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

[2026] SGHC 32

Originating Application No 517 of 2025

Between

DRL

… *Applicant*

And

DRK

… *Respondent*

GROUNDS OF DECISION

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

TABLE OF CONTENTS

DRL
v
DRK

[2026] SGHC 32

General Division of the High Court —Originating Application No 517 of 2025
Vinodh Coomaraswamy J
30 September, 3 October 2025

9 February 2026

Vinodh Coomaraswamy J:

Introduction

1 This is an application to set aside an award[1] issued in March 2025 ("the Award") delivered by a tribunal ("the Tribunal") in an arbitration ("the Arbitration") seated in Singapore and conducted under the Arbitration Rules (6th Edition, 1 August 2016) ("the SIAC Rules")[2] of the Singapore International Arbitration Centre ("the SIAC").[3] The Award includes an order terminating the Arbitration. That, of course, meant that the Tribunal did not go on to determine the merits of the applicant's claim against the respondent. The Tribunal took this unusual step because it found that continuing the Arbitration had

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1 Applicant's first affidavit filed 3 July 2025 ("AA1"), p 40.

2 AA1, p 288.

3 Award at para 3.

"become…impossible" within the meaning of Article 32(2)(*c*) of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") read with s 3(1) of the International Arbitration Act 1994 ("the Act").

2 Article 32 of the Model Law provides that arbitral proceedings may terminate under Singapore law in two ways: (a) by the final award; or (b) by the tribunal making an order to terminate the arbitral proceedings under one of the three paragraphs of Article 32(2). Article 32 reads as follows:

> Article 32. Termination of proceedings
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> (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this Article.
>
> (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
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> (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
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> (b) the parties agree on the termination of the proceedings;
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> (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
>
> (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of Articles 33 and 34(4).

3 The applicant submits that the Award ought to be set aside because a breach of natural justice occurred in connection with the making of the Award that has prejudiced the applicant's rights within the meaning of s 24(*b*) of the Act. In the alternative, the applicant submits that it was unable to present its case in the Arbitration within the meaning of Art 34(2)(*a*)(ii) of the Model Law.

4 The applicant is particularly aggrieved because the limitation period that governs its claim against the respondent expired in April 2024, 11 months before the Tribunal terminated the Arbitration by issuing the Award.[4] The result of the Award is that the applicant can no longer commence a fresh arbitration to secure a final and binding determination of its claim against the respondent on the merits.[5]

5 I have dismissed the application. I accept the respondent's submission that this application is in substance nothing more than a disguised appeal against the Tribunal's finding of fact that it was impossible to continue the arbitration within the meaning of Art 32(2)(*c*) of the Model Law. The Tribunal did not breach any aspect of natural justice either by terminating the Arbitration or by failing to determine the applicant's claim against the respondent on the merits. As the Tribunal held, Art 32(2)(*c*) positively obliges a tribunal to terminate an arbitration when it is impossible to continue it. Article 32(2)(*c*) therefore not only envisages but expressly mandates that every such arbitration will conclude with a termination order issued under Art 32(2)(*c*) and not with the final award issued under Art 32(1). Article 32(2) mandates this: (a) even if a termination order will cause irremediable prejudice to a party; and (b) even if the impossibility arises from circumstances that are not caused by the party prejudiced, or indeed any of the parties.

6 When one party to an arbitration applies for a termination order under Art 32(2)(*c*), the tribunal's duty to afford the parties natural justice within the meaning of s 24(*b*) of the Act and to afford each of them a reasonable and fair opportunity to present its case within the meaning of Art 34(2)(*a*)(ii) detaches from the tribunal's determination of the parties' dispute on the merits and

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4 Applicant's written submissions ("AWS"), paras 44(a) and (d) and 65(a).

5 AWS, paras 5 and 28(a).

attaches to the tribunal's determination of whether the high threshold of impossibility within the meaning of Art 32(2)(*c*) is satisfied. It is only if the application for a termination order is dismissed that these duties of the tribunal reattach to a determination of the parties' dispute on the merits.

7 In my view, the Tribunal did not breach its duty under either s 24(*b*) of the Act or under Art 34(2)(*a*)(ii) of the Model Law. The applicant's arguments on this application are in fact directed at the merits of the termination order and at the consequences of its results rather than at the process that the Tribunal followed in making the termination order.

8 The applicant has appealed against my decision. I now set out the grounds for my decision.

9 The parties' names and identifying features have been anonymised in these grounds of decision in order to preserve the confidentiality attached to the Arbitration and pursuant to a consent order[6] under s 23 of the International Arbitration Act 1994 ("the Act"). For the same reasons, I have converted all sums of money into Singapore dollars at the prevailing exchange rate and rounded them off for convenience.

Factual background

10 The background to the parties' dispute is not directly relevant and need not be traversed in detail here. It suffices for present purposes to say that the applicant's case in the Arbitration was that the respondent is indebted to the Applicant in a nine-figure sum ("the Debt") under a contract between them ("the Contract').[7] The Contract is governed by English law. The Contract also

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6 HC/ORC 7159/2025.

7 AA1, p 61.

contains an arbitration agreement requiring the parties to resolve all disputes arising under it by arbitration in Singapore under the SIAC Rules.[8]

11 In 2018, the applicant commenced litigation based on the Debt in the courts of a county that need not be named. The respondent relied on the arbitration agreement in the Contract to defeat that litigation.

