

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

[2026] SGHC 21

Originating Application No 872 of 2025 (Summons No 2496 of 2025)

Between

GE Vernova Parts & Products
GmbH (formerly known as GE
Global Parts & Products
GmbH)

... Applicant

And

(1) Anlima Meghnaghat Power
Plant Limited
(2) Standard Chartered Bank
(Singapore) Limited

... Respondents

GROUND OF DECISION

[Injunctions — Interlocutory injunction— Whether defendant acted fraudulently in making demand]

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GE Vernova Parts & Products GmbH
v
Anlima Meghnaghat Power Plant Ltd and another

[2026] SGHC 21

General Division of the High Court — Originating Application No 872 of 2025 (Summons No 2496 of 2025)
Chan Seng Onn SJ
14 August, 29 September 2025

26 January 2026

Chan Seng Onn SJ:

Introduction

1 This case concerned an application made in relation to an *ex parte* interim injunction to restrain the 1st Respondent, Anlima Meghnaghat Power Plant Limited (“Anlima”) and the 2nd Respondent, Standard Chartered Bank (Singapore) Limited (“SCB”) that I granted on 14 August 2025 (the “Interim Injunction Order”). Under the Interim Injunction Order, Anlima was restrained from receiving any moneys from SCB pursuant to a call made by Anlima on a bank guarantee made in Anlima’s favour and from making further demands for payment under the bank guarantee. The Interim Injunction Order also restrained SCB from paying Anlima any moneys pursuant to a demand on the bank guarantee, pending arbitration between GE and Anlima.¹

¹ HC/ORC 4732/2025 at [1]–[3].

2 Anlima applied to set aside the Interim Injunction Order in HC/SUM 2496/2025 (“SUM 2496”).

3 After considering the parties’ submissions, I dismissed Anlima’s application. Anlima has filed an appeal against my decision in SUM 2496. I now set out the reasons for my decision.

Facts

The parties

4 The Applicant, GE Vernova Parts & Products GmbH (formerly known as GE Global Parts & Products GmbH) (“GE”) is a company incorporated in Switzerland. It is in the business of designing, selling, operating and maintaining power generation equipment and facilities worldwide.²

5 Anlima is a company incorporated in Bangladesh and has its place of business at Bangladesh. It is the owner and/or developer of a power plant project in Bangladesh (the “Project”).³

6 SCB is the issuer of a bank guarantee in Anlima’s favour. The bank guarantee was issued in the form of an Irrevocable Advance Payment Standby Letter of Credit No. 958020191134-GS dated 14 December 2021 for the sum of USD 2,000,000 in favour of Anlima (the “Bank Guarantee”).⁴

² Affidavit of Md Abidur Rahman Chowdhury dated 13 August 2025 and filed on 14 August 2025 (“MARC’s 1st Affidavit”) at [5].

³ MARC’s 1st Affidavit at [7].

⁴ MARC’s 1st Affidavit at [8] and [20].

Background to the dispute

The Reservation Agreement

7 In or around 2021, General Electric International Inc (a related company of GE) and Anlima Textile Limited (a related company of Anlima) were engaged in negotiations in relation to the supply of a 9F.05 gas turbine. However, Anlima Textile Limited and/or Anlima were not ready to place an order for the 9F.05 gas turbine. Around 14 October 2021, General Electric International Inc informed Anlima Textile Limited that if the technical book, commercial contract and downpayment were not concluded by December 2021 for the 9F.05 gas turbine, General Electric International Inc would not be able to supply the 9F.05 gas turbine. As an interim solution, General Electric International Inc and Anlima Textile Limited agreed instead to have GE enter into a reservation agreement with Anlima for GE to reserve a new 9F.05 gas turbine for Anlima upon payment of a reservation fee.⁵

8 GE and Anlima subsequently entered into a reservation agreement dated 4 December 2021 (the “Reservation Agreement”). Under clause 3 of the Reservation Agreement, Anlima agreed to pay GE a non-refundable reservation fee of USD 2,000,0000 (the “Reservation Fee”). In return (and as a consideration) for the Reservation Fee, GE agreed to reserve one 9F.05 gas turbine until 31 December 2023 as reflected in clause 2 of the Reservation Agreement.⁶ I set out below clauses 2 and 3 of the Reservation Agreement:

2 SCOPE

Upon the receipt of the Reservation Fee from the Owner,

⁵ MARC’s 1st Affidavit at [9]–[14].

⁶ MARC’s 1st Affidavit at [15]–[17]; p 32.

GE agrees to reserve the Equipment which is one (1) 9F.05 gas turbines flange to flange and combustion system as further described in Appendix A Scope of Supply, without offering them for different project(s) until 30th September 2022 for the Project or 90 days of signing of the power purchase agreement between the Owner and Bangladesh Power Development Board (BFPD), whichever is later; however not later than 31st December 2023 (the “Stop Date”). Both Parties agree that the Equipment shall be delivered at FCA POE (Incoterm 2020) on or before 31st December 2023 by fulfilling the respective pre requisite conditions.

3 RESERVATION FEE

Owner agrees to pay to GE **USD 2,000,000 (In Words: US Dollars Two Million Only)** (the “Reservation Fee”) for the Scope as defined in Clause 2 of this Reservation Agreement subject to GE not being in breach of the Agreement. The Parties agree that Reservation Fee is not refundable.

