

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC(I) 29

Originating Application No 10 of 2025

Between

(1) DPT
(2) DPU

... Applicants

And

(1) DPV
(2) DPW
(3) DPX

... Respondents

JUDGMENT

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

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**DPT and another
v
DPV and others**

[2025] SGHC(I) 29

Singapore International Commercial Court — Originating Application No 10 of 2025

S Mohan J, Roger Giles JJ, Anselmo Reyes JJ

22 September 2025

1 December 2025

Judgment reserved.

S Mohan J (delivering the judgment of the court):

Introduction

1 SIC/OA 10/2025 (“OA 10”) is an application brought by the applicants, DPT and DPU (collectively, “Applicants”), to set aside, in whole or in part, a Partial Award dated [redacted] (“Partial Award”) made in Singapore International Arbitration Centre Arbitration No. [redacted] (“Arbitration”).

2 The Applicants allege that:¹

(a) they were unable to present their case within the meaning of Article 34(2)(a)(ii) of the UNCITRAL Model Law on International

¹ HC/OA 309/2025 filed 26 March 2025, Prayer 2(1).

Commercial Arbitration (“Model Law”), read with s 3 of the International Arbitration Act 1994 (2020 Rev Ed) (“IAA”); and / or

(b) there was a breach of the rules of natural justice in connection with the making of the Partial Award by which the rights of the Applicants have been prejudiced, within the meaning of s 24(b) of the IAA.

3 We note from the outset that these two grounds may be considered together. While found in separate provisions, both grounds ultimately relate to the same fundamental complaint that the rules of natural justice have been breached: see *ADG v ADI* [2014] 3 SLR 481 at [118]; *Government of the Republic of the Philippines v Philippine International Air Terminals Co, Inc* [2007] 1 SLR(R) 278 at [18].

4 Following an exchange of written submissions, we heard oral arguments on 22 September 2025 (“Oral Hearing”).

5 For the reasons that follow, we dismiss OA 10.

Facts

Parties

6 DPX is a joint venture financial technology company at the centre of this dispute. Its “main product is ... an e-wallet open-loop payment method”.² It features as the third respondent in the Arbitration and the third respondent in OA 10, but it otherwise plays a nominal role – the main combatants are the shareholders of DPX.

² 1st Supporting Affidavit of the Applicants filed 26 March 2025 (“SA-1”) at para 6.

7 DPT and DPU (*ie*, the applicants in OA 10 and the first and second respondents in the Arbitration) are sister companies both incorporated in [Country A].³ Their parent company is [Company A]. DPU is primarily in the transportation business.

8 The first and second respondents in OA 10 are DPV and DPW (collectively, “Founders”). At the material time, DPV was the Group CEO of DPX, while DPW was the Head of Business Planning & Intelligence / Group Chief Strategy Officer albeit that he had been formally employed by a wholly-owned subsidiary of DPX based in [Country A] (referred to as “DPXA”).⁴ The Founders were the claimants in the Arbitration.

Background facts

9 Sometime in 2016, [Witness 1], the CEO of [Company A] (which was then known by a different name), discussed the possibility of developing a financial technology business with the Founders.⁵

10 These discussions culminated in a proposal for DPX being presented to the Board of DPU via e-mail on 28 October 2016. On 4 November 2016, the Board of DPU passed a resolution to set up DPX.⁶

11 DPX was incorporated on [redacted] 2017 and 900 shares were allotted as follows:⁷

³ SA-1 at para 5.

⁴ Applicants’ Statement of Defence and Counterclaim filed in the Arbitration (“D&CC”) at para 32 (SA-1 at p 661).

⁵ Partial Award at [228]–[230].

⁶ Partial Award at [231]–[232].

⁷ Partial Award at [234].

Shareholder	Number of Shares	Ownership Percentage
DPU	750	83.33%
Founders Combined	150	16.67%
DPV	100	11.11%
DPW	50	5.56%

12 On 9 March 2017, DPV and DPW transferred their respective shareholdings to DPU “in anticipation of [DPU’s] investment in [DPX]”:⁸

Shareholder	Number of Shares	Ownership Percentage
DPU	900	100%
Founders Combined	0	0%

13 In March 2017, DPU, the Founders, and DPX entered into a shareholders’ agreement (“SHA”) and an investment agreement (“IA”) (collectively, “Agreements”), in order to “develop a pan-regional fintech business”.⁹ The IA provided for, amongst others, investments by DPU to take place in tranches, and the Founders’ shares “to be issued to them in two tranches and subject to vesting restrictions to be subsequently agreed”.¹⁰ These “vesting restrictions” were termed the “Founders’ Vesting Arrangements”.

⁸ Founders’ Statement of Claim (Amended) filed in the Arbitration (“SOC(A1)”) at para 55 (SA-1 at p 547); Investment Agreement dated 17 March 2017 (“IA”), Background (B) (SA-1 at p 142).

⁹ Partial Award at [14].

¹⁰ SA-1 at para 25.

14 On 5 April 2017, the DPU Board approved certain vesting conditions during a meeting. The Founders were not present at this meeting.¹¹

15 Following the receipt of equity funding by DPU, DPX issued a further 2850 shares to DPU on 17 April 2017, bringing DPU’s total shareholding to 3750 shares.¹²

Shareholder	Number of Shares	Ownership Percentage
DPU	3750	100%
Founders Combined	0	0%

16 In April 2017, [DPXA] applied for approval from [Country A’s] central bank to issue a prepaid card (“DPX Card”), launch the “DPX Mobile App”, and conduct closed beta trials of the same.¹³

17 On 27 February 2018 and following further equity funding by DPU, DPX issued an additional 3178 shares to DPU, bringing DPU’s total shareholding to 6928 shares.¹⁴

Shareholder	Number of Shares	Ownership Percentage
DPU	6928	100%
Founders Combined	0	0%

18 On 14 August 2018, a DPX directors’ resolution was passed pursuant to which 572 shares would be issued to DPU, 600 shares would be issued to DPV,

¹¹ Partial Award at [240].

¹² Partial Award at [239]–[241].

¹³ Partial Award at [242]; Chronology of Core Events and Facts filed in the Arbitration dated 12 January 2023 (“Chronology”) at S/N 20 (SA-1 at p 1114).

¹⁴ Partial Award at [247].

and 300 shares would be issued to DPW.¹⁵ The respective shareholdings as at 15 August 2018 were as follows:

Shareholder	Number of Shares	Ownership Percentage
DPU	7500	89.29%
Founders Combined	900	10.71%

19 On 15 August 2018 and 4 September 2018, DPX and DPU entered into two convertible loan notes (“CLNs”) for US\$6,188,155 and US\$8,474,576 respectively.¹⁶

20 On 28 March 2019, DPU transferred its shareholding in DPX to DPT. DPT was formerly known by two different names, but for ease of reading we will use “DPT” to also refer to transactions it was previously involved in under its previous names. For present purposes it is immaterial under which name(s) DPT contracted at the material time. It is undisputed that DPT then became a party to the Agreements.¹⁷ The two CLNs identified above at [19] were also transferred from DPU to DPT.¹⁸

21 Between May 2019 to August 2020, DPT and DPX entered into a further 10 CLNs.¹⁹ For convenience, the 12 CLNs entered into between August 2018 and August 2020 will be referred to collectively as the “DPT CLNs”, and individually as “CLN 1” to “CLN 12”. The total sum loaned to DPX via the DPT CLNs will be referred to as the “CLN Debt”. Save that CLN 1 does not

¹⁵ Partial Award at [249].

¹⁶ Partial Award at [250]–[251].

¹⁷ Partial Award at [252].

¹⁸ SOC(A1) at para 64 (SA-1 at p 551).

¹⁹ SOC(A1) at para 66 (SA-1 at p 552); Partial Award at [253]–[274].

contain a provision for early repayment,²⁰ the DPT CLNs were structured in broadly identical terms and provided for certain circumstances pursuant to which DPX's debts under the DPT CLNs would be converted into equity for DPT.

22 On 17 January 2020, DPX's shares were split, resulting in the following shareholding:²¹

Shareholder	Number of Shares	Ownership Percentage
DPT	7,500,000	89.29%
Founders Combined	900,000	10.71%

23 The relationship between the Applicants and the Founders began to deteriorate sometime in early 2020,²² coinciding with the onset of the COVID-19 pandemic:

(a) DPX's "closed loop transaction facility on [the Applicants' website] was suspended" sometime in June 2020.²³

(b) In or around May to August 2020, the Founders and DPX's management were alerted to the development of [DPT e-Wallet], an "e-wallet for digital payments" on the Applicants' app.²⁴ The Founders took the view that [DPT e-Wallet] was a "competitive business which caused damage to [DPX]".²⁵

²⁰ See CLN 1 (SA-1 at p 162); cf. CLN 2, cl 3 (SA-1 at p 171).

²¹ Partial Award at [260].

²² SOC(A1) at para 83 (SA-1 at p 561).

²³ Partial Award at [270].

²⁴ Partial Award, *Abbreviations and Acronyms*, "[DPT e-Wallet]" (SA-1 at p 5747).

²⁵ SOC(A1) at para 100 (SA-1 at p 570).

(c) Between August and November 2020, the Founders exchanged a series of Whatsapp messages which included statements regarding their intention to, amongst others, “burn the whole house down”, leak information, “strong [arm] a deal”, and force a buyout.²⁶

(d) Sometime in October 2020, the Founders drafted and transmitted an anonymous letter to a number of third parties (“Letter”) which, amongst others, alluded to “mismanagement”, “corruption and cronyism” in the Applicants.²⁷

(e) DPT issued calls on CLN 1 and CLN 2 on 27 October 2020.²⁸ These calls were formally retracted on 1 November 2020, following legal advice received in relation to the implications of the 27 October 2020 calls.²⁹

(f) Following the issuance of the Letter, the Applicants commenced investigations and eventually placed DPV and DPW on gardening leave.³⁰ DPW and DPV were terminated as employees on 9 December and 16 December 2020 respectively.³¹

24 Termination notices were sent on 28 December 2020 and 27 January 2021 by DPT to the Founders purporting to terminate the Agreements.³²

²⁶ Partial Award at [275].
²⁷ Partial Award at [279]–[280].
²⁸ Partial Award at [282].
²⁹ Partial Award at [284]–[285].
³⁰ Partial Award at [283].
³¹ Partial Award at [287]–[288].
³² Partial Award at [289] and [291].