The Arbitration

12 As a result of the dismissal, the applicant commenced the Arbitration in Singapore in May 2020. In August 2020, the Tribunal was constituted.[9]

13 The applicant's substantive claim in the Arbitration was for the Debt. The respondent denied that it owed the Debt to the applicant and brought a counterclaim for breach of the Contract.

14 Between February and June 2022, several countries[10] imposed sanctions ("the Sanctions") on the applicant. It is the Sanctions that led to the order terminating the Arbitration. The applicant itself accepts that the Sanctions have had the following continuing effects on the applicant:[11]

(a) The applicant's assets touching the financial system of the United States of America ("the US") and Singapore are frozen.

(b) US persons are prohibited from dealing with the applicant.

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8 Award at para 2.

9 Award at para 11.

10 Respondent's first affidavit filed on 8 July 2025 ("RA1"), p 158, para 12(a); RA1, pp 64–85, 86–91.

11 RA1, pp 158–159, paras 11–12.

(c) Providers of secure messaging services for financial transactions are prohibited from providing their services to the applicant. This includes the provider of the system for secure bank-to-bank communications known as the Society for Worldwide Interbank Financial Telecommunications ("SWIFT").

(d) It has become "impossible"[12] for the applicant to make or receive international payments, with the following consequences:

(i) It is "impossible" for the applicant to pay to the SIAC any further tranches of the deposits necessary to progress the Arbitration.[13]

(ii) The applicant is unable to transfer fees to its lawyers to progress the Arbitration;[14]

(iii) It is "impossible" for the applicant to pay to the respondent any sums of money that any tribunal may order the applicant to pay under any final award or under any interlocutory or final costs awards.[15]

(iv) It is "impossible" for the respondent to receive from the applicant any sums of money that any tribunal may order the applicant to pay under any final award or under any interlocutory or final costs awards.[16]

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12 RA1, pp 158–159, para 12(c).

13 RA1, p 158, para 12(c); p 168, para 50(b).

14 RA1, p 168, para 50(b); AWS, para 6.

15 RA1, p 159, para 12(c); p 168, para 50(b).

16 RA1, p 158, para 12(d); p 168, para 50(c).

15 The immediate result of the Sanctions was that the applicant was unable to progress the Arbitration from February 2022 until April 2022. In April 2022, the applicant sought and secured a two-month stay of the Arbitration so that it could address various issues arising from the Sanctions.[17] The respondent did not object to this stay.[18]

16 In June 2022, as the two-month stay was coming to an end, the Tribunal asked the parties whether they intended to proceed with the Arbitration and, if so, how.[19]

17 In July 2022, the applicant sought a further stay of the Arbitration until the end of October 2022 for the same reason it gave in April 2022, *ie,* to address issues arising from the Sanctions.[20] This time, the respondent objected to a further stay.[21]

18 Starting in July 2022, three key procedural events in the Arbitration took place. These events are:

(a) The respondent's application in July 2022 under Rule 27(j) of the SIAC Rules for an order requiring the applicant to furnish security for the respondent's costs in the sum of $3.2m ("the SFC Application");[22]

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17 RA1, p 159, para 13.

18 RA1, p 159, para 15.

19 RA1, p 159, para 16.

20 RA1, p 159, para 17.

21 RA1, para 46.

22 RA1, p 60–91, p 62, paras 2(f) and 2(h).

(b) The applicant's application in October 2023 under Rule 19.1 of the SIAC Rules for an order staying the Arbitration indefinitely ("the Stay Application");[23] and

(c) The respondent's application in November 2023 under Art 32(2)(*c*) of the Model Law for an order terminating the Arbitration ("the Termination Application").

The SFC Application

19 The respondent brought the SFC Application as a reaction to the Applicant's request for an indefinite stay of the Arbitration (see [15] above). The respondent's case on the SFC Application was that the Sanctions made it impossible: (a) for the applicant to make further payments to the SIAC to progress the Arbitration; and (b) for the applicant and the respondent to pay to each other any sums due under any final award or any costs award.[24]

20 From July 2022 to September 2023, correspondence ensued between the parties and also between the parties and the Tribunal. During this 14-month period, the Sanctions remained in place and continued to prevent the applicant from progressing the Arbitration.

21 On 6 September 2023, the Tribunal made its order on the SFC Application ("the SFC Order"). By the SFC Order, the Tribunal ordered the applicant, by 4 October 2023:

(a) to furnish security for the respondent's costs of the Arbitration in the sum of $1.3m;

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23 RA1, p 156.

24 RA1, p 62, para 2(e).

(b) to state "unequivocally" whether it intended to proceed with the Arbitration; and

(c) if it intended to proceed with the Arbitration, to set out how it intended to deal with the effect of the Sanctions.[25]

22 The SFC Order also granted the respondent permission, after 4 October 2023, to apply for an order to terminate the Arbitration under Art 32(2)(*c*) of the Model Law if the applicant failed to comply with the SFC Order.

23 The applicant failed to comply with the SFC Order.

The Stay Application

24 Instead of complying with the SFC Order, the applicant made the Stay Application on 3 October 2023. In the Stay Application, the applicant asked the Tribunal to stay the Arbitration on two broad grounds: (a) the Sanctions were "exceptional reasons or circumstances justifying a stay" because they are circumstances beyond the applicant's control "that have a concrete impact on the Arbitration";[26] and (b) in any event, it was in the interests of natural justice that the Tribunal should grant a stay.[27]

25 Although the terms of the Stay Application sought an indefinite stay of the Arbitration, the applicant accepted in its written submissions in support of the Stay Application that any stay should be limited to six months,[28] *ie,* until April 2024.

