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Preface

Welcome to *The Asia-Pacific Arbitration Review 2023*, a Global Arbitration Review special report. For the uninitiated, Global Arbitration Review is the online home for international arbitration specialists the world over, telling them all they need to know about everything that matters.

Throughout the year, we deliver our readers pitch-perfect daily news, surveys and features; lively events (under our GAR Live and GAR Connect banners (GAR Connect for virtual)); and innovative tools and know-how products.

In addition, assisted by external contributors, we curate a range of comprehensive regional reviews that go deeper into developments in each region than the exigencies of journalism allow. *The Asia-Pacific Arbitration Review*, which you are reading, is part of that series.

This review contains insight and thought leadership inspired by recent events from 53 pre-eminent practitioners. Across 20 chapters and 315 pages, they provide us with an invaluable retrospective on the past year. All contributors are vetted for their standing and knowledge before being invited to take part.

The contributors' chapters capture and interpret the most substantial recent international arbitration events across the Asia-Pacific region, with footnotes and relevant statistics. Elsewhere they provide valuable background on arbitral infrastructure in different locales to help readers get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Australia, China, Hong Kong, India, Japan, Malaysia, Singapore, Sri Lanka and Vietnam and has overviews on topics including economic damages; energy disputes; private equity; construction and infrastructure disputes and the impact of sanctions; and hospitality disputes.

I hope you enjoy the volume and get as much from it as I did. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalarbitrationreview.com.

David Samuels
Publisher
May 2022

Singapore: latest arbitration developments

Alvin Yeo SC, Chou Sean Yu and Lim Wei Lee
WongPartnership LLP

IN SUMMARY

This chapter summarises the key developments on the Singapore international arbitration scene between the period of March 2021 and February 2022.

DISCUSSION POINTS

- Highlights from the Singapore International Arbitration Centre's Annual Report 2021
- Legislative developments concerning international arbitration in Singapore
- Significant judgments handed down by the Singapore courts in relation to international arbitration

REFERENCED IN THIS ARTICLE

- Legal Profession Act (Cap 161, 2020 Rev Ed)
- International Arbitration Act (Cap 143A, 2002 Rev Ed)
- UNCITRAL Model Law on International Commercial Arbitration
- *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244
- *CDM and another v CDP* [2021] SGCA 45
- *The 'Navios Koyo'* [2021] SGCA 99
- *Republic of India v Vedanta Resources plc* [2021] SGCA 50
- *BZW and another v BZV* [2022] SGCA 1
- *Sai Wan Shipping Ltd v Landmark Line Co, Ltd* [2022] SGHC

Statistics from 2021

In 2021, despite setbacks wrought by the covid-19 pandemic, the Singapore International Arbitration Centre (SIAC) chalked up its third-highest caseload of 469 new filings, of which 86 per cent were international in nature (2020: 94 per cent). This was the fifth consecutive year in which the SIAC's caseload exceeded 400, with the number of cases doubling over the past decade.

Of the 469 new case filings, 446 (95 per cent) (2020: 1,063 (98 per cent)) were administered by the SIAC. The remaining 23 case filings (5 per cent) were ad hoc appointments. The new cases were filed by parties from 64 jurisdictions (2020: 60). India, the United States and China again emerged at the top of the foreign user rankings. The SIAC also saw an increased number of foreign parties from Hong Kong SAR, Malaysia, South Korea, the United Arab Emirates, Ukraine and Vietnam compared with 2020.

The total sum in dispute for new case filings in 2021 was US$6.54 billion (2020: US$8.49 billion), with the highest sum in dispute for a single administered case standing at US$1.95 billion – more than double that in 2020.

The SIAC was also ranked as the most preferred arbitral institution in the Asia-Pacific, and second among the world's top five arbitral institutions, in the Queen Mary University of London and White & Case International Arbitration Survey (the QMUL Survey) released on 6 May 2021. In addition, the QMUL Survey jointly ranked Singapore with London as the most popular seat in the world, and the most preferred seat in the Asia-Pacific. The survey findings were based on the responses given in 198 interviews and by 1,218 questionnaire participants, which included in-house counsel from both public and private sectors, private practitioners, arbitrators, representatives of arbitral institutions and trade associations, academics, experts and third-party funders.

