Singapore company and a party to the SPA and BAA, D1 submitted that P2 is only an investment holding company holding P1's business interests in India. P3 is an Indian company and carries on business solely in India. Furthermore, D1 is ordinarily resident in India and his business interests are in India.

24 Second, the key witnesses that D1 intends to call are located and compellable only in India and the Singapore court does not have the power to subpoena witnesses outside the jurisdiction. Hence, it would be deprived of key evidence and that would be prejudicial to D1's defence. The Plaintiffs, however,

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22 SOC Amd 1 at para 43.

23 D2's 1st Affidavit at paras 17–33; D2's Written Submissions dated 4 November 2019 ("D2WS") at paras 4, 5 and 10.

24 D1's 1st Affidavit at para 31; D1's 2nd affidavit dated 21 October 2019 ("D1's 2nd Affidavit") at paras 7–22.

are able to compel their witnesses, who are their employees and representatives, to give evidence if the proceedings were brought in India.[25]

25 Third, the Plaintiffs' claims are governed by Indian law, and their reliance on the Misrepresentation Act is misplaced as the Defendants are not parties to the SPA and BAA.[26] Further, the Plaintiffs' claims involve torts which occurred in India. The Defendants denied making the Pre-SPA and Pre-BAA Representations. Nevertheless, D1 submitted that the alleged representations, if made, would have been received and acted upon in India, as the negotiations that led to the SPA and BAA took place at a meeting on 29 October 2014 in India at Educomp Solutions' office in India ("2014 India Meeting"). This meeting was attended by Doris Chung, a director of P2 ("Doris"), and Sunil Peter ("Sunil"), who represented REG.[27] Moreover, the alleged Conspiring Parties are (with the exception of D2) all resident or based in India. Any agreements or combinations among them would necessarily have been formulated in India, and the place of the concerted acts or means in furtherance of such conspiracy would be India. The relevant events also concerned entities located in India, namely ERHEL, MIDL, JRRES and Noida College. The SPA was an agreement to transfer shares in ERHEL, while the BAA was an agreement for advisory services to be provided in India. Any wrongful conduct *vis-à-vis* JRRES and Noida College would have taken place in India. In addition, most of the losses suffered by the Plaintiffs were also in India.[28]

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25 D1's 1st Affidavit at paras 33, 35–36; D1's Written Submissions dated 4 November 2019 ("D1WS") at paras 53–54.

26 D1WS at para 64.

27 D1WS at paras 52(e)(i), 69–70; D1's 1st Affidavit at paras 39–40; D1's 2nd Affidavit at para 27 and pp 68–69.

28 D1WS at paras 79–88; D1's 1st Affidavit at paras 42–47.

26 Last, the Plaintiffs have commenced the Parallel Proceedings in India. These proceedings have a significant overlap of parties, issues and reliefs sought in Suit 709, giving rise to a risk of double recovery and conflicting judgments.[29]

Plaintiffs' position

27 The Plaintiffs submitted that India is not the more appropriate forum.

28 First, all the parties to the action are based in, or have substantial connections with, Singapore. P1 and P2 are incorporated in Singapore, and P3 is wholly owned by P1 and operates on P1's instructions. D1 is a Singapore permanent resident holding various directorships in Singapore companies and D2 is a Singapore citizen who resides and works in Singapore.[30]

29 Second, the JVA, SPA and BAA are governed by Singapore law, as stated in the respective agreements. The tort claims are closely connected with these contracts as they arose in the context of the JVA, and, but for the alleged Pre-SPA and Pre-BAA Representations, P2 and P3 would not have entered into the SPA and BAA.[31]

30 Third, the key elements of the Plaintiffs' actions arose mostly in Singapore. The Pre-SPA and Pre-BAA Representations were made in Singapore from late 2014 or early 2015 until and during the meetings held in Singapore from 11 to 13 March 2015 ("2015 Singapore Meetings") and matters concerning

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29 D1WS at paras 94–95; D1's 1st Affidavit at paras 50–51; D1's 2nd Affidavit at paras 44–45.

30 John's 1st Affidavit at para 16.

31 John's 1st Affidavit at para 18; Plaintiffs' Written Submissions dated 4 November 2019 ("1PWS") at para 47.

the SPA and BAA were never discussed by the parties in any India meeting. Rick John Tham (P1's Director of Legal) ("John") explained as follows.

(a) The negotiation meetings were held at the corporate offices of P2 in Singapore. As D2 stated:[32]

> … the negotiation meetings [concerning the SPA and BAA] [were] held throughout at the corporate offices of [P2] … It cannot be that [D2's] working on the draft agreements (the contents of which were finalised in consultation with [P2] and [P3] over 3 days of negotiation meetings between 11 March 2015 and 13 March 2015 and which were eventually agreed to and signed by the Plaintiffs) makes [D2] a conspirator.

(b) The SPA and BAA were drafted by D2, who is based in Singapore, and D2's solicitor's undertaking (see [10] above) was delivered to P2 by hand in Singapore.[33]

(c) The 2014 India Meeting, attended by Sunil representing REG, "did **not** form part of the negotiations leading to the SPA and BAA" because "the Educomp Group had only proposed *preliminary* terms for its exit from the [joint venture] at [the 2014 India Meeting] … As those proposed terms did not envisage the Educomp Group ceding control of JRRES (a key [joint venture] entity), [REG] did not proceed with any or any further negotiation / discussion with the Educomp Group on that basis" [emphasis in original]. The Minutes of Meeting of the 2014 India Meeting ("2014 Minutes") support this. The Plaintiffs claimed that "It was only later, in or around late 2014 / early 2015, that the Educomp Group … finally indicated its willingness to consider a fresh proposal

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32 D2's 1st Affidavit at para 11; John's 1st Affidavit at para 20(a).

33 John's 1st Affidavit at paras 20(b) and 20(c).

> that would include such ceding control over JRRES. Parties agreed thereafter to hold physical meetings in Singapore in early March 2015 between representatives from the Educomp Group and [REG] to discuss / negotiate *on that basis* the terms of the Educomp Group's exit from the [joint venture]" [emphasis in original]. These meetings in Singapore "were where the bulk of the substantive discussions relating to the Educomp Group's exit from the [joint venture] was conducted, where the Pre-SPA and Pre-BAA Representations were made and where the SPA and BAA were signed".[34]

31 In addition, the Plaintiffs suffered loss and damages mostly in Singapore, since the bulk of the funds disbursed in respect of the SPA or the BAA originated from P1, which is based in Singapore.[35]

32 Fourth, the key witnesses are all based in Singapore, namely D1, D2, Doris, John and Chew Hua Seng ("Chew"), who is P1's founder, chairman and chief executive officer. There was nothing to suggest that the non-party witnesses in India (whom D1 intended to call) would not be willing to attend trial in Singapore, and it is open to parties to apply for permission for any person whose evidence is material to be examined abroad.[36]

33 Fifth, P1 and the Defendants are not parties to the Parallel Proceedings, which concerned only P2, P3, D1 (in his capacity as JRRES's chairman and

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34 John's 3rd affidavit dated 6 November 2019 ("John's 3rd Affidavit") at para 7 and p 7.

