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

[2026] SGHC 106

Originating Application No 10 of 2026

Between

DWE

… *Claimant*

And

DWF

… *Defendant*

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside — Breach of natural justice]

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v
DWF

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15 May 2026

18 May 2026 Judgment reserved.

Kristy Tan J:

Introduction

1 HC/OA 10/2026 ("OA 10") concerns an application for the setting aside of part of an arbitral award dated 4 October 2025 ("Award") pursuant to s 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed) on grounds that the sole arbitrator ("Tribunal") breached the fair hearing rule in making that part of the Award. Having considered the parties' evidence and submissions, I dismiss OA 10 for the reasons that follow.

Background

2 I set out the undisputed background that is relevant to the part of the Award under challenge.

3 [DWE] ("E"), the claimant in OA 10, was the respondent in the underlying arbitration ("Arbitration"). E is a loyalty and rewards management company.[1]

4 [DWF] ("F"), the defendant in OA 10, was the claimant in the Arbitration. F is a technology company in the payments industry.[2]

5 E and F entered into an agreement dated 28 December 2018 ("CBA") to collaborate in respect of programs for co-branded prepaid cards ("Card Program").[3]

6 Clause 3 of the CBA provided that "[s]ubject to the terms of [the CBA]", F would provide E with specified "Incentives". Pursuant to cl 3(a) of the CBA, one such Incentive was a one-time "Sign On Bonus" of US$2,007,000 to be paid by F to E within 60 days from the date of the execution of the CBA subject to F receiving E's written request for the Sign On Bonus.

7 Clause 4 of the CBA provided that the provision by F to E of the Incentives was subject to E fulfilling specified commitments. Pursuant to cl 4(ii) of the CBA, one such commitment was for E to launch the Card Program in partnership with a customer bank of F in India within 12 months from the date E signed the CBA (*ie*, by 27 December 2019).

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1 Affidavit filed on behalf of the Claimant in HC/OA 10/2026 on 6 January 2026 ("Claimant's Affidavit") at para 7.

2 Claimant's Affidavit at para 8.

3 Claimant's Affidavit at pp 206–221.

8 Clause 10 of the CBA provided for the incorporation of the Standard Terms and Conditions ("STC") exhibited to the CBA.

9 Clause 4 of the STC enabled F to clawback Incentives paid to E, in the following terms:

> **4. Incentives Refund**
>
> [F] shall charge back to [E] (also commonly referred to as 'clawback') any amount it may have advanced if it is later determined by [F] and notified to [E] that [E] is not entitled to such an amount, whether as differential or whole, due to non-performance, under-performance or violation of the terms and/or conditions of this Agreement. …

10 Clause 21 of the STC contained the parties' warranties of their power and authority to enter into and perform the CBA:

> **21. Power and Authority**
>
> Each of the parties warrants, represents and undertakes to the other that they have the right, necessary power, consents and authority to enter into and fully perform its obligations under this Agreement and will maintain the same throughout the term of this Agreement and their performance hereunder does not conflict with the rights granted to any other party under any other agreement.

11 On 20 February 2019, E requested F to release the Sign On Bonus.[4]

12 On 29 October 2019, F released the Sign On Bonus to E.[5]

13 The Card Program was not launched by 27 December 2019.[6]

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4 Claimant's Affidavit at para 12.

5 Claimant's Affidavit at para 13.

6 Claimant's Affidavit at para 15.

14 On 14 July 2021, the Reserve Bank of India ("RBI") imposed an indefinite restriction on F onboarding new domestic customers onto its card network from 22 July 2021, stating ("RBI Restriction"):[7]

> The Reserve Bank of India (RBI) has today imposed restrictions on [F] from on-boarding new domestic customers (debit, credit or prepaid) onto its card network from July 22, 2021. Notwithstanding lapse of considerable time and adequate opportunities being given, the entity has been found to be non-compliant with the directions on Storage of Payment System Data. … [F] shall advise all card issuing banks and non-banks to conform to these directions. …

15 On 20 July 2021, F informed E of the RBI Restriction, stating that it "impact[ed] issuance of any new cards (including new co-branded cards)" with effect from 22 July 2021.[8]

16 From January to May 2022, the parties corresponded regarding a refund of the Sign On Bonus.[9]

17 On 30 May 2022, F issued a notice to E demanding a refund of the Sign On Bonus pursuant to cl 4 of the STC.[10] E did not accede to this demand.

18 On 16 June 2022, the RBI Restriction was lifted.[11]

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7 Claimant's Affidavit at p 1611.

8 Claimant's Affidavit at para 18 and p 1089.

9 Claimant's Affidavit at pp 1090–1101, 1109–1110 and 1113–1132.

10 Claimant's Affidavit at para 20 and pp 1134–1135.

11 Claimant's Affidavit at p 1087.

19 On 12 December 2023, F commenced the Arbitration against E.[12] Among other claims, F sought to clawback the Sign On Bonus. E resisted the claim.[13]

20 In the Award issued on 4 October 2025, the Tribunal ordered, among other things, that:

(a) E was to pay F the sum of US$2,007,000 being the refund of the Sign On Bonus (Award at [122(iii)]).

(b) E was to pay F simple interest at 7% per annum on the sum of US$2,007,000 for the period from 29 October 2019 to the date of payment (Award at [122(iv)]).

(c) E's application, made on the last day of the parties' arguments in the Arbitration, to admit additional documents (comprising nearly 400 pages of bank statements from March 2019 to January 2022) into evidence ("Additional Documents Application") was dismissed (Award at [65]–[68]).

The parties' cases

21 In brief, E advanced seven grounds in its written submissions for contending that the Tribunal's decision in the three areas set out at [20] above were made in breach of the fair hearing rule:[14]

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12 Claimant's Affidavit at para 3.