Extension of third-party funding framework; conditional fee arrangements permitted

On 28 June 2021, Singapore's third-party funding framework was expanded to include, among other things, proceedings commenced in the Singapore International Commercial Court (SICC), domestic arbitration proceedings and related mediation proceedings.

Previously, the third-party funding framework was available only in respect of international arbitration proceedings and related court and mediation proceedings. By expanding the types of legal proceedings to which the third-party funding framework

applies, the Ministry of Law intends to offer international commercial parties that are in financial hardship a way to pursue their claims and further strengthen Singapore's position as an international commercial dispute resolution hub.

On 12 January 2022, amendments to the Legal Profession Act (Cap 161, 2020 Rev Ed) were passed, which will allow conditional fee arrangements (CFAs) in prescribed categories of proceedings, including international and domestic arbitration proceedings, certain proceedings in the SICC and related court and mediation proceedings. Prior to this, CFAs were prohibited under Singapore law. These amendments have not yet come into effect.

Singapore Chamber of Maritime Arbitration issues fourth edition of arbitration rules

The Singapore Chamber of Maritime Arbitration (SCMA) released the fourth edition of the SCMA Arbitration Rules, which applies to all SCMA arbitrations commenced on or after 1 January 2022.

This latest edition reflects industry views and is designed to reinforce the SCMA's attractiveness and cost-efficiency for resolution of maritime and trade disputes. Key changes include:

- allowing two arbitrators to proceed with an arbitration, with the third being appointed only where necessary (eg, if an oral evidential hearing is required);
- oral hearings no longer being mandatory, unless requested by a party;
- empowering the tribunal to withhold approval to a late change of representatives where the conduct of proceedings or the enforceability of any award might be prejudiced; and
- inclusion of an expedited procedure.

Memoranda of understanding between the SIAC and other institutions

The SIAC entered into three memoranda of understanding with other arbitral institutions to promote international arbitration as the preferred method of dispute resolution for international disputes:

- on 8 April 2021 with the Abu Dhabi Global Market (ADGM) Arbitration Centre;
- on 21 April 2021 with Arbitration Place (Canada); and
- on 16 August 2021 with the Santiago Arbitration and Mediation Centre.

Under these memoranda of understanding, the SIAC will, among other things, work with these institutions to jointly organise conferences, seminars and workshops on international arbitration and arrange or assist to request the use of hearing facilities

in Maxwell Chambers at preferential rates for ADGM-seated, Toronto- or Ottawa-seated or Santiago-seated arbitration hearings (as the case may be) that are held in Singapore.

On 5 August 2021, the SIAC entered into a memorandum of understanding with the Korea In-house Counsel Association (KICA). The SIAC and the KICA intend to jointly promote international arbitration as a preferred method of dispute resolution, including through organising international arbitration events in Korea.

Case law

We summarise below some of the significant judgments released since our last report (from March 2021 to February 2022).

- In *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244, the General Division of the High Court (the High Court) held that subject matter arbitrability at the pre-award stage is determined by the law of the seat of arbitration, not the law governing the arbitration agreement.
- In *CDM and another v CDP* [2021] SGCA 45, the Court of Appeal held that indemnity costs would not be the default position where an application to set aside an arbitral award has been unsuccessful, disagreeing with the position in Hong Kong.
- In *The 'Navios Koyo'* [2021] SGCA 99, the Court of Appeal declined to stay an admiralty action in favour of arbitration on condition that the right to rely on a defence of time bar in the arbitration be waived; the waiver sought was of an accrued defence of time bar, which was a substantive issue rightly reserved for determination in the arbitration.
- In *Republic of India v Vedanta Resources plc* [2021] SGCA 50, the Court of Appeal considered an application for declaratory relief on a question of law previously determined by the tribunal as a procedural matter to be an abuse of process.
- In *BZW and another v BZV* [2022] SGCA 1, the Court of Appeal considered the fair hearing rule and determined that a tribunal must pay attention to what is put before it and give its reasoned decision based on the arguments and evidence presented. This requirement would not be met if the decision was 'manifestly incoherent'.
- In *Sai Wan Shipping Ltd v Landmark Line Co, Ltd* [2022] SGHC 8, the High Court considered an arbitrator's power to make peremptory orders in an ad hoc arbitration under the UNCITRAL Model Law on International Commercial Arbitration (the Model Law).