[emphasis in underline]

9 I noted that Anlima could choose not to purchase the 9F.05 gas turbine by 31 December 2023 and forfeit the non-refundable Reservation Fee in favour of GE.⁷

The Bank Guarantee

10 The Reservation Agreement required GE to secure Anlima in the event of a breach by GE, which would justify the refund of the Reservation Fee paid by Anlima. Thus, clause 4(a) of the Reservation Agreement stipulated that GE was to procure an advance payment bank guarantee for the Reservation Fee in favour of Anlima.

11 Clause 4(a) stated:⁸

4 RESERVATION PROVISIONS

⁷ MARC’s 1st Affidavit at [16].

⁸ MARC’s 1st Affidavit at p 32.

- a) The Reservation Fee shall be paid by Owner by wire transfer to the bank account of GE within ten (10) business days from receipt by Owner of the commercial invoice and *advance payment bank guarantee* sent by GE via e-mail, however, not later than 31st December 2021.

[emphasis added in italics]

12 On or around 14 December 2021, in accordance with clause 4(a), GE procured the Bank Guarantee for US\$2,000,000 which was issued in favour of Anlima (see [6] above). The Bank Guarantee expressly provided that Anlima was entitled to call on the Bank Guarantee if GE breached the Reservation Agreement:⁹

BY ORDER OF, GE GLOBAL PARTS AND PRODUCTS GMBH, BROWN BOVERI STRASSE 8, BADEN 5400 SWITZERLAND (HEREINAFTER KNOWN AS “GE”) AND FOR ACCOUNT OF SAME, WE, STANDARD CHARTERED BANK (SINGAPORE) ... UNDERTAKE TO PAY YOU (THE “BENEFICIARY”), WITHOUT CAVIL, DEMUR, AND ARGUMENT, ANY REFERENCE AND ANY/OR ANY LEGAL PROCEEDING WHATSOEVER TO THE APPLICANT/GE OR ANY OTHER PARTY UP TO AN AGGREGATE AMOUNT OF USD2, 000,000.00 (US DOLLARS TWO MILLION ONLY) WITHIN TEN (10) BUSINESS DAYS UPON RECEIPT BY US OF YOUR **FIRST WRITTEN DEMAND ACCOMPANIED BY A WRITTEN STATEMENT** THROUGH AN AUTHENTICATED SWIFT **THAT THE APPLICANT/GE IS IN BREACH OF THE OBLIGATION(S) UNDER THE CONTRACT CONDITIONS**, WITHOUT YOU NEEDING TO PROVED OR SHOW GROUNDS OR REASONS FOR YOUR DEMAND OR THE SUM SPECIFIED THEREIN...

[emphasis added in bold]

13 The Bank Guarantee required a demand for payment by Anlima to be accompanied by *inter alia*:

- (a) a written statement from Anlima to SCB asserting that GE had breached its obligations pursuant to the Reservation Agreement; and

⁹ MARC’s 1st Affidavit at pp 39–40.

(b) a copy of Anlima’s written notification to GE, informing GE that GE had breached its contractual obligations under the Reservation Agreement.

14 These requirements were set out in clauses 1 and 2 of the Bank Guarantee:¹⁰

1) **A STATEMENT** PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE ANLIMA MEGHNAGHAT POWER PLANT LIMITED STATING THAT:

“(GE GLOBAL PARTS AND PRODUCTS GMBH) HAS FAILED TO PERFORM ITS OBLIGATION IN ACCORDANCE WITH THE TERMS OF THE CONTRACT NO. DATED 4TH DECEMBER 2021, BETWEEN ANLIMA MEGHNAGHAT POWER PLANT LTD AND GE GLOBAL PARTS AND PRODUCTS GMBH AND WE HEREBY DEMAND PAYMENT IN THE AMOUNT OF (WRITTEN AMOUNT AND FIGURES) (USD __) UNDER YOUR STANDBY LETTER OF CREDIT NO. ____”.

2) A COPY OF YOUR **WRITTEN NOTIFICATION** SENT VIA EXPRESS MAIL / COURIER TO GE DATED AT LEAST THIRTY (30) CALENDAR DAYS PRIOR TO PRESENTATION OF ANY CLAIM HEREUNDER EVIDENCING THAT BENEFICIARY GAVE WRITTEN NOTIFICATION TO

GE GLOBAL PARTS AND PRODUCTS GMBH
BROWN BOVERI STRASSE 8, BADEN 5400 SWITZERLAND
ATTENTION: FINANCE MANAGER

STATING THEREIN THAT “**GE IS IN BREACH OF ITS CONTRACT OBLIGATIONS BY FAILING TO (SPECIFY REASON)**. ACCORDINGLY, WE INTEND TO CLAIM (SPECIFY AMOUNT) IN THE EVENT GE FAILS TO COMMENCE ACTION TO CURE SUCH DEFAULT WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS NOTICE”

[emphasis added in bold]

15 The Bank Guarantee was governed by English law.¹¹

¹⁰ MARC’s 1st Affidavit at p 40.

¹¹ MARC’s 1st Affidavit at [22].

Amendment to the Reservation Agreement

16 On 16 October 2023, GE and Anlima amended the Reservation Agreement (the “Amendment Agreement”) and agreed that:¹²

- (a) the reservation of the 9F.05 gas turbine (which was the subject matter of the Reservation Agreement) would be changed to the reservation of the new 9HA.01 gas turbine; and
- (b) the Stop Date would be extended to 31 December 2025.