35 John's 1st Affidavit at para 20(f).

36 John's 1st Affidavit at paras 22–23.

president) and Educomp Professional. Further, none of the claims or causes of action in the Parallel Proceedings overlap with those raised in Suit 709.[37]

Stay of proceedings – applicable legal principles

34 The test in determining whether Suit 709 should be stayed on the basis of *forum non conveniens* is well established – see *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [38], applying the seminal decision of the House of Lords in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*"). Under the first stage of the *Spiliada* test, the burden lies on the defendant to show that there is some other available forum which is "clearly or distinctly" more appropriate for the trial of the action (in this case, India) than Singapore. If the court concludes at this stage that there is some other available forum which *prima facie* is clearly more appropriate it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless be refused. For this second stage inquiry, the legal burden is on the plaintiff to establish the existence of the special circumstances. A decision on whether to grant a stay of proceedings is ultimately a discretionary one (*JIO Minerals* at [40]).

35 In *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo Tania*") at [70]–[72], the Court of Appeal held that, in the first stage of the *Spiliada* analysis, it is "the *quality* of the connecting factors that is crucial in this analysis, rather than the quantity of factors on each side of the scale" [emphasis in original]. These factors include: (a) the personal connections of the parties and the witnesses; (b) the connections to relevant events and transactions; (c) the applicable law of the dispute; (d) the

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[37] John's 1st Affidavit at para 24.

existence of proceedings elsewhere (*ie*, *lis alibi pendens*); and (e) the overall "shape of the litigation". However, the Court cautioned against a mechanistic application of the framework and emphasised that greater weight should be ascribed to the factors likely to be material to a fair determination of the dispute.

36 I consider the two most significant connecting factors in the present case to be, first, the place of the torts; and, second, the location, availability and compellability of witnesses (particularly the non-party witnesses). The place of the tort is *prima facie* the natural forum (*JIO Minerals* at [106]). Although this is only a *prima facie* position, it is a "significant" factor to be taken into account (*Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") at [40]). Before I turn to examine the factors, I deal with the issue of D1's residence (of which there was a dispute), as this is a material point in assessing the connecting factors.

D1's residence

37 D1 claimed that he is ordinarily resident in India, his business interests are in India and he spends only seven to eight days a year in Singapore. In fact, D1 attested on 21 October 2019 that he had "not travelled to Singapore in the past 14 months".[38] D1 supported his claim with an Aadhaar card ("Aadhaar Card"), issued by the Government of India, and his Overseas Citizenship of India card ("OCI Card") issued in Singapore which shows that he is registered as an "Overseas Citizen of India". D1 further claimed that his ability to travel out of India is "restricted" because of an order from the Debt Recovery Tribunal in Delhi dated 10 April 2019 ("Tribunal Order") that required him to inform the Tribunal before he travels abroad, and a Look Out Circular ("Look Out

[38] D1's 2nd Affidavit at paras 21–22.

Circular") has been issued on his passport by the Indian authorities to prevent and monitor his exit from India.[39]

38 Whilst D1's OCI Card shows that his registered address is a flat in Ang Mo Kio in Singapore ("AMK Flat"), D1 claimed that he did not reside there. Instead, the AMK Flat belonged to his friend who allowed him to use it as a correspondence address. D1 also asserted that, between 25 December 2014 and 5 December 2016, he had relinquished all of his directorships in the Singapore companies, and currently only remains a director of Educomp Intelliprop Ventures Pte Ltd ("Educomp Intelliprop"), which is a defunct company "with no trading activities" since 2016.[40]

39 I find that D1 has not discharged the burden of showing that he was ordinarily resident in India and not in Singapore at the material time when the alleged Pre-SPA and Pre-BAA Representations were made, when the alleged conspiracies occurred, when the SPA and BAA were executed or even now.

40 It is undisputed that D1 was and is still a Singapore permanent resident. This is *prima facie* evidence of his close connection to Singapore. No evidence was presented to me – not even a copy of D1's passport records – to show that D1 only spent "seven to eight days" a year in Singapore as he deposed.[41] Additionally, D1 was a director of various Singapore entities even until 2015/2016, the time of the alleged misrepresentations and acts of conspiracy.[42]

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39 D1's 1st Affidavit at paras 31(a)–31(c) and 37 and pp 722–725, 727.

40 D1's 2nd Affidavit at paras 16–20.

41 Notes of Evidence ("NE") (12 February 2020) at p 9 lines 26–29; p 10 lines 17–20.

42 Agreed List of Directors and Shareholders, S/Ns 5, 7, 14–18.

41 The Aadhaar Card was issued only on 25 June 2015, long after the SPA and BAA were executed on 12 March 2015. The Aadhaar Card expressly states that it is only a "proof of identity, not of citizenship", and the explanation on the Indian government website in relation to Aadhaar expressly states that "it does not confer any right of citizenship or domicile".[43] Whilst it is issued to residents of India, there is no evidence to show whether it is only issued if the person is ordinarily resident there or if a minimum number of days of residency there is fulfilled. As such, the Aadhaar Card does not prove, on balance, that D1 is ordinarily resident in India – D1's counsel, Mr Xavier SC conceded as much.[44] As for the OCI Card, this was issued on 29 September 2017 and in Singapore – long after the alleged Pre-SPA and Pre-BAA Representations were made, the SPA and BAA were executed, and the conspiracies were carried out. The OCI Card also does not prove that D1 was resident in India more than in Singapore or elsewhere. When D1 was issued the OCI Card, he was an Antiguan citizen (as reflected in the OCI Card) and a Singapore permanent resident.

42 It is also significant that D1's registered address in both the OCI Card and ACRA People Profile Search[45] as recent as 23 September 2019 is the AMK Flat. This is especially when the OCI Card provides the option of a registered address "*in India* / Abroad" [emphasis mine]. If D1 was ordinarily resident in India, it was unclear why he did not provide his registered address in India.

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43 D1's 2nd Affidavit at p 26.

44 NE (12 February 2020) at p 10 lines 12–15; p 23 lines 20–26.

45 D1's 1st Affidavit at p 725; John's 2nd affidavit dated 16 October 2019 ("John's 2nd Affidavit") at p 27.

43 Next, the Tribunal Order[46] does not prove that D1 is ordinarily resident in India nor prevent him from travelling out of India. It merely states that D1 is to inform the Debt Recovery Tribunal before travelling abroad and there is no requirement for D1 to seek the Tribunal's approval for overseas travel.