25 On 10 February 2021, the Founders were removed as directors of DPX by way of an ordinary resolution;³³ the Founders however remained as shareholders of DPX.

26 In April 2021, DPT launched [DPT Marketplace],³⁴ a “digital financial marketplace ... integrated on [the Applicants’ app]”.³⁵

27 On 12 May 2021, Mr [X], then CEO of DPX (up to around February 2023)³⁶ prepared a board paper seeking approval to convert the DPT CLNs into ordinary shares “so as to ‘reduce the liabilities on [DPX’s] balance sheet’ in light of [DPX’s] bid to obtain ‘additional regulatory licenses’”.³⁷

28 On 21 May 2021, the DPT CLNs were converted into shares for DPT. Consequently, 197,309,509 shares in DPX were issued to DPT.³⁸ This resulted in DPT becoming the 99.6% shareholder of DPX, and the Founders’ percentage shareholding being reduced from 10.71% to 0.4%.³⁹ The propriety of the conversion of the DPT CLNs was a major point of contention in the Arbitration.

29 On [redacted] 2021, “DPXB”, another subsidiary of DPX, submitted an application to [Country A’s] central bank for a digital bank license.⁴⁰

³³ Partial Award at [293].

³⁴ Partial Award at [294].

³⁵ Partial Award, *Abbreviations and Acronyms*, “[DPT Marketplace]” (SA-1 at p 5747).

³⁶ SA-1 at para 83.

³⁷ Partial Award at [296].

³⁸ Partial Award at [305(a)(ii)]; SOC(A1) at para 179 (SA-1 at p 609).

³⁹ Partial Award at [298]; Applicants’ Written Submissions dated 11 August 2025 (“AWS”) at para 5.

⁴⁰ Partial Award at [299].

30 On [redacted] 2021, it was announced that DPX had secured up to [redacted] in financing led by the [B Group] (“[B Group] Investment”), one of the largest conglomerates in [Country B].⁴¹ The [B Group] would invest a sum of [B Group Sum].⁴²

31 On [redacted] 2022, [Country A’s] central bank rejected [DPXB’s] digital bank license application.⁴³

32 In June 2022, [DPT e-Wallet] was launched.⁴⁴

The Arbitration

33 In November 2021, the Founders filed their Notice of Arbitration against the Applicants and DPX.⁴⁵

Claims and reliefs sought

34 The Founders claimed against the Applicants and DPX for breaches of the Agreements, and claimed against the Applicants for minority oppression under s 216(1) of the Companies Act 1967 (2020 Rev Ed) (“Companies Act”). In their amended statement of claim (“SOC(A1)”), the Founders sought:⁴⁶

- (a) a declaration that the Applicants and DPX had breached the Agreements;

⁴¹ Partial Award at [300].

⁴² Partial Award, *Abbreviations and Acronyms*, “[B Group] Investment” (SA-1 at p 5753).

⁴³ Partial Award at [303].

⁴⁴ Partial Award at [304].

⁴⁵ Partial Award at [17].

⁴⁶ Partial Award at [305].

- (b) a declaration that the Applicants had conducted the affairs of DPX and / or caused the powers of their nominee directors to be exercised in a manner that oppresses, disregards the interests of, unfairly discriminates against or otherwise prejudices the Founders in contravention of s 216(1) of the Companies Act (*ie*, a declaration of minority oppression);
- (c) an order that the issuance of 197,309,509 shares in DPX to DPT on 21 May 2021 be struck down and invalidated;
- (d) an order for DPT to purchase the shares of the Founders pursuant to s 216(2)(d) of the Companies Act on such terms to be determined by the three-member arbitral panel (“Tribunal”) after considering submissions from the parties (*ie*, a buyout order);
- (e) damages (to the extent that a buyout order was not granted or did not fully compensate the Founders); and
- (f) interest, costs, and such further relief as the Tribunal deemed fit.

35 The Applicants in turn requested:⁴⁷

- (a) a declaration that the Agreements had been validly terminated;
- (b) a declaration that the Founders’ interest in the shares of DPX were as reflected in the Register of Members;
- (c) an order for the Founders to pay damages (in an amount to be assessed) in respect of the Applicants’ counterclaim for malicious falsehood;

⁴⁷ Partial Award at [306].

- (d) an order for the Founders to pay the Applicants the costs of the Arbitration on a full indemnity basis; and
- (e) such further relief as the Tribunal deemed fit.

36 DPX requested the Tribunal to dismiss the Founders' claims with costs.⁴⁸

Procedural history

37 The Tribunal was constituted on 14 June 2022 and notified to the parties on 15 June 2022. It is unnecessary (indeed, undesirable) for us to canvass the entire procedural history of the Arbitration, save to note a few material events which occurred.

38 The Applicants submitted their first round of witness statements on 14 June 2023, comprising:⁴⁹

- (a) the 1st Witness Statement of [Witness 1];
- (b) the 1st Witness Statement of [Witness 2];
- (c) the 1st Witness Statement of [Witness 3];
- (d) the 1st Witness Statement of [Witness 4];
- (e) the 1st Witness Statement of [Witness 5];
- (f) the 1st Witness Statement of [Witness 6];

⁴⁸ Partial Award at [307].

⁴⁹ Partial Award at [104].

- (g) the 1st Witness Statement of [Witness 7];
- (h) the 1st Witness Statement of [Witness 8];
- (i) the 2nd Witness Statement of [Witness 9]; and
- (j) the 1st Expert Report of [Expert A].

39 Over 14 and 15 August 2023, the Applicants and the Founders exchanged their second round of witness statements (“2nd Round Witness Statements”).⁵⁰ The Applicants’ 2nd Round Witness Statements comprised:

- (a) 2nd Witness Statement of [Witness 1];
- (b) 2nd Witness Statement of [Witness 2];
- (c) 2nd Witness Statement of [Witness 3];
- (d) 1st Witness Statement of [Witness 10];
- (e) 2nd Witness Statement of [Witness 7];
- (f) 2nd Witness Statement of [Witness 8]; and
- (g) Reply Witness Statement of [Witness 5].

(1) Mr [X] and Ms [Y] Answers

40 On 31 August 2023, the Founders’ counsel informed the Tribunal that subpoenas had been granted by the Singapore High Court and served on Mr [X] and Ms [Y], requiring them to give evidence in the Arbitration.⁵¹ As previously

⁵⁰ Partial Award at [119]–[121].

⁵¹ Partial Award at [138].

stated (see [27] above), Mr [X] was the former CEO of DPX. Ms [Y] was the former Head of Finance of [DPXA] and had worked in [DPXA] from September 2018 to May 2023.⁵²

41 Additionally, in the case of Mr [X], he had also been subpoenaed to provide documents (“Mr [X] Documents”),⁵³ which were the subject of a previous application for disclosure made by the Founders on 10 August 2023.⁵⁴ The Mr [X] Documents also consisted of secret recordings of various conversations which Mr [X] had obtained and disclosed to the Founders (“Mr [X] Recordings”).⁵⁵ The Applicants had resisted the disclosure application on the grounds that the Mr [X] Documents contained privileged material and / or were not responsive to the production orders.⁵⁶ The Founders informed the Tribunal that they were withdrawing their disclosure application as they had already obtained the Mr [X] Documents by way of the subpoena.⁵⁷

42 On 14 September 2023, the Tribunal directed that, *inter alia*:⁵⁸

- (a) Mr [X] and Ms [Y] were to provide their answers in writing to questions provided by the Founders;
- (b) the Applicants / DPX were at liberty to file responsive evidence to these answers;

⁵² SA-1 at para 84.

⁵³ Partial Award at [138].

⁵⁴ SA-1 at para 88.

⁵⁵ SA-1 at paras 85–86, and 88; 1st Reply Affidavit of the Founders filed 30 April 2025 (“RA-1”) at para 73.

⁵⁶ SA-1 at para 89.

⁵⁷ SA-1 at para 91.

⁵⁸ Partial Award at [158].

(c) the Applicants / DPX would be permitted to cross-examine Mr [X] and Ms [Y], and the Founders would then be permitted to re-examine them; and

(d) the Founders were to disclose all exchanges and communications they had with Mr [X] and / or Ms [Y] and / or their solicitors in connection with the Arbitration.

43 Mr [X] and Ms [Y] furnished their answers to the Founders' questions on 23 September 2023 ("Mr [X] Answers" and "Ms [Y] Answers").⁵⁹ On 27 September 2023, the Tribunal granted the Founders' request made the previous day for them to tender additional questions to Mr [X] and Ms [Y].⁶⁰

(2) Responsive Evidence

44 On 2 October 2023, the Applicants submitted responsive witness statements to the Mr [X] Answers and Ms [Y] Answers ("Responsive Evidence"). The Responsive Evidence comprised ten witness statements:⁶¹

- (a) the 3rd Witness Statement of [Witness 1];
- (b) the 3rd Witness Statement of [Witness 2];
- (c) the 3rd Witness Statement of [Witness 3];
- (d) the 3rd Witness Statement of [Witness 5];
- (e) the 3rd Witness Statement of [Witness 7];

⁵⁹ Partial Award at [168] and [219].

⁶⁰ Partial Award at [170].

⁶¹ SA-1 at para 99.

- (f) the 3rd Witness Statement of [Witness 8];
- (g) the 3rd Witness Statement of [Witness 9];
- (h) the 1st Witness Statement of [Witness 11];
- (i) the 1st Witness Statement of [Witness 12]; and
- (j) the 1st Witness Statement of [Witness 13].

45 On 10 October 2023, the Founders informed the Tribunal that in light of “the Tribunal’s indications that parties should focus only on the core evidence”, they would be dispensing with the cross-examination of the following witnesses:⁶²

- (a) [Witness 11];
- (b) [Witness 12];
- (c) [Witness 13];
- (d) [Witness 10]; and
- (e) [Witness 6].

46 Notably, [Witness 11], [Witness 12], and [Witness 13] were three witnesses who provided statements for the first time as part of the Responsive Evidence (see above at [44]).