Subject matter arbitrability at pre-award stage is determined by the law of the seat of arbitration

In *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244, the High Court held that subject matter arbitrability at the pre-award stage is determined by the law of the seat of arbitration.

The plaintiff and defendant entered into a shareholders agreement, which provided for disputes 'relating to the management of the [company] or relating to any matters set out in [the shareholders agreement]' to be referred to arbitration in Singapore. When disputes arose regarding, among other things, the company's management, board composition and potential sale, the defendant commenced an action for shareholder oppression and company mismanagement in the courts of Mumbai, India.

The plaintiff applied to the High Court for a permanent anti-suit injunction on the grounds that the dispute fell within the scope of the arbitration agreement and ought to be arbitrated. It also submitted that the question of arbitrability was governed by the law of the seat (Singapore law), under which oppression and mismanagement claims were arbitrable.

The defendant opposed the anti-suit injunction, arguing, among other things, that disputes relating to oppression and mismanagement were not arbitrable under Indian law, which applied as the law governing the arbitration agreement.

The High Court held that the law of the seat of arbitration determined subject matter arbitrability at the pre-award stage, finding, among other things, the following.

- Subject matter arbitrability, when raised at the pre-award stage before the seat court, is essentially an issue of jurisdiction of the tribunal. A claim that a particular dispute is non-arbitrable due to its subject matter in substance invalidates the parties' consent to arbitration since parties cannot agree to submit non-arbitrable disputes to arbitration. It is not appropriate to characterise the issue of subject matter arbitrability as a question on the effect of an arbitration agreement (which may engage issues such as whether the dispute falls within the scope of the arbitration agreement, in which case, the law of the arbitration agreement would apply).
- Applying the law of the seat avoids potential anomalous outcomes that might otherwise arise from applying the proper law of the arbitration agreement. At the post-award stage, the seat court applies the law of the seat when it considers an application to set aside an award on grounds of non-arbitrability of the dispute. Applying the same law to the issue of arbitrability at the pre-award stage would ensure consistent results are always arrived at by the seat court regardless of when the issue of arbitrability arises.

Applying Singapore law as the law of the arbitral seat, the High Court found that the disputes brought before the Mumbai courts were arbitrable and fell within the scope of the arbitration agreement and that the defendant had, accordingly, breached the arbitration agreement in commencing the Mumbai proceedings. The High Court thus granted the permanent anti-suit injunction sought by the plaintiff.

Indemnity costs are not the default position for unsuccessful setting-aside application

In *CDM and another v CDP* [2021] SGCA 45, the Court of Appeal held that indemnity costs would not be the default position where an application to set aside an arbitral award has been unsuccessful, and that the usual principle-based approach that applies to civil litigation applies equally to setting-aside proceedings.

In the underlying arbitration, the tribunal ordered the appellants to pay, among other things, the sum of US$13.9 million, with interest, to the respondent. The appellants applied to set aside that part of the award. The High Court dismissed the appellants' application; the appeal therefrom was also dismissed by the Court of Appeal.

In the process, the respondent contended that, having been successful in resisting the appellants' attempt to set aside the award, it should be entitled to costs on an indemnity basis. The respondent later abandoned this position at the appeal, following the decision in *BTN and another v BTP and another* [2021] SGHC 38 (*BTN*), where the High Court declined to apply the Hong Kong approach (ie, that the award-creditor is entitled to indemnity costs following the award-debtor's unsuccessful application to set aside the arbitral award). Nonetheless, the Court of Appeal set out its views on this significant question of law as to costs.

The Court of Appeal agreed with the reasoning in *BTN* that the imposition of costs on an indemnity basis was 'dependent on there being exceptional circumstances to warrant a departure from the usual course of awarding costs on a standard basis', and held that:

- it cannot be said that every instance of an unsuccessful challenge to an award is, at least presumptively, an 'exceptional circumstance' warranting indemnity costs;
- there was no justification to treat arbitration as a separate category – there is nothing in both the case law and the Rules of Court that suggests that an entire area should be presumptively hived-off as attracting costs on an indemnity basis purely because of the subject matter it concerns; and
- the assessment of whether indemnity costs are warranted turns on a highly fact-specific assessment of the totality of the facts and circumstances.