44 As for the Look Out Circular,[47] it does not prove that D1 is ordinarily resident in, or even a resident of, India, as such a Circular can be issued for "keeping a watch on arrival/departure of Indians and *foreigners*" [emphasis mine]. Further, D1 did not produce the specific Look Out Circular which pertained to him. D1 explained that "the [Indian Serious Fraud Investigation Office] did not see it fit to share a copy of the Look Out Circular with [him] as it is an internal Government document".[48] Even if this were true, D1 could have provided the specific details of the Look Out Circular in relation to him (such as the date of commencement and any specific restrictions to D1) or show evidence of how he was first informed that the Look Out Circular was issued against him. In any event, there is no evidence that the Look Out Circular is still in force as against D1 today. Such a circular is stated to be valid for one year from the date of issue unless an exception applies or if an extension is sought.[49] There is no evidence of when the Look Out Circular was issued against D1, and the letter from the Indian Serious Fraud Investigation Office (exhibited by D1) – which shows D1's request to withdraw the Look Out Circular against him was not acceded to – is a letter dated as late back as 14 February 2019.[50]

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46 D1's 1st Affidavit at p 727.

47 D1's 2nd Affidavit at p 77.

48 D1's 2nd Affidavit at para 36(b).

49 D1's 2nd Affidavit at para 8(i) and p 81.

50 D1's 2nd Affidavit at p 85.

45 Next, even though D1 was not the registered owner of the AMK Flat, that did not mean that he did not reside there at all. Indeed, he has consistently held out his residence as being the AMK Flat, in his OCI Card dated 2017 and even in an ACRA People Profile Search done as recently as September 2019 (long after the Look Out Circular was issued against D1). The fact that a person holds himself out as being ordinarily resident in a place is "highly relevant" for the purposes of determining his ordinary place of residence and should be given weight (*Tjong Very Sumito and others v Chan Sing En and others* [2011] 4 SLR 580 ("*Tjong Very Sumito*") at [54]). While *Tjong Very Sumito* pertained to the issue of security for costs, the holding there is no less applicable to the present case.

46 Indeed, D1 has not produced any evidence to support his assertion that he is only in Singapore a few days a year, or even that he has not travelled to Singapore in the past 14 months (when he made the attestation in October 2019). He could have easily done so by producing a copy of his passport.

47 Hence, D1 has not shown that he is ordinarily resident in India or that he is not ordinarily resident in Singapore at the material time or even now. This is even if D1 has business interests in India or is no longer a director of any Singapore company other than Educomp Intelliprop. As noted earlier, D1 had been a director of numerous Singapore companies even until 2015 and 2016.

48 Further, a person can be ordinarily resident in more than one jurisdiction. The determinative factor is the individual's "settled purpose". Once this purpose is established, temporary absence from a place does not *per se* alter the fact that the individual is still ordinarily resident there: *Tjong Very Sumito* at [25]–[33]. In this case, the evidence that D1 has adduced, *at best*, shows that he is ordinarily resident in both India and Singapore, since the evidence – that he is a

Singapore permanent resident and holds himself out as residing in the AMK flat in the OCI Card and ACRA People Profile Search – shows that he has a settled purpose to reside in Singapore. Therefore, even if I were wrong that D1 is not ordinarily resident in India, it is clear on the evidence before me that D1 is, on balance, *also* ordinarily resident in Singapore. Hence, this factor does not assist D1 in proving that Singapore is not the more natural and appropriate forum.

Place of fraudulent misrepresentation

49 I turn to deal with the Plaintiffs' claim in fraudulent misrepresentation. In *JIO Minerals* ([34] *supra*) at [91] and [93], the Court of Appeal provided guidance on the approach to be adopted in relation to the place of the tort of misrepresentation. Where the misrepresentation was received and acted upon in a single jurisdiction, that place should be the place of the tort, unless that place was fortuitous or if the receipt and reliance occurred in different countries, in which case, the "substance test" would be more applicable. In the "substance test", one looks at the events constituting the tort and asks where, in substance, the cause of action arose (*JIO Minerals* at [90]). In applying the "substance test", where the representation is "received and acted upon" (particularly where the representation is made to a specific person or class of persons) is the place where the tort is generally committed.

50 I find the evidence showed that the Pre-SPA and Pre-BAA Representations, if made, would have been made, received, and relied upon, in Singapore. There was no evidence that the Pre-SPA Representations were made at the 2014 India Meeting – D1 had categorically denied that any such representations were made at all. Even if they had been made there, such representations would have continued to be made after that meeting until the SPA and BAA were executed. The documents showed that many of the terms

(including material ones) which eventually found their way into the SPA (and BAA) were not discussed or even finalised at the 2014 India Meeting.

51 First, the documents support the inference that the alleged Pre-SPA and Pre-BAA Representations were made after the 2014 India Meeting to the Plaintiffs' representatives such as John and Doris who were based in Singapore.

52 The 2014 Minutes were bereft of details. It did not encapsulate all the alleged Pre-SPA Representations, specifically the ceding of control of JRRES to the Plaintiffs, and it did not encapsulate the alleged Pre-BAA Representations.[51] The fact that the ceding of control by Educomp Asia and Educomp Professional of JRRES was a critical component of the SPA, particularly when P2 and P3 would be buying over their shares, was accepted by Educomp Asia and Educomp Professional in the arbitration which led to the SIAC Award (see [11] above).[52] The 2014 Minutes is in contrast with cl 3.1.2 of the SPA, which provides:

> On deposit of the 10% of the Purchase Price by [P2 and P3] to the Escrow Agent …, [Educomp Asia and Educomp Professional] shall allow [P2 and P3] *to take control of [ERHEL] and JRRES* …
>
> [emphasis added]

Indeed, the 2014 Minutes had a section titled "JRRES" which was left completely blank, and Mr Xavier SC accepted that the issue of ceding control of JRRES was only raised in a subsequent term sheet dated 23 January 2015 which was signed by Doris ("2015 Term Sheet").[53]

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51 John's 3rd Affidavit at p 7.

52 John's 1st Affidavit at p 333 (Final Award of the arbitration at [379]).

53 NE (12 February 2020) at p 21 lines 24–25.

53 After the 2014 India Meeting, a term sheet dated 31 October 2014 was prepared, which allegedly recorded the agreed terms of the India Meeting ("2014 Term Sheet").[54] But the term sheet made no mention of the BAA or the Pre-SPA Representation relating to the ceding of control of JRRES to the Plaintiffs, in contrast with cl 3.1.2 of the SPA. The 2014 Term Sheet was unsigned, and there is no evidence that the Plaintiffs had accepted the terms therein (as can be seen from the fact that there was a subsequent 2015 Term Sheet and various drafts of the SPA before the SPA was executed).