47 On 12 October 2023, the Founders also dispensed with cross-examination of [Witness 5]. For context, [Witness 5] was, amongst others, the

⁶² Partial Award at [186].

former Head of Legal and current Chief Legal & Compliance Officer at DPX.⁶³ The Founders took the view that [Witness 5's] witness statements "[did] not speak to matters within her personal knowledge and [were] therefore of limited assistance".⁶⁴

(3) Valuation Document and Dropdown Model

48 The oral hearing for the Arbitration was heard over the course of ten days in October 2023 ("Arbitration Hearing").⁶⁵ We note in particular that on 11 October 2023 (Day 8 of the Arbitration Hearing), the Tribunal circulated a document titled "Valuation Issues 10.10.2023.docx" ("Valuation Document") to seek clarifications from the parties as to their respective positions on the valuation exercise in the event a buyout order was made.⁶⁶ The relevance of this document will become apparent later in this judgment.

49 Closing and reply closing submissions were exchanged over the course of November 2023.

50 On 15 December 2023, the Applicants' counsel provided a "Dropdown Model" used by their expert, [Expert A], to assist with computing the value of the Founders' shares in DPX.⁶⁷ The Dropdown Model was in the form of a Microsoft Excel spreadsheet.

⁶³ Partial Award, *Abbreviated Names*, "[Witness 5]" (SA-1 at p 5756).

⁶⁴ Partial Award at [188].

⁶⁵ Partial Award at [179].

⁶⁶ SA-1 at para 154; Core Bundle of Documents dated 8 September 2025 ("CBOD") at p 297.

⁶⁷ Partial Award at [196].

51 The Founders replied on 20 December 2023 indicating their surprise at receiving the Dropdown Model for the first time on 15 December 2023, without being given any prior opportunity to comment on the same. The Founders alleged, amongst others, that the Dropdown Model was of limited assistance to the Tribunal and would be prejudicial to their case.⁶⁸

52 On 9 February 2024, after being given some time to confer, counsel for the Founders informed the Tribunal that the parties were as yet unable to agree on a joint model but that they would submit a Microsoft Excel spreadsheet containing both their models for the Tribunal's consideration.⁶⁹

53 The Tribunal responded on 16 February 2024, indicating its view that:⁷⁰

... given the Parties' disagreements regarding the dropdown model and the absence of a consensus on which model is appropriate, the Tribunal is of the view that it should determine the disputes having regard only to the evidence received up to the conclusion of the evidentiary hearing.

54 Both the Founders and the Applicants expressed their substantive agreement with this approach.⁷¹

55 On 11 December 2024, the Tribunal closed the proceedings in relation to matters dealt with in the Partial Award.⁷²

⁶⁸ Partial Award at [197].

⁶⁹ Partial Award at [207].

⁷⁰ Partial Award at [208].

⁷¹ Partial Award at [209].

⁷² Partial Award at [216].

Partial Award

56 The Tribunal issued the Partial Award in December 2024.

Main findings

57 With regard to the alleged breaches of the Agreements:

- (a) The Tribunal unanimously determined that:
 - (i) the purported termination of the Agreements by DPT was not valid and was in breach of the Agreements;⁷³
 - (ii) DPT and / or DPX had variously breached the SHA and / or IA by:⁷⁴
 - (A) “denying [the Founders] the opportunity to appoint new directors”;
 - (B) “refusing to provide material information to the [Founders] that they were entitled to”;
 - (C) “proceeding to allot/issue shares without the prior approval of the shareholders”;
 - (D) “failing to obtain [the Founders’] approval for the [B Group] Investment”; and
 - (E) “launching and operating [DPT e-Wallet] and [DPT Marketplace]”.
- (b) A majority of the Tribunal (“Majority”) found that:⁷⁵

⁷³ Partial Award at [592(a)(i)].

⁷⁴ Partial Award at [592(a)(ii)–(a)(vi)].

⁷⁵ Partial Award at [592(b)(i)–(b)(ii)].

- (i) DPT and DPX had breached the IA by “failing to accurately reflect [the Founders’] shareholding percentage at 12.28% of [DPX’s] shares”; and
- (ii) DPT and DPX had breached the SHA by “rendering [DPX’s] Board inquorate and continuing to transact business”.

58 On the issue of minority oppression:

(a) The Tribunal unanimously found that the following acts and breaches were “oppressive both *individually and cumulatively*” [emphasis added]:⁷⁶

- (i) invalidly terminating the Agreements;
- (ii) refusing to reflect the Founders’ true shareholding;
- (iii) denying the Founders rights to remain as directors and appoint new directors;
- (iv) refusing and / or failing to provide requested information;
- (v) the dilution of the Founders’ shareholding; and
- (vi) the launch of [DPT e-Wallet] and [DPT Marketplace].

(b) The Majority also found that rendering DPX’s Board inquorate and unable to transact business was oppressive.⁷⁷

⁷⁶ Partial Award at [593(a)].

⁷⁷ Partial Award at [593(b)].

59 On the whole, DPT was found to have acted in a manner oppressive to the Founders as the minority, in contravention of s 216(1) of the Companies Act.⁷⁸

60 The Majority also declared the issuance of shares to DPT on 21 May 2021 (pursuant to the conversion of the DPT CLNs) “null and void” as regards the Founders.⁷⁹ This declaration was made based on the Majority’s finding that the conversion had been performed without giving due notice to the Founders, thereby “depriving [the Founders] not only of the ability to vote and represent themselves with regard to the board resolution but also of the opportunity to seek legal remedies”.⁸⁰ It is pertinent to note that the declaration was premised on DPT having acted in breach of cl 5 of the SHA,⁸¹ and was made irrespective of the finding that the issuance of shares was itself an independent act of oppression.

61 The Majority further ordered the Applicants to buy out the Founders’ shares for a sum of US\$14,736,000, comprising US\$9,824,000 for DPV and US\$4,912,000 for DPW.⁸²

62 Lastly, the Applicants’ counterclaim for malicious falsehood was dismissed.⁸³

⁷⁸ Partial Award at [594].

⁷⁹ Partial Award at [522], [523(b)] and [598(f)].

⁸⁰ Partial Award at [431]; see generally Partial Award at [420]–[432] and [522].

⁸¹ Partial Award at [432].

⁸² Partial Award at [595].

⁸³ Partial Award at [596].

Calculation of the buyout price

63 For reasons that will become apparent, it is useful to set out in some detail the Majority’s reasoning underpinning the terms of the buyout order that it made.

64 It was undisputed that the date of valuation should be 31 December 2021.⁸⁴

65 The Majority took the view that the [B Group] Investment was “the most reliable starting point” because it was an arm’s length transaction between two sophisticated parties with due diligence having been conducted.⁸⁵ The [B Group] Investment was made on the basis of an implied valuation of DPX at US\$120m. However, the Majority took the view that this nonetheless appeared to be an undervaluation because [Witness 1] himself had previously informed the [B Group] in January 2021 that he believed DPX’s value to be around US\$150m.⁸⁶ Thus, US\$120m formed the “lower bound” of DPX’s value in the Majority’s deliberation.⁸⁷

66 The Majority then went on to consider whether several deductions should be made to the value of DPX. The Applicants / DPX had argued for deductions to take into account the:⁸⁸

⁸⁴ Partial Award at [544].

⁸⁵ Partial Award at [549].

⁸⁶ Partial Award at [507] and [550].

⁸⁷ Partial Award at [554].

⁸⁸ Partial Award at [555].

- (a) [B Group] guarantee (a reference to a guarantee by DPT and [Company A] in respect of the [B Group] Investment);⁸⁹
- (b) [B Group] Investment; and
- (c) a top-up by the Founders in order to maintain their shareholding.

67 Only the deduction relating to the top-up is relevant before us. In brief, the Applicants' case was that the Founders should have had to make a notional top-up to prevent the dilution of their shares.⁹⁰ By converting the DPT CLNs, a large debt had been removed from DPX's books, thereby increasing the value of DPX at DPT's expense. To equitably benefit from the removal of DPX's debt, it would only be fair to require the Founders to subscribe for additional shares if they wanted to maintain their percentage shareholding. The notional cost of procuring those additional shares should be deducted from any sums that would otherwise be payable to the Founders pursuant to the buyout order.

68 The Majority found that the Founders did not have to make a notional top-up.⁹¹ Its reasoning may be briefly summarised as follows.

69 First, the Founders were entitled to 12.28% of the issued capital of DPX, "irrespective of how many shares [were] issued to [DPT]".⁹²

⁸⁹ [Expert A's] 1st Expert Report ("1EA"), *Glossary*, "[B Group] Guarantee" (SA-1 at p 1727); Applicants' Closing Submissions filed in the Arbitration ("ACS") at para 205 (SA-1 at p 5645).

⁹⁰ Applicants' Reply Submissions filed in the Arbitration ("ARS") at para 57 (CBOD at p 390).

⁹¹ Partial Award at [558].

⁹² Partial Award at [558].

70 Second, at paragraph 512 of the Partial Award, the Majority found that the DPT CLNs were “worthless as debt”.⁹³ It is useful to reproduce its reasoning in full on this point, found at paragraph 558 of the Partial Award:⁹⁴

The [Founders] should not have to bear the costs of making a notional top-up to prevent the improper dilution of their shares. The issue of a top-up has arisen solely because of [the Applicants / DPX]’s wrongful and oppressive dilution of the [Founders]’ shareholdings. As far the [Founders]’ are concerned, they were entitled to 12.28% of the issued capital of [DPX], irrespective of how many shares are issued to [DPT]. Irrespective of whether the [Applicants / DPX] had a right to convert the CLNs, the CLNs were plainly wrongfully converted with oppressive intentions carried out in breach of the [Founders]’ rights under SHA/IA. [DPT’s] convertible debt was a sunk cost for [Company A]. It was *expended and irrecoverable*.⁷³⁸ It was an “internal” debt that was *not intended to be repaid by [DPX]* (which was majority-owned by [DPT]) but recoverable in a future IPO or in a buyout by an investor interested in it as a fintech startup. *The conversion of [DPT’s] CLNs did not, and could not, inject any fresh funds into [DPX]*. It appears it was *just a balance sheet exercise, which did not increase or decrease the valuation of [DPX]* as a fintech startup, before and after the conversion, as the loan proceeds had been fully expended at the time of conversion. There was no change in the FMV of [DPX] whether or not the [DPT’s] CLNs were converted. In fact, the one reason proffered by [the Applicants] for converting the CLNs was not to improve the financial condition of [DPX] but to make the balance sheet debt-light in order to improve its chances of obtaining an e-banking licence from [Country A’s central bank].