17 To match the new Stop Date of 31 December 2025, on or around 1 November 2023, GE procured the extension of the Bank Guarantee until 31 December 2025.¹³

Events leading up to and the demand on the Bank Guarantee

18 Between 10 April 2025 to 24 July 2025, GE and Amina exchanged correspondence on whether the Reservation Agreement (as amended) had been frustrated and whether GE had to refund the Reservation Fee:

- (a) By a letter dated 10 April 2025, Anlima wrote to GE, asserting that the Reservation Agreement (as amended) was frustrated because the Bangladesh Power Development Board (the “BPDB”) had cancelled the Letter of Intent (the “LOI”) between Anlima and the BPDB via a memo dated 19 November 2024 (the “BPDB memo”).¹⁴ Anlima asserted that the Reservation Agreement (as amended) “stands terminated due to

¹² MARC’s 1st Affidavit at [27] and pp 43–46.

¹³ MARC’s 1st Affidavit at [28].

¹⁴ MARC’s 1st Affidavit at [30].

frustration of the contract” and requested GE to refund the Reservation Fee.¹⁵

(b) GE responded to Anlima, via a letter dated 27 April 2025. In GE’s letter, GE disagreed that the Reservation Agreement was frustrated and stated that the BPDB memo did not state that the LOI was cancelled but stated that the LOI was under consideration for procurement through a competitive bidding process. GE affirmed that it would perform its obligations under the Reservation Agreement and its amendment and stated that the Reservation Fee was not refundable in any event, pursuant to clause 3 of the Reservation Agreement.¹⁶

(c) Anlima responded to GE via a letter dated 7 May 2025. Anlima insisted that the Reservation Agreement was terminated because the contract was frustrated, and it was entitled to a refund of the Reservation Fee because “if it [*ie*, the Reservation Fee] were meant to be non-refundable, GE would not have furnished the bank guarantee”.¹⁷

(d) GE responded to Anlima via a letter dated 2 June 2025. GE stated that it had complied and continued to comply with its obligations under the Reservation Agreement (as amended) and the Reservation Agreement was not terminated. GE stated that Anlima had paid the Reservation Fee for GE to reserve the 9F.05 gas turbine (in the Reservation Agreement) and subsequently the 9HA.01 gas turbine (in the Amendment Agreement), and that the Reservation Fee was non-refundable. The advance payment guarantee was done in compliance

¹⁵ MARC’s 1st Affidavit at [30] and pp 50–52.

¹⁶ MARC’s 1st Affidavit at [31] and p 54.

¹⁷ MARC’s 1st Affidavit at [32] and p 56.

with Bangladesh Foreign Exchange Regulation and did not amount to the Reservation Fee being refundable.¹⁸

(e) On 25 June 2025, Anlima sent a Written Notification dated 25 June 2025 to GE, alleging that (i) GE had breached the Reservation Agreement (as amended) because it refused to refund the Reservation Fee; and (ii) the Reservation Agreement (as amended) was terminated due to frustration. Anlima's letter stated:¹⁹

GE is in breach of its contract obligations by failing to refund the amount of US\$ 2,000,000/- (United States Dollars Two Million only) despite Reservation Agreement (dated 04.12.2021), later amended by Amendment to the Reservation Agreement (dated 16.10.2023), being terminated by reason of frustration as the Bangladesh Power Development Board (BPDB) has, by its memo No. 27.11.0000.101.14.021.24-2671 (dated 19.11.2024), without alleging or assigning any fault on our part, cancelled its earlier Letter of Intent (LOI) No. 27.11.0000.101.14.021.19-3029 dated 25.06.2019, issued in our favour for the development of Gas/RLNG based Combined Cycle Power Generation Facility of 450 MW (Net) Capacity at Meghnaghat, Narayanganj Bangladesh, on Build-Own-Operate (BOO) basis under Private Sector Power Generation Policy of Bangladesh, which was the purpose for which the equipment under the Reservation Agreement was being procured.

Accordingly, we intend to claim US\$2,000,000/- (United States Dollars Two Million only) in the event GE fails to commence action to cure such default within thirty (30) calendar days from the date of this notice.

[emphasis added in italics]

(f) GE responded to Anlima via a letter dated 24 July 2025. GE reiterated that (i) the Reservation Agreement (as amended) was not frustrated; (ii) the LOI was not cancelled; (iii) GE had not breached the

¹⁸ MARC's 1st Affidavit at [33] and pp 58–59.

¹⁹ MARC's 1st Affidavit at [34] and p 61.

Reservation Agreement (as amended); and (iv) Anlima had no basis to ask for a refund of the Reservation Fee.²⁰

19 On or around 4 August 2025, Anlima made a demand to SCB to be paid under the Bank Guarantee. As part of the demand, Anlima provided (i) the Written Statement dated 4 August 2025 made to SCB stating that GE had failed to perform its contractual obligations under the Reservation Agreement; and (ii) the Written Notification dated 25 June 2025 that Anlima had sent to GE (see [18(e)] above).²¹

OA 872 and the ex parte injunction

20 On 14 August 2025, GE filed HC/OA 872/2025 seeking an *ex parte* interim injunction to restrain (a) Anlima from receiving payment under the Bank Guarantee and from making further demands for payment under the Bank Guarantee; and (b) SCB from paying the Bank Guarantee to Anlima, pending arbitration between GE and Anlima.²² Anlima and SCB were given notice of both OA 872 and the hearing of OA 872. However, both Anlima and SCB were absent at the hearing.²³

21 On 14 August 2025, I granted the interim injunction pending arbitration between GE and Anlima.²⁴

²⁰ MARC’s 1st Affidavit at [35] and pp 63–64.

²¹ MARC’s 1st Affidavit at [36] and p 66.