13 Claimant's Affidavit at paras 23–24.

14 Claimant's Written Submissions dated 30 April 2026 ("CWS") at Sections III(A), (B), (C), (D), (E), (F) and (G).

(a) The Tribunal disregarded E's argument on s 53 of the Indian Contract Act 1872 ("ICA") ("s 53 ICA Ground").

(b) The Tribunal disregarded E's argument on s 56 of the ICA ("s 56 ICA Ground").

(c) The Tribunal disregarded E's contention that the parties' discussions from January to May 2022 were 'without prejudice' communications ("WP Communications Ground").

(d) The Tribunal's finding that F was not in breach of cl 21 of the STC had no nexus to the parties' submissions ("cl 21 STC Ground").

(e) The Tribunal's finding that F had no control over the RBI Restriction had no nexus to E's submissions and the evidentiary material on record ("RBI Restriction Ground").

(f) The Tribunal's decision on interest had no nexus to the parties' submissions ("Interest Ground").

(g) The Tribunal's rejection of the Additional Documents Application deprived E of an opportunity to address a determinative issue ("Additional Documents Application Ground").

22 F countered that the Tribunal did not breach the fair hearing rule and that E's complaints were nothing more than disguised attempts to challenge the substantive merits of the Tribunal's decision.[15]

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15 Defendant's Written Submissions dated 30 April 2026 ("DWS") at para 72.

23 At the hearing of OA 10, E's counsel informed me that E was no longer pursuing the Additional Documents Application Ground. I will therefore say no more about this ground. I will address each of the remaining grounds of challenge advanced by E in turn, elaborating on the parties' submissions at the relevant junctures.

The Award

24 Before delving into the grounds of challenge, I first provide some necessary context by setting out the portions of the Award which are of particular salience to E's challenge.

25 Under the heading "Case of the Respondent", the Tribunal referred to the following arguments made by E regarding the RBI Restriction (Award at [57]) and E's assertion of 'without prejudice' privilege over the parties' communications from January to May 2022 (Award at [58]):

> 57. According to [E], when it became clear by 28th December 2021, by which time the [RBI Restriction] persisted for 6 months, that it was impossible to launch the Card Program during the subsistence of such restriction, [E] communicated the said consequence to [F]. Referring to Section 53 of the [ICA], [E] contends that it was exonerated from performance of its obligations as a result of the RBI restriction and the consequent breach of the CBA that it led to. **It is [E's] case that the RBI restriction rendered it impossible to launch the Card Program; it completely offset the foundation of the CBA**.
>
> 58. [E] submits that the ensuing discussions between the parties should not be viewed as an admission by [E] of any liability. All such discussions and correspondences were 'without prejudice', *although the Minutes of the Meetings or the correspondences do not expressly contain those words*.
>
> [emphasis added in underline, bold and italics]

26 Turning to F's claim to clawback the Sign On Bonus, the Tribunal found that the basis for this claim was cl 4 of the STC (Award at [94]).

27 The Tribunal then reasoned that F would be entitled to clawback the Sign On Bonus under cl 4 of the STC if there was "non-performance" of the CBA, and noted in this connection that it was undisputed that the Card Program was not launched (Award at [96]):

> 96. One of the pre-conditions for [F] to avail of the clawback clause is the 'non-performance, under-performance or violation of the terms and/or conditions of this Agreement.' … Of the 3 elements in the above Clause 4 *viz*. 'non-performance', 'under-performance' or 'violation of the terms and/or conditions' in the CBA, the latter two would require a determination as to an under-performance or violation by [E], which of course is denied by [E]. As regards the first contingency i.e., 'non-performance', it is relatively easier to arrive at a conclusion in that regard in the context of the present case since it is an admitted position by both parties that the Card Program was in fact not launched. The case of [F] was that there was an abandonment of the Card Program by [E] leading to 'non-performance'. *This was refuted by [E] pointing to the circumstances that led to impossibility of the launch of the Card Program as envisaged under the CBA*. The fact remains that there could be no launch of the Card Program on account of factors beyond the control of either party. If this was a case of 'non-performance' of the terms and conditions of the CBA, then the clawback clause would be able to be invoked by [F] independent of any conclusion that the Tribunal may arrive at in finding out whether it was [F] or [E] responsible for the under-performance, or violation of the terms and/or conditions in the CBA.
>
> [emphasis added in italics and underline]

28 The Tribunal continued its reasoning by referring to and relying on various discussions and correspondence between the parties in the period from January to May 2022 (Award at [97]–[102]):

> 97. From the affidavit of evidence of [the] witness of [F], it is seen that the Card Program could not progress on account of the directives issued by the RBI on 14th July 2021, which restriction was removed only on 16th June 2022. Till such restriction came in place, the parties appear to have accepted the delays occurred to them in the launch of the Card Program. The discussion between the parties on not going ahead with the Card Program appear to have begun within 6 months of the RBI restriction. A perusal of the Minutes of the Meetings between the parties point to this acceptance of the inevitability by both parties. …
>
> …

29 The Tribunal then found that F was not in breach of the CBA on account of the RBI Restriction, over which F had no control (Award at [105]–[106]); the parties had accepted that there was "non-performance" of the CBA for reasons beyond their control (Award at [107]); the parties had been working out the modality and timing of E's refund of the Sign On Bonus to F (Award at [107]); and F had thus made out a case for refund of the Sign On Bonus under cl 4 of the STC (Award at [108]):

> 105. A perusal of the [Statement of Defence] would further show that the contention now raised by [E] is that the RBI restriction 'tantamount to a flagrant breach of the Agreement by [F]' by referring to Clause 21 of the STC appended to the CBA …
>
> 106. The manner of interpretation of the above clause by [E] to the effect that in the above clause [F] had guaranteed performance, even against a future legal restriction, is misconceived. Neither party would have contemplated the RBI directive of 14th July 2021 at the time of entering into the CBA. There cannot be an agreement that the parties will act contrary to law. <u>[F] certainly cannot be held to be … in breach of [the] CBA on account of the RBI's directive of 14th July 2021, over which [F] had no control</u>.
>
> 107. Significantly, in the [Statement of Defence], there is no denial of the minutes of the discussions held by the parties in January and February 2022 as captured in the e-mails referred to hereinbefore. Consequently, <u>the</u>

