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

[2025] SGHC 31

Originating Application No 1222 of 2024

Between

(1) DMZ

… *Claimant*

And

(1) DNA

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Declaratory relief]
[Arbitration — Conduct of arbitration — Correction of commencement date]
[Arbitration — Singapore International Arbitration Centre — Rules 2016]

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DMZ
v
DNA

[2025] SGHC 31

General Division of the High Court — Originating Application No 1222 of 2024
Hri Kumar Nair J
6 February 2025

25 February 2025

Hri Kumar Nair J:

Introduction

1 On 10 October 2024, the claimant filed HC/OA 1050/2024 ("OA 1050") against the defendant and the Singapore International Arbitration Centre ("SIAC"). The defendant had earlier commenced several arbitrations against the claimant ("Arbitrations") administered by the SIAC in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) ("SIAC Rules"). OA 1050 was a challenge against the decision by the Registrar of the SIAC ("Registrar") with respect to the commencement date of the Arbitrations.

2 However, the defendant was the subject of insolvency proceedings in Hong Kong ("Hong Kong Proceedings"). At the time OA 1050 was filed, the defendant had obtained the recognition of the Hong Kong Proceedings in

Singapore pursuant to Arts 2(f) and 17(2)(a) of the UNCITRAL Model Law on Cross-Border Insolvency ("Insolvency Model Law") as set out in the Tenth Schedule of the Companies Act (Cap 50, 2006 Rev Ed). Pursuant to Art 20 of the Insolvency Model Law, the claimant was obliged to seek permission to bring proceedings against the defendant. The claimant therefore filed HC/OA 1222/2024 ("OA 1222"), seeking permission to commence and proceed with OA 1050.

3 I dismissed OA 1222. These are the grounds of my decision.

Background

4 Sometime between 2017 and 2018, the parties entered four contract for the sale of oil products by the defendant to the claimant ("Sale Contracts").[1] The Sale Contracts each contained materially identical arbitration clauses that provided:[2]

(a) that they were governed by Singapore law;

(b) for disputes arising out of or in connection with the Sale Contracts to be referred to the SIAC and arbitrated in accordance with the SIAC Rules; and

(c) for the arbitral tribunal to comprise three arbitrators.

5 On 25 December 2017, the parties entered an agreement to extend the deadline for payment due under one of the Sale Contracts ("Extension

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1 Affidavit of [D] filed in HC/OA 1222/2024 on 16 December 2024 ("D1222") at para 11.

2 D1222 at para 12.

Agreement").[3] The Extension Agreement similarly contained an arbitration clause that provided:[4]

(a) that it was governed by Singapore law; and

(b) for disputes arising out of or in connection with the Extension Agreement to be referred to the SIAC and arbitrated in accordance with the SIAC Rules.

Unlike the Sale Contracts, the Extension Agreement did not stipulate the number of arbitrators.

6 Disputes between the parties arose. On 24 June 2024, the defendant filed a Notice of Arbitration ("NOA") with the SIAC, which stipulated that:[5]

(a) the disputes between the parties arose out of or were in connection with the Sale Contracts;

(b) because the Extension Agreement expressly referred to one of the Sale Contracts, the former's arbitration clause should be "read together" with the latter's; and

(c) the defendant was applying to "consolidate all of the [A]rbitrations commenced pursuant to the [NOA] in respect of [its] claims arising out of or in connection with the Sale Contracts (read with [the Extension Agreement] where appropriate)".

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3 D1222 at para 13.