²² Applicant’s Bundle of Documents dated and filed on 22 September 2025 (“BOD”) at Tab 1.

²³ BOD at Tab 6; 2nd Affidavit of Md Abidur Rahman Chowdhury dated and filed on 16 September 2025 (“MARC’s 2nd Affidavit”) at [8].

²⁴ HC/ORC 4732/2025; MARC’s 2nd Affidavit at [9] and pp 33–34.

Events after the ex parte interim injunction and the arbitration

22 The Interim Injunction Order was served on Anlima and SCB on 15 August 2025.²⁵ On 28 August 2025, Anlima filed SUM 2496 to set aside the *ex parte* interim injunction that I granted.

23 On 5 September 2025, GE filed a Notice of Arbitration (the “NOA”) with the Singapore International Arbitration Centre to refer the dispute arising from Anlima’s demand on the Bank Guarantee to arbitration. The NOA was served on Anlima.²⁶ In the NOA, GE also applied for the dispute to be dealt with under the expedited procedure pursuant to Rule 14.2 of the SIAC Rules 2025.²⁷

24 On 19 September 2025, Anlima’s lawyers served the Response to Notice Arbitration on GE’s lawyers. Anlima confirmed that it was not objecting to the Tribunal’s jurisdiction, but took the position that GE was not entitled to refer the issue of whether the demand on the Bank Guarantee was wrongful to arbitration because the issue would be *res judicata* once it is decided by the Singapore Courts.²⁸

25 The hearing for SUM 2496 took place on 29 September 2025. I refused to set aside the *ex parte* interim injunction and dismissed SUM 2496 with costs to be reserved to the arbitration.²⁹

²⁵ MARC’s 2nd Affidavit at [10].

²⁶ MARC’s 2nd Affidavit at [13].

²⁷ MARC’s 2nd Affidavit at [13] and pp 36–91.

²⁸ Applicant’s Written Submissions dated and filed on 22 September 2025 (“GE WSS”) at [31].

²⁹ Notes of Evidence for 29 September 2025 (“NE for 29 September 2025”) at pp 73:17–74:7.

The parties' cases

Anlima's case

26 Anlima's position was that the interim injunction should be discharged. The Bank Guarantee was governed by English law and under English law, an injunction would only be granted if the demand on the Bank Guarantee was fraudulent or the beneficiary who made the call could not have honestly believed in the validity of its demand. Anlima contended that the *ex parte* interim injunction was liable to be set aside if the Court found that there was no evidence of fraud.³⁰

27 Anlima argued that the *ex parte* interim injunction should be set aside because Anlima had an honest belief in the validity of its demand on the Bank Guarantee and GE had failed to provide full and frank disclosure.³¹

28 First, Anlima made a demand on the Bank Guarantee because GE breached its contractual obligations. GE's failure to return the Reservation Fee upon the frustration of the amended Reservation Agreement amounted to a breach of the following terms to the amended Reservation Agreement:³²

- (a) an express term that parties would comply with "all applicable federal, provincial or local law, regulation, directive or ordinance and all lawful agreements, rules and regulations" in connection with the Project. This would include an obligation to comply with the Law Reform (Frustrated Contracts) Act 1943 (the "LRFCA");

³⁰ 1st Respondent's Written Submissions dated 22 September 2025 ("Anlima WSS") at [5]–[6].

³¹ Anlima WSS at [4]–[69].

³² Anlima WSS at [8].

(b) an implied term that parties would comply with the governing law of the Reservation Agreement, namely English law which the LRFCA was a part of; and

(c) due to the provisional nature of the Reservation Fee, there was an implied term that if the consideration for which the Reservation Fee was paid wholly failed, Anlima would be entitled to recover the Reservation Fee.

29 Anlima contended that the Reservation Agreement had been frustrated. The common purpose of the Reservation Agreement and the Amendment Agreement (collectively, the “Agreements”) was to implement the LOI, which granted Anlima the right to develop and operate the Project. Both Agreements were entered into for the purpose of implementing the Project.³³ The BPDB cancelled the LOI and the Project, thereby discharging both Agreements by frustration as it was no longer possible to achieve their common purpose.³⁴

30 Second, Anlima’s position was that the Reservation Fee paid to GE was an advance payment. Clause 3 of the Reservation Agreement should be interpreted as stating that GE would only be entitled to keep the Reservation Fee if GE had not breached the Reservation Agreement at the end of the Stop Date (*ie*, 31 December 2025). The Reservation Fee, which was paid to GE before GE had actually earned it, was an advance payment and was provisional in nature.³⁵ Anlima also contended that the Reservation Agreement functioned like an Option to Purchase and that the Reservation Fee served a dual purpose

³³ Anlima WSS at [9]–[20].

³⁴ Anlima WSS at [24]–[28].

³⁵ Anlima WSS at [29].

– to compensate GE for reserving the gas turbine/price of the gas turbine for Anlima until the Stop Date, and to be utilised as part payment of the contract price if Anlima and GE signed a Supply Contract.³⁶ GE’s right to retain the Reservation Fee referred to GE’s right to retain the Reservation Fee after the Stop Date if there was no Supply Contract signed by then, because GE would have earned the Reservation Fee provided that it did not breach the Reservation Agreement.³⁷

31 Third, Anlima contended that Anlima and GE were required to comply with the LRFCA pursuant to clause 8.1(d) of the Reservation Agreement and an implied term that parties would comply with English law (see [28(a)] and [28(b)] above).³⁸ The Reservation Agreement fell under the ambit of the LRFCA because the LRFCA applied to contracts governed by English law which had been frustrated.³⁹ Section 1(2) of the LRFCA provided that moneys paid pursuant to a contract that has been frustrated may be recoverable by the paying party.⁴⁰

32 Fourth, Anlima contended that on account of the provisional nature of the Reservation Fee, there was an implied term that Anlima would be entitled to recover the Reservation Fee if the consideration for the Reservation Fee wholly failed (see [28(c)] above).⁴¹ There would have been a total failure of consideration in the situation where an advance payment had been made under

³⁶ Anlima WSS at [30].