[emphasis added]

71 Additionally, the Majority took into consideration the Founders’ case that “if they did not agree with the dilution or to top-up, they would have exited by seeking a buyout at the material time ... [which] further lends force to their contention there should not be a deduction for a notional top up”.⁹⁵

⁹³ Partial Award at [512].

⁹⁴ Partial Award at [558].

⁹⁵ Partial Award at [561].

72 The Majority took the view that the buyout should be ordered on the basis that the new shares had not been issued pursuant to the improper conversion of the DPT CLNs,⁹⁶ and it noted that the Tribunal had an “unfettered discretion” under Singapore law to arrive at a valuation that was just and equitable.⁹⁷

73 It concluded by observing that “as the conversion scheme for the [DPT] CLNs has been declared to be invalid as against [the Founders], axiomatically the requirement for a top up simply does not arise” [internal citations omitted].⁹⁸

74 In the circumstances, the Majority ordered that the Founders were entitled to 12.28% of DPX’s shareholding, at a valuation of US\$120m, and with no deductions to be made to DPX’s value.⁹⁹ DPT was ordered to buy out the Founders for the sum of US\$14,736,000.¹⁰⁰

Dissent

75 The dissenting arbitrator (“Minority”) disagreed with various aspects of the Majority’s decision.

76 In particular, in relation to the conversion of the DPT CLNs, the Minority was of the view that to value the Founders’ shares in such a way as to put them in a position as if the improper conversion had not taken place required either one of two possible courses to be taken:¹⁰¹

⁹⁶ Partial Award at [560].

⁹⁷ Partial Award at [564].

⁹⁸ Partial Award at [566].

⁹⁹ Partial Award at [583].

¹⁰⁰ Partial Award at [587].

¹⁰¹ Partial Award at [660].

- (a) [DPX] had [owed the CLN Debt] to [DPT], which reduced its net assets by that amount; or alternatively
- (b) If [DPX] is to be valued on the basis that the [CLN Debt] had been repaid by the conversion of the CLNs to equity, [DPV] and [DPW] had acquired sufficient shares, on the same terms, *pari passu* in order to maintain their percentage interest in the capital of [DPX], and had paid the funds necessary to subscribe for those shares.

77 The Minority took the view that “either the [CLN Debt] must be taken into account in the valuation of the [Founders’] shares or if that debt is not to be taken into account, it must be assumed that the [Founders] had contributed the amount required to maintain their percentage interest in [DPX] enhanced by the removal of [the CLN Debt]”.¹⁰² To adopt the Majority’s approach would be to disregard DPX’s CLN Debt to DPT, thereby awarding the Founders a windfall via an enhanced value of DPX when “the only way that could have occurred is if the [Founders’] had exercised the right conferred upon them by the SHA to subscribe for the shares necessary to maintain their percentage interests on the same terms, *pari passu*, as the shares were issued to [DPT]”.¹⁰³

78 Additionally, the Minority disagreed with the Majority’s conclusions (see above at [70]) that DPT’s debt in DPX via the DPT CLNs was essentially “worthless”. The Minority indicated that it was “not aware of any evidence which would sustain these conclusions”; instead, the evidence suggested that the debt arose due to cash advances made by DPT to fund DPX’s operations.¹⁰⁴ It was of the view that the CLN Debt was “real” and repayable to DPT if it was not converted to equity, and that the evidence suggested that “[B Group] would not have invested [B Group Sum] into [DPX] unless [DPT’s] debt had been

¹⁰² Partial Award at [661].

¹⁰³ Partial Award at [661].

¹⁰⁴ Partial Award at [675].

converted into equity”.¹⁰⁵ For this reason, the debt had to be taken into account when valuing the Founders’ shares in DPX. As a result, the value of DPX used for the valuation had to be reduced by the amount of the CLN Debt.¹⁰⁶

Parties’ arguments

79 Due to the highly factual nature of the dispute, the parties’ arguments are set out here very briefly and will be expanded upon in more detail at the appropriate juncture of our analysis.

80 The Applicants argue that the Tribunal committed a breach of natural justice in two ways:¹⁰⁷

- (a) first, that the Tribunal had, in determining the buyout price for the Founders’ shares, gone down a path which was not open to it and had done so without giving the parties an opportunity to be heard (“Buyout Issue”); and
- (b) second, in accepting the evidence of Mr [X] without considering the Responsive Evidence (“Responsive Evidence Issue”).

81 The Founders, unsurprisingly, disagree with the Applicants’ contentions.

Issues

82 There are two broad issues for us to decide:

¹⁰⁵ Partial Award at [677]

¹⁰⁶ Partial Award at [678].

¹⁰⁷ AWS at para 11.

- (a) whether the Buyout Issue has been established; and
- (b) whether the Responsive Evidence Issue has been established.

Applicable law

83 The applicable law relating to breaches of natural justice in arbitration proceedings is not contentious.

84 To set aside an award for a breach of natural justice, an applicant needs to “(a) identify the rule of natural justice which was breached; (b) establish how the rule was breached; (c) establish the way the breach was connected to the making of the award; and (d) show that the breach prejudiced the rights of the party”: *BTN v BTP* [2021] 1 SLR 276 (“*BTN (CA)*”) at [43], citing *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (“*Soh Beng Tee*”) at [29].

85 Natural justice is generally understood as comprising two pillars. First, that an adjudicator must be independent and unbiased; and second, that all parties must be given adequate notice and an opportunity to be heard (generally referred to as the “fair hearing rule”): *Soh Beng Tee* at [43], citing *Gas & Fuel Corporation of Victoria v Wood Hall Ltd & Leonard Pipeline Contractors Ltd* [1978] VR 385 at 396.

86 In this case, both the Buyout Issue and the Responsive Evidence Issue relate to alleged breaches of the fair hearing rule.

87 In respect of the Buyout Issue, it is well-established that there can be a breach of the fair hearing rule if there is a defect in the tribunal’s chain of

reasoning. The applicable principles have been summarised in *BZW v BZV* [2022] 1 SLR 1080 (“*BZW (CA)*”) at [60(b)]:

...

(b) Two, a breach of the fair hearing rule can also arise from the *chain of reasoning* which the tribunal adopts in its award. To comply with the fair hearing rule, the tribunal’s chain of reasoning must be: (i) one which the parties had reasonable notice that the tribunal could adopt; and (ii) one which has a sufficient nexus to the parties’ arguments (*JVL Agro Industries* ([29] *supra*) at [149]). A party has reasonable notice of a particular chain of reasoning (and of the issues forming the links in that chain) if: (i) it arose from the parties’ pleadings; (ii) it arose by reasonable implication from their pleadings; (iii) it is unpleaded but arose in some other way in the arbitration and was reasonably brought to the party’s actual notice; or (iv) it flows reasonably from the arguments actually advanced by either party or is related to those arguments (*JVL Agro Industries* at [150], [152], [154] and [156]). To set aside an award on the basis of a defect in the chain of reasoning, a party must establish that the tribunal conducted itself either irrationally or capriciously such that “a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award” (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (“*Soh Beng Tee*”) at [65(d)]).

[emphasis in original]

88 In respect of the Responsive Evidence Issue, the alleged breach is of the *infra petita* variety, which means that “the essential complaint [is] that the tribunal had not carried out its mandate by considering all the material issues that were raised in the arbitral proceedings”: *DKT v DKU* [2025] 1 SLR 806 (“*DKT*”) at [7].

89 The principles applicable to an *infra petita* challenge (which were not disputed by the parties) have been comprehensively summarised by the Court of Appeal in *DKT*, which explained that an *infra petita* challenge will only succeed if *all* of the four following conditions are satisfied:

(a) First, “the point must have been properly brought before the tribunal for its determination”; a party is not entitled to raise an *infra petita* challenge in respect of points it could have but failed to raise in the arbitration: *DKT* at [8(a)].

(b) Second, “the point must have been *essential* to the resolution of the dispute” [emphasis in original]: *DKT* at [8(b)]. In this regard, a tribunal is only under a duty to address “essential” issues; it “does not have the duty to deal with every issue raised”, particularly where the issue is rendered moot due to certain findings of the tribunal: *DKT* at [8(b)].

(c) Third, “the tribunal must have completely failed to consider the point”. This is a matter of inference, which to be drawn requires showing that the inference is “*clear and virtually inescapable*” [emphasis added]: *DKT* at [8(c)]. A “generous approach” is adopted, “avoiding a hypercritical or excessively syntactical analysis of the award”, with any doubt “resolved in favour of upholding the award”: *DKT* at [8(c)]. The court’s focus is “not directed at the *adequacy* of the tribunal’s analysis, but with the *existence and fact* of such analysis” [emphasis in original], and it would only “be in the *truly exceptional circumstance* where the tribunal’s purported analysis is so *woefully incomplete and cursory* that it leads to the *clear and virtually inescapable inference* that the tribunal had in fact completely failed to consider the issue” [emphasis added]: *DKT* at [8(c)].

(d) Finally, “even if the tribunal failed to consider an essential point placed before it, there must have been real or actual prejudice occasioned by this breach of natural justice”: *DKT* at [8(d)]. The test is whether the breach “was merely technical and inconsequential or

whether as a result of the breach, the arbitrator was denied the benefit of arguments or evidence that had a real as opposed to a fanciful chance of making a difference to his deliberations”, such that “the material *could reasonably* have made a difference to the arbitrator” [emphasis in original]: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 (“*L W Infrastructure*”) at [54], cited in *DKT* at [8(d)].

90 In our view, the need for a “clear and virtually inescapable inference” also applies in relation to a failure to consider material *evidence* (as opposed to material *issues*). This is because the evidence on record forms part of the overall material which a tribunal needs to consider in its determination of the issues before it – we note that in their written submissions and oral arguments before us, neither party contended otherwise.

91 In *ASG v ASH* [2016] 5 SLR 54, Coomaraswamy J also appeared to treat the “clear and virtually inescapable inference” requirement as being similarly applicable to the tribunal’s consideration of the evidence when he observed at [86]:

... Although the arbitrator failed to set out his reasoning on this issue, I am unable to draw a *clear and virtually inescapable inference* from that omission that he failed to consider, or failed to attempt to understand, *the plaintiff’s evidence* and submissions *on the issue*.