> Tribunal is satisfied that both parties accepted that this was a situation of 'non-performance' of the Contract, in the sense that for reasons beyond the control of the parties, intervening events made it impossible for the Card Program to be launched within the time frame originally agreed to by the parties under the CBA. By the time the restriction of RBI stood lifted on 16th June 2022, the parties had already decided not to go ahead with the CBA and were only working out the modalities of the refund of the Incentives and the Sign On Bonus by [E] to [F]. The minutes referred to hereinbefore as captured in e-mails exchanged by the parties, reveal that far from denying that it has not required the refund of the Sign On Bonus, [E] was only seeking more time for that purpose.
>
> 108. The Tribunal is therefore satisfied that [F] has made out a case for refund of the Sign On Bonus by [E] to [F] in terms of Clause 4 of the STC appended to the CBA.
>
> [emphasis added in underline]

30 Separately, the Tribunal set out its decision for pre-award interest on the sum of US$2,007,000 to run from 29 October 2019 (see [20(b)] above), as follows (Award at [118]–[120]):

> 118. Under Rule 32.9 of the SIAC Rules, "The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate."
>
> 119. In the present matter, since the CBA is silent on the issue of interest, it is for the Tribunal to determine both the rate of interest as well as the period for which it is payable. …
>
> 120. As per prevailing norms, the highest of the maximum rate of interest on deposits with the scheduled banks ranges between 7 and 7.5% simple interest per annum. In that view of the matter, the Tribunal considers it appropriate to award [F] simple interest @ 7% per annum on the awarded sum i.e., the Sign On Bonus of USD 2,007,000 *from the date that [E] received it i.e.,*

> *29th October 2019* till the date of payment of the said sum by [E] to [F] in terms of this Award.
>
> [emphasis added; original emphasis omitted]

31 I now turn to E's specific grounds of challenge to the Award.

The s 53 ICA Ground

E's case

32 E explained that, in the Arbitration, F had argued that E had abandoned the Card Program in January 2022 such that there was "non-performance" by E of the CBA which entitled F to invoke cl 4 of the STC to clawback the Sign On Bonus. E had refuted the alleged "non-performance" on the grounds that the RBI Restriction (which E had argued was attributable to F's non-compliance with Indian law) "tantamounted to a flagrant breach" of the CBA by F and rendered it impossible for E to launch the Card Program. On this basis, E had argued that it was exonerated under s 53 of the ICA, "which prevents a party to a contract from holding the counterparty liable for failing to do an act which he has himself made impossible",[16] from performing its obligation under the CBA to launch the Card Program.[17]

33 E submitted that, despite it having "put forth these contentions in great detail during the Arbitration",[18] there was "only a single reference" [original emphasis omitted] to E's argument on s 53 of the ICA in the Award at [57].[19] This paragraph appeared "within the section [of the Award] in which the

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16 CWS at para 19(a).

17 CWS at para 15.

18 CWS at para 16.

19 CWS at para 17.

Tribunal was generally summarising [E's] overall position"[20] and "cannot be understood to reflect the Tribunal's application of mind to [E's] argument on Section 53 of the [ICA]".[21] E submitted that this was a scenario where the Tribunal had summarised E's position "without any accompanying analysis".[22] Accordingly, the Tribunal "failed to apply its mind to this issue, having failed to engage with [E's] arguments".[23]

34 E noted "the Award's view that the mere fact of the Card Program not being launched amounted to 'non-performance' in terms of Clause 4 [of the STC] and the Tribunal was not required to address [E's] submissions on Section 53 of the [ICA]".[24] However, E submitted that this was "precisely" where the Tribunal had breached the fair hearing rule: the Tribunal "ignored" [E's] argument on the impact of s 53 of the ICA on the issue of "non-performance" and "restricted its analysis solely to contractual interpretation (i.e., the wording of Clause 4 [of the STC])".[25]

35 E submitted that one of the issues framed by the Tribunal for determination was: "Whether [E] is entitled to resist the monetary claims raised by [F] (including the claim for claw-back of the incentives under the [CBA]) for the reasons set out in the [Statement of Defence]" (Award at [11]). The Tribunal was thus bound to apply its mind to the reasons set out in the Statement of Defence, which included E's argument that there was no "non-performance"

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20 CWS at para 17.

21 CWS at para 18.

22 CWS at para 17.

23 CWS at para 17.

24 CWS at para 19.

25 CWS at paras 19 and 19(a).

on its part in view of s 53 of the ICA.[26] F had also made detailed arguments in its written submissions in the Arbitration on the inapplicability of s 53 of the ICA to the dispute, which made it clear that the Tribunal completely failed to consider "an essential point" [original emphasis omitted].[27]

36 E submitted that the Tribunal's disregard of E's argument on s 53 of the ICA had prejudiced E. Had the Tribunal applied its mind to the argument, it could have concluded that there was no "non-performance" on E's part and that F was not entitled to clawback the Sign On Bonus under cl 4 of the STC.[28]

F's case

37 F submitted that E was unable to show a "clear and virtually inescapable inference" that the Tribunal failed to consider E's argument on s 53 (and s 56) of the ICA. The Tribunal had referred to the argument in the Award at [57] and [96].[29] The Tribunal had expressly considered E's argument that the RBI Restriction rendered the launch of the Card Program impossible but concluded that cl 4 of the STC simply required "non-performance" of the CBA to trigger a refund of the Sign On Bonus irrespective of why such non-performance took place.[30] Given the Tribunal's interpretation of cl 4 of the STC, it was unnecessary for the Tribunal to go further and determine whether E's non-performance was caused by the RBI Restriction, as E contended.[31] The

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26 CWS at para 19(b).