4 D1222 at para 13.

5 D1222 at paras 9, 14–16 and Tab 1.

7 The SIAC wrote to the defendant seeking clarification "as to the total number of arbitration agreements it [was seeking] to invoke under its [NOA] and in relation to its consolidation application therein".[6]

8 The defendant responded, stating that "in addition to the arbitration clauses of [the Sale Contracts], [it was] also seeking to invoke the arbitration clause of [the Extension Agreement] under the NOA and in relation to [its] consolidation application therein".[7]

9 On 9 July 2024, the SIAC issued a letter stating that the Registrar had "deemed the … [A]rbitrations to have commenced on 3 July 2024 pursuant to Rule 3.3 of the SIAC Rules" ("9 July Decision").[8]

10 On 22 July 2024, the claimant filed its response to the NOA, where it asserted that the defendant's claims were time-barred because the Arbitrations commenced on 3 July 2024 "which was more than 6 years after the sums allegedly became due under the [Sale Contracts]".[9]

11 The following day, the defendant wrote to the SIAC, requesting the Registrar to "correct" the commencement date of the Arbitrations to 24 June 2024.[10] The defendant maintained that the NOA filed on 24 June 2024 had fully, or at least substantially, complied with the SIAC Rules.[11]

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6 D1222 at para 18.

7 D1222 at para 21.

8 D1222 at para 27.

9 D1222 at paras 33–34 and Tab 4.

10 D1222 at para 35.

11 D1222 at para 36.

12 The claimant objected to the defendant's request.[12] The parties thereafter made further submissions to the Registrar on the issue of the commencement date.[13]

13 By a letter dated 30 July 2024, the SIAC revised the commencement date, stating that, "[having] considered the Parties' submissions, the circumstances of [the Arbitrations], and the requirements under Rule 3 of the SIAC Rules, the Registrar hereby deems that the date of the commencement of [the Arbitrations] shall be amended to 24 June 2024" ("30 July Decision").[14]

14 Following the 30 July Decision, the claimant did not make further submissions, or raise objections, to the Registrar with respect to the issue of the commencement date.

15 However, more than two months later, the claimant filed OA 1050 against the SIAC and the defendant, seeking, amongst other things:

(a) a declaration that the commencement date of the Arbitrations was 3 July 2024;

(b) a declaration that the 30 July Decision was unlawful as it was *ultra vires* the SIAC Rules;

(c) further and/or in the alternative, a declaration that the 30 July Decision was in breach of the SIAC Rules;

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12 D1222 at para 37.

13 D1222 at paras 38–41 and Tab 5.

14 D1222 at para 43 and Tab 6.

(d) further and/or in the alternative, a declaration that the 30 July Decision "was unlawful as it was made arbitrarily, capriciously and/or unreasonably"; and

(e) an order setting aside the 30 July Decision.

The applicable law

16 Upon recognition of a foreign insolvency proceeding, no action or proceeding may be commenced or continued against the company subject to the foreign insolvency proceedings except (a) with the court's permission and (b) in accordance with such terms as the court may impose: *Re Sapura Fabrication Sdn Bhd and another matter (GAS, non-party)* [2024] SGHC 241 at [33].

17 In determining whether permission should be granted, the court should take into account, *inter alia*: (a) the timing of the application for permission; (b) the nature of the claim; (c) the existing remedies; (d) the merits of the claim; (e) the existence of prejudice to the creditors or to the orderly administration of the liquidation; and (f) other miscellaneous factors: *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd and another* [2023] 3 SLR 1604 ("*Wang Aifeng*") at [32]. As a general rule, the court "should not engage substantively with the merits of the proposed action at the grant of permission stage": *Wang Aifeng* at [39].

Issue to be determined

18 I accepted the claimant's submission that there was no delay in bringing OA 1050 and that granting permission to proceed with OA 1050 would not cause real prejudice to the creditors or the orderly administration of the

liquidation.[15] In my view, OA 1222 turned entirely on whether OA 1050 was legally sustainable. In this regard, the claimant accepted that the facts it was relying on in OA 1050 were not in dispute and that the application ultimately turned on the interpretation of the SIAC Rules and questions of law.[16]

19 Consequently, it would be fair, expeditious, cost-effective and efficient – and therefore consistent with the Ideals of the Rules of Court 2021 ("ROC") – to refuse to grant permission if OA 1050 would clearly fail on its merits: O 3 r 1 ROC. The court should not grant permission to commence proceedings if the process will ultimately prove to be futile when the matter is heard; barren litigation should not be given a kiss of life: *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671 at [41].