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25 RA1, p 114–115.

26 RA1, p 168, para 50.

27 RA1, p 157, para 2; p 166–167, para 46; p 171, para 58.

28 RA1, p 229, para 3.

26 The applicant sought a stay of the Arbitration on the following principal grounds:[29]

(a) The applicant was locked out of SWIFT and therefore could not pay its own lawyers.

(b) The applicant required time to find a third-party prepared to fund its claim against the respondent or to find a third party prepared to acquire its claim against the respondent as assignee.

(c) Save only for the two-month stay from April 2022 to June 2022, the applicant was not responsible for the 41 months of delay in the Arbitration from the time it was commenced in May 2020 until the time of the Stay Application in October 2023. The Stay Application sought only a further stay of only six months. Granting this stay would therefore leave the applicant responsible only for eight months of delay out of the 47 months that would by then have elapsed, *ie,* from May 2020 to April 2024, and was reasonable in all the circumstances.

(d) A further stay limited to only six months would cause the respondent no material prejudice.

The Termination Application

27 The Termination Application was the respondent's reaction to the Stay Application. The respondent brought the Termination Application pursuant to the permission that the Tribunal had granted it to do so in the SFC Order (see [22] above).

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29 RA1, p 323, para 44(1)–(5).

28 The Termination Application[30] asked the Tribunal to terminate the Arbitration either: (a) under Article 32(2)(*c*) of the Model Law because it had become impossible to continue the Arbitration;[31] alternatively (b) because the applicant had failed to comply with the SFC Order and because a termination order was, in the circummures, the only realistic way in which the Tribunal could discharge its duty under Rule 19.1 of the SIAC Rules "to ensure the fair, expeditious, economical and final resolution of the [parties'] dispute".[32]

The Tribunal's decision

29 On 27 September 2024, the Tribunal issued its decision on the Stay Application and on the Termination Application ("the Termination Decision").[33]

30 In the Termination Decision, the Tribunal dismissed the Stay Application. It held, for three reasons, that the applicant had failed to discharge its burden of justifying a stay.[34] First, a stay of a further six months would serve no useful purpose. In the 11 months that had elapsed since the applicant made the Stay Application, the applicant's position had not improved. The Sanctions had not been lifted, and the applicant had failed to find a third-party funder or assignee. Second, the applicant had failed to put any "concrete basis or evidence" before the Tribunal to suggest that its position would improve in the next six months.[35] Finally, for these reasons, the applicant could not comply

30 RA1, p 186–187; p 194–218.

31 RA1, p 213–214, paras 66.1 and 67–72.

32 RA1, p 213, para 66.2; pp 214–218, and paras 73–84.

33 Award at paras 13 and 19; RA1, p 306.

34 RA1, p 325, para 50.

35 RA1, p 324–325, para 48–49.

with its duty – as the claimant in the Arbitration – to "prosecute this arbitration as expeditiously as practically possible".[36]

31 The Tribunal indicated in the Termination Decision that it was minded to allow the Termination Application. But the Tribunal was aware that making a termination order would terminate its mandate with immediate effect, rendering it *functus officio* (see Art 32(3) of the Model Law, at [2] above). The Tribunal therefore deferred making a formal termination order until the parties had addressed it on the remaining incidental matters in the Arbitration,[37] *ie,* the costs of the Arbitration including the costs of the Stay Application and the costs of the Termination Application.[38]

32 The Tribunal gave the following four main reasons for being minded to terminate the Arbitration:[39]

(a) A tribunal is duty-bound to make a termination order if it finds as a fact that "the continuation of the proceedings has…become… impossible" within the meaning of Art 32(2)(*c*) of the Model Law.[40]

(b) A tribunal is obliged to terminate an arbitration under Art 32(2)(*c*) even though doing so could cause significant prejudice to a claimant, *eg,* where the applicable limitation period had expired.[41]

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36 RA1, p 326, para 51.

37 RA1, p 333, para 77.

38 Award at para 13.

39 RA1, p 331–333, paras 69–75.

40 RA1, p 327, para 57.

41 RA1, p 331, para 70.

(c) The prejudice to the applicant that arose before April 2024 from having to incur the time and cost of recommencing arbitration against the respondent on the same claim and the prejudice that arose after April 2024 from the expiry of the limitation period[42] were not relevant considerations under Art 32(2)(*c*).

(i) If a tribunal finds that it is impossible to continue an arbitration within the meaning of Art 32(2)(*c*), the Model Law does not require a tribunal to consider the prejudice that would be occasioned to either party by terminating the arbitration.[43]

(ii) In any event, the Tribunal accepted the respondent's submission[44] that any prejudice to the claimant arising from terminating the Arbitration was outweighed by the prejudice to the respondent from not terminating the Arbitration if it was impossible for the Arbitration to continue.[45]

(d) The evidence before the tribunal established that it was indeed impossible for the Arbitration to continue within the meaning of Art 32(2)(*c*).