The Court of Appeal disagreed with the position in Hong Kong law, finding that the Hong Kong law approach 'fails to recognise that the limited avenues available to challenge an arbitral award are statutorily provided for in the same way as a right of appeal against a decision of the court below'; there is no principled reason to draw any distinction between the two in assessing whether exceptional circumstances exist for the purpose of awarding indemnity costs.

Court's discretion to impose condition on stay in favour of arbitration depends on nature of condition sought and justice of case

In *The 'Navios Koyo'* [2021] SGCA 99, the Court of Appeal considered the issue of whether a court, in staying court proceedings in favour of arbitration, can impose conditions such that substantive issues that would otherwise be decided in the arbitration can effectively be excluded from the arbitration.

The appellant financier commenced an admiralty action in the High Court against the respondent shipowner in respect of claims under the bills of lading. The bills of lading incorporated the terms of a charterparty, including its arbitration clause. However, the appellant did not take any step to ascertain the full details of the incorporated terms, until the night before a time bar accrued to bar claims under the bills of lading, when the appellant finally sought and obtained from the respondent a copy of the charterparty.

The respondent applied for and obtained from the High Court an unconditional stay of the admiralty action under section 6(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (IAA) in favour of arbitration.

The appellant appealed against the High Court's decision, arguing that the stay should be conditional on the respondent waiving its right to rely on a defence of time bar in the arbitration.

The Court of Appeal declined to impose the condition sought. The Court held that the exercise of the court's discretion to impose a condition for a stay under section 6 of the IAA depends on:

- the true nature of the condition sought, in the context of the relevant circumstances: the threshold for conditions that do not merely facilitate or seek to give effect to the arbitration agreement is higher than that applicable for essentially administrative conditions; and
- the justice of the case, which entails consideration of whether the party seeking the stay is able to justify the imposition of the condition sought. In determining whether such justification is shown, regard should be had to:

- the reasons for the conditions being sought, and whether those reasons could have been obviated by the applicant's own conduct;
- whether the need for any of the conditions was contributed to or caused by the conduct of the respondent; and
- the substantive effect on the parties of any condition that the court may impose. The size of the claim is not relevant in determining whether hardship would be engendered if a condition was not imposed.

In this case, there was no basis to grant the condition sought for the following reasons.

- The condition sought to be imposed was a waiver of an accrued defence of time bar. The fact that the court was being asked to deprive a party of a substantive and accrued defence that ought to be determined at the arbitration was a very strong factor against imposition of the condition; and
- The appellant chose not to do anything to ascertain the incorporated terms under the bills of lading. The appellant simply failed to protect its own commercial interests and could not expect the court to insulate it from the consequences of its own inaction.

The Court of Appeal therefore dismissed the appeal.

No backdoor appeal on question of law

In *Republic of India v Vedanta Resources plc* [2021] SGCA 50, the Court of Appeal considered an application for declaratory relief on a question of law previously determined by the tribunal as a procedural matter to be an abuse of process.

The respondent commenced a Singapore-seated investment treaty arbitration (the Vedanta Arbitration) against the appellant while a separate but related investment treaty arbitration (the Cairn Arbitration) commenced by other parties against the appellant was ongoing.

On the appellant's application for a regime to permit cross-disclosure of documents between both arbitrations, the tribunal in the Vedanta Arbitration (the Vedanta Tribunal) considered various sources of law, including Singapore law. In doing so, the Vedanta Tribunal took the view that, under Singapore law, an implied obligation of confidentiality applied in every arbitration governed by Singapore procedural law, subject to certain exceptions (eg, where the public interest or the interests of justice required disclosure). On the basis of that exception, the Vedanta Tribunal developed a 'new independent exception' to cover investment treaty arbitrations that could be applied together with its inherent powers to design a customised confidentiality

regime. This resulted in the issuance of a cross-disclosure regime set out in the Vedanta Tribunal's Procedural Order No. 3 (VPO 3). Under VPO 3, either party was at liberty to apply for disclosure of any specific identified document to the Cairn Arbitration after having first consulted the other party with a view to reaching mutual agreement.