OA 1050 was legally unsustainable

The Court had no jurisdiction to review the Registrar's decision

20 The claimant submitted that a contractual relationship arose between the parties and the SIAC, citing Gary B Born, *International Commercial Arbitration* (Wolters Kluwer, 3rd Ed, 2021) ("*International Commercial Arbitration*") at §13.03[D]:

> Although there is little authority on the subject, the arbitral institution is best regarded as party to a contract (or contracts) with the arbitrators and the parties, specifying the institution's rights and duties. In contractual terms, the arbitral institution's contract is formed when an institution offers to administer arbitrations between parties that have incorporated its rules into an arbitration agreement, with that offer being accepted by the parties through the submission of a dispute arising under that arbitration agreement to the institution. … The

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15 Claimant's Written Submissions filed in HC/OA 1222/2024 on 27 January 2025 ("CWS") at paras 14–20, 52–66.

16 Certified Transcript of Hearing on 6 February 2025 ("Transcript") at pp 2–5.

> institution's rights and duties in relation to a particular arbitration are then specified in those contracts …
>
> Most institutional arbitration rules include provisions that specifically address the institution's rights, duties and protections *vis-à-vis* the parties. … These provisions are best regarded as being incorporated into the contract between the arbitral institution and the parties.

21. According to the claimant,[17] it followed that when deciding on the commencement date of the Arbitrations, the SIAC was contractually obliged to comply with the SIAC Rules – in particular, Rules 3.3 and 40.1, which state:

> 3.3 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify the parties of the commencement of the arbitration.
>
> …
>
> 40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

22 The claimant's case in OA 1050 was that the Registrar had acted wrongfully in issuing the 30 July Decision.[18] It mounted its case on two principal arguments:

> (a) Rule 40.1 applied to make the 9 July Decision "conclusive and binding", such that the defendant was precluded from asking the

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17 Transcript at p 18.

18 CWS at para 33.

Registrar, and the Registrar had no power, to review the 9 July Decision or substitute that with the 30 July Decision.[19] This, the claimant argued, was based on a plain and "logical" reading of Rule 40.1.[20] The Registrar therefore acted in breach of the SIAC Rules in issuing the 30 July Decision.

(b) Alternatively, the 30 July Decision was made arbitrarily, capriciously and/or unreasonably and therefore the Registrar had exercised the discretion conferred upon him in a manner that was *ultra vires* and/or in breach of the SIAC Rules.[21]

23 I accept Gary Born's characterisation of the legal relationship between the relevant parties as a contractual one, and that the SIAC was therefore contractually obliged to comply with the SIAC Rules in administering the Arbitrations. However, the claimant's argument was ultimately self-defeating. OA 1050, which was an application to review the 30 July Decision, was plainly brought in breach of Rule 40.2 of the SIAC Rules, which states:

> Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority.

Rules 16.1 and 28.1 of the SIAC Rules were not relevant – they respectively deal with the power of the Court of Arbitration of SIAC ("the SIAC Court") to decide on a challenge to the appointment of an arbitrator and a party's objection to the existence or validity of the arbitration agreement or the competence of the SIAC to administer an arbitration (and the Registrar's determination to refer

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19 CWS at para 36(e)(ii)–(iii).

20 Transcript at pp 43, 45.

21 Transcript at pp 48, 51–52, 78.

such an objection to the SIAC Court). It was also not the claimant's case that Rule 40.2 is void or unenforceable.

24 The claimant submitted, on the strength of *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") (at [132]), that this court had "wide-ranging powers [under the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA")] to grant declaratory relief in respect of a Singapore-seated arbitration".[22] This did not assist the claimant.