(i) The respondent had discharged its burden of establishing that the Sanctions had rendered it impossible for the Arbitration to continue:[46] (a) the applicant had failed to pay the requisite deposits to the SIAC since February 2022; (b) the applicant had

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42 RA1, p 330, para 67.

43 RA1, p 333, para 75.

44 RA1, p 333, footnote 35.

45 RA1, p 333, para 75.

46 RA1, p 333, para 74.

> failed to furnish security for the respondent's costs under the SFC Order since October 2023; (c) the Sanctions had not been lifted and the applicant had failed to find a third-party funder or assignee since October 2023; and (d) there was "no sign that the sanctions would be lifted or cancelled in the near future".[47]
>
> (ii) As the Tribunal had already found on the Stay Application (see [30] above), the applicant had established "no good reason why, even after 6 months, there would be a change to the circumstances that have prevented the continuation of this arbitration".[48]

33 The applicant accepts that it cannot, on this application, challenge the correctness of any of these holdings of law or findings of fact by the Tribunal.[49] For what it is worth, however, I consider the Tribunal to be correct, not only in its holdings of law and findings of fact, but also in the way the Tribunal applied the law as it held to the facts as it found.

34 The Tribunal's reasons for being minded to make a termination order are set out in paragraphs 70 to 75 of the Termination Decision:[50]

> 70. First, the Tribunal fully appreciates that a termination order may have a significant impact on the [applicant]. This is particularly the case bearing in mind (among others) the limitation point made by the [applicant]. Hence, the Tribunal should not make a termination order unless the circumstances justify the same. However, as pointed out…above, the Tribunal is duty bound to make a termination order if continuation of the arbitration is "impossible". Further, the Tribunal has already determined above that a stay of 6 months is unlikely to

47 RA1, p 333, para 73; p 325, para 49–50.

48 RA1, p 331–332, para 70.

49 AWS, para 59.

50 RA1, p 331–333.

> result in a viable resolution of the [applicant's] current difficulties. With regard to the Termination Application, the [applicant] has provided no good reason why, even after the 6 months, there would be a change to the circumstances that have prevented the continuation of this arbitration.
>
> 71. Second, the Tribunal does not accept that the Termination Application was premature. As rightly pointed out by the Respondent, the applicant was in breach of the Tribunal's decision [on the SFC Application] in that it failed to provide security for costs as directed by the Tribunal. Hence, the Respondent was entitled to make the Termination Application.
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> 72. Further, insofar as may be necessary, the Tribunal will add this. The contention that the Termination Application was premature is a purely technical argument. The [applicant] has not suggested that it has suffered any prejudice as a result of the fact that the Termination Application was premature. In any event, even if it was indeed premature as contended by the [applicant], the Tribunal still has the jurisdiction to consider the Termination Application if the further progress of this arbitration has in fact become "impossible". The Tribunal should be concerned with matters of substance and not matters of technicality.
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> 73. Third, the most important consideration is whether the Respondent has successfully discharged the burden of showing that the continuation of this arbitration has become "impossible" within the meaning of Article 32(2)(c) of the Model Law. As noted…above, failure to make an advance on costs may give rise to such circumstances. Similarly, the failure to comply with an order to provide security for costs (especially when there is no indication that the inability to provide security for costs may change in the near future) certainly justifies a conclusion that continuation of an arbitration has become "impossible". In the present case, the Tribunal agrees with the Respondent on its submissions on the impact of the international sanctions. The Tribunal also repeats its analysis set out in paragraphs 49 and 50 above. There is simply no credible evidence that the [applicant] can successfully overcome the impact of the sanctions, whether by getting third party funder or by assigning its cause of action against the Respondent to a third party. There is equally no sign that the sanctions would be lifted or cancelled in the near future.
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> 74. On the whole, the Tribunal accepts the Respondent's submissions that the international sanctions faced by the [applicant] have rendered the further progress of this arbitration "impossible" within the meaning of Article 32(2)(c) of the Model Law.

> 75. Fourth, as regards the two forms of prejudice contended by the [applicant], the Tribunal is not persuaded if such prejudice (even if established) can be valid objections to the Termination Application. Article 32(2)(*c*) of the Model Law has not provided that prejudice (if any) is a relevant factor that the Tribunal shall take into account (still less an answer to an application for a termination order). In any event, even if such prejudice is relevant under Article 32(2)(*c*) of the Model Law, such prejudice would have to be weighed against the prejudice the Respondent would suffer."

35 In January 2025, the Tribunal declared the proceedings closed pursuant to Rule 32.1 of the SIAC Rules.[51]

36 In March 2025, the Tribunal issued the Award. The Termination Decision is annexed to the Award, and its reasoning is integral to the Award. The Award does not add to or supplement the reasons for making the Termination Order that the Tribunal set out in September 2024 in the Termination Decision. The Award includes only the following additional reasons: (a) the Tribunal's reasons for also terminating the Arbitration in respect of the respondent's counterclaim;[52] and (b) the Tribunal's reasons for its decisions on costs.

37 The final section of the Award is headed "Disposition" and includes the formal order terminating the Arbitration under Art 32(2)(*c*) of the Model Law[53] ("the Termination Order").

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51 Award at para 18.