Pursuant to VPO 3, the appellant applied twice to the Vedanta Tribunal for cross-disclosure of certain documents from the Vedanta Arbitration into the Cairn Arbitration. The Vedanta Tribunal granted only part of the appellant's first application and rejected the second.

The appellant then applied to the High Court seeking declarations that: (1) documents disclosed or generated in the Vedanta Arbitration were not confidential or private; and (2) disclosure of documents disclosed or generated in the Vedanta Arbitration by the appellant in the Cairn Arbitration would not breach any obligation of confidentiality or privacy. The appellant's primary complaint was that the Vedanta Tribunal had, through VPO 3, erred in impermissibly developing the lex arbitri. The appellant also indicated that it intended to use the declarations to invite the Vedanta Tribunal to reconsider its decision in VPO 3.

The Court of Appeal found that the appellant had no legitimate basis to invoke the court's jurisdiction for the declaratory relief sought, by the mere fact that the tribunal's decision pertained to the lex arbitri:

- The issue in VPO 3 was a procedural one concerning disclosure or discovery of documents disclosed or generated in the Vedanta Arbitration. Emphasising that an arbitrator is 'master of his own procedure', the Court of Appeal noted that the fact that the obligation of confidentiality applied as a substantive rule of the common law did not take the matter outside the scope of the arbitral procedure and place it within the court's purview. Even if the tribunal made an error of law, its decision is final and binding unless there are grounds for setting aside.
- Since the Vedanta Tribunal was the master of its own procedure, it would be inappropriate for the court to intervene in its decision. Otherwise, it would be open to a party that (as here) is dissatisfied with a tribunal's decision on a procedural matter that the party claims is not covered by existing case law to invite the court to rule on the procedural matter and use the abstract ruling as a tool to persuade the tribunal to reconsider its decision. This would violate the principle of minimal curial intervention 'at the highest level'.
- The true purpose of the application was a backdoor appeal against VPO 3 and the Vedanta Tribunal's decisions on the appellant's two applications for cross-disclosure or an attempt to seek a court judgment to put pressure on the tribunal to reconsider its decision. In either case, it was manifestly improper conduct.

The Court of Appeal therefore found that the appellant's application was a blatant abuse of the process of the court and dismissed the appeal.

'Manifestly incoherent' decision breached the fair hearing principle

In *BZW and another v BZV* [2022] SGCA 1, the Court of Appeal found that an award that was 'manifestly incoherent' breached the fair hearing rule.

The respondent had entered into a ship-building contract with the appellants, which were associated companies. Disputes arose over delays in construction and the quality of the generators in the vessel eventually delivered. In the arbitration, the respondent pursued two claims against the appellants, namely: (1) a claim for liquidated damages arising from the delay in delivery (the Delay Claim); and (2) a claim in damages for the installation of contractually inadequate generators (the Rating Claim). The appellants filed a counterclaim seeking extra payment for extra work.

The tribunal dismissed the respondent's claims and the appellants' counterclaim. In dismissing the respondent's claims, the tribunal based its decision on, among other things, the following findings.

- The vessel was not ready for delivery by the appellant.
- The respondent's own representative, Mr Tan, provided supporting documents showing that the generators were fit for purpose.
- The appellants were not in breach of the contract by delivering the vessel with generators rated IP23, which was below the contractually required rating of IP44, because the respondent itself had confirmed that generators were fit for purpose.

In dismissing the appellants' counterclaim, the tribunal held that:

- the appellants had indeed delayed in delivering the vessel under the contract;
- the delivery date or the cancelling date was not extended; and
- the appellants were not entitled to rely on the permissible delay clause because they had failed to comply with the contractual conditions precedent for invoking that provision.

One of the members of the tribunal issued a brief dissenting opinion on the Rating Claim and noting the error in describing Mr Tan as the respondent's representative.

The respondent submitted a request for correction of the award. The respondent pointed out in its request for correction that Mr Tan was not the respondent's representative but, in fact, the appellants' representative. The tribunal accordingly reworded the relevant part of the award to state that '[t]he Tribunal has noted that [the appellants'

Mr Tan] provided supporting documents to show that IP23 was fit for purpose'. The respondent subsequently made a further request for an interpretation of the award, but this request was rejected on the ground that it had been made out of time.