54 I turn to the 2015 Term Sheet.[55] This Term Sheet contained additional terms and more details than the 2014 Term Sheet, and this supports the inference that further negotiations on the SPA took place after the 2014 India Meeting. D1 asserted that discussions relating to the 2015 Term Sheet were largely conducted by email and telephone calls between the Indian and Singapore parties, and produced emails dated January to February 2015 to show that negotiations and discussions on the SPA continued to take place after the 2014 India Meeting.[56]

55 D1's assertion and emails support the Plaintiffs' claim that the alleged representations were made from late 2014 / early 2015 via emails and telephone. Moreover, any discussions via email or telephone would have been with the Plaintiffs' representatives (Doris and John), who are based in Singapore, and

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54 D1's 1st Affidavit at paras 22 and 40 and pp 150–153.

55 D1's 4th affidavit dated 13 December 2019 ("D1's 4th Affidavit") at pp 54–59.

56 D1's 2nd Affidavit at para 29 and pp 71–75 ("SP-2, Tab 6"); NE (12 February 2020) at p 2 lines 26–30.

any representations made to them would have been received by them in Singapore. This was conceded by D1 and Mr Xavier SC.[57]

56 Next, the 2014 and 2015 Term Sheets were materially different from the SPA.[58] This showed the evolving nature of the parties' negotiations.

(a) For instance, the buyer changed from P2 (in the 2014 Term Sheet) to P1 (in the 2015 Term Sheet), then to P2 and P3 (in the SPA). A key part of the SPA to the Plaintiffs was the resignation of Educomp Group's representatives/nominees from JRRES and the appointment of the Plaintiffs' nominees onto JRRES. This is so that there would be an effective transfer of control of JRRES to the Plaintiffs. This, as the Plaintiffs' counsel, Ms Lin, submitted, was a key part of the Pre-SPA Representations which induced the Plaintiffs to enter into the SPA (see [15(b)] above).[59] The 2014 Term Sheet made *no mention* of this. While the 2015 Term Sheet provided for the resignation of Educomp Group's representatives from JRRES, it was only in the SPA that various condition precedents were spelt out to ensure that P2 and P3's representatives would be appointed as members of the JRRES General Body (amongst other things).

(b) Next, it is not disputed that the purchase price progressively increased from about INR316 million (in the 2014 Term Sheet) to about INR846 million (in the 2015 Term Sheet) to INR986 million (in the SPA). I accept the Plaintiffs' submission that this is reflective of the

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57 D1's 1st Affidavit at para 40; NE (12 February 2020) at p 21 lines 19–21.

58 John's 1st Affidavit at pp 218–235; D1's 4th Affidavit at pp 216–240.

59 NE (12 February 2020) at p 15 lines 1–5 and p 22 lines 16–25.

progressive changes in the SPA that came about *after* the Pre-SPA Representations were made.[60] The purchase price, being a material term, *tripled* from the time of the 2014 Term Sheet to the time of the SPA. D1 conceded that the final purchase price of about INR986 million first surfaced on 11 March 2015, just a few hours before the parties physically met that day (in the 2015 Singapore Meetings).[61] Hence, this was not a situation where the key points (pertaining to the Plaintiffs' buy-out of Educomp Asia and Educomp Professional's shares in ERHEL) had been agreed to at the 2014 India Meeting with only minor details to be ironed out. This is so even if the parties had some broad understanding at the 2014 India Meeting that there would be such a buy-out. Indeed, the SPA contained many more major details such as condition precedents to be fulfilled and the closing mechanism for the deal. Even the governing law and dispute resolution clauses of the SPA (and 2015 Term Sheet) were different from the 2014 Term Sheet.

(c) The progression of these terms supports that the Pre-SPA Representations would have been made after the 2014 India Meeting, and supports the Plaintiffs' claim that they were made from late 2014 / early 2015 and that they *continued* until the 2015 Singapore Meetings. This is also consistent with the fact that some eight SPA and five BAA unique drafts were exchanged during the 2015 Singapore Meetings[62] and that negotiations took place over three days at the 2015 Singapore Meetings (see [58] below), before the SPA was concluded.

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60 NE (12 February 2020) at p 13 line 27–p 14 line 9.

61 Minute Sheet (6 April 2020) at p 2.

62 D1's 4th Affidavit, Tab 4 to Tab 18; Letter to Court from WongPartnership LLP dated 9 April 2020 at para 4.

57 As for the Pre-BAA Representations, they could not have been made at the 2014 India Meeting, it being undisputed that the BAA or its terms were not raised at that meeting or in the 2014 and 2015 Term Sheets.[63] As Mr Xavier SC conceded, the discussions concerning the BAA only started on 4 March 2015, and the first draft of the BAA was circulated only a few days before the 2015 Singapore Meetings.[64] Whilst Mr Xavier SC submitted that the Pre-BAA Representations (assuming they existed) were closely linked to the SPA, the fact remained that the Pre-BAA Representations were different from the Pre-SPA Representations.

58 Second, D2's evidence supports the inference that the alleged Pre-SPA and Pre-BAA Representations were made in Singapore. D2 attested that, throughout the negotiations and finalisation of the SPA and BAA, the Plaintiffs were represented by Doris and John who were at the negotiation meetings held throughout *at the corporate offices of P2*, with amendments to the SPA and BAA made in accordance with their requirements and inputs and finalised in consultation with them at those meetings. This would support the Plaintiffs' claim that it was only "in or around late 2014 / early 2015, [when] the Educomp Group … finally indicated its willingness to consider a fresh proposal that would include such ceding control over JRRES" that the Plaintiffs agreed to hold physical meetings in Singapore in March 2015 to negotiate the terms of the Educomp Group's exit from the joint venture.[65]

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63 Minute Sheet (6 April 2020) at p 5.

64 NE (12 February 2020) at p 13 lines 24–25; Minute Sheet (6 April 2020) at p 3.

65 John's 3rd Affidavit at para 7(b).

59 Third, I had found that D1 was ordinarily resident in Singapore at the material time. He was a director of numerous Singapore entities even until 2015 and 2016. He had applied for the OCI Card (which reflected his registered address as the AMK Flat) *in Singapore* even in 2017, *long after* the alleged misrepresentations and acts of conspiracy took place. It is also telling that D1 failed to provide any evidence of his travel history and is *completely silent* about his whereabouts during the relevant time of the alleged misrepresentations or conspiracy. In contrast, he readily asserted in his affidavit (dated October 2019) that he had not travelled to Singapore "in the past 14 months" – but which he failed to provide any supporting evidence of.