52 Award at paras 19 and 54(1).

53 Award at para 54.

The applicant's case

38 The applicant accepts, quite correctly, that the Tribunal had jurisdiction to make the Termination Order.[54] The applicant also accepts, again quite correctly, that it cannot on this application argue that the Tribunal erred in law, erred in fact or erred in its application of the law to the facts.[55] By accepting this latter point, the applicant also abandons any argument before me that a court is somehow empowered to review *de novo* a termination order if it causes irremediable prejudice to a claimant and the impossibility arises from causes beyond the claimant's control. Any such argument, even if made, could not possibly succeed. There is no warrant for any such power of *de novo* curial review in the grounds for setting aside an award under the Act or under the Model Law.

39 The applicant applies to set aside the Award on only the two following grounds: under s 24(*b*) of the Act and under Art 34(2)(*a*)(ii) of the Model Law. The parties correctly accept that the same approach applies to a challenge brought on each of these grounds (*ADG v ADI* [2014] 3 SLR 481 at [118]).[56] The applicant therefore accepts that these two grounds stand or fall together.[57]

40 The applicant's case on both grounds rests on three core submissions:

(a) The applicant had a fundamental right in the Arbitration to a determination on the merits of its claim against the respondent.[58]

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54 AWS, para 53.

55 AWS, para 59.

56 AWS, para 21.

57 AWS, para 105.

58 AWS, paras 3(a) and 36.

(b) The Tribunal had a duty, in making any decision, to apply its mind to and consider the essential issues and arguments raised by parties.[59]

(c) The applicant had a "right to fair and equal treatment, and [an] expectation that arbitrators [would] not act unreasonably or capriciously".[60]

41 None of these submissions is a basis for setting aside the Award.

42 I deal with each submission in turn.

Fundamental right to a hearing on the merits

43 The first submission on which the applicant rests this application is the submission that the applicant had a fundamental right in the Arbitration to a determination on the merits of its claim against the respondent.

44 It is, of course, broadly correct to say that each party to an arbitration has a right to have the tribunal determine their dispute on the merits. It is also broadly correct to say that that right gives rise to a legitimate expectation that the tribunal will determine their dispute on the merits.

45 This right and this expectation are, of course, subject to the obvious proviso that the tribunal must first find that it has jurisdiction over the parties and then find that it has jurisdiction over their dispute. This proviso will be satisfied if the arbitration agreement is valid, if all the parties before the tribunal are bound by the arbitration agreement, if all contractual conditions precedent

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59 AWS, para 3(a).

60 AWS, para 3(b).

for a reference to arbitration under the arbitration agreement have been met, if the dispute is arbitrable and if the dispute is within the scope of the arbitration agreement.

46 Subject to this proviso, it is of course correct to say that a tribunal is both obliged and expected to determine the dispute between the parties on the merits. This is a natural consequence of the fundamental nature of arbitration: a structured, private and consensual regime that provides a functional alternative to invoking the public and coercive powers of the state through litigation in order to sublimate conflict by resolving disputes on the merits in a manner that is both final and binding upon the parties.

47 But this right to a determination on the merits is not fundamental in the sense that it is absolute and unqualified. In that very narrow sense, a party to an arbitration has a fundamental right only to an arbitration that is conducted in accordance with the parties' arbitration agreement subject to the mandatory provisions of the *lex arbitri*. Embedded in the *lex arbitri* is an irreducible core of mandatory and non-derogable principles of procedural fairness that the state considers universal and therefore guarantees universally. This irreducible core is another natural consequence of the fundamental nature of arbitration: a regime for dispute resolution that the state considers to be an acceptable alternative to the courts established and administered by the state only because the arbitration regime incorporates and preserves an irreducible core of procedural rights that the state considers universal and therefore guarantees universally. Thus, for example, the right to a fair hearing is part of that irreducible core; a right to have errors of law or of fact corrected on appeal is not part of that irreducible core.

48 It is therefore true that a tribunal is bound, as the applicant submits,[61] under both Art 24(1) of the Model Law and under Rule 24.1 of the SIAC Rules to hold a hearing on the merits, if so requested by a party. It is also true, as the applicant submits, that there is no express qualification elsewhere in the Model Law of a party's right, upon request, to a hearing on the merits under Art 24(1).[62] But the very existence of Art 32(2)(*c*) is an implicit qualification of Art 24(1). A right to a hearing on the merits of a dispute is therefore not within that irreducible core of procedural rights if the *lex arbitri* incorporates Art 32 of the Model Law.

49 Singapore law does incorporate Art 32 of the Model Law. Article 32 expressly provides two methods of terminating an arbitration. These two methods are mutually exclusive. The first is by the final award under Art 32(1), *ie,* the final award on the merits. The second is by an order terminating the arbitration under Art 32(2). Article 32(2)(*c*) of the Model Law expressly envisages that, when it has become impossible to continue an arbitration, the arbitration will not terminate with the final award under Art 32(1) but will instead terminate with a termination order under Art 32(2). Of necessity, no party can in that situation insist on having a hearing on the merits under Art 24(1). That is simply because it is impossible for the arbitration to continue towards any such hearing.

50 Indeed, a finding of impossibility under Article 32(2)(*c*) does not merely empower a tribunal to terminate an arbitration without a determination on the merits. As the Tribunal held, that finding obliges the tribunal to terminate the arbitration. That is the effect of the word "shall" in the chapeau of Art 32(2). As

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61 AWS, para 86.