27 CWS at para 19(b).

28 CWS at para 20.

29 DWS at para 23.

30 DWS at para 25.

31 DWS at para 27.

Tribunal was not required to address every authority or subsidiary point once its interpretation of cl 4 of the STC was dispositive.[32]

Decision

38 I find that there was no breach of the fair hearing rule as alleged by E. In my view, the Tribunal did consider E's argument on s 53 of the ICA and implicitly rejected the argument. I elaborate.

39 It is established law that a party alleging that an arbitral tribunal breached the fair hearing rule by failing to consider a point must show that this is the "clear and virtually inescapable" inference to be drawn (*AKN v ALC* [2015] 3 SLR 488 ("*AKN*") at [46]). A tribunal may *implicitly* decide to reject an argument; this is distinct from the tribunal's failure to even consider that argument and does not amount to a breach of natural justice (*AKN* at [47]). The court will adopt a "generous approach" in reading the arbitral award, resolving any doubt in favour of upholding the award in accordance with the principle of minimal curial intervention (*DKT v DKU* [2025] 1 SLR 806 ("*DKT*") at [8(c)]).

40 In the present case, it is undisputed that the Tribunal expressly referred to E's argument on s 53 of the ICA when recapitulating E's case in the Arbitration at [57] of the Award. Contrary to E's present submission (see [33] above), that was *not* the only juncture at which the Tribunal referred to E's argument on s 53 of the ICA. E's argument in the Arbitration was essentially that s 53 of the ICA exonerated E from failing to launch the Card Program as F had made that "impossible" by F's own breach of the CBA arising from the

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[32] DWS at para 26.

RBI Restriction (see [32] above).[33] In other words, (a) E associated s 53 of the ICA with the language of "impossibility" of performance, and (b) E's argument on s 53 of the ICA was contingent on *F* being responsible for causing the "impossibility" of performance. In the Award at [96], which contained the Tribunal's *reasoning*, the Tribunal referred to E's contentions regarding "the circumstances that led to *impossibility* of the launch of the Card Program as envisaged under the CBA" [emphasis added]. In my view, this indicates that the Tribunal *did* bear in mind E's argument on s 53 of the ICA when making its findings on whether F was entitled to clawback the Sign On Bonus.

41 Next, the Tribunal interpreted cl 4 of the STC as entitling F to clawback the Sign On Bonus if there was "non-performance" of the CBA (Award at [96]). The Tribunal found that there was such "non-performance" within the meaning of cl 4 of the STC because the Card Program was not launched due to the RBI Restriction, which was a factor "beyond the control" of the parties in general and F in particular:

(a) In the Award at [96], the Tribunal found that "[t]he fact remains that there could be no launch of the Card Program on account of factors beyond the control of either party".

(b) In the Award at [106], the Tribunal found that "[F] certainly cannot be held to be … in breach of [the] CBA on account of the RBI's directive of 14th July 2021, over which [F] had no control".

(c) Finally, in the Award at [107], the Tribunal held that "the Tribunal is satisfied that both parties accepted that this was a situation

[33] See also, *eg*, Claimant's Affidavit at p 1229: Statement of Defence at para 52.

> of 'non-performance' of the Contract, in the sense that for reasons beyond the control of the parties, intervening events made it impossible for the Card Program to be launched within the time frame originally agreed to by the parties under the CBA".

42 In reaching this conclusion, the Tribunal implicitly rejected E's argument on s 53 of the ICA. E's argument on s 53 of the ICA was founded on the premise that F had, through the RBI Restriction, made it "impossible" for E to launch the Card Program. However, the Tribunal had effectively rejected this very premise (and concomitantly, the applicability of s 53 of the ICA) through its finding that F was *not* responsible for the RBI Restriction or for the Card Program not being launched. Having implicitly resolved E's argument on s 53 of the ICA, it was unnecessary for the Tribunal to provide a further discourse on the argument (see *ASG v ASH* [2016] 5 SLR 54 at [59(e)]).

The s 56 ICA Ground

E's case

43 E explained that, in the Arbitration, E had argued that (without prejudice to its argument on s 53 of the ICA) it was absolved from launching the Card Program on account of the RBI Restriction leading to frustration of the CBA under s 56 of the ICA. The RBI Restriction prevented F from issuing new co-branded cards as E's exclusive payment network brand partner for the Card Program, and "completely upset the very foundation of the [CBA]".[34] F had "vigorously contested" the applicability of s 56 of the ICA.[35]

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34 CWS at para 21(a).

35 CWS at para 21(b).

44 E submitted that its argument on s 56 of the ICA was "essential" to determining whether there was "non-performance" on its part under cl 4 of the STC. This was because, if E could establish that the RBI Restriction led to frustration of the CBA, the question of "non-performance" on E's part would not arise.[36]

45 E submitted that the Award "[did] not devote a single word in respect of Section 56 of the [ICA]". The words "Section 56" and "frustration" did not appear even once in the Award. The Tribunal's "complete disregard" of E's argument on s 56 of the ICA thus "could not be clearer". E also asserted that it was not the case that the Tribunal had implicitly resolved the issue of whether the RBI Restriction led to frustration of the CBA.[37]

46 E submitted that the Tribunal's disregard of E's argument on s 56 of the ICA had prejudiced E. Had this been considered, the Tribunal could have concluded that there was no "non-performance" on E's part (and consequently, no liability to refund the Sign On Bonus).[38]

F's case

47 F's submissions on this ground were similar to those made in respect of the s 53 ICA Ground (set out at [37] above).

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36 CWS at para 22.

37 CWS at para 23.

38 CWS at para 24.

Decision

48 I find that there was no breach of the fair hearing rule as alleged by E. In my view, the Tribunal did consider E's argument on s 56 of the ICA.