25 First, *Sun Travels* does not support the proposition that the court may grant declarations in breach of express provisions of the SIAC Rules. On the contrary, *Sun Travels* upholds the policy of minimal curial intervention, as summarised by the Court of Appeal in *COT v COU and others and other appeals* [2023] SGCA 31 (at [1]):

> The policy of minimal curial intervention in arbitral proceedings is well settled in our arbitration jurisprudence … This policy is engendered by considerations of party autonomy and the finality of the arbitral process, dictating that the courts should act with a view to "respecting and preserving the autonomy of the arbitral process" … Thus, curial intervention is warranted only on limited grounds.

Rule 40.2 – which limits reviews and appeals to the court – is consistent with this policy.

26 Second, in that same decision, the Court of Appeal clarified that the power to grant declarations was not unfettered and that the court should only intervene in an arbitration where expressly provided in the International Arbitration Act 1994 (2020 Rev Ed) ("IAA"): *Sun Travels* at [134]. The IAA

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22 CWS at para 34.

does not contain any provision which permits the court to review the 30 July Decision.

27 Third, while purportedly seeking declarations, the claimant was in OA 1050 effectively asking the court to override the Registrar's determination in the 30 July Decision and reinstate 3 July 2024 as the commencement date of the Arbitrations. This is evident from the first prayer in OA 1050 seeking a declaration that the commencement date of the Arbitrations was 3 July 2024. OA 1050 was effectively a back-door appeal.

28 The claimant had no basis to invoke the court's jurisdiction under the SCJA to challenge the 30 July Decision. Even if the Registrar was wrong in his decision with respect to the commencement date, that did not give the claimant a right to ask the court to intervene and overturn that decision.

29 The other authorities cited by the claimant also did not assist it.

30 First, the claimant relied on *AT&T Corp and another v Saudi Cable Co* [2000] 2 All ER (Comm) 625 (*AT&T*),[23] where the English Court of Appeal held that the applicant was entitled to seek a review of the decision of the International Chamber of Commerce Court ("ICC Court") to dismiss a challenge to an arbitrator's appointment despite the International Chamber of Commerce Rules of Conciliation and Arbitration 1988 providing that the ICC Court's decisions were final. However, such a review was expressly permitted under s 23(1) of the English Arbitration Act 1950 (c 27) (UK): *AT&T* at [49].

[23] CWS at paras 47–50.

31 Second, the claimant relied on *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 1 SLR(R) 52 ("*Lines*"),[24] where the court declared that the guidelines and the decision of the Port of Singapore Authority to deny the plaintiff's vessel a berth were *ultra vires*. But *Lines* was inapplicable as it involved an application for judicial review of a public body's decision: *Lines* at [4].

32 Third, the claimant relied on *Li See Kit Lawrence v Debate Association (Singapore)* [2023] SGHC 154,[25] where the plaintiff sought a declaration that the provisions of the Debate Association's contract with its members – as contained in its constitution – was such that it had no power to take any form of disciplinary action. This argument fails to deal with the express prohibition in Rule 40.2.

33 That said, it is not the case that the Registrar's determination under Rule 3.3 of the SIAC Rules is unimpeachable. Unlike in court proceedings where an action is commenced on the date the proceedings are filed, Rule 3.3 confers on the Registrar a discretion to determine when all the relevant requirements under the SIAC Rules have been substantially complied with, and therefore, when an arbitration is deemed to have commenced. The Registrar must undoubtedly exercise that power in a lawful manner and in accordance with the SIAC Rules: see Born, *International Commercial Arbitration* at §13.03[D] as cited above (at [20]).

34 Insofar as the claimant claimed that the Registrar had exercised that power wrongfully, the IAA arguably provides a basis for redress. In particular,

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24 CWS at para 34.