The respondent applied to the High Court to set aside the award, save for the part dismissing the appellants' counterclaim under section 24(b) of the IAA and article 34(2)(a)(iii) of the Model Law, contending, among other things, that: (1) as regards both the Delay Claim and the Rating Claim, there was no nexus between the chain of reasoning which the tribunal adopted and the cases which the parties had advanced; and (2) as regards the Delay Claim, the tribunal failed to direct its mind to the merits.

The Court of Appeal affirmed the High Court's decision to set aside the award, finding, among other things, the following.

- The fair hearing rule requires each party to be given adequate notice of the case it must meet in the arbitration and a fair opportunity to be heard on that case. The rule requires a tribunal to pay attention to what is put before it and give its reasoned decision on the arguments and evidence presented. A manifestly incoherent decision shows that the tribunal did not understand or deal with the case at all, which meant that the parties were not accorded a fair hearing.
- The tribunal failed to apply its mind to the essential issues in respect of the Delay Claim. The tribunal's chain of reasoning bore a nexus only to one of the appellants' defences. The tribunal's findings in the counterclaim necessarily meant a rejection of the appellants' other defences. However, the application of the one remaining defence turned on a number of questions that the tribunal ought to have posed to itself, but did not.
- With respect to the Rating Claim, the majority had adopted a chain of reasoning that had no nexus to the parties' submissions. Once the tribunal corrected the fact that Mr Tan was the appellants' own witness, there was no basis for the tribunal's finding that the respondent was estopped by leading the appellants to believe that the generators supplied were acceptable. However, the tribunal failed to apply its mind to this essential issue.
- While the tribunal did make factual findings, these findings were often mere assertions rather than a result of examining documentary evidence and considering the credibility of witnesses. The Court found that the award was difficult to understand as the tribunal did 'very little, if anything, to connect the proverbial dots'.
- It was not appropriate to remit the award to the tribunal. The tribunal's breach in this instance did not rest on a single or isolated point; it failed entirely to appreciate the correct questions it had to decide, let alone apply its mind to determining those questions. On the facts (eg, the majority's attempt to deny the obvious effect

as to the error regarding Mr Tan's employer had on its chain of reasoning), a reasonable person would no longer have confidence in the tribunal's ability to come to a fair and balanced conclusion on the issues if the award was remitted.

Clarification of arbitrator's powers to make and enforce peremptory orders

In *Sai Wan Shipping Ltd v Landmark Line Co, Ltd* [2022] SGHC 8, the High Court considered an arbitrator's power to make peremptory orders in an ad hoc arbitration under the Model Law.

The dispute arose out of a charterparty agreement between the plaintiff charterer and the defendant vessel owner. In the arbitration proceedings, the defendant sought an interim award for unpaid hire. The sole arbitrator granted the application and issued a first partial award. Ten months later, the defendant filed further submissions claiming for the balance of the charter hire and requested the plaintiff to file its defence within 28 days (by 31 March 2021). Without inviting any submission from the plaintiff, the arbitrator ordered that the plaintiff serve its defence by 31 March and directed that if the plaintiff failed to do so, the defendant could apply for a short final and peremptory order that would include a severe sanction against the plaintiff.

The plaintiff did not respond to the arbitrator, but in subsequent communications, the plaintiff obtained the defendant's agreement to an extension of time until 9 April 2021. The plaintiff did not serve its defence on 31 March 2021, and the defendant's solicitors wrote to the arbitrator on 1 April 2021, asserting that the plaintiff did not need an extension of time and looked forward to receiving the tribunal's directions. The plaintiff responded, copying the arbitrator, saying that there was a misunderstanding, as it was under the impression that an extension of time had been agreed. The arbitrator was provided copies of the correspondence exchanged, but did not invite any further input. Instead, the arbitrator proceeded to issue what he described as a final and peremptory order for the defence to be filed by 5pm London time on 9 April 2021, failing which, the plaintiff would be barred from advancing any positive defence or evidence in the arbitration.