62 AWS, para 87.

the Tribunal points out in the Termination Decision[63] and as the respondent submits on this application,[64] the *travaux preparatoires* for Art 32(2) show that the use of "shall" instead of "may" in Art 32(2) is a deliberate choice and is intended to be mandatory.

51 For these reasons, every arbitration that is terminated by an order under Art 32(2) will by definition not proceed to a determination on the merits and will not terminate with the final award under Art 32(1). A determination on the merits is therefore not the absolute and unqualified right that the applicant submits that it is.

52 The respondent is correct that accepting the applicant's first submission would render Art 32(2)(*c*) completely otiose.[65] If every party to an arbitration had an absolute and unqualified right to a determination on the merits, Art 32(2)(*c*) could never be invoked to terminate an arbitration on grounds of impossibility unless both parties also agreed to waive this right. But that possibility is expressly covered by Art 32(2)(*b*).

53 The applicant suggests that a claimant has an absolute and unqualified right to a determination on the merits once the limitation period has expired, thereby precluding it from commencing a fresh arbitration to have its claim determined on the merits.[66] The applicant also suggests that a termination order ought not to be made if the impossibility within the meaning of Art 32(2)(*c*) has not been caused by either party or has been caused more by the party seeking

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63 RA1, p 327, para 57 and footnote 23.

64 RWS, para 57.

65 RWS, paras 55–60.

66 AWS, para 95(c).

termination than by the party resisting termination.[67] I do not accept either of these suggestions. Once again, these points go to the outcome of a termination application and not to the fairness of the process by which a termination application is determined. But I deal with these points for what they are worth.

54 As the Tribunal pointed out in the Termination Decision, there is no basis in the scheme of Art 32(2)(*c*) of the Model Law for considering or weighing the prejudice to one or other party. This is so regardless of the severity of the prejudice that a termination order will cause to either party. So too, there is no basis in the scheme of Art 32(2)(*c*) for considering who has caused the impossibility, either in absolute terms (*eg*, if the impossibility is caused by neither party) or even in relative terms (if the impossibility has been caused more by one party than the other).

55 Contrary to the applicant's submission,[68] Art 32(2)(*c*) does not confer on the tribunal a procedural discretion to be exercised after weighing the balance of prejudice or after considering and attributing the causes of the impossibility.[69] Article 32(2)(*c*) turns on – and only on – an objective finding of fact by a tribunal as to the existence of impossibility. If a tribunal makes that finding, Art 32(2)(*c*) expressly mandates a termination order. That is so regardless of the degree of the prejudice to either party and regardless of the degree to which either party, if any, caused the impossibility.

56 In this respect, Art 32(2)(*c*) is quite unlike Art 32(2)(*a*) of the Model Law. Article 32(2)(*a*) deals with the termination of an arbitration upon the claimant withdrawing its claim. It confers on the Tribunal a discretion to reject

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67 AWS, para 93(b).

68 AWS, para 97.

69 AWS, paras 28(b), 65(c), 70(e), 75(b) and 100.

the claimant's attempt to withdraw its claim if: (a) the respondent objects to the withdrawal; and (b) the tribunal "recognises a legitimate interest on [the respondent's] part in obtaining a final settlement of the dispute". By its express terms, therefore, Article 32(2)(*a*) does confer on a tribunal a discretion and permits a tribunal to consider a respondent's legitimate interests when the tribunal exercises that discretion.

57 Article 32(2)(*c*) confers no discretion whatsoever on a tribunal. A tribunal has no power to find impossibility, and yet to require an arbitration to proceed to a determination on the merits. Indeed, any such discretion would be nonsensical. If an arbitration can continue to a determination on the merits, it is quite clearly not impossible for the arbitration to continue.

58 The apparent unfairness to claimants as a class arising from Art 32(2)(*c*) leaving a tribunal no scope to consider prejudice is more apparent than real. As the Tribunal pointed out, a claimant has the carriage of an arbitration. It therefore has a duty to progress that arbitration to an award on the merits, and to do so expeditiously. It is incumbent on every claimant to be alert to the limitation period applicable to its claim and to seize the initiative to prevent prejudice arising by reason of that limitation period expiring.

59 In this case, for example, the applicant had 29 months from its first request for a stay in April 2022 until the Termination Decision in September 2024 to find a third-party funder or assignee. That period of 29 months encompasses the formal stay of the Arbitration from April 2022 to June 2022 and a *de facto* stay of the Arbitration from June 2022 to September 2024. Indeed, it is a virtual certainty that the Tribunal would have been prepared to reconsider its indication in favour of a termination order if the applicant had come forward in the six months between the Termination Decision and the Termination Order with a credible third-party funder or assignee who was prepared to continue the

Arbitration without any further delay. In truth, therefore, the applicant had over three years, from February 2022 until March 2025, to devise and implement a mechanism to progress the Arbitration to a determination on the merits despite the Sanctions and despite the expiry of the applicable limitation period.

60 The applicant complains that the respondent "stymied"[70] its attempts to find a third-party funder or assignee by refusing, in December 2022, to consent to the Tribunal's relaxation of the applicant's obligation under Rule 39 of the SIAC Rules to keep confidential "all matters relating to" the Arbitration. In September 2023, the Tribunal formally rejected the applicant's unilateral request to be released from its obligations of confidentiality.[71] The applicant was therefore unable to disclose to potential third party funders or assignees any material that was subject to this obligation of confidentiality.