25 CWS at para 34.

Art 34(2)(a)(iv) of the UNCITRAL Model Law on International Commercial Arbitration (which has the force of law in Singapore by virtue of s 3 of the IAA), provides that an award may be set aside if:

> the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law …

The Registrar's determination of the commencement date of the Arbitrations under Rule 3.3 is arguably part of the arbitral procedure. Indeed, the defendant accepted that it would be open for the claimant to apply to set aside an award under Art 34(2)(a)(iv) on the basis that the Registrar's 30 July Decision was made in breach of the parties' agreement for the Arbitrations to be conducted in accordance with the SIAC Rules.[26] Whether such an application will succeed on its merits is a separate matter.

35 Contrary to what the claimant argued,[27] Art 34(2)(a)(iv) does not, on its face, confine such challenges to errors made by the *arbitral tribunal*. However, such a challenge may only be brought in the context of challenging an award by the arbitral tribunal. The claimant highlighted that this would mean that the arbitration proceedings may have to be completed first.[28] That may be so, but that does not deprive the claimant of its remedy. It would be no different from the challenge brought in *ST Group Co Ltd and others v Sanum Investments Ltd and another appeal* [2020] 1 SLR 1, where the Court of Appeal held (at [76]–[101]) that the award ought not to be recognised or enforced because the arbitral

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26 Transcript at p 83.

27 Transcript at pp 91–92.

28 Transcript at pp 39, 96.

tribunal had wrongly determined the seat and the arbitration was therefore conducted in breach of the arbitration agreement.

36 In the circumstances, it was the claimant which had acted in breach of the SIAC Rules by bringing OA 1050. OA 1050 was therefore an abuse of process. It followed that OA 1222 must be dismissed.

In any event, there was no merit to OA 1050

37 The above disposed of OA 1222. Nonetheless, I also found that leave ought not to be granted as there was no merit to OA 1050.

The Registrar could review his own decision

38 The claimant submitted that Rule 40.1 of the SIAC Rules prohibited the Registrar from reviewing the 9 July Decision i.e., that he was *functus officio* on the issue of the commencement date of the Arbitrations, having made the 9 July Decision.[29] In particular, it highlighted that Rule 40.1 expressly provides that the Registrar's decisions are "conclusive and binding".[30]

39 I did not accept the claimant's interpretation of Rule 40.1.

40 First, Rule 40.1 provides that the Registrar's decisions are only "conclusive and binding *upon the parties and the Tribunal*" [emphasis added]. It does not expressly prohibit the Registrar from reviewing or reconsidering his own decisions.

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29 CWS at para 36(e)(ii).

30 CWS at para 36(e)(iii).

41 In this regard, Rule 40.2 implicitly supports this interpretation as it expressly prohibits appeals or reviews to a *different* body.

42 Second, the phrase "conclusive and binding" did not assist the claimant since such a decision could still be subject to reconsideration or revision.

43 Seen in its proper context, when the Registrar determines the commencement date of an arbitration, he is in essence only making an *administrative* decision – in other words, a decision made in the course of and for the purpose of facilitating the SIAC's function of administering arbitrations. Indeed, the SIAC Rules require the Registrar to make various other administrative decisions, for example: the extension or abbreviation of time limits (Rule 2.6); whether a dispute warrants the appointment of three arbitrators instead of one (Rule 9.1); whether a translation of a document must be submitted (Rule 22.2); the fees and deposit payable by parties (Rule 34.2); and the arbitral tribunal's fees and expenses (Rule 36.1). Such a characterisation of the Registrar's role is consistent with Article 29.1 of the London Court of International Arbitration ("LCIA Court") Rules 1998 ("LCIA Rules"), which provides:

> The decisions of the LCIA Court with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal. *Such decisions are to be treated as administrative in nature* and the LCIA Court shall not be required to give any reasons.
>
> [emphasis added]

The claimant itself described Article 29.1 of the LCIA Rules as being *in pari materia* to Rule 40.1 of the SIAC Rules. [31] Although Rule 40.1 does not specify

[31] CWS at para 42.

that the Registrar's decisions are to be treated as administrative in nature, I saw no reason why it should be understood differently.