60 To sum up, it was undisputed that any representations made between the parties after the 2014 India Meeting were made by emails and telephone calls which would have been received by the Plaintiffs' representatives in Singapore, and any representations made at the 2015 Singapore Meetings were made in Singapore. The SPA and BAA were also signed in Singapore.[66] The pertinent issue is where the representations were *received* and *relied upon*, even if D1 was not in Singapore at the material time. I am satisfied that the any Pre-SPA and Pre-BAA Representations would have been made in Singapore and received and relied upon in Singapore by the Plaintiffs' representatives. Even if some representations might have been made at the 2014 India Meeting, the evidence suggests that representations continued to be made thereafter until the SPA and BAA were executed. Hence, I find the place of the tort of misrepresentation to be Singapore.

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66 NE (12 February 2020) at p 9 line 12.

61 I add that it was not "fortuitous" that the misrepresentations were made, received, and relied upon, in Singapore. The Defendants knew at all material times that the Plaintiffs' representatives were based in Singapore and that the representations would be relied upon and received by them in Singapore. The bulk of the negotiations conducted in person was done at the 2015 Singapore Meetings and the final SPA differed from the 2014 and 2015 Term Sheets materially. The SPA and BAA were also signed in P2's office in Singapore.[67]

62 Finally, I deal briefly with D2's claim that he was not in any way involved in the representations. D2's claim relates to the substantive merits of the case and is immaterial for the purposes of determining whether the Suit should be stayed for *forum non conveniens*.

Place of conspiracy

63 The next issue is where the alleged conspiracies took place. In *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [53], the Court of Appeal enunciated that the key factors to consider in relation to where the tort of conspiracy occurred are: (a) the identity, importance and location of the conspirators; (b) the locations where any agreements or combinations took place; (c) the nature and places of the concerted acts or means; (d) the location of the plaintiff; and (e) the places where the plaintiff suffered losses.

64 I find that the evidence pointed towards Singapore (as opposed to India) as the place where the alleged conspiracies in substance occurred.

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67 D1's 2nd Affidavit at para 31.

65 The Conspiring Parties, based on the Plaintiffs' amended SOC, are D1 and D2. The Plaintiffs, by their amendment to the SOC, had excluded D1's associates and the Educomp Group as the Conspiring Parties. D1 claimed that the Plaintiffs amended the SOC, to plead D1 and D2 as the only Conspiring Parties, as a tactical decision to bring their claims within the Singapore forum, and, hence, such amendment should be disregarded.[68] I disagree. The Plaintiffs are entitled to decide how they wish to pursue their claims (and will stand or fall by their pleaded case). The court, in determining the issue of the appropriate forum for the dispute, should look at the relevant pleaded case which the Plaintiffs choose to run. In any event, although the Plaintiffs had initially included other persons as Conspiring Parties, they had all along pursued their claims only against D1 and D2. Hence, it would be appropriate to consider where the conspiracies between D1 and D2 was hatched.

66 D2 is a Singapore citizen and based here at all material times. D1 is a Singapore permanent resident (and an Antiguan citizen) and he owned and controlled the Educomp Group at the material time.[69] As I had earlier found, D1 was also ordinarily resident in and more closely connected to Singapore during the material time of the alleged conspiracies. As such, assuming there was a conspiracy to injure the Plaintiffs, it was more likely to have been hatched in Singapore – this included making the Pre-SPA and Pre-BAA Representations and where the agreement to injure the Plaintiffs might have taken place. The 2015 Singapore Meetings were in Singapore and the SPA and BAA were executed in Singapore. If D1 was ordinarily resident in Singapore (as I had found), his instructions to other persons, in pursuance of the conspiracies, to

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68 Minute Sheet (6 April 2020) at p 6.

69 D1's 1st Affidavit at para 42(a).

perform acts which caused damaged to the Plaintiffs would have been likely given by him from Singapore.

67 Next, P1 and P2 are incorporated, and their directors based, in Singapore. While P3 is incorporated in India, it is undisputed that its directors are based in Singapore.[70] The test of ordinary residence of a corporation is the place of its central management: *Tjong Very Sumito* ([45] *supra*) at [27]. I accept that the Plaintiffs had suffered losses in Singapore. It can be "assumed" that damage is suffered in the jurisdiction where the relevant entity is incorporated, unless there is "evidence to suggest … that the [cost] was disbursed from [another jurisdiction]": *Man Diesel & Turbo SE and another v IM Skaugen SE and another* [2020] 1 SLR 327 ("*IM Skaugen*") at [78]. While the Court of Appeal in *IM Skaugen* was analysing *forum conveniens* in the context of O 11 r 1 of the ROC, its reasoning is equally applicable to the present context. The evidence showed that the funds for the SPA and BAA originated and were disbursed from P1 in Singapore.[71] Also, a substantial part of the Plaintiffs' claim for losses suffered as a result of the conspiracies were losses incurred by P1 or P2.[72] Whilst some of the alleged wrongful conduct took place in India, such acts would have been, as the Plaintiffs pleaded, instigated by D1. As such, the evidence would support that the alleged conspiracies took place in Singapore.

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70 John's 2nd Affidavit at p 23; Agreed List of Directors and Shareholders at S/N 3.

71 John's 1st Affidavit at para 20(f); John's 2nd Affidavit at para 11(a)(iii); John's 4th affidavit dated 30 December 2019 ("John's 4th Affidavit") at p 40; Minute Sheet (6 April 2020) at p 4.

72 SOC Amd 1 at paras 42(a), 42(b), 42(e), 42(f) and 42(g).

Witness convenience and compellability

68 The second most significant factor in this case is the availability and compellability of the witnesses. Two factors are to be analysed separately (*JIO Minerals* ([34] *supra*) at [63]), namely, the convenience in having the case decided in the forum where the witnesses are ordinarily resident ("witness convenience factor") and the compellability of those witnesses ("witness compellability factor"). These factors are significant in the present case as the Plaintiffs' claims largely centre on questions of fact: *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [73]. These include whether the Defendants made the Pre-SPA and Pre-BAA Representations; whether they conspired to make false representations to induce the Plaintiffs to enter into the SPA and BAA when they did not intend for Educomp Asia / Educomp Professional / Edulearn to perform the SPA and BAA; whether they conspired to engage in wrongful conduct *vis-à-vis* JRRES and ERHEL; and D2's involvement in the purported representations and conspiracies given his claim that his role at the 2015 Singapore Meetings (pertaining to the review of various iterations of the draft SPAs and BAAs) was in his capacity as the lawyer for the Educomp Group and to provide legal advice.[73] The resolution of these issues will also depend materially on witness testimony.

Witness convenience

69 I deal first with the witness convenience factor. The question, at the interlocutory stage, is how the court should approach the issue of which witnesses are to be considered. The Court of Appeal in *JIO Minerals* ([34] *supra*) held at [66]–[67], following *Good Earth Agricultural Co Ltd v Novus*

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[73] D2's 1st Affidavit at paras 10, 11, 20–22 and 25.