61 The fact remains, however, that the applicant had 26 months, from February 2022 until April 2024, to find a third-party funder or assignee *without* disclosing any material that was subject to its obligation of confidentiality arising from the Arbitration. This non-confidential material would include historical material that pre-dated the commencement of the Arbitration, such as the Contract and other transactional documents and correspondence. This material would also include any material that was initially subject to the obligation of confidentiality under Rule 39 of the SIAC Rules, but which had since been disclosed to the public as a result of the litigation between the parties and the judgments published in those matters, none of which were anonymised. In this latter category would be the very existence of the Arbitration and its subject-matter.

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70 AWS, paras 7, 70(f).

71 AWS, para 70(f), RA1, pp 255–257, paras 31(d)–(g).

62 During these 26 months, the third-party funder or assignee could have decided, on the basis of the non-confidential material or the formerly confidential material, whether to fund the Arbitration or to cause the Arbitration to be withdrawn and to fund or commence a new arbitration reframed in the manner it considered most advantageous.

63 There is no evidence that the applicant made any such efforts.

64 The applicant also suggests that its right to "be given a full opportunity of presenting its case" under Art 18 of the Model Law obliged the Tribunal to determine its claim against the respondent on the merits. As the respondent points out, this is a wholly strained reading of the Tribunal's obligation under Art 18. That article provides only that a tribunal has an obligation to treat the parties with equality and to give each party a reasonable and fair opportunity of presenting its case on the merits of its dispute (see *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 ("*China Machine*") at [104(b)]). A claimant in an arbitration that is terminated by an order under Art 32(2)(*c*) has no cause for complaint if it is treated with equality and afforded a reasonable and fair opportunity to present its case on whether the tribunal ought to make a termination order. If it has become impossible for an arbitration to continue to a decision on the merits of the claimant's claim, that is no breach of Art 18. That article does not guarantee that a claimant will have a reasonable and fair opportunity presenting its case on the merits of its claim even if it becomes impossible for the arbitration to continue.

65 The applicant also complains that it was and is unable to comply with the SFC Order and to pay the requisite deposits to the SIAC not because it is impecunious, but purely because it has been cut off from international payment

services.[72] This is completely immaterial to the inquiry under Art 32(2)(*c*). What matters under Art 32(2)(*c*) is whether it is impossible for an arbitration to continue. The cause of the impossibility is not material.

The Tribunal's duty to apply its mind to the essential issues and arguments

66 The second submission on which the applicant rests this application is that the Tribunal, in rendering the Award, was obliged to apply its mind to and consider the essential issues and arguments raised by parties.

67 This submission is of course true. But it tells only half the story.

68 The result of a termination order is, quite obviously, to terminate the arbitration. That is the result whether the tribunal has complied with or breached s 24(*b*) of the Act or Art 34(2)(*a*)(ii) of the Model Law. After an arbitration has been terminated, the tribunal cannot, by definition, continue to be under any duty to apply its mind to the essential issues and arguments raised by the parties on the merits of their dispute. Of course, a termination order that has been made in breach of the Act or the Model Law is liable to be set aside. But that is quite different from the suggestion implicit in the applicant's submission: that a tribunal somehow has a duty that transcends a termination order to consider the essential issues and arguments raised by the parties on the merits of their dispute.

69 The Tribunal fully discharged its duty to afford the applicant natural justice – both on the Termination Application and in the continuum of the Arbitration – when it arrived at its determination that it was in fact impossible

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[72] AWS, para 70(b).

to continue the Arbitration within the meaning of Art 32(2)(*c*) in September 2024 and when it eventually made the Termination Order in March 2025.

70 It is true that the Tribunal dealt with the Termination Application as a documents-only application, *ie* without hearing oral arguments from the parties. The applicant suggests that this was a breach of the Tribunal's duty of procedural fairness.[73] I do not accept this suggestion. The applicant did not at any time ask the Tribunal for an opportunity to present oral arguments on the Termination Application or object to the Tribunal's exercise of its procedural discretion to decide the Termination Application without hearing oral arguments. In any event, it was perfectly within the margin of deference accorded to the Tribunal on procedural matters to determine the Termination Application without hearing oral arguments (see *Vitol Asia Pte Ltd v Machlogic Singapore Pte Ltd* [2021] 4 SLR 464 at [143]–[149]).

The Tribunal's duty to treat the applicant fairly and equally

71 The final submission on which the applicant rests this application is that the applicant had a "right to fair and equal treatment, and [an] expectation that the Tribunal will not act unreasonably or capriciously.[74] The applicant develops this argument in the following terms:[75]

> **[The applicant's] right to fair and equal treatment, and expectation that arbitrators will not act unreasonably or capriciously:** Fair and equal treatment of the parties means, among other things, that an arbitrator must be independent and accountable for its decision. The Tribunal's reasoning in its stay / termination decision dated 27 September 2024 ("Stay / Termination Decision") was cavalier and skewed towards [the respondent]. For instance, the Tribunal pinned most of the

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73 AWS, para 92.

74 AWS, para 3(b).

75 AWS, para 3(b).

> blame for delays in the proceedings on [the applicant] and completely overlooked [the respondent's] lengthier delays."