44 Administrative decisions can plainly be reconsidered. In *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682, the Court of Appeal made the following observation (at [16]):

> Finally, there was some suggestion that this court should not "reopen" the Judge's decision to grant the stay as the appeal is against the decision to lift the stay and not the earlier decision to grant the stay. This argument misses the mark. The grant of a stay on case management grounds is *part of the court's exercise of its inherent jurisdiction to manage its own internal processes. It is administrative. The Judge correctly recognised that the court does not become functus officio after a stay is granted …*
>
> [emphasis added]

45 In any event, a power to reconsider an administrative decision could be implied based on necessity: *Sloane v Minister for Immigration, Local Government and Ethnic Affairs* [1992] 28 ALD 480 ("*Sloane*") at 486. That Rule 40.2 precluded parties from challenging the Registrar's decisions elsewhere meant that such a power was necessary. In this regard, Rule 3.3 contemplates that the Registrar will determine the commencement date of an arbitration having received a claimant's notice – he is not required to first seek clarification from the parties. Indeed, in most cases, the commencement date of the arbitration would not be material at all. It would be absurd if the Registrar had made an error in determining the commencement date or had done so without fully appreciating all the facts, but is then precluded from changing his mind. As observed by French J in *Sloane* (at 486), "[t]here is nothing inherently angelical about administrative decision-making … that requires the mind that engages in it to be unrepentantly set upon each decision taken".

46 The same applies even in respect of procedural decisions. In *Republic of India v Vedanta Resources plc* [2020] SGHC 208, Coomaraswamy J made similar observations (at [48]–[49], which were affirmed by the Court of Appeal in *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354 at [50]):

> 48 So where does that leave a procedural order? A procedural order (as opposed to an award) is not final and may be reconsidered and revised by a tribunal but cannot be nullified by a court. This is not a contradiction. This is *merely an aspect of the tribunal being the exclusive master of its own procedure* …
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> 49 *Does this mean that a party may repeatedly ask a tribunal to reconsider its procedural orders? In theory yes.* As the cases make clear, until the tribunal issues its final award and becomes *functus officio*, it has the jurisdiction to reconsider and revise earlier procedural orders. And a party does nothing wrong by inviting a tribunal to do so. *It is simply invoking another facet of the tribunal's mastery of its own procedure.*
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> [emphasis in original omitted; emphasis added in italics]

Drawing from this, a court or a tribunal – as the master of its own internal procedure – would be entitled to reconsider administrative or procedural decisions. There is no reason why an arbitral institution would not be entitled to do the same.

47 In this regard, the claimant argued that the principle of finality applied to preclude the Registrar from revisiting his decisions,[32] citing Peter J Turner and Reza Mohtashami, *A Guide to the LCIA Arbitration Rules* (Oxford University Press, 2009) (at [2.21]):

> [The importance of Article 29 of the LCIA Rules] stems from the fact that it establishes not only the administration, rather than judicial, character of the LCIA Court, but also the principle of finality for its decisions. If one of the most oft-cited advantages of arbitration is the final nature of awards and the very limited grounds of recourse against them by way of setting-aside

[32] CWS at paras 43–44.

> actions, it would be odd indeed if dissatisfied parties were able to get around that principle by starting actions against the LCIA Court. This provision therefore not only reinforces the finality of arbitral awards and the arbitral process in general, it also … reduces the scope of satellite litigation.

According to the claimant, "the same principle of finality is found in Rule 40.1", and therefore there was no basis for the Registrar to reconsider the 9 July Decision.[33]

48 But the afore-cited passage only reinforces the points earlier made (above at [23]–[25]) that the Registrar's decisions cannot be reviewed by this court – it speaks of finality only in the sense that parties are generally precluded from submitting appeals against the award and the arbitral process to court. In any event, the principle of finality is that "*controversies, once resolved*, are not to be re-opened except in a few, narrowly defined, circumstances" [emphasis added]: *D'Orta-Ekenaike v Victoria Legal Aid and another* [2005] 214 ALR 92 at [34]. Even taking the claimant's case at its highest, the principle of finality would not apply to the 9 July Decision given that no controversy was raised to the Registrar's attention at that juncture and it was made before the Registrar had considered the parties' submissions.