International Pte Ltd [2008] 2 SLR(R) 711 at [21], that the court hearing an application for a stay should not predetermine the witnesses the parties should call. It would not be appropriate to require a defendant to demonstrate exactly how it would use the testimony of the witnesses it proposes to call, at this interlocutory stage, as it has not yet prepared its defence. Nevertheless, the defendant should at least show that evidence from the foreign witnesses is "at least arguably relevant" to its defence, as it should not be permitted to assert without substantiation that it requires foreign witnesses; otherwise, that would make it easy to manufacture a connecting factor for the purposes of a stay application. The Court of Appeal in *Rappo Tania* ([35] *supra*) at [90] appeared to have taken a similar approach. It had disagreed with the view expressed by the court below that there was no need to call some witnesses at the trial or that the evidence of such witnesses was likely to be irrelevant. Such a view was "premature" in the context of a stay application. Likewise, the Court of Appeal in *Lakshmi* adopted the approach in *JIO Minerals* ([34] *supra*) when it found that the appellant had sufficiently demonstrated that the evidence of the witnesses in Singapore was "at least arguably relevant" (see *Lakshmi* at [74] and [76]).

70 Ms Lin, citing the Court of Appeal's decision in *Rickshaw Investments* ([36] *supra*), submitted that only the material or key witnesses are to be considered. However, *Rickshaw Investments* must be read in its context. The Court therein placed weight on the fact that the "principal witnesses" were located in Singapore, in the *absence* of any foreign non-party witnesses having been identified for the purposes of determining the appropriate forum in that case (see *Rickshaw Investments* at [23]–[29]). Thus, I accept the approach in *JIO Minerals* ([34] *supra*) and *Lakshmi* – that the defendant's identified witnesses whom it claims it intends to call at trial must be shown to be at least

arguably relevant to its case. At the end of the day, in most cases, the approaches in *JIO Minerals* and *Rickshaw Investments* may not result in a material difference – a witness who is arguably relevant is also potentially likely to be material (see *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [69], where the Court of Appeal held that witnesses whose evidence is "potentially material and relevant" to the issues should be reckoned). In any event, whichever approach is adopted would make no difference to my analysis of the present case because I find that the parties' identified witnesses are material and their evidence at least arguably relevant.

71 The Plaintiffs identified the "key" witnesses to be John, Doris, Chew, D1 and D2, who are all based in Singapore.[74]

72 D1 submitted that the following witnesses, who are Indian nationals residing in India, were key witnesses who would be crucial to his defence (collectively "the Foreign Witnesses"):[75]

> (a) Ashish Mittal ("Ashish"), the chief financial officer of Educomp Solutions and a director of ERHEL. Ashish represented the Educomp Group in the negotiations on the exit from the joint venture. He was present at the 2014 India Meeting and the 2015 Singapore Meetings and would be able to testify on what transpired there. Ashish was also aware of the Defendants' involvement in JRRES and Noida College and would be able to testify as to the allegations made about the Defendants and to refute the Plaintiffs' claims of misrepresentation and conspiracy.

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74 John's 1st Affidavit at para 22.

75 D1's 1st Affidavit at para 32; D1's 2nd Affidavit at para 37.

(b) Narpat Singh ("Narpat"), D1's representative at JRRES and the head of human resources at Noida College. Narpat would be able to testify that the allegations as to the Defendants' wrongful conduct *vis-à-vis* JRRES and Noida College are unfounded.

(c) Professor Mahesh Gandhi ("Prof Gandhi"), the director-general of Noida College. The Plaintiffs alleged that D1 had instigated Prof Gandhi to send an email to JRRES's members alleging that he had been harassed and forced to resign at the behest of the Plaintiffs' representatives. Prof Gandhi would be able to testify that such allegations relating to the Defendants' wrongful conduct *vis-à-vis* JRRES and Noida College are unfounded.

(d) Ashok Mehta ("Ashok") and Harpreet Singh ("Harpreet"). Ashok is a member of JRRES and former president of Educomp Solutions. Harpreet was a member and secretary of JRRES and President of Noida College. They would be able to testify to the events and circumstances surrounding the Plaintiffs' dismissal of Prof Gandhi from JRRES and refute the Plaintiffs' allegations that D1 had engaged in wrongful conduct *vis-à-vis* Prof Gandhi's dismissal.

(e) Vinod Kumar Dandona ("Vinod") and Shiv Kumar ("Shiv"). Vinod was a former director of Educomp Solutions while Shiv was a former manager at Noida College. The Plaintiffs alleged that Vinod had abused and harassed the Plaintiffs' representatives and instructed Shiv to provide statements against them in a police complaint. Vinod's and Shiv's testimonies would disprove the Plaintiffs' false allegations.[76]

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[76] SOC Amd 1 at para 33(j).

73 I am satisfied that the Foreign Witnesses are at least arguably relevant to the Defendants' defence and, in any event, that they would be material or key witnesses. By the Plaintiffs' own pleaded case, the Foreign Witnesses played a substantial part in the acts pursuant to the alleged conspiracies which resulted in damage to the Plaintiffs.[77] The Plaintiffs had pleaded that Narpat had done various acts pursuant to the conspiracies such as refusing to approve bank transfers, payment of salary and other matters pertaining to JRRES. They also made various allegations which involved Prof Gandhi, such as that D1 had instigated him to send an email to members of the JRRES Governing Body to allege that he had been harassed and forced to resign from his position at JRRES at Chew's behest, which the Plaintiffs claimed to be untrue. The Plaintiffs further alleged that D1 had instigated Vinod to harass and threaten the Plaintiffs' representatives to JRRES.

74 I turn to consider Sunil, a Singapore citizen, who at the material time represented REG but has since left their employ in 2017. He had attended the 2014 India Meeting and, according to John, participated in the 2015 Singapore Meetings.[78] Whilst the Plaintiffs have not mentioned Sunil as a key witness[79] in the action, he would arguably be a relevant and key witness if he was at the 2014 India Meeting and 2015 Singapore Meetings and would be able to shed light on what transpired there and whether any representations were made. John attested that Sunil might be willing to testify for the Plaintiffs in Singapore but

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77 D1's 2nd Affidavit at para 37(b); SOC Amd 1 at paras 33 and 42.

78 John's 4th Affidavit at paras 21–23.

79 John's 1st Affidavit at para 22; 1PWS at para 18.

he is not certain if Sunil would be willing to do so in India as D1 had harassed and filed a police complaint against Sunil in India.[80]

75 As such, of the non-party witnesses identified, there is one witness based in Singapore (Sunil) and seven witnesses based in India (see [72] above). As for Doris, John, and Chew, as they are the Plaintiffs' directors, their location will be analysed separately as part of the parties' personal connections (see [86] below). Therefore, the witness convenience factor would suggest that India is the more appropriate forum.