49 As a starting point, while the Award did not contain the words "s 56" or "frustration", I find that the Tribunal did refer to the substance of E's argument on s 56 of the ICA.

50 To appreciate this, it is necessary to first have the proper context of what E had argued in the Arbitration. In E's Written Submissions dated 13 June 2025 filed in the Arbitration, E referred to s 56 of the ICA as providing that where an event not reasonably in the parties' contemplation when the contract was made rendered performance "impossible" or unlawful, the contract was rendered void and the parties were excused from performance of their respective obligations (at para 27(a)).[39] E then went on state that (at para 28) (see also [43] above):[40]

> It is undeniable that *the RBI Restriction rendered it impossible to Launch the Card Program*. The most fundamental aspect of Launching the Card Program was [F's] ability to facilitate issuance of new co-branded cards as [E's] exclusive payment network brand partner in the Card Program. The RBI Restriction prevented [F] from performing this precise obligation, *and completely upset the very foundation of the Agreement*. [emphasis added]

51 It is important to note from [50] above that, in the Arbitration, E had referred to the concept of "impossibility" of performance of the CBA (specifically, the launch of the Card Program) in association with s 56 of the

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[39] Claimant's Affidavit at p 1739: E's Written Submissions in the Arbitration dated 13 June 2025 at para 27(a).

[40] Claimant's Affidavit at p 1740: E's Written Submissions in the Arbitration dated 13 June 2025 at para 28.

ICA, and not only in association with s 53 of the ICA. Further, E's argument was essentially that s 56 of the ICA applied and the CBA was frustrated because the RBI Restriction "completely upset the very foundation of the [CBA]".

52 In recapitulating E's case in the Arbitration, the Tribunal had pithily summarised those very arguments in the Award at [57], stating: "It is [E's] case that the RBI restriction rendered it *impossible* to launch the Card Program; *it completely offset the foundation of the CBA*" [emphasis added] (see [25] above). While the Tribunal appears to have made an editorial or typographical error in stating "offset" in place of "upset", this is immaterial. In my view, it is obvious that in the Award at [57], the Tribunal was referring to the substance of E's arguments on *both* ss 53 and 56 of the ICA. It follows that when the Tribunal referred, in the reasoned portion of the Award at [96], to E's contentions regarding "the circumstances that led to *impossibility* of the launch of the Card Program as envisaged under the CBA" [emphasis added], the Tribunal had in mind E's argument on s 56 of the ICA (as well as E's argument on s 53 of the ICA). In my view, these matters indicate that the Tribunal *did* bear in mind E's argument on s 56 of the ICA when making its findings on whether F was entitled to clawback the Sign On Bonus.

53 I recognise that the Tribunal went on to find that "for reasons beyond the control of the parties, intervening events made it impossible for the Card Program to be launched within the time frame originally agreed to by the parties under the CBA" (Award at [107]). It might be said that, facially, this finding cohered with E's characterisation of the concept of frustration under s 56 of the ICA. However, the Tribunal found instead that this situation amounted to "non-performance" of the CBA under s 4 of the STC, which entitled F to clawback the Sign On Bonus (Award at [107]–[108]). In my view, a possible

explanation for the Tribunal's aforesaid reasoning and conclusion is that the Tribunal had, rightly or wrongly, implicitly rejected E's argument on s 56 of the ICA for being wrong in law and/or inapplicable on the facts. An error (if any) in the Tribunal's reasoning in this regard is not a breach of natural justice. It bears emphasising that the court's focus is not on how well or accurately the Tribunal understood, analysed and dealt with E's argument on s 56 of the ICA but on whether the Tribunal did in fact consider the argument *at all* (however incompetently or incorrectly it may be said to have done so) (*DKT* at [8(c)]). At bottom, I do not think E has shown that the clear and inescapable inference is that the Tribunal failed to consider E's argument on s 56 of the ICA.

The WP Communications Ground

E's case

54 E explained that, in the Arbitration, E had contended that the parties' discussions and correspondence in the period from January to May 2022 were without prejudice to E's rights and could not be relied on in evidence.[41]

55 E submitted that the Tribunal "simply discarded" E's contentions.[42] E disagreed with F that the last phrase in the Award at [58] – "although the Minutes of the Meetings or the correspondences do not expressly contain those words" – implied that the Tribunal had disagreed with E's position that the said discussions and correspondence were subject to 'without prejudice' privilege. The Tribunal was merely summarising E's arguments, which included the

41 CWS at para 26.

42 CWS at para 27.

argument that it was not necessary for documents to be marked 'without prejudice' for the privilege to apply.[43]

56 E asserted that the Tribunal did not implicitly address or resolve E's contentions.[44] E submitted that it would be "absurd" to treat the Tribunal's reliance on the said discussions and correspondence as implying that the Tribunal had considered and rejected E's arguments on the issue, as that would "render pointless the need for a reasoned award".[45]

57 E submitted that, had the Tribunal considered and accepted E's position that the said discussions and correspondence were subject to 'without prejudice' privilege, the Tribunal could have concluded that there was no admission by E to refund the Sign On Bonus.[46]

F's case

58 F submitted that the Tribunal had considered and rejected E's arguments that the parties' discussions and correspondence from January to May 2022 were subject to 'without prejudice' privilege. This was evidenced in the Award at [58], and by the Tribunal's reliance on the said discussions and correspondence in the Award at [97]–[101].[47]

59 F submitted that E chose not to ask F's witness in the Arbitration any questions on the said communications; chose not to call any witness of its own

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43 CWS at para 27.

44 CWS at para 28.

45 CWS at para 29.

46 CWS at para 29.

47 DWS at paras 29–31.

to give oral evidence on the issue; and chose not to adduce any further evidence directed specifically to the purported 'without prejudice' character of the correspondence. As such, the Tribunal simply decided the issue on the evidence (including any evidential gaps on the issue) before it.[48]

60 F submitted that E was impermissibly attempting to recast its unhappiness with the substance of the Tribunal's decision to rely on the said communications and E's admissions made therein, as a breach of natural justice.[49]

Decision

61 I find that there was no breach of the fair hearing rule as alleged by E. In my view, the Tribunal did consider E's contention that the parties' discussions and correspondence from January to May 2022 were subject to 'without prejudice' privilege and implicitly rejected the contention.