72 The example that the applicant relies on to support this submission reveals, as the respondent submits, that the substance of this application is an attempt to persuade the court that the Tribunal was wrong to find impossibility and that the Tribunal therefore was wrong to have made the Termination Order.[76] The allegation the Tribunal was unreasonable or capricious in conducting the Arbitration is included only in an attempt to bring the applicant's challenge within the well-established principle that a court may set aside an award if the tribunal conducted the arbitration: (a) irrationally or capriciously; or (b) in a manner "so far removed from what could reasonably be expected of the arbitral process that it must be rectified" (see *China Machine* at [103]).

73 The applicant has failed to establish that the Tribunal's conduct of the Arbitration meets this very high threshold.

74 The applicant complains[77] that the Tribunal failed to consider delay in the Arbitration caused by the respondent and also caused by the Tribunal from the commencement of the Arbitration in May 2020 until the first of the Sanctions was imposed in February 2022 that "signalled the death knell"[78] for the applicant's claim. The applicant's submission is that, but for these delays, a hearing on the merits would have taken place in 2021.[79] As examples of this delay, the applicant points to: (a) the respondent's delay in filing its response to the notice of arbitration three weeks late,[80] (b) the respondent's delay in paying

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76 AA1, para 69.

77 AA1, paras 75–76.

78 AWS, paras 8 and 15(e).

79 AWS, paras 15(b), 15(e).

80 AWS, para 15(c); AA1, paras 38–40 and 58.

its share of the initial deposit with the SIAC more than nine months late;[81] (c) the respondent's delay in filing its amended statement of defence two weeks late;[82] and (d) the Tribunal's delay in taking almost eight months to make its decision on a contested request for document production.[83]

75 The applicant's complaint is misconceived.

76 First, as a matter of fact, the basis for the applicant's submission that a merits hearing would have taken place in 2021 is the Tribunal's provisional timetable issued in November 2020. But that provisional timetable did not in any way foreshadow a merits hearing in 2021. All that it foreshadowed was that an agreed list of issues would be finalised by 2 December 2021 with the next substantial step to be an evidentiary hearing to be fixed "in consultation with the parties" after a case management conference.[84] Even on the Tribunal's provisional timetable, therefore, and without any of the delay that the applicant now complains of, it was highly unlikely that any award would have been issued, let alone satisfied, before the first of the Sanctions was imposed in February 2022.

77 Second, the Tribunal's failure to consider the question of absolute or relative cause for the delay in the Arbitration is not evidence that it behaved irrationally or capriciously in deciding the Termination Application. As I have already held, the question of the cause of the impossibility is entirely immaterial to the inquiry on an application under Art 32(2)(*c*) of the Model Law. The only inquiry is whether "the continuation of the proceedings

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81 AWS, para 15(c); AA1, paras 41–45 and 58.

82 AWS, para 15(c); AA1, para 46.

83 AWS, para 15(c); AA1, paras 51 and 59.

84 Applicant's Bundle of Documents, Vol 1, pp 23–24; Termination Decision, para 31.

has…become…impossible" within the meaning of Art 32(2)(*c*). Impossibility under Art 32(2)(*c*) is an objective state. It is also a binary state. It is a state that either exists or it does not exist. That is the only predicate for a termination order. Who, if anyone, caused the delay that resulted in the Arbitration not concluding with a final award under Art 32(1) that had been satisfied before the Sanctions made that impossible is irrelevant to ascertaining whether impossibility existed or did not exist as an objective state and as a binary state in September 2024 or indeed in March 2025.

78 The Tribunal found that the Sanctions combined with the applicant's failure to find a third-party funder or assignee and further combined with the lack of any evidence that the applicant's position might improve in the foreseeable future made it impossible for the Arbitration to continue. Indeed, it was the applicant's own case in support of the Stay Application that the Sanctions made it impossible for the Arbitration to continue.[85]

79 The applicant does not suggest that there was any material change in this impossibility between the Termination Decision in September 2024 and the Termination Order in March 2025 or that any such material change was brought to the Tribunal's attention but irrationally or capriciously ignored. As I have already found, the mere fact that the applicant is not impecunious and has the financial ability to furnish the security for costs is wholly irrelevant so long as the Sanctions continue to prevent the applicant from effecting the necessary mechanics of payment. That has been the position since February 2022.

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[85] RA1, pp 158–159, paras 11–12.

Conclusion

80 The applicant attacks the Tribunal and its reasoning in making the Termination Order as unreasonable and capricious,[86] "bare-bones"[87], "a feeble attempt"[88] or "tersely worded".[89] This intemperate language is totally without basis and wholly unwarranted. So too is the applicant's allegation that the Award should be set aside because the Tribunal dismissed the prejudice to the applicant "with a throwaway one-liner", because the Tribunal was "skewed"[90] in favour of the respondent or because the Tribunal "just played along with [the respondent]'s attempt to stymie [the applicant]'s best efforts".

81 These baseless allegations do a disservice to the Tribunal and to the respondent. Indeed, these allegations do a disservice also to the applicant, to the court and to the legislative regime for setting aside awards. These allegations ought never to have been made.

82 For these reasons, I have dismissed the application with costs.

Vinodh Coomaraswamy
Judge of the High Court

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86 AWS, paras 3(b) and 59(b).

87 AWS, para 8.

88 AWS, para 47.

89 AWS, para 55.

90 AWS, paras 3(b) and 34(c).

Shobna d/o V Chandran, Delvin Chua, Navin Kumar and Kayshavani d/o Kuppusamy (Shobna Chandran LLC) for the applicant;
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