76 However, the analysis on the witness convenience factor does not end there. The next question is the appropriate weight to be placed on this factor. In this regard, the court should consider the possibility of obtaining evidence through video-link and the relative distance of India from Singapore (*JIO Minerals* ([34] *supra*) at [68]–[70]). D1 has not explained why the Foreign Witnesses' evidence cannot be obtained by video-link. Further, India is not far from Singapore. Given the availability of video-link and technology today, the witness convenience factor in this case is not compelling. Hence, in my view, the witness convenience factor did not operate in the Defendants' favour.

Witness compellability

77 I turn to examine the witness compellability factor. That a foreign witness cannot be compelled to either testify in a Singapore court or give evidence via video-link is a factor that points towards the foreign forum as the natural forum (*JIO Minerals* ([34] *supra*) at [71]; *Lakshmi* ([68] *supra*) at [72]–[73]). However, the strength of the witness compellability factor in favour of

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80 John's 4th Affidavit at para 23.

the foreign forum may be weaker if there is evidence that the foreign witness is willing to testify in Singapore or via video-link: see *eg*, *Mann Holdings Pte Ltd and another v Ung Yoke Hong* [2016] SGHC 112 ("*Mann Holdings*") at [49].

78 Who, then, bears the burden of proving that a foreign witness is unwilling to testify in Singapore or via video-link? In this respect, I disagree with D1's submission, in reliance on *Abdul Rashid bin Abdul Manaf v Hii Yii Ann* [2016] SGHCR 1 at [38(b)], that the "[o]ne who asserts that a witness is willing to testify outside of his place of residence must prove this".[81] In a *forum non conveniens* case, the burden is on the defendant to show that there is an alternative forum (forum A) that is clearly more appropriate for the trial of the action. In seeking to rely on the witness compellability factor to point towards the alternative forum, he has to show that the witnesses he intends to call (from that alternative forum) would be unwilling to testify in the plaintiff's forum (forum B). The witness compellability factor is not equally significant in all cases. The significance of this factor may be reduced if the witnesses are actually willing to testify in forum B as the said witnesses *would not even need to be compelled* to testify in that forum. Thus, a party who wishes to rely on the witness compellability factor to show that forum A is the more natural forum has to show that this factor is significant because the witnesses are unwilling to testify, and thus need to be compelled to testify, in forum B, whereas they would not have to be so compelled in forum A.

79 In *Exxonmobil Asia Pacific Pte Ltd v Bombay Dyeing & Manufacturing Co Ltd* [2007] SGHC 137 ("*Exxonmobil*") at [17], the High Court noted as follows:

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[81] D1WS at para 56.

> … If [the Defendants] can succeed in establishing that India is a more appropriate forum than Singapore by merely having one of its officers testify that some witnesses had said to him that they would not cooperate if the trial was conducted in Singapore, all that any defendant has to do in future to have Singapore proceedings stayed *is to merely state in an affidavit without any further proof that he has spoken to two or three witnesses who do not wish to testify and cannot be compelled by the Singapore courts to do so*. Surely more is expected of a defendant who seeks a stay of proceedings in Singapore on the basis that a foreign forum is, as compared to Singapore, a more appropriate forum.
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> [emphasis added]

80 In *Mann Holdings* at [49] to [50], the High Court held that, on the facts, "there was nothing on record to indicate [the defendant's brother's] unwillingness to testify in a Singapore court on the defendant's behalf as the defendant claimed", and rejected the defendant's application for a stay of the Singapore proceedings. The High Court's decisions in *Exxonmobil* and *Mann Holdings* were upheld by the Court of Appeal.[82]

81 Therefore, in a *forum non conveniens* case, the burden lies on the Defendants to show that the Foreign Witnesses are unwilling to testify in Singapore, because it is the Defendants who are seeking to persuade the court that the witness compellability factor points towards India as the more natural forum. To hold otherwise would allow a defendant to assert, without more, that he required certain witnesses (so that he can tilt the balance in favour of the jurisdiction of his choice) and then place the burden on the plaintiff to show that the defendant's choice of jurisdiction is not the clearly or distinctly more appropriate forum.

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[82] CA 87/2007; CA 42/2016.

82 In this case, as there are more relevant non-party witnesses based in India than Singapore, this would, on first blush, indicate that the witness compellability factor points towards India as the more natural forum. While no expert evidence was adduced before me to show that the Foreign Witnesses are compellable in India (see *JIO Minerals* ([34] *supra*) at [74]), it is not disputed that, if the proceedings are heard in India, the Indian courts can issue a summons for the attendance of the witnesses residing in India for those proceedings.[83] I am also cognisant that Suit 709 is brought against D1 personally and that Educomp Solutions is currently in liquidation.

83 Nevertheless, the Defendants have failed to satisfy me that the witness compellability factor should be accorded weight in this case. They have adduced no evidence to show that the Foreign Witnesses were unwilling or not prepared to testify for them whether the matter is heard in India or in Singapore. It is telling that while D1 readily asserted in his affidavits that he had "no power" to compel the Foreign Witnesses to testify in Singapore,[84] he stopped short of asserting that they were unwilling to testify in Singapore or via video-link, even though John had raised this point in his affidavit (dated 18 October 2019) and D1 had the opportunity to respond to it in his reply affidavit (dated 21 October 2019).[85] This must also be seen in light that the Foreign Witnesses were either representing Educomp Solutions' interests in the JVA, SPA and BAA, or were representatives of D1 in relation to JRRES and Noida College. For instance, Narpat is D1's representative at JRRES,[86] while Ashok and Harpreet are

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83 D1's 1st Affidavit at para 34.

84 D1's 1st Affidavit at para 35; D1's 2nd Affidavit at para 39.

85 John's 2nd Affidavit at para 14(d)(i).

86 D1's 2nd Affidavit at para 37(b)(i).

members of JRRES nominated by the Educomp Group and which the latter was to have procured their resignation from JRRES pursuant to the SPA.[87] Applying the principles (at [78] to [81] above) to the present case, there is no evidence to show that the Foreign Witnesses are unwilling or less willing to testify in Singapore. Consequently, I am unconvinced that the witness compellability factor leans, or tilts the balance, in favour of India as the more natural forum.