[emphasis added]

92 Also relevant are Ramsey IJ’s remarks in *DFI v DFJ* [2024] SGHC(I) 4 (at [73]), which we find to be consistent with our observations above:

In order to succeed on a claim that the rules of natural justice were breached because the Tribunal failed to consider certain evidence, the claimant would have to show, first, that there was relevant and material evidence which the Tribunal disregarded

in coming to its decision. Having done that, the claimant would then have to show that this evidence, when considered in the context of the other evidence on that issue, would arguably have led the Tribunal to reach a different outcome in the Award. It is not sufficient to show that there was some evidence not taken into account. That evidence has to be of such importance that it would arguably have led to a different outcome. As has often been said, a challenge on natural justice grounds is not an opportunity to appeal the Tribunal's findings on fact or law; that is why the evidence must be of critical importance to the outcome in circumstances where the Tribunal has found to the contrary based on the other evidence.

93 Having set out the applicable principles, we now turn to consider how they apply to each of the issues before us.

The Buyout Issue

Overview of parties' arguments

94 The Applicants submit that the Founders had taken the position in their opening statement that there were two ways of calculating the amount to be paid under a buyout order:¹⁰⁸

- (a) a buyout would be ordered on the basis that the DPT CLNs were *not* converted ("First Scenario"); or
- (b) a buyout would be ordered on the basis that the DPT CLNs *were* converted *with* a top-up ("Second Scenario").

95 Between these two possibilities, the Founders had ostensibly opted for the Second Scenario,¹⁰⁹ and had confirmed the same via their submissions and / or exchanges which their counsel, Mr Calvin Liang ("Mr Liang"), had with the

¹⁰⁸ AWS at para 19; Founders' Opening Statement filed in the Arbitration ("FOS") at paras 59–60 (SA-1 at p 3014).

¹⁰⁹ AWS at para 19.

Tribunal. It was only in their closing submissions that the Founders raised for the first time a “Third Scenario” where they requested the Tribunal to order a buyout based on a post-conversion valuation *without* a top-up.¹¹⁰ As is apparent from the summary of the Partial Award provided above (at [63]–[74]) however, it was precisely this Third Scenario that the Majority used as the basis for ordering the buyout.

96 Additionally, to justify adopting this Third Scenario, the Majority had adopted a chain of reasoning which was allegedly unforeseeable and which the parties did not have reasonable notice of. In particular, the Applicants seek to impugn two findings made by the Majority (see above at [70]):¹¹¹

- (a) that the DPT CLNs were “worthless as debt”; and
- (b) consequently, that DPX’s pre-conversion value would have been the same as its post-conversion value.

97 Flowing from this overview, the Applicants’ complaints can be categorised into three categories:

- (a) that the Majority had ordered a buyout on the basis of the Third Scenario, which the Founders had confirmed they would not be running as part of their case; and
- (b) that the Majority had justified their approach by relying on two factual findings which themselves bore no reasonable nexus to the parties’ cases, these being the findings:

¹¹⁰ AWS at para 31.

¹¹¹ AWS at paras 35–37.

- (i) that the DPT CLNs were “worthless”; and
- (ii) that DPX’s pre-conversion value was the same as DPX’s post-conversion value.

98 Additionally, these breach(es) were connected to the making of the Partial Award and had caused the Applicants prejudice.¹¹²

99 The Founders raise a preliminary objection that the Applicants are attempting to belatedly raise new grounds for setting aside the Partial Award and that these grounds are now time-barred.¹¹³ Substantively, with regard to the Buyout Issue, they argue that the Third Scenario had always been their primary case.¹¹⁴ Even if the Third Scenario had not been before the Tribunal, it was open to the Tribunal to adopt it in the exercise of its discretion.¹¹⁵ Finally, the Applicants did not suffer any prejudice because they failed to give “fair intimation” to the Tribunal of the alleged breach in accordance with the guidance set out by the Court of Appeal in *China Machine New Energy Corp v Jaguar Energy Guatemala LLC* [2020] 1 SLR 695 (“*China Machine*”).¹¹⁶

¹¹² AWS at paras 47–54.

¹¹³ Respondents’ Written Submissions dated 1 September 2025 (“RWS”) at paras 11–14.

¹¹⁴ RWS at para 16.

¹¹⁵ RWS at para 36.

¹¹⁶ RWS at paras 42–43.

Analysis

Time-bar objection

100 The Founders’ preliminary objection is that the Applicants have taken inconsistent positions in their supporting affidavit and in their written submissions:¹¹⁷

- (a) the Applicants’ supporting affidavit had complained that the Majority had adopted a *pre*-conversion valuation without allowing the Applicants to lead any evidence as to DPX’s *pre*-conversion value;
- (b) in contrast, the Applicants’ written submissions complain that they had not been given the opportunity to submit on whether a top-up was required in a *post*-conversion scenario.

101 This latter ground, which the Founders say is new and belatedly raised in the Applicants’ written submissions, is time-barred because it was not raised within three months of the date on which the Applicants received the Partial Award (presumably referring to O 23 r 7(3)(a) of the Singapore International Commercial Court Rules 2021).¹¹⁸ To support these arguments, counsel for the Founders, Mr Liang, also tendered a two-page note to the court at the Oral Hearing setting out his arguments on this point.¹¹⁹ The Founders assert that the Applicants’ original supporting affidavit did not “reasonably contain all the facts, evidence and grounds relied upon”: *BTN v BTP* [2022] 4 SLR 683 (“*BTN (HC)*”) at [62]. This is because in their supporting affidavit, the Applicants’

¹¹⁷ RWS at para 12.

¹¹⁸ RWS at para 13.

¹¹⁹ Providence Law Asia LLC’s Letter to Court dated 1 October 2025, enclosing Mr Liang’s note (“Time-Bar Note”).

initial ground as to why the Partial Award should be set aside was premised on the Majority having adopted a pre-conversion valuation of DPX. In contrast, the ground for setting aside raised in the Applicants’ written submissions (*ie*, whether a top-up should have been applied) is “based on a diametrically opposite factual premise” – that of the Majority having adopted a post-conversion valuation of DPX.¹²⁰

102 On the morning of the Oral Hearing, the Applicants informed the court by letter that they would potentially be relying on the additional authority of *DLS v DLT* [2025] SGHC 61 (“*DLS*”) during the Oral Hearing.¹²¹ The stated relevance of *DLS* was for the proposition that:¹²²

Article 34(3) of the Model Law requires that the originating application briefly stating the provisions relied on to set aside the award be filed within 3 months from the date the award is received by the party making the application.

103 The parties were however content not to address us in oral argument on the time-bar point. Counsel for the Applicants, Mr Kelvin Poon SC (“Mr Poon SC”), indicated that his submissions were “conditional on what the respondents would say”.¹²³ For his part, Mr Liang was content to rest his submissions on this issue on the written note he had tendered to us (see above at [101]).¹²⁴ In the circumstances, the Applicants ultimately ended up not addressing us on the time-bar point.

¹²⁰ Time-Bar Note at para 3.

¹²¹ Rajah & Tann Singapore LLP’s Letter to Court dated 21 September 2025 (filed 22 September 2025) at para 2.

¹²² Rajah & Tann Singapore LLP’s Letter to Court dated 21 September 2025 (filed 22 September 2025), Annex A, para 2 of the attached e-mail.

¹²³ Transcript of Hearing of SIC/OA 10/2025 on 22 September 2025 (“Hearing Transcript”) at p 31, line 28 to p 32, line 2.

¹²⁴ Hearing Transcript at p 32, lines 8–24.

104 It appears to us that there is some force to the Founders' complaint that the ground raised by the Applicants in their written submissions that they were not given the opportunity to address the issue of a top-up is a new ground which had not been raised in their supporting affidavit. The relevant paragraphs of the Applicants' supporting affidavit read:¹²⁵

215. Second, in respect of the Buyout Issue, the right was breached because the Tribunal had determined the purchase price of [the Founders'] shareholding on a basis which: (a) departs from the Parties' agreed position; and (b) the Parties did not have reasonable notice of. To elaborate briefly:

215.1. As explained above, the Parties agreed position going into and at the Hearing was that [the Founders'] shareholding should be valued on the basis of a valuation of [DPX] which assumed that: (a) the [DPT] CLNs were converted; and (b) [the Founders] had to top up to maintain their percentage shareholding in [DPX].

215.2. As shown at [157]-[158] above, following the Tribunal seeking the express confirmation from the Parties that the [DPT] CLNs were assumed to be converted for the purpose of determining the buyout price, the Tribunal explicitly informed the Parties that it was not considering the alternative basis for valuation (i.e., if the [DPT] CLNs were not converted).

215.3. Because of the Parties' confirmations and the Tribunal's acknowledgment of the Parties' agreed position, there was no evidence available on what [DPX's] equity value as of 31 December 2021 would have been if the [DPT] CLNs were not converted.

215.4. In the Award, the Tribunal held that [DPX's] equity value as of 31 December 2021 was USD 120m, which was the pre-money valuation used for the [B Group] Investment. This valuation assumed that the [DPT] CLNs were converted.

215.5. However, the Majority then decided that [the Founders] were not required to top up to maintain their percentage shareholding in [DPX].

215.6. Inexplicably, the Majority then held that [DPX's] equity value of USD 120m would have been the same,

¹²⁵ SA-1 at paras 215–217.

regardless of whether the [DPT] CLNs were converted. This was not a position advanced by any of the Parties, and was not based on evidence that was available to the Tribunal, given that the Tribunal had stated that it was not necessary to hear evidence on that issue given the Parties' agreed position.

215.7. The Majority's approach as aforesaid directly informed the Majority's determination of the appropriate price for the buyout.

215.8. Accordingly, [the Applicants were] deprived of the opportunity to make submissions or lead evidence on the valuation basis and corresponding buyout price which the Tribunal eventually proceeded with.

215.9. A tribunal, acting reasonably and having had the benefit of expert evidence on the appropriate approach to valuing the equity of [DPX] had the [DPT] CLNs been converted, may have come to a different conclusion as to the appropriate buy-out price.