62 To begin with, the Tribunal referred to E's contention of 'without prejudice' privilege when recapitulating E's case (Award at [58]), showing, minimally, that the Tribunal was not oblivious to the contention. The Tribunal chose to highlight that "the Minutes of the Meetings or the correspondences [did] not expressly contain" the words "without prejudice" (Award at [58]), suggesting that this feature of the communications caught the Tribunal's attention. While E asserted the existence of the 'without prejudice' privilege (and thus bore the burden of proving the same), I accept F's submission that E did little to advance its evidential case on why and how the alleged privilege

48 DWS at paras 34 and 36.

49 DWS at para 37.

supposedly arose (see [59] above). It is against the foregoing background that the court should assess the significance of the Tribunal's decision to rely and make findings based on the parties' communications from January to May 2022. In the context of this background, it is minimally plausible that the Tribunal chose to do so because it had implicitly decided that E simply had not made out its case of 'without prejudice' privilege. In my view, it cannot be said that the clear and inescapable inference to be drawn is instead that the Tribunal failed to consider E's contention of 'without prejudice' privilege.

The cl 21 STC Ground

E's case

63 E explained that, in the Arbitration, E had argued that on account of the RBI Restriction, F had breached cl 21 of the STC. This was because the RBI Restriction had "stripped [F] of the right, power and authority" to issue new co-branded cards, which was F's fundamental obligation in relation to launching the Card Program under the CBA.[50]

64 E submitted that the Tribunal had found that E's arguments on cl 21 of the STC implied that "[F] had guaranteed performance even against a future legal restriction" (Award at [106]). Consequently, the Tribunal held that "[t]here cannot be an agreement that the parties will act contrary to law" and found that F was not in breach of cl 21 of the STC (Award at [106]).[51] However, the Tribunal's finding was "the opposite of what [E] had argued"; E had "never argued that Clause 21 [of the STC] implied that [F] would have to launch the

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50 CWS at para 30(a).

51 CWS at para 31.

Card Program despite the imposition of the RBI Restriction".[52] Nor did F characterise E's argument on cl 21 of the STC as implying that E was seeking performance of the CBA despite the RBI Restriction.[53] Thus, the Tribunal's chain of reasoning with respect to the finding that F was not in breach of cl 21 of the STC had no nexus whatsoever to the arguments advanced by the parties.[54]

65 E submitted that had the Tribunal "engaged with [E's] arguments and agreed", the outcome could have been a finding that E need not return the Sign On Bonus.[55]

F's case

66 F submitted that there was no breach of natural justice arising out of the Tribunal's chain of reasoning on whether F had breached cl 21 of the STC. E had reasonable notice that the Tribunal could adopt this chain of reasoning as the Tribunal's reasoning arose from matters expressly pleaded by E and did not amount to a dramatic departure from E's submissions. A reasonable party in E's position would have foreseen that the Tribunal might reject E's interpretation of cl 21 of the STC and adopt a different view of the provision.[56]

67 F submitted that the Tribunal had simply disagreed with E's position that the imposition of the RBI Restriction could have amounted to a breach of cl 21 of the STC on F's part. Even if the Tribunal's interpretation of cl 21 of the

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52 CWS at paras 30(b) and 32.

53 CWS at para 32.

54 CWS at paras 33 and 34.

55 CWS at para 35.

56 DWS at para 44.

STC was incorrect (which F denied), that would be considered an error of fact or law which was not a basis to set aside the Award.[57]

68 F submitted that, in any event, E had failed to show that it had suffered any prejudice because of this alleged defect in the Tribunal's chain of reasoning. Even if the Tribunal had agreed with E that the imposition of the RBI Restriction resulted in a breach of cl 21 of the STC by F, this would not have altered the outcome of the Arbitration. The Tribunal's decision to order E to refund the Sign On Bonus to F was based on the Tribunal's interpretation of cl 4 of the STC, to which cl 21 of the STC was unrelated.[58]

Decision

69 I find that there was no breach of the fair hearing rule as alleged by E. E's purported criticism of the Tribunal's "chain of reasoning" is contrived and convoluted. This is because E's real complaint, in truth, is that the Tribunal had misunderstood or (to use E's own words) "mischaracterized"[59] E's argument about F's alleged breach of cl 21 of the STC. Such alleged misunderstanding does not, however, constitute a breach of the fair hearing rule. I elaborate.

70 It is helpful to first view side by side E's arguments in the Arbitration (as summarised in E's written submissions in OA 10), and the Tribunal's findings (in the Award at [106]), on F's alleged breach of cl 21 of the STC:

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57 DWS at paras 45–47.

58 DWS at para 48.

59 CWS at para 34(c).

Table 1

E's arguments in the Arbitration	Award at [106]
… on account of the indefinite RBI Restriction, [F] had breached Clause 21 of the [STC] (which was a warranty, representation, and undertaking by [F] that it would have the right, power, consents, and authority to fully perform its obligations under the [CBA] throughout the term of the [CBA]).[60] … the RBI Restriction had stripped [F] of the right, power, and authority to issue new co-branded cards, which was its fundamental obligation in relation to launching the Card Program under the [CBA]…[61] … the Card Program could not have been Launched … without violating the terms of the RBI Restriction (which, needless to state, was not an option).[62] [original emphasis omitted] … since [F] had warranted to [E] in Clause 21 that it would retain the ability to launch the Card Program throughout the [CBA's] term, [F's] failure to retain its ability to launch the Card Program in view of the RBI Restriction (which was a result of [F's] own doing) tantamounted to a breach of the [CBA] by F.[63]	The manner of interpretation of [cl 21 of the STC] by [E] ***to the effect*** that in [cl 21 of the STC] [F] had guaranteed performance, even against a future legal restriction, is misconceived. Neither party would have contemplated the RBI directive of 14th July 2021 at the time of entering into the CBA. There cannot be an agreement that the parties will act contrary to law. [F] certainly cannot be held to be … in breach of [the] CBA on account of the RBI's directive of 14th July 2021, over which [F] had no control. [emphasis added in bold italics]

60 CWS at para 30.

61 CWS at para 30(a).

62 CWS at para 30(b).

63 CWS at para 34(c).

71 In my view, in the Award at [106], the Tribunal had simply expressed its *understanding* of E's interpretation of cl 21 of the STC (*viz*, that it was "to the effect" as stated by the Tribunal) before rejecting that interpretation.