The plaintiff served its defence on 9 April 2021, but after the 5pm deadline, claiming to have experienced some trouble with the internet connection. The arbitrator sent an email the next day, directing that he would abide by the terms of his peremptory order, and that the plaintiff's defence would be excluded unless the defendant agreed otherwise. The defendant unsurprisingly declined to agree to the inclusion of the plaintiff's defence.

The arbitrator eventually issued a second award, after considering further evidence and submissions from the defendant to prove its case.

The plaintiff applied to the High Court to set aside the award, asserting that the arbitrator acted in breach of the fair hearing and equal treatment rules under article 18 of the Model Law.

The High Court found that the arbitrator had acted in breach of natural justice. It held, among other things, the following.

- This was a Singapore-seated ad hoc arbitration. Accordingly, the arbitrator should have looked at the Model Law before considering whether to make or enforce any peremptory orders.
- The phrase 'peremptory order' is not found in the Model Law. However, articles 23 and 25 of the Model Law provide that where a respondent fails to communicate its statement of defence within the period of time agreed by the parties or determined by the tribunal, without showing sufficient cause, then the tribunal is to continue the proceedings without treating such failure in itself as an admission of the claimant's allegation.
- The sanction imposed by the arbitrator did not track the wording of article 25 of the Model Law but effectively barred the plaintiff from challenging the defendant's case altogether. The arbitrator exceeded his powers under the Model Law.
- In the absence of agreement, the arbitrator is to determine what the period of time should be after consulting all the parties. If not, he or she must be open to reconsider the time fixed upon request of either party. If a party fails to adhere to the stipulated timeline, the arbitrator must also consult all parties when considering whether there is sufficient cause for the failure. The arbitrator acted in breach of natural justice by failing to give the plaintiff an opportunity to address him on these matters.

The High Court did not consider it appropriate to remit the award in the circumstances of the case, finding that the plaintiff's lack of confidence in the arbitrator to decide the matter fairly if remitted is not without reasonable basis. Accordingly, the High Court set aside the award.

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Alvin Yeo, Senior Counsel, is the chairman and senior partner of WongPartnership LLP. He was appointed Senior Counsel of the Supreme Court of Singapore in 2000 at the age of 37, the youngest ever to be so appointed. His main areas of practice are litigation and arbitration in banking, corporate/commercial and infrastructure disputes.

Alvin is a member of the court of the SIAC and the ICC Commission; a fellow of the Asian Institute of Alternative Dispute Resolution, the Singapore Institute of Arbitrators and the Singapore Institute of Directors; and a former member of the LCIA Court and the IBA Arbitration Committee. He is also on the panel of arbitrators in the Hong Kong International Arbitration Centre, the International Centre for Dispute Resolution, the Korean Commercial Arbitration Board, the Shenzhen Court of International Arbitration and the Singapore Institute of Arbitrators' Panel for Sports in Singapore.

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Her main areas of practice involve litigation and arbitration across a wide range of matters including commercial, corporate and banking disputes, fraud, cross-border trade and investment disputes, insolvency, and judicial review. In addition to an active court practice as counsel in the High Court and Court of Appeal, Wei Lee has acted as counsel in arbitrations conducted under various leading arbitral rules (eg, SIAC, ICC, UNCITRAL, AIAC, LCIA). Wei Lee also sits as arbitrator, both as party-appointed co-arbitrator and through appointments by arbitral institutions (as designated appointing authority).

Wei Lee is a council member of the International Chamber of Commerce Institute of World Business Law and a fellow of the Chartered Institute of Arbitrators. She also serves as a member of the Advisory Committee of The Law Society of Singapore's Professional Conduct Council.

Wei Lee graduated from the National University of Singapore. She also holds a European master's in law and economics, graduating summa cum laude. She is admitted to the Singapore Bar.

Headquartered in Singapore, WongPartnership is an award-winning law firm and one of the largest in the country. With offices in Shanghai and Yangon, as well as in Abu Dhabi, Dubai, Jakarta, Kuala Lumpur and Manila, through member firms of WPG, a regional law network, we are a leading provider of legal services in ASEAN, China and the Middle East. Together, WPG offers the expertise of over 400 professionals to meet the needs of our clients throughout the region.

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