216. The Majority's breach of natural justice (i.e., failing to give the Parties the opportunity to lead evidence on how [DPX's] equity value as of 31 December 2021 would have been affected by the non-conversion of the [DPT] CLNs) was intrinsically connected to their eventual finding that the buyout price should be USD 14,736,000.

217. In this regard, I exhibit at "[SA-1], Tab 72" an affidavit dated 26 March 2025 prepared by [Expert A], [the Applicants'] independent valuation expert who had given expert evidence on [the Applicants'] behalf at the Arbitration, where he explains the evidence he would have given assuming the approach taken by the Majority had he been given the opportunity.

[emphasis in original omitted]

105 While the Applicants did reference the fact that the Majority had decided the Founders "were not required to top up to maintain their percentage shareholding",¹²⁶ paragraphs 215.2–215.3, 215.6, and 216–217 make clear that the gravamen of the Applicants' complaint was that the Tribunal had considered DPX's *pre-conversion valuation* to determine the buyout price. Nowhere in

¹²⁶ SA-1 at para 215.5.

their supporting affidavit do the Applicants specifically take issue with the Founders *not having to pay a top-up*, which is a different complaint altogether.

106 As the point was not in fact addressed by the Applicants at the Oral Hearing, we are unsure what arguments the Applicants would have made had they addressed the issue. Nor do we know what point the Applicants seek to make by referring us to *DLS*. Nonetheless, we have considered the authority and we do not think that it assists the Applicants' case. In *DLS*, the court cited (at [90]) *BZW (CA)* for the proposition that it is only the setting-aside application (that "briefly states the provisions of the IAA or Model Law that are relied upon") which needs to be filed within the three-month time period; in *BZW (CA)*, the application was not filed out of time because only the supporting affidavit had been filed after the three-month period.

107 While we accept that pursuant to *BZW (CA)*, a supporting affidavit may be filed after the three-month time period, this is not inconsistent with the rule in *BTN (HC)* that when the supporting affidavit is eventually filed, it (together with the originating application) should set out *the entirety* of the applicant's case for setting aside. Indeed, this was precisely the issue in *DLS* (at [91]):

... The question was whether the court should permit a *supplementary* affidavit to be filed, outside the prescribed three-month period for the bringing of a setting-aside application, to add a *new basis* for setting aside the *same parts* of the First Partial Award that the Contractor had applied to set aside. ... [emphasis in original]

108 In our view, there was no basis for the Applicants to raise a new ground in their written submissions when the same "could and should have been raised at first instance" in their supporting affidavit: *BTN (HC)* at [63].

109 For this reason, we would reject the Applicants' arguments on the issue of whether the Majority was entitled to determine that no top-up was required, as that complaint should have been raised in their supporting affidavit and is now made out of time.

110 In any case, on the assumption that the Applicants were not prevented from raising this new ground, we have in any event gone on to consider the substantive grounds raised by the Applicants and even then, it remains our unanimous decision that the Applicants cannot succeed on the Buyout Issue. It is to the substantive merits of the Buyout Issue that we now turn our attention.

Whether the Founders had agreed not to run the Third Scenario

111 We begin with the Applicants' first complaint (as identified above at [97(a)]). The Applicants rely on various submissions made in the Arbitration and / or exchanges between counsel and the Tribunal to support their contention that the Founders had effectively agreed to raise *only* the Second Scenario in the Arbitration. We canvass some of the evidence below. However, considering the many points taken by the parties, it would not be practical to set out every single argument and reference to the arbitral record put forth.

(1) Founders' opening statement

112 The Applicants first referred us to the following paragraphs from the Founders' opening statement:¹²⁷

59. First, as a matter of law, a buy-out order should be fixed at a price that excludes the illegitimate dilution by assuming that the new conversion shares issued to [DPT] were not issued.
...

¹²⁷ FOS at paras 59–60 (SA-1 at p 3014).

60. Nonetheless, *[Expert B's] Equity Value of [DPX] assumes* (in [the Applicants'] favour) that the anti-dilution safeguards in the SHA, IA and Constitution were honoured (which was not the case) and *the Founders – in order to retain their rightful 16.67% shareholding – subscribed to additional shares at the [Company C] valuation relied upon for illegitimate conversion*. On that assumption, the Founders would acquire the additional shares at a price of “at most c. USD 0.5 million”. ...

[emphasis in original and internal citations omitted; emphasis added]

113 In the Applicants' view, the effect of the above paragraphs of the Founders' opening statement was to indicate that the Founders were adopting the Second Scenario.¹²⁸ Presumably, the focus is on the portion that has been italicised – that the Founders assumed that they would have to subscribe to additional shares in order to retain their percentage shareholding.

114 In turn, the Founders argue that paragraph 59 of their opening statement had captured their primary case that the “buyout order should be fixed at a price that excludes the illegitimate dilution by assuming that the new conversion shares issued to [DPT] [following the conversion of the CLNs] were not issued” [second interpolation in original].¹²⁹ Their valuation expert, [Expert B], had provided a valuation based on the Founders having to top-up to maintain their shareholding but this was an “assum[ption]” made *in the alternative* – hence the reference to “Nonetheless” at the start of paragraph 60 of their opening statement.

(2) Expert reports

115 Next, the Applicants submit that the Founders' primary position based on the Second Scenario is supported by the Founders instructing [Expert B] to

¹²⁸ AWS at para 19.

¹²⁹ RWS at para 24.

exclude the dilutive effects of the conversion by “assuming that [the Founders] were allowed to subscribe *pari passu* to maintain their percentage shareholding in [DPX] (i.e., top up)”.¹³⁰

116 In [Expert B’s] first expert report, [Expert B] indicated that amongst the instructions he had received:¹³¹

... [the Founders] would have had an opportunity to scrutinise and approve/ veto the terms of the conversion (including the valuation and the conversion price), and, in any event, an opportunity to subscribe to additional shares at the valuation relied upon by [DPX] and [DPT]. ... In this scenario, if at all necessary, the [Founders] would acquire the new shares at the same valuation (i.e., USD 2.7 million at a 100% level after the application of a 20% discount) at a price of at most c. USD 0.5 million ...

117 In a joint expert report filed on 13 August 2023, [Expert B] provided the following response to issue number 6.3, titled “Estimation of required capital injection by the [Founders] to maintain shareholding”:¹³²

In particular, the conversion of the CLNs was (according to the [Applicants’ / DPX]) based on/ informed by a USD 2.7 million equity value of [DPX] (informed by the valuation by [Company C]). This would mean the [Founders] would have paid an amount of USD 0.5 million to retain their shareholding of 16.67% after the conversion of CLNs and issuance of new shares. ([Expert B’s first expert report]: 1.13)

118 This, the Applicants say, was [Expert B] confirming that “he was instructed to assume that the [DPT] CLNs were converted on 21 May 2021 and to determine how much [the Founders] would have had to pay to maintain their

¹³⁰ AWS at para 20.

¹³¹ [Expert B’s] 1st Expert Report (“1EB”) at para 1.13 (SA-1 at p 1618).

¹³² Joint Expert Report at S/N 6.3 (SA-1 at p 1860).

percentage shareholding”.¹³³ Reference was also made to footnote 145 of [Expert B’s] first expert report, which reads:¹³⁴

... For the [DPT] CLNs, I am instructed that the [Founders] would have had an opportunity to subscribe to additional shares at the post-money value concluded by [Company C] at the time of conversion. In this scenario, the [Founders] would have been able to retain its higher shareholding and at most in exchange for the price of the new shares. This amount would be USD 0.5 million. I understand that there might be alternative scenarios available as to the treatment of the [DPT] CLNs and the [B Group] convertible notes. ...

119 Similarly, in [Expert B’s] second expert report, [Expert B] stated that he would “rely on the same assumptions as in [his first expert report]”,¹³⁵ that “while the [DPT] CLNs were converted prematurely and inappropriately, the [Founders] would also have had the right to subscribe to additional shares at the same valuation used for the conversion”.¹³⁶

120 The Founders’ position is that the parties’ expert reports had indeed addressed the Third Scenario.¹³⁷ In his first expert report, [Expert B] states that he was instructed to assume that the “value of [the Founders’] Shares in [DPX] should be assessed at 16.67%” (*ie*, without a top-up).¹³⁸ The opportunity for the Founders to subscribe to additional shares in DPX was “in the alternative” and

¹³³ SA-1 at para 108.3.

¹³⁴ 1EB at footnote 145 (SA-1 at p 1685).

¹³⁵ SA-1 at para 109.

¹³⁶ [Expert B’s] 2nd Expert Report (“2EB”) at para 2.11 (SA-1 at p 2060); SA-1 at para 109.1.

¹³⁷ RWS at para 20.

¹³⁸ RWS at para 21; 1EB at para 1.13 (SA-1 at p 1618).

“if at all necessary”.¹³⁹ The Founders further refer to summary tables in [Expert A’s] first and second expert reports, reproduced below:¹⁴⁰

Table 6-1: Summary of Claimants’ shareholding value in [DPX] as of 6 August 2021 after the [B Group] Investment, USD million

Equity value of [DPX]	The Claimants’ shareholding (%)	The Claimants’ shareholding value
166.4	0.22%	0.3
166.4	10.71%	13.7
166.4	16.67%	21.4

Source: Exhibit SEC-39: Secretariat assessment, tab “Summary”

Figure 1 - Table from [Expert A’s] first expert report with redactions applied

Table 2-2: Summary of my valuation, USD million

Date of valuation	Equity value of [DPX]	The Claimants’ shareholding (%)	The Claimants’ shareholding value
6 August 2021	166.4	0.22%	0.3
(after [B Group] Investment)		10.71%	13.7
		16.67%	21.4

Figure 2 - Table from [Expert A’s] second expert report with redactions applied

121 In each of his expert reports, [Expert A’s] own summary table of the Founders’ possible shareholding value did not provide for the Founders having to top up to maintain their shareholding —¹⁴¹ the Founders say this shows that the Third Scenario was a live issue as between the experts.¹⁴²

¹³⁹ RWS at para 21; 1EB at para 1.13 (SA-1 at p 1618).

¹⁴⁰ 1EA at para 6.12 (SA-1 at p 1763); [Expert A’s] 2nd Expert Report (“2EA”) at para 2.31 (SA-1 at p 2171).

¹⁴¹ Hearing Transcript at p 89, lines 11–30.

¹⁴² RWS at para 22.