³⁷ Anlima WSS at [31].

³⁸ Anlima WSS at [32]–[39].

³⁹ Anlima WSS at [35].

⁴⁰ Anlima WSS at [36].

⁴¹ Anlima WSS at [40].

a contract and the contract was frustrated before the payee performed its contractual obligation.⁴² Until the Stop Date of 31 December 2025, GE would not have earned the Reservation Fee.⁴³ While the Reservation Agreement did not specify how the Reservation Fee was to be treated if the consideration for which it was paid wholly failed, the English courts were prepared to imply a term that an advance payment had to be returned if the recipient was not entitled to keep it. GE was not entitled to keep the Reservation Fee because it was not a gift to GE and GE had not earned it. Pursuant to English law, an advance payment would have to be returned to the payor if the consideration for which it was paid had wholly failed.⁴⁴

33 The implied terms did not contradict clause 3, because the Reservation Agreement (as amended) made no provision for a situation where there was a total failure of consideration or where the contract had been frustrated.⁴⁵ The provisions in clause 3 were not contradictory to the implied terms.⁴⁶ Anlima asserted that in the absence of any such provision in the Reservation Agreement (as amended) that stipulated how the Reservation Fee ought to be treated upon a total failure of consideration, under the business efficacy test and the obviousness test, a term could be implied that such payment ought to be refunded to Anlima in such an event.⁴⁷ Given that GE's refusal to repay the

⁴² Anlima WSS at [41].

⁴³ Anlima WSS at [44].

⁴⁴ Anlima WSS at [45]–[48].

⁴⁵ Anlima WSS at [51]–[52].

⁴⁶ Anlima WSS at [51].

⁴⁷ Anlima WSS at [53].

Reservation Fee amounted to a breach of the express and implied terms (see [28] above), Anlima was entitled to make a demand on the Bank Guarantee.⁴⁸

34 Anlima further asserted that GE had failed to provide full and frank disclosure. Anlima’s position was that GE ought to have informed the Court that it should dispense with the consideration of a balance of convenience when hearing an application for injunctions on a call on the Bank Guarantee. GE also failed to disclose the fact that the Reservation Agreement and the Amendment Agreement evinced a common purpose of implementing the LOI and the fact that the payment of the Reservation Fee was provisional in nature. These were material facts to Anlima’s case that the Reservation Agreement (as amended) had been frustrated and there had been a total failure of consideration.⁴⁹

GE’s case

35 GE’s position was that the *ex parte* interim injunction should not be discharged, and that SUM 2496 should be dismissed.⁵⁰ GE argued that clause 3 of the Reservation Agreement expressly stipulated that GE was entitled to the Reservation Fee which was not refundable unless GE had breached the Reservation Agreement. Hence, Anlima would only be entitled to a refund of the Reservation Fee if GE had acted in breach of the Reservation Agreement. A breach could only happen if GE refused or failed to reserve the 9F.05 gas turbine for Anlima until the Stop Date (*ie*, 31 December 2023), which GE did not do.⁵¹

⁴⁸ Anlima WSS at [61]–[62].

⁴⁹ Anlima WSS at [63]–[67].

⁵⁰ GE WSS at [84].

⁵¹ GE WSS at [9]–[10].

36 First, GE asserted that the Bank Guarantee was a performance bond. Its purpose was to secure Anlima against a breach by GE of the terms of the Reservation Agreement (as amended) which would entitle Anlima to a refund of the Reservation Fee.⁵² Anlima's call on the Bank Guarantee was a clear case of fraud because Anlima had no honest belief and/or could not have had any honest belief in the validity of the call on the Bank Guarantee, given that GE had not committed any breach.⁵³ GE had clearly stated in its various letters dated 27 April 2025, 2 June 2025 and 24 July 2025 to Anlima that it had reserved and would continue to reserve the price of the 9HA.01 gas turbine for Anlima until the Extended Stop Date of 31 December 2025. Anlima was aware of this and did not make any allegation of such a breach. There was no basis for Anlima to contend that it was entitled to what it had agreed was a non-refundable Reservation Fee, and for it to call on the Bank Guarantee. This was a clear case of fraud because Anlima did not and could not have had an honest belief in the validity of the call on the Bank Guarantee when it had no basis to do so.⁵⁴ The real complaint was that the LOI had been cancelled by the BPDP and Anlima could not proceed with the Project. This act by the BPDB was not a breach on GE's part of any of its obligations under the Reservation Agreement. Anlima was not entitled to a refund of the Reservation Fee under the terms of the Reservation Agreement because of this act by the BPDB, which was a third party. Anlima was only entitled to a refund only if GE itself had committed a breach of the Reservation Agreement (as amended), which could only happen if GE refused or failed to reserve the price of a 9HA.01 gas turbine for Anlima

⁵² GE WSS at [68].

⁵³ GE WSS at [73].