Other connecting factors

84 I turn to deal briefly with some of the other connecting factors.

85 First, as for the choice of law for torts, the double actionability rule applies in Singapore *ie* the tort must be actionable under both the *lex loci delicti* and the *lex fori* (*JIO Minerals* ([34] *supra*) at [88]). The *lex loci delicti*, based on my earlier analysis of the place of the torts, is Singapore law, and it is clear that the *lex fori* is also Singapore law. The Plaintiffs' claims of fraudulent misrepresentation and conspiracy are thus actionable under Singapore law and the *lex causae* for the torts is Singapore law. In any event, the key issues in dispute are factual rather than legal in nature, and both India and Singapore are common law jurisdictions such that there is usually little difficulty in one forum applying the law of another (*Lakshmi* ([68] *supra*) at [55] and [57]). Therefore, whilst the governing law of the torts is Singapore, this is not a weighty factor, and in any event does not tilt the balance in favour of the Defendants.

86 Second, insofar as the parties' personal connections are concerned, P1 and P2 are Singapore entities, and P3's directors are based in Singapore. D2 is a Singapore citizen and, whilst D1 may claim to be residing in India currently,

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87 John's 1st Affidavit at pp 225 and 239 (SPA, clause 4.4.5 read with Annexure D).

he is nevertheless a Singapore permanent resident. At this stage, I briefly deal with D1's claim that he is currently in India and unable to travel overseas because of the Tribunal Order and Look Out Circular. As I had earlier found, the Tribunal Order does not prevent D1 from travelling overseas; it merely states that D1 has to inform the Tribunal before he does (see [43] above). As for the Look Out Circular, D1 has not shown evidence of how it applied to him, and whether it is still valid as against him, today (see [44] above). Hence, D1 has not shown that he is currently unable to travel overseas, even assuming he is in India. Thus, this factor does not tilt the balance in the Defendants' favour.

87 Third, even though some of the acts done in pursuant to the alleged conspiracies may have occurred in India, this does not clearly or distinctly point towards India as the more natural or appropriate forum. As I had found earlier, the alleged representations would have been made, received, and relied on, in Singapore, and the alleged conspiracies in substance occurred in Singapore. The SPA and BAA were also signed in Singapore.

88 Fourth, I considered the Parallel Proceedings in India. They are as follows and are all currently pending:[88]

(a) Civil Suit 419 of 2017 ("CS 419/2017"): P3 commenced proceedings against JRRES's president to recover an advance sale consideration of INR140 million paid to JRRES under the JRRES SPA, and pertained to breaches of obligations under the JRRES SPA.

(b) Civil Suit 197 of 2018 ("CS 197/2018"): P3 commenced proceedings against JRRES's chairman and president to recover

[88] D1's 1st Affidavit at para 29; D1's 4th Affidavit at para 11; D1WS, Annex.

payments made by P3 to JRRES to ensure the continuing operation of Noida College. Whilst the respondents in CS 197/2018 are named as the chairman (Chew) and president (D1) of JRRES, Ms Lin clarified that P3 is essentially suing the society (JRRES).[89]

(c) Petition O.M.P. 6/2017 ("Petition 6/2017"): P2 commenced proceedings against Educomp Professional to enforce the SIAC Award. The SIAC Award concerned breaches of the SPA, of which D1 and D2 are not parties.

(d) Civil Suit 655 of 2017 ("CS 655/2017"): Doris commenced proceedings against members of JRRES (including D1), seeking the appointment of an administrator for JRRES and the removal of eight JRRES members.

(e) Complaint Case 11448 of 2018 ("CC 11448/2018"): P1 commenced criminal proceedings against Educomp Solutions, D1 and other individuals, alleging that they had committed criminal offences relating to the dishonest misappropriation of property, criminal breach of trust, cheating and dishonestly inducing delivery of property. Whilst the summons has been issued against D1, it has not been served on him.[90]

89 I found this factor to be neutral at best. Whilst there may be some overlap of issues between the Parallel Proceedings and Suit 709, the causes of action and parties (particularly the defendants) are different. Pertinently, CC 11448/2018 is a criminal complaint. The Parallel Proceedings are also largely

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89 NE (12 February 2020) at p 20 lines 13–21.

90 Letter to Court from WongPartnership LLP dated 9 April 2020 at para 3.

in the preliminary stages. There is no evidence as to the precise stages of each of the Parallel Proceedings, and it would seem that they are either at a pre-hearing or pre-trial stage.[91] Although there is some duplicity in the damages sought in Suit 709 and in, *eg*, CS 419/2017, CS 197/2018 and Petition 6/2017,[92] these form only a portion of the loss that the Plaintiffs are claiming in Suit 709. In any event, the Plaintiffs have stated that there would not be double recovery in Suit 709 if any sums are recovered via the Parallel Proceedings.[93] At the end of the day, even if there is a risk of conflicting judgments in that findings on certain issues in dispute would be conflicting, this is not a decisive factor when weighed against all the other factors including the parties pursued and the causes of action being different.

90 Finally, I consider D1's submission that P1's act of filing the criminal complaint (CC 11448/2018) in India shows that P1 believed that India bore the closer connection to the factual dispute, including that D1 was resident there, that the alleged offending acts took place there, and that the loss was suffered there.[94] I gave little weight to this submission, as it was made by counsel and not attested to by D1, and P1 has not had the opportunity to explain this. Pertinently, it should be noted that CC 11448/2018 was filed against 12 accused persons, most of whom are Indian residents or citizens (putting aside D1), and against Educomp Solutions, which is incorporated in India. Hence, it would be reasonable for P1 to file its criminal complaint in India. Even if D1 was currently residing in India, this did not mean that he was ordinarily resident (or

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91 D1WS, Annex; Plaintiffs' Supplementary Written Submissions (11 February 2020) at p 15.

92 SOC Amd 1 at paras 42(a), 42(c) and 42(d).

93 John's 2nd Affidavit at para 15(a).

94 Minute Sheet (6 April 2020) at p 6.

ordinarily resident only) in India or so resident at the time of the torts (see [48] above).

91 I find that the overall shape of the litigation does not necessarily point to India as *clearly or distinctly the more appropriate forum* than Singapore. The acts making up the dispute essentially concerned the alleged representations made by the Defendants, and their intent, via the alleged conspiracies, to cause damage to the Plaintiffs. I had found that the representations would have been received and relied upon by the Plaintiffs in Singapore, and the Defendants would have hatched their conspiracy in Singapore. Even if D1 claimed to have been residing in India, the fact remained that D2 was in Singapore.

Conclusion

92 Under the first stage of the *Spiliada* test, the Defendants bore the burden of showing that there is clearly or distinctly a more appropriate forum for the trial of the action. I am not satisfied that they have done so. Given this, there is no need for me to consider the second stage of the *Spiliada* test. As such, I dismiss the Defendants' stay applications with costs to the Plaintiffs.

Audrey Lim
Judge

Wendy Lin, Monica Chong Wan Yee and Ho Yi Jie (Wong Partnership LLP) for the plaintiffs;
Francis Xavier SC and Derek On (Rajah & Tann Singapore LLP) for the first defendant;
P Padman and Lim Yun Heng (KSCGP Juris LLP) for the second defendant.