(3) Exchanges with the Tribunal

122 Particular emphasis was placed by the Applicants on certain exchanges between the Founders’ counsel, Mr Liang, and the Tribunal, which the Applicants argue amount to concessions and / or undertakings which had the effect of confirming that the Founders would *not* be pursuing the Third Scenario (ie, post-conversion valuation with *no* top-up) as the basis for the valuation exercise.¹⁴³

123 On 11 October 2023 (Day 8 of the Arbitration Hearing), the Tribunal circulated the Valuation Document (see above at [48]) and sought clarifications from the parties as to the conversion of the DPT CLNs:¹⁴⁴

[TRIBUNAL]: The second issue is covered in [the Applicants / DPX]’s note and that is what assumptions do you make in relation to the conversion of the [DPT] CLNs? In other words, do you assume they are converted or not? If you assume they weren’t converted then is it right that you would value the equity value of the company by leaving the amount of debt in there, which would be \$50-odd million? In other words, would you reduce the equity amount by \$50 million if you proceed on the basis the [DPT] CLNs hadn’t been converted?

...

Then the question is: upon what basis, assuming conversion had taken place with due regard¹⁴⁵ to the [Founders]’ rights, how would it have taken place? That means you have to make an assumption as to the market value of the company less 20 per cent and then you have to ask yourself a further question of whether the [Founders]---you should proceed on the assumption [Founders] contributed *pari passu* the amount to maintain their percentage shareholding or alternatively didn’t contribute and were diluted. So in the former you need to know what amount they should have contributed, so you can set that

¹⁴³ AWS at paras 26 and 29.

¹⁴⁴ 11 October 2023 Transcript of the Arbitration Hearing (“11 Oct Transcript”) at p 223, line 6 to p 224, line 19 (SA-1 at pp 5100–5101); SA-1 at para 155.

¹⁴⁵ The Applicants accepted at the Oral Hearing that this should be understood as “without due regard”: Hearing Transcript at p 15, lines 7–13.

off against the buy-out, if you are going to maintain the percentage; on the latter account, you need to know what the dilution is for the purpose of working out what the value of the shares was. I think that is how I see it.

124 The parties responded:¹⁴⁶

[MR PRADHAN, for the Applicants]: ... We will require clarification from the [Founders]. Because our understanding of the [Founders] position right now is that you treat it as being subject to a notional top-up, as we have set out in our note, so that you maintain the *pari passu* entitlement.

I understand that is for the purpose of arriving at a way to solve for the conversion and get to an equitable result in the context of how you value the shareholding.

...

[MR LIANG, for the Founders]: Yes, sir. You will see in [Expert B's] second report there are two calculations for the top-up provided. My opening statement at paragraphs 60 to 64 sets out our primary position on the top-up. There are alternative scenarios in his second report which explain other ways of calculating the top-up.

125 The Applicants say that Mr Liang did not deny the Applicants' understanding of the Founders' position that the conversion was *subject to a notional top-up*, but instead *confirmed* it.¹⁴⁷

126 The Founders explained that Mr Liang's comments relating to their "primary position on the top-up" meant that this was their primary case "assuming there was a top up at all".¹⁴⁸ Their primary position on the Third Scenario had already been set out in their statement of claim and opening

¹⁴⁶ 11 Oct Transcript at p 224, line 23 to p 225, line 8 and p 226, lines 17–22 (SA-1 at pp 5101–5103); SA-1 at para 156.

¹⁴⁷ AWS at para 25.

¹⁴⁸ RWS, Annex A at S/N 4.

statement, and this was an impromptu exchange meant to address specific queries from the Tribunal.¹⁴⁹

127 On 12 October 2023 (Day 9 of the Arbitration Hearing), the Tribunal asked parties to confirm their positions in relation to the Valuation Document which the Tribunal had previously circulated.¹⁵⁰ The pertinent section of the Valuation Document reads:¹⁵¹

The conversion of the [DPT] CLNs.

4. Should the shares to which the [Founders] are entitled be valued on the basis that the [DPT] CLNs were converted from debt to equity?
5. If the answer to the preceding question is no, does this mean that the debt secured by the [DPT] CLNs should be subtracted from the value of the company as a whole for the purposes of valuing the [Founders'] shares?
6. If the answer to the preceding question is yes, isn't it necessary to postulate that the [Founders] either:
 - (a) Contributed an amount *pari passu* to the debt surrendered by [DPT], so as to maintain their percentage shareholding, or
 - (b) Did not contribute such an amount, with the result that their shareholding is diluted?
7. If the answer to the preceding question is yes:
 - (a) What is the amount which the [Founders] would have had to contribute to maintain their percentage shareholding after the conversion of the [DPT] CLN's, on the assumption that they were converted at fair market value (FMV) less 20%
 - (b) To what extent would the [Founders] shareholding have been diluted after the conversion of the [DPT] CLNs at FMV less 20% if they had made no contribution to maintain their percentage shareholding?

¹⁴⁹ RWS, Annex A at S/N 4.

¹⁵⁰ SA-1 at para 157.

¹⁵¹ Valuation Document (SA-1 at pp 3192–3193).

128 The Applicants place emphasis on the following exchange with the Tribunal:¹⁵²

[TRIBUNAL]: Moving on to the question of the impact of the conversion of the [DPT] CLNs in May 2021, I don't think anybody is suggesting that the valuation should be conducted on the basis that they had not been converted; is that right? Nobody is contending that?

MR LIANG: No.

129 This, they say, was the Founders' confirmation that it was "*common ground* that the valuation of [the Founders'] shareholding should be conducted on the basis that the [DPT] CLNs *were converted*" [emphasis in original].¹⁵³ For this reason, no evidence was led on Issues 4 and 5 in the Valuation Document (see [127] above).

130 On Issue 6 in the Valuation Document (see [127] above), counsel for the Applicants, Mr Avinash Vinayak Pradhan ("Mr Pradhan"), also apparently obtained Mr Liang's confirmation that the Founders' case "assume[s] the top-up":¹⁵⁴

[TRIBUNAL]: ... on the assumption that the [Founders] have succeeded, and it will follow that the conversion was probably one of the instruments of oppression, the question is we have to adopt a counterfactual. What I mean is the conversion at the rate was an act of oppression, then there has to be a counterfactual assumption and that is a conversion at market value less 20 per cent.

There are two scenarios that one could assume. One is that the [Founders] don't take up the opportunity to acquire the number of shares necessary to maintain their percentage shareholding, whatever it was, in which case they are diluted so we need to

¹⁵² 12 October 2023 Transcript of the Arbitration Hearing ("12 Oct Transcript") at p 101, line 21 to p 102, line 2 (SA-1 at pp 5232–5233); SA-1 at para 158.

¹⁵³ AWS at para 27.1; Hearing Transcript at p 16, lines 22–30.

¹⁵⁴ 12 Oct Transcript at p 102, line 4 to p 103, line 24 (SA-1 at pp 5233–5234); SA-1 at para 158.

know the extent of the dilution; and the other hypothetical discussion is that they do take up the opportunity to acquire additional shares to maintain their percentage shareholding and, if so, what is the amount they would have had to contribute to do that? The purpose of ascertaining that is so it can be deducted from the amount they would receive on the buy-out.

Who wants to kick us off on that?

MR PRADHAN: Very briefly, I think the second point is a question for the [Founders]. My understanding of the [Founders] position is that their case is to assume the top-up.

[TRIBUNAL]: Assume the top-up. Is that right, Mr Liang?

MR LIANG: Just so I understand, this is the top-up pursuant to the conversion of the [DPT] CLNs as a distinct event from an automatic conversion?

[TRIBUNAL]: Yes.

MR LIANG: That's correct.

[TRIBUNAL]: You assume the top-up. You say we should---your expert shows ways in which that can be calculated.

MR LIANG: Yes.

[TRIBUNAL]: You will take us through that evidence tomorrow?

MR LIANG: Yes.

[TRIBUNAL]: You don't pose a dilution scenario?

MR LIANG: No.

[TRIBUNAL]: Mr Pradhan, what do you say?

MR PRADHAN: We will meet that case.

[TRIBUNAL]: You don't advance an alternative dilution scenario?

MR PRADHAN: No, sir.

131 From the Applicants' perspective, these exchanges confirmed that the valuation of the buyout (if one were to be ordered) would be based on (a) the DPT CLNs being converted, and (b) the Founders having to top up a certain sum to maintain their percentage shareholding, and this resulted in no evidence

being led as to DPX’s pre-conversion value.¹⁵⁵ The only issue was the extent of the Founders’ top-up, not *whether* the Founders had to top up in the first place.¹⁵⁶

132 The Founders explain that these conversations took place within a specific “counterfactual” of “(i) the Founders not acquiring the shares necessary to maintain their percentage shareholding after the conversion; and (ii) the Founders acquiring the necessary additional shares to maintain their percentage shareholding”.¹⁵⁷ In their view, the Tribunal’s question had only been directed at clarifying what the amount of top-up would be *if* it was assumed that a top-up would be required in the first place.

(4) Founders’ closing submissions

133 Turning to the Founders’ closing submissions, the prospect of a conversion without a top-up was, according to the Applicants, raised for the first time in the Founders’ closing submissions, the material portion of which reads:¹⁵⁸

First, the buyout order should be on the basis that the new shares issued pursuant to the oppressive, conversion of the [DPT] CLNs had not been issued. This would mean that the Founders would be bought out based on their rightful 16.67% shareholding without having to subscribe pari passu to maintain their proportionate shareholding. It stands to reason that the dilutive effects from the conversion of the [DPT] CLNs in May 2021 should be excluded as the conversion was not carried out for any legitimate commercial purpose but was a cynical attempt to secure an illegitimate advantage for [the Applicants] in negotiations with the Founders (see above at [32]–[53]).

[emphasis in original omitted; emphasis added in italics]

¹⁵⁵ AWS at para 29; Hearing Transcript at p 19, lines 16–25.

¹⁵⁶ AWS at para 30.

¹⁵⁷ 1st Reply Affidavit of the Founders filed 30 April 2025 (“RA-1”) at para 37(b); RWS, Annex A at S/N 5.

¹⁵⁸ AWS at para 31; CBOD at pp 360.