⁵⁴ GE WSS at [76]-[79].

until the Extended Stop Date. Anlima bore the risks should the Project not proceed for any reason.⁵⁵

37 Second, GE’s position was that there was no frustration and/or total failure of consideration of the Reservation Agreement. The Reservation Agreement was not a supply contract. The Reservation Agreement (as amended) was not frustrated because its purpose, which was for GE to reserve both the price of the turbine and the turbine itself, had neither become impossible to achieve nor was thwarted to a very high degree. The purpose of the Reservation Agreement (as amended) was not for GE to supply the turbine for Anlima for the Project. This purpose could continue and GE could continue to perform its obligations under the Reservation Agreement (as amended), despite the cancellation of the LOI. GE had also made it clear to Anlima that it had and would continue to reserve the price of the 9HA.01 gas turbine for Anlima until the Extended Stop Date of 31 December 2025.⁵⁶ Furthermore, the purpose of the Reservation Agreement was not thwarted to a very high degree by the cancellation of the LOI as GE had already performed a very substantial part of its obligation under the Reservation Agreement (around 44 out of 48 months) by initially reserving the 9F.05 gas turbine and subsequently reserving the price of the 9HA.01 gas turbine for Anlima.⁵⁷ Anlima’s call on the Bank Guarantee for the full US\$ 2,000,000 was opportunistic and unfair, given the fact that they had enjoyed 44 out of the 48-month reservation period.⁵⁸

⁵⁵ GE WSS at [80]-[83].

⁵⁶ GE WSS at [88]-[92].

⁵⁷ GE WSS at [93].

⁵⁸ GE WSS at [94].

38 Third, there was no total failure of consideration in relation to the Reservation Fee.⁵⁹ Anlima had paid the non-refundable Reservation Fee to obtain the right to purchase a 9F.05 turbine at the reserved price starting from December 2021 to December 2023, and subsequently a 9HA.01 turbine at the reserved price starting from October 2023 to December 2025. This was a valuable benefit to Anlima, which Anlima enjoyed for 44 months until it called on the Bank Guarantee. The fact that Anlima no longer intended to exercise its right to purchase the turbine because the LOI was cancelled did not mean that the purpose of the Reservation Agreement (as amended) had failed and/or that there was a total failure of consideration.⁶⁰

39 Fourth, GE's position was that the LRFCA did not assist Anlima in its case. The LRFCA was inapplicable because the Reservation Agreement remained possible to be performed and had not been frustrated, while the LRFCA only applied to contracts that were impossible to be performed or were frustrated. Moreover, even if the LRFCA were applicable, it only conferred a statutory right and not a contractual right. Even if Anlima had a right to any statutory remedies under the LRFCA (which GE denied), it was immaterial because GE did not breach its contractual obligations pursuant to the Reservation Agreement.⁶¹

40 Fifth, GE's position was that there were no implied terms to refund the non-refundable Reservation Fee. The two alleged implied terms – (a) the parties would comply with the LRFCA; and (b) Anlima would be entitled to recover the Reservation Fee if its consideration wholly failed – were neither implied in

⁵⁹ GE WSS at [95].

⁶⁰ GE WSS at [95]-[101].

⁶¹ GE WSS at [107]-[109].

fact or in law.⁶² The two alleged implied terms also conflicted with clause 3 of the Reservation Agreement (as amended).⁶³

41 In response to Anlima’s allegation that GE had failed to provide full and frank disclosure, GE’s position was that it had not failed to provide a full and frank disclosure of all material facts. The balance of convenience did not apply.⁶⁴ Whatever that was material to Anlima’s position would have been set out in the correspondence between GE and Anlima from 10 April 2025 to 24 July 2025, which was exhibited in full in MARC’s 1st Affidavit.⁶⁵ Moreover, under Singapore law, an applicant’s duty to make full and frank disclosure was not unlimited: the test for materiality was always an objective one and “the duty extends only to plausible, and not all conceivable or theoretical, defences” (*The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [87]). At the *ex parte* hearing of OA 872, GE did not need to identify “conceivable or theoretical” defences, nor facts which had “no material bearing” on the original application.⁶⁶

42 GE denied Anlima’s allegation that GE had failed to disclose certain background facts about the LOI which showed that the Reservation Agreement was for the purpose of implementing the Project. GE had disclosed Anlima’s position that the Reservation Agreement was for the purpose of implementing the Project. This could be seen in Anlima’s letters dated 10 April 2025, 7 May 2025 and 25 June 2025, which were set out in the text of and exhibited in MARC’s 1st Affidavit. At the hearing of OA 872, it was also brought to the

⁶² GE WSS at [112]–[119].

⁶³ GE WSS at [120]–[121].

⁶⁴ GE WSS at [122].

⁶⁵ GE WSS at [38]–[39].

⁶⁶ GE WSS at [40]–[42].

court’s attention that in Anlima’s view, BPDB’s cancellation of the LOI had the effect of frustrating the Reservation Agreement since Anlima alleged that the Project was the purpose of the Reservation Agreement.⁶⁷

43 GE asserted that the Reservation Agreement was not entered into for the purpose of implementing the Project. As Anlima was not ready to commit to a supply contract for the turbine at the material time in or around December 2021, GE and Anlima agreed to enter into a reservation agreement for GE to reserve a 9F.05 gas turbine upon Anlima’s payment of a non-refundable Reservation Fee.⁶⁸ The purpose of the Reservation Agreement was initially to reserve a 9F.05 gas turbine for Anlima until the Stop Date of 31 December 2023, and subsequently the price of a 9HA.01 gas turbine for Anlima until the Extended Stop Date of 31 December 2025.⁶⁹

44 GE asserted that Anlima’s allegation, that there was a total failure of the consideration (for which Anlima paid the Reservation Fee) as a result of the cancellation of the LOI, was only raised for the first time in Mahmudul Hoque’s affidavit. Anlima’s allegation on the total failure of consideration was not stated in any of its letters to GE nor in the parties’ correspondence between 10 April 2025 to 24 July 2025. The allegation that the consideration had wholly failed or that there was a total failure of consideration was not made by Anlima in the Written Statement or the Written Notification which were provided by Anlima to SCB when they called on the Bank Guarantee. Anlima could not expect GE to raise allegedly material facts that it did not even raise to GE.⁷⁰

⁶⁷ GE WSS at [50].