72 Preliminarily, it is unclear to me that the Tribunal's understanding was incorrect. As Table 1 at [70] above demonstrates, (a) E was indeed suggesting that F had warranted under cl 21 of the STC that F would have the power *etc* to perform the CBA come what may in the future, and (b) the Tribunal not illogically pointed out that E was effectively contending that F's warranty in cl 21 of the STC was meant to apply even in a situation where there was a future legal restriction. *Both* E and the Tribunal were clear that adopting such an interpretation would essentially set F up for breach of cl 21 of the STC, as neither E nor the Tribunal contemplated that F should act contrary to the RBI Restriction. This was why the Tribunal rejected such an interpretation of cl 21 of the STC. In these circumstances, I struggle to see what meaningful difference (if any) E's present submissions contrive to draw between E's interpretation of cl 21 of the STC and the Tribunal's understanding of E's interpretation.

73 More fundamentally, and even if I am wrong in my analysis at [72] above, it does not change the true nature of E's complaint. Properly appreciated, E's quarrel is *not* that there was a defect in the Tribunal's "chain of reasoning", but rather, that the Tribunal had allegedly "mischaracterized" E's argument.[64] However, the fact that the Tribunal may have misunderstood E's case on the interpretation of cl 21 of the STC, or that the Tribunal may have erred in rejecting E's argument that F had breached cl 21 of the STC (based on the

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64 CWS at para 34(c).

Tribunal's misunderstanding of E's argument), is not a breach of the fair hearing rule or otherwise a ground for setting aside the Award (see *AKN* at [46] and [59]).

The RBI Restriction Ground

E's case

74 E explained that, in the Arbitration, E had argued that the RBI Restriction was directly and entirely attributable to F. This was obvious from the statement in the RBI Restriction that "[n]otwithstanding lapse of considerable time and adequate opportunities being given, the entity [*ie*, F] has been found to be non-compliant with the directions on Storage of Payment System Data".[65]

75 E submitted that given the "definitive stipulation in the RBI Restriction", "there cannot be an alternative to the view that the indefinite RBI Restriction was imposed on account of [F's] persistent non-compliance with Indian law".[66] Yet, the Tribunal concluded that F had no control over the RBI Restriction.[67] The Tribunal's reasoning was not only "incoherent" but also showed that it failed to apply its mind to and properly engage with E's arguments in respect of the RBI Restriction.[68] The Tribunal did not even refer to the statement in the RBI Restriction cited by E.[69] As such, the Tribunal's finding had no nexus to E's arguments, and the Tribunal adopted a chain of

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65 CWS at para 36.

66 CWS at para 37.

67 CWS at para 38.

68 CWS at para 39.

69 CWS at para 40.

reasoning untethered to the parties' submissions and failed to consider a material issue.[70] Had the Tribunal considered and found that the RBI Restriction was a consequence of F's non-compliance with Indian law, the result could have been that E would not be liable to return the Sign On Bonus.[71]

F's case

76 F submitted that this was a straightforward case of the Tribunal preferring F's arguments over E's in finding that the RBI Restriction was beyond F's control.[72]

Decision

77 I find that there was no breach of the fair hearing rule as alleged by E.

78 It is established law that:

(a) A breach of the fair hearing rule can arise from an arbitral tribunal's complete failure to consider an essential point (*BZW v BZV* [2022] 1 SLR 1080 ("*BZW*") at [60(a)]; *DKT* at [8(c)]).

(b) A breach of the fair hearing rule can also arise if an arbitral tribunal adopts a chain of reasoning (i) of which the parties did not have reasonable notice, or (ii) which did not have a sufficient nexus to the parties' arguments (*BZW* at [60(b)]).

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70 CWS at para 40.

71 CWS at para 40.

72 DWS at para 50.

(c) "Manifest incoherence" in an arbitral award is not, in itself, a ground to challenge the award for a breach of natural justice. The relevance of any "manifest incoherence" lies in whether it demonstrates a breach of an established rule of natural justice. This may be so where the "manifest incoherence" (i) gives rise to a clear and virtually inescapable inference that the arbitral tribunal had completely failed to consider an essential point, or (ii) results from a chain of reasoning of which the parties did not have reasonable notice or which did not have a sufficient nexus to the parties' arguments (*DKT* at [12]).

79 In the present case, E had argued in the Arbitration that the RBI Restriction was attributable to F's non-compliance with Indian law;[73] F had denied that the RBI Restriction was attributable to F's non-compliance with Indian law;[74] and the Tribunal had decided that the RBI Restriction was beyond F's control (Award at [106]). In my view, it cannot be more obvious that there is no manifest incoherence in the Tribunal's decision; the Tribunal had considered (but implicitly rejected) E's argument; and the Tribunal's decision had a direct nexus to the parties' arguments. It is neither here nor there that the Tribunal did not expressly address the statement in the RBI Restriction cited by E. The worst that might be alleged is that there was poor reasoning or a wrong conclusion reached by the Tribunal on the issue, but these would not be grounds for setting aside the Award (see *AKN* at [59]; *DKT* at [8(c)]).