49 Third, the above interpretation is also fortified by Rule 41.2 of the SIAC Rules, which provides:

> In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any award.

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33 CWS at para 44.

It would evidently be fair, expeditious and economical for parties to invite the Registrar to reconsider his own decision, particularly if that decision was arrived at on a misapprehension of the facts or without first hearing from the parties. On the contrary, where the Registrar declines to reconsider a decision in circumstances where the aggrieved party may not have had the opportunity to make submissions, he runs the risk of an award issued in the arbitration being challenged on the basis that there was a breach of natural justice in the course of the arbitration (provided the aggrieved party can show prejudice).

50 The claimant argued that to allow the Registrar to consider his own decision would not be expeditious and economical as parties would be entitled to make multiple requests for review.[34] That concern was overstated and was, in any event, misconceived. Once the Registrar has taken a position (having been apprised of the controversy and considered the parties' submissions), he would be able to deal summarily with any subsequent requests for review. Further, there is no bar against the parties making multiple requests in respect of administrative or procedural orders: see above at [44]–[46].

51 In contrast, if the claimant is correct, parties may only challenge the Registrar's decision by applying to court, which would plainly not be expeditious or economical, and will likely lead to significant delay to the arbitration.

52 Finally, the SIAC Rules must be understood in the context of the provisions of the IAA, which expressly provides when decisions made in arbitrations are intended to be final. In this regard, s 19B(2) of the IAA provides that:

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[34] Transcript at p 27.

> Except as provided in Articles 33 and 34(4) of the Model Law, upon an award being made, including an award made in accordance with section 19A, the arbitral tribunal must not vary, amend, correct, review, add to or revoke the award.

In other words, where it is intended for a particular decision *not* to be reviewed, corrected or amended, specific language is adopted. No similar provision exists in the SIAC Rules in respect of the Registrar's decisions.

53 The claimant posited the alternative argument that while the Registrar may reconsider his own decision, he must only act on his own initiative as Rule 40.2 precluded *the defendant* from asking him to do so (as it had done in this case).[35] I had no hesitation in rejecting that interpretation. To draw such a distinction was patently absurd. It could not logically matter how the review was initiated or who did so – by asking the Registrar to reconsider, the defendant was simply invoking a facet of the SIAC's mastery of its own processes.

54 I therefore reject the claimant's case that the Registrar was not permitted by the SIAC Rules to review or reconsider the 9 July Decision and issue the 30 July Decision.

The claimant's argument that the 30 July Decision was arbitrary, capricious and/or unreasonable was a disguised appeal

55 Despite alleging that the 30 July Decision was arbitrary, capricious and/or unreasonable, the claimant did not argue that the Registrar had taken into account irrelevant matters or had failed to take into account relevant matters. Instead, it simply sought to persuade me that the 30 July Decision was plainly wrong on its merits. Either way, the claimant was effectively seeking an appeal of the Registrar's decision, which it was prohibited from doing by Rule 40.2. I

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[35] CWS at para 39.

will therefore not engage the claimant's arguments on the merits of the Registrar's decision in these grounds, save to say that I did not find them particularly convincing.

Conclusion

56 For the above reasons, I dismissed OA 1222.

57 I also ordered the claimant to pay costs on an indemnity basis. Such costs should be ordered where the action amounts to an abuse of process and where the action is clearly without basis: *BTN and another v BTP and another* [2021] 4 SLR 603 at [15]. OA 1050 was filed in breach of the agreement between the parties and was therefore an abuse of process. It followed that OA 1222, which was for permission to commence and proceed with OA 1050, was an abuse as well.

Hri Kumar Nair
Judge of the High Court

Lin Chunlong, Zerlina Yee Zi Ling, Li Zizheng and
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