⁶⁸ GE WSS at [51].

⁶⁹ GE WSS at [55].

⁷⁰ GE WSS at [60]–[63].

My decision

The relevant legal principles governing the granting of an injunction to restrain a call on the Bank Guarantee

45 At the outset, the relevant principles governing the granting of an injunction to restrain a call on the Bank Guarantee were not controversial. Parties did not dispute that under English Law (which was the governing law for the Bank Guarantee), fraud was the sole ground on which an injunction would be granted to restrain a call on the Bank Guarantee. On the issue of fraud, Singapore law was no different from English law (*Shanghai Electric Group Co Ltd v PT Merak Energi Indonesia and another* [2010] 2 SLR 329 (“*Shanghai Electric*”) at [36]). For fraud to be established, the party applying for the injunction would have to show that the beneficiary who made the call had presented “a claim which he knows at the time to be an invalid claim, representing to the bank that he believes it to be a valid claim” or that “the beneficiary has no honest belief in the validity of the call on the performance guarantee” (*Shanghai Electric* at [36]). The standard of proof for the fraud exception was a high one where there would have to be clear evidence of both the fact of fraud and the bank’s knowledge (*Shanghai Electric* at [37]). If the court considered that based on the material before it, the only realistic inference to draw was that of fraud, then the party who applied for the injunction would have made out a sufficient case of fraud (*Shanghai Electric* at [37]).

46 The central inquiry was therefore whether GE had made out a sufficient case of fraud on Anlima’s part in calling on the Bank Guarantee.

Anlima's demand on the Bank Guarantee was fraudulent

The Reservation Agreement was not a supply contract

47 It was clear that the Reservation Agreement was not a supply contract. Anlima was not contractually obligated to purchase the 9F.05 gas turbine it had initially reserved, nor the new 9HA.01 gas turbine that was the subject matter of the amended Reservation Agreement. This was clearly evident from clauses 2, 4 and 5 of the Reservation Agreement.⁷¹ Clause 2 stated that “GE agrees to *reserve* the Equipment” [emphasis added in italics]. Clause 4(d) provided that “[w]hen GE signs the *Supply Contract* for this Equipment ... any payments made under this Reservation Agreement by Owner will [be] deemed to be part of the contract price of that *Supply Contract*” [emphasis added in italics]. Clause 5(b) further provided that the “Reservation Agreement and the Advance Payment Guarantee issued under this Agreement, shall expire automatically...when the *Supply Contract* is signed” [emphasis added in italics]. The fact that the Reservation Agreement expressly provided for a separate Supply Contract clearly showed that the Reservation Agreement itself was not a Supply Contract – it was merely an agreement between GE and Anlima for GE to reserve the 9F.05 gas turbine, and subsequently, the new 9HA.01 gas turbine for Anlima. Anlima was not contractually obligated to purchase the gas turbine it had reserved: this was contemplated by both parties when they entered into the Reservation Agreement, which could be evinced from the fact that clauses 4(d) and 5(b) expressly provided for a separate Supply Contract.

48 As Anlima had not yet secured a power purchase agreement from the BPDB but was only given an LOI, Anlima obviously did not want to risk

⁷¹ MARC's 1st Affidavit at pp 32–33.

purchasing the gas turbine from GE just in case the power purchase agreement with the BPDB did not materialise and the Project might have to be aborted. That was why Anlima did not enter immediately into a Supply Contract for the gas turbine with GE after getting the LOI from the BPDB, but decided instead to enter into a Reservation Agreement, where Anlima would have no contractual obligation to purchase the gas turbine. Anlima nevertheless wanted to reserve the specific gas turbine to ensure its availability at a fixed price and to purchase it in the future from GE in the event that Anlima should succeed in getting a power purchase agreement from the BPDB, whereupon the Project could then proceed. That was the obvious reason why Anlima entered into the Reservation Agreement (and not a Supply Contract) at the material time with GE. Accordingly, it would have been in the contemplation of both parties, and in particular, Anlima, that the Project might not even materialise (despite the LOI), and this was exactly what happened when the BPDB cancelled the LOI. In other words, the alleged “frustration” caused by the cancellation of the LOI was clearly contemplated at the time when the Reservation Agreement was entered into and that was the very reason why Anlima entered into a Reservation Agreement instead of a Supply Agreement with GE. In my view, GE would rather have Anlima enter into a Supply Agreement with Anlima immediately after Anlima had secured the LOI rather than having a Reservation Agreement, where Anlima had no obligation to purchase the gas turbine. It was reasonably clear on the facts as disclosed that GE did not breach the Reservation Agreement and the Reservation Agreement was not frustrated.

49 The central dispute between the Anlima and GE was over the proper construction of clause 3 of the Reservation Agreement. Clause 3 of the Reservation Agreement provided as follows:⁷²

⁷² MARC’s 1st Affidavit at p 32.