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73 Claimant's Affidavit at p 1229: Statement of Defence at para 50.

74 Claimant's Affidavit at p 1662: Rejoinder at para 50.

The Interest Ground

E's case

80 E submitted that the Tribunal's decision to award interest on the Sign On Bonus from 29 October 2019 (*ie*, the date of E's receipt of the Sign On Bonus from F) had no nexus to the parties' submissions.[75] F's position in the Statement of Claim in the Arbitration was that "interest should be reckoned from the date such amounts were claimed by and became due to [F]".[76] F had first claimed a refund of the Sign On Bonus on 30 May 2022.[77] E had argued in the Arbitration that F's claim for pre-award interest was untenable and could not be granted.[78] Yet, the Tribunal awarded interest from 29 October 2019, a decision which had no nexus to the parties' arguments.[79] The Tribunal gave no reason for its decision; the statement in the Award at [120] that the interest on the Sign On Bonus should be calculated "from the date that [F] received it" was a "conclusion [that] cannot by itself be the reason".[80] There was prejudice to E, as the earliest that interest could have been payable was from 30 May 2022 (when F first sought a refund of the Sign On Bonus) but E had been "forced" by the Tribunal's decision to pay interest for an additional 31 months.[81]

81 At the hearing of OA 10, E's counsel added that it was "internally inconsistent" for the Tribunal to award interest from 29 October 2019 after

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75 CWS at para 41.

76 CWS at para 41(b); Claimant's Affidavit at p 185: Statement of Claim at para 197.

77 CWS at para 41(b).

78 CWS at para 41(c).

79 CWS at paras 42–43.

80 CWS at para 43.

81 CWS at para 44.

finding that the "operative" date of non-performance of the CBA was in May 2022.

82 To avoid doubt, E did not challenge the *rate* at which the Tribunal ordered interest on the Sign On Bonus to be paid, *viz*, at 7% per annum (Award at [120]).

F's case

83 F submitted that the Tribunal had given a reason for its decision to award interest on the Sign On Bonus from 29 October 2019, *viz*, that interest should be calculated from the time that E had received the Sign On Bonus from F (Award at [120]).[82] E could not complain that the decision had no nexus to E's arguments when E had chosen not to advance any substantive arguments on the appropriate commencement date for or duration of interest.[83] E had ample notice that the Tribunal was empowered, under the Arbitration Rules of the Singapore International Arbitration Centre (6th Ed, 1 August 2016) which applied to the Arbitration, to determine the appropriate period of interest.[84] It was not a breach of natural justice that the Tribunal had reached a conclusion not argued by either party as the commencement date for interest calculation selected by the Tribunal had a manifest and rational connection to the dispute, being the date E had received the Sign On Bonus from F.[85]

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82 DWS at para 54(a).

83 DWS at para 54.

84 DWS at para 54(d).

85 DWS at paras 55–56.

Decision

84 I find that there was no breach of the fair hearing rule as alleged by E.

85 To start, I agree with F's submission that, reading the Award at [120] sensibly, it does contain the Tribunal's reason for deciding to award interest from 29 October 2019, such reason being that this was the date on which E had received the Sign On Bonus from F. In my view, it is implicit that the Tribunal considered that since E was not entitled to the Sign On Bonus pursuant to cl 4 of the STC (on the Tribunal's prior determination) but had had the benefit of the Sign On Bonus moneys from 29 October 2019, interest on the amount of the Sign On Bonus should be paid from that date (until the date of refund of the Sign On Bonus to F).

86 Properly analysed, E's complaint is that the Tribunal decided on a commencement date which neither party had advocated. This does not equate to a lack of nexus between the Tribunal's decision and the parties' arguments. Indeed, as F pointed out, E had made *no* arguments in the Arbitration on the appropriate date from which any interest ordered should run. While the Tribunal had been cognisant of F's arguments (Award at [117]), it had simply decided on a different commencement date for pre-award interest which had a "manifest and rational connection to the dispute" and was "well with the [T]ribunal's discretion to choose" (*BRQ v BRS* [2019] SGHC 260 at [164]).

87 In any event, there is no breach of natural justice in the Tribunal having decided on a commencement date which neither party had advocated. To the contrary, in the circumstances of the present case, this precisely shows that the Tribunal had applied its (own) mind to the issue as it was obliged to do. As the

Court of Appeal explained in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (at [65(e)]:

> It is almost invariably the case that parties propose diametrically opposite solutions to resolve a dispute. They may expect the arbitrator to select one of these alternative positions. The arbitrator, however, is not bound to accept an either/or approach. *He is perfectly entitled to embrace a middle path (even without apprising the parties of his provisional thinking or analysis) so long as it is based on evidence that is before him. Similarly, an arbitrator is entitled – indeed, it is his obligation – to come to his own conclusions or inferences from the primary facts placed before him. In this context, he is not expected to inexorably accept the conclusions being urged upon him by the parties. Neither is he expected to consult the parties on his thinking process before finalising his award unless it involves a dramatic departure from what has been presented to him.* [emphasis added]

88 Finally, E's counsel's assertion that the Tribunal's decision was "internally inconsistent" is a criticism that the Tribunal erred in its decision-making. However, errors of law or fact (assuming any) are not grounds for setting aside the Award.

Conclusion

89 In conclusion, OA 10 is dismissed. E has failed to establish any of its six grounds for setting aside the part of the Award which it challenged. Its application was, from start to end, founded on disagreement with the Tribunal's decision and an impermissible attempt to confront the merits of that decision.

90 Unless the parties agree on costs, they should file their written submissions on costs, limited to three pages, within three weeks from the date of this judgment.

- Sgd -
Kristy Tan
Judge of the High Court

Navin Joseph Lobo and Suchitra Kumar (Premier Law LLC) for the claimant;
Mahesh Rai and Shreya Kittur (Drew & Napier LLC) for the defendant.