3 RESERVATION FEE

Owner agrees to pay to GE USD 2,000,000 (In Words: US Dollars Two Million Only) (the “Reservation Fee”) for the Scope as defined in Clause 2 of this Reservation Agreement subject to GE not being in breach of the Agreement. The Parties agree that Reservation Fee is not refundable.

[emphasis in underline]

50 It was clear from the express wording of clause 3 that GE and Anlima had agreed that the Reservation Fee was only refundable if GE was in breach of its contractual obligations under the Agreement. That was the only situation where Anlima could get the Reservation Fee back, otherwise, it was expressly stated to be “not refundable”. GE’s contractual obligation under the Reservation Agreement was to reserve one 9F.05 gas turbine for Anlima till 31 December 2023. This was later amended to GE reserving the price of one 9HA.01 gas turbine for Anlima till 31 December 2025. As was evident from GE’s correspondence with Anlima (see [18] above), GE had repeatedly affirmed in its letters dated 27 April 2025, 2 June 2025 and 24 July 2025 that it had complied and continued to comply with its obligations under the Reservation Agreement (as amended) and the Reservation Agreement was not terminated. In fact, it was also not Anlima’s argument that GE had breached the Reservation Agreement because GE had failed to reserve one 9F.05 gas turbine for Anlima till 31 December 2023 or the price of one 9HA.01 gas turbine for Anlima till 31 December 2025. Anlima’s contention was that GE had breached an implied term in the Reservation Agreement that if the consideration for which the Reservation Fee was paid wholly failed, Anlima would be entitled to recover the Reservation Fee. Anlima did not dispute that GE had reserved the price of one 9HA.01 gas turbine for Anlima till the Stop Date of 31 December 2025.

51 I did not accept Anlima’s argument that there was an implied term in the Reservation Agreement that Anlima would be entitled to recover the

Reservation Fee if the consideration for the Reservation Fee wholly failed. Anlima’s case was that this implied term arose on account of the provisional nature of the US\$2,000,000 made under the Reservation Agreement (as amended).⁷³ I found that the Reservation Fee was expressly agreed by GE and Anlima to be non-refundable and it was not provisional in nature. In the same vein, clause 3 clearly showed that the Reservation Fee was not an advance payment. This proposed implied term also contradicted clause 3 of the Reservation Agreement (as amended) which expressly provided that “the Reservation Fee is not refundable”.

52 I found that the Reservation Agreement was not frustrated on the facts as disclosed. The threshold for a contract to be discharged for frustration was high, whereby the commonly held purpose for which the contract was entered into had been found impossible to achieve (*Krell v Henry* [1903] 2 KB 740). In the present case, the Reservation Agreement was clearly not frustrated by BPDB’s cancellation of the LOI – it was not impossible for GE to continue reserving the price of one 9HA.01 gas turbine for Anlima till 31 December 2025, which GE did. The commonly held purpose of the Reservation Agreement was for GE to reserve the price of one 9HA.01 gas turbine for Anlima till 31 December 2025, and not for the implementation of the LOI. As the Reservation Agreement (as amended) was not frustrated, I found that the LRFCA did not apply to the Reservation Agreement (as amended) and the Bank Guarantee. Accordingly, GE was under no obligation to comply with the LRFCA, and I rejected Anlima’s arguments that there was an express and implied term for GE to comply with the LRFCA.

⁷³ Anlima WSS at [40].

53 Given that Anlima had no basis to make a call for the US\$2,000,000 in the Bank Guarantee because GE had not breached any of its contractual obligations under the Reservation Agreement, I found that Anlima had acted fraudulently in making the call on the Bank Guarantee. Anlima had agreed that the Reservation Fee was non-refundable except in the event of GE's breach, as seen in clause 3. In the correspondence between Anlima and GE from 10 April 2025 to 24 July 2025, GE had consistently stated that it had complied and continued to comply with its obligations under the Reservation Agreement (as amended) and the Reservation Agreement was not terminated. Anlima was always aware that GE had continued to comply with its obligations under the Reservation Agreement and had done so till the Stop Date of 31 December 2025. Given that Anlima was aware that GE had not breached any of its contractual obligations, and Anlima had expressly agreed that the Reservation Fee was non-refundable if there was no breach by GE, the only realistic inference for the court to draw was that Anlima knew that the call on the Bank Guarantee was invalid and/or that Anlima could not have honestly believed that the call on the Bank Guarantee was a valid call. Moreover, Anlima had sought a two-year extension of the Stop Date from 31 December 2023 to 31 December 2025. GE had already complied fully with the Reservation Agreement till 31 December 2023 and had every intention to continue to comply fully with the Reservation Agreement (as amended) till 31 December 2025. When Anlima made the call on the Bank Guarantee on 4 August 2025, Anlima enjoyed 44 out of the total 48-month reservation period under both the Reservation Agreement and the Reservation Agreement (as amended). Anlima essentially reaped a significant portion of the benefit under both these Agreements. The fact that Anlima had chosen to make the call when there was only a few more months left till the Stop Date showed that the only realistic inference to draw was that Anlima had acted fraudulently in making the call on the Bank Guarantee.

Conclusion

54 For the reasons set out above, I dismissed SUM 2496 and held that the *ex parte* interim injunction should be upheld. Given that the parties were currently involved in arbitration in relation to this dispute, I ordered costs to be reserved to the arbitration.

Chan Seng Onn
Senior Judge

Christopher Chong, Chen Zhihui and Isaac Lee (Drew & Napier
LLC) for the applicant;
Lim Shack Keong and Ang Minghao (Legis Point LLC) for the
defendants.