134 As a result of the Founders’ allegedly belated and unpleaded argument, the Applicants “did not have reasonable notice” of the same.¹⁵⁹

(5) Our decision

135 Preliminarily, we disagree that the so-called Third Scenario had not been sufficiently pleaded by the Founders. The relevant portion of SOC(A1) pleaded:¹⁶⁰

... the purchase price of the Founders’ shareholding should be calculated based on the percentage shareholding that should have been issued to the Founders in accordance with the IA and SHA, excluding any illegitimate dilution. On this basis, the purchase price of the Founders’ shares should be calculated based on the Founders having a 16.67% shareholding in [DPX].

136 In substance, the Applicants’ complaint appears to be that the SOC(A1) did not *explicitly* mention that there was no need for the Founders to top-up *pari passu* to maintain their shareholding percentage.

137 We disagree that the Founders needed to specifically mention that no top-up was required. While there was no specific pleading that a top-up was or should *not* be required in the sense that those words or words to similar effect were not used, the Founders had stated quite plainly that “the purchase price of the Founders’ shares should be calculated based on the Founders having a 16.67% shareholding in [DPX]”. This line should be read at face value – in the absence of any further qualification, it was wide enough to encompass a case where no top-up should be assumed.

¹⁵⁹ AWS at para 33.

¹⁶⁰ SOC(A1) at para 235 (CBOD at p 14).

138 Bathurst IJ took the view in *Hii Yii Ann v Tiong Thai King* [2024] 6 SLR 96 that in respect of damages, it would be “sufficient for a party to plead heads of damage without descending to precise quantification” (at [34]). We consider that a similarly flexible approach should be adopted in the context of a valuation exercise particularly in the context of a buyout order sought in a minority oppression claim. The Applicants’ position amounts to requiring the Founders to plead a negative and pre-empt arguments from the Applicants. We do not think that the rules of pleadings, even in an arbitration, extend so far as to require a claimant to plead which possible deductions *do not* apply. These are, if at all, matters for the defendant to raise.

139 The Applicants’ counsel, Mr Poon SC, also appeared to acknowledge that the Founders’ pleadings might be “broad enough to encapsulate [the Third Scenario] as a legal argument”,¹⁶¹ notwithstanding the Applicants’ general position that the Third Scenario was not pleaded.¹⁶² As mentioned above at [137], we are of the view that the pleading was broad enough to include the Third Scenario.

140 Turning to the issue proper, we find that the Third Scenario (*ie*, post-conversion valuation with no top-up) remained a live issue during the Arbitration and there was no agreement and / or understanding between the parties that this would not be the Founders’ case.

141 The parties’ respective arguments have already been set out in some detail above. These arguments, particularly those by the Applicants, essentially constitute running through the arbitral record with a fine-tooth comb to put forth

¹⁶¹ Hearing Transcript at p 12, lines 1–8.

¹⁶² Hearing Transcript at p 19, line 27 to p 20, line 1.

differing interpretations of what each party said or meant. This approach did not strike us as being particularly productive. In *DKT*, the Court of Appeal cautioned against undertaking an overly detailed examination of the arbitral record as this “risks encouraging recalcitrant award debtors to burden the courts with needlessly excessive and convoluted references to the arbitral record”: *DKT* at [2]. These observations similarly apply to the parties and their counsel who, in the first place, should properly assess whether such heavy reference to the arbitral record is indeed required.

142 Having regard to the notes of evidence of the Arbitration including the excerpts canvassed above and others contained in the parties’ submissions, we find that the Applicants have not provided sufficiently cogent evidence to persuade us that some form of agreement or understanding had been reached between the parties that the Third Scenario was not in issue in the Arbitration.

143 It is not seriously disputed that the Founders’ case has always been that the valuation should exclude the effects of the illegitimate dilution – the real question is whether this itself implies that a top-up is required or was envisaged by the Founders. Granted, some of the excerpts the Applicants brought us to indicated that the parties were alive to the *possibility* of a top-up being considered. However, we do not think that by merely considering the possibility of a top-up, or addressing the Tribunal’s questions on a top-up scenario, the inference can be drawn that the *no* top-up scenario had therefore been abandoned by the Founders.

144 A perusal of the notes of evidence would reveal – as the Founders have sought to argue – that most of the exchanges with the Tribunal were made in the context of “assumed” hypotheticals. We accept that at some points Mr Liang’s comments appeared to verge on a concession – in particular when he confirmed

that the Founders were “assum[ing] the top up” (see above at [130]). However, we are also mindful of the observations in *Shiraz Abidally Husain v Husain Safdar Abidally* [2007] 2 SLR(R) 719 that (at [18]):

... any party seeking to rely on a concession which is subsequently disputed faces an uphill task. He must be able to definitively point to a particular exchange in the record which constitutes the concession, is framed in clear terms and is explicitly agreed to by the parties. It would not suffice to reproduce lengthy extracts of the notes of evidence to allege that the totality of the extracts create the impression or allude to the fact that such a concession was made.

145 We are unpersuaded that Mr Liang’s exchanges were so clear and unequivocal as to amount to a concession that the Third Scenario was not (or no longer) part of the Founders’ case. No evidence was brought to our attention that showed Mr Liang being *directly* asked whether the Founders were dropping or abandoning the Third Scenario. We accept that the exchanges between counsel and the Tribunal were in the context of impromptu questions posed by the Tribunal in the midst of the Arbitration Hearing —¹⁶³ they were not, for example, carefully deliberated statements made in written closing submissions.

146 Additionally, we are mindful that this alleged concession took place in the context of a valuation exercise in a claim for minority oppression. The Tribunal observed, in the Partial Award, that it is “trite that Singapore law confers unfettered discretion on the Tribunal in assessing an appropriate valuation to ensure a just and equitable outcome”.¹⁶⁴ This was not seriously disputed by either party and the availability of “discretionary adjustments ... to arrive at a fair and just valuation” was a point expressly made by the Applicants

¹⁶³ RWS, Annex A at S/N 4 (“It bears highlighting the *impromptu* nature of the exchange which served to assist the Tribunal during the hearing” [emphasis in original]).

¹⁶⁴ Partial Award at [564].

in their closing submissions.¹⁶⁵ In view of this broad discretion exercisable by the Tribunal, cogent evidence would be required in order to persuade us that a party had given its consent to the Tribunal's discretion being restricted in a manner which prevented that party from arguing, or the Tribunal from adopting, a position which was *more advantageous* to that party.

147 Even if our conclusions above are wrong and the Applicants are right that the Founders had raised a new argument belatedly in their closing submissions, the Founders argue that the Applicants cannot now complain in any event because they did not give “fair intimation” to the Tribunal at the time in accordance with the rule in *China Machine* (see above at [99]).

148 In *China Machine*, the Court of Appeal held that a party who believes there has been a “fatal failure in the process of arbitration” must give “fair intimation to the tribunal that the complaining party intends to take that point at the appropriate time if the tribunal insists on proceeding”, and this would ordinarily require the complaining party to “at the very least, seek to suspend the proceedings until the breach has been satisfactorily remedied (if indeed the breach is capable of remedy) so that the tribunal and the non-complaining party has the opportunity to consider the position”; a party who fails to do so and instead presents themselves as “ready, able and willing to carry on to the award ... does so at its own peril” because the “courts must not allow parties to hedge against an adverse result in the arbitration in this way” (at [170]).

149 The Founders point out that rather than ask the Tribunal to discard the allegedly new and unpleaded argument, the Applicants chose to (a) file their reply closing submissions to substantively respond to that argument; (b)

¹⁶⁵ ACS at para 188 (SA-1 at p 5639); See generally, RWS at para 2(b), and D&CC at paras 401–403 (SA-1 at pp 837–838).

“[adduce] new expert evidence (without leave) by way of a dropdown model to calculate the buyout price”; and (c) did not object to the Tribunal’s question as to whether further evidence should be adduced on the respective dropdown models (both of which allowed for the buyout price to be calculated based on the Third Scenario).¹⁶⁶

150 The Applicants argue that simply because they managed to provide a response, did not therefore mean that they had a “reasonable opportunity to be heard”.¹⁶⁷ The Applicants refer to *CAJ v CAI* [2022] 1 SLR 505 (“*CAJ (CA)*”) as a qualification of the *China Machine* rule.¹⁶⁸ In *CAJ (CA)*, the appellant raised a new, fact-sensitive defence for the first time in its written closing submissions. Notwithstanding that the respondent provided a substantive response to that new defence in its written closing submissions, both the High Court and the Court of Appeal remained of the view that the respondent did not have a reasonable opportunity to respond as the fact-sensitive nature of the new unpleaded defence required the respondent to be given, amongst others, the opportunity to seek leave to adduce fresh evidence before the tribunal.

151 The Applicants contend that those observations apply with equal force here – they argue that the issue surrounding the top-up is a fact-sensitive one which they could not have responded to without the aid of further evidence, which they did not have the opportunity to adduce.¹⁶⁹ The Applicants seek to draw a parallel to the objection raised by the respondent in *CAJ (CA)*,¹⁷⁰ who

¹⁶⁶ RWS at para 31.

¹⁶⁷ AWS at para 33.

¹⁶⁸ AWS at para 34.

¹⁶⁹ AWS at para 34.

¹⁷⁰ Hearing Transcript at p 164, line 17 to p 165, line 2.

had in its written closing submissions raised the following objections (*CAJ (CA)* at [65]):

(a) the [new defence] ‘was never pleaded, nor raised at any point during the 8-day hearing, until it appeared in the Written Closing’; (b) no application had been made by the appellants to amend their pleadings; and (c) the [new defence] had not been the ‘subject of pleadings, focused document production, witness evidence or cross-examination’.

152 The Applicants submit that similarly, their reply closing submissions read:¹⁷¹

56. Contrary to their previous written arguments and [Expert B’s] concession, the [Founders] now advance in their Closing theories that avoid calculation on the basis of a *pari passu* contribution and instead assume the [Founders] subscription on terms better than [the Applicants].

57. First, the [Founders] contend that the new shares be disregarded and the [Founders] be bought out at their pre-conversion shareholding percentage without accounting for any injection of funds by the [Founders]. This contention is commercially absurd. It would result in a windfall to the [Founders]. There is nothing in any document, anywhere, that suggests that the [Founders] would be entitled to maintain a percentage shareholding irrespective of the capital injected as equity into the company. The contention also ignores the [Founders]’ own evidence, and the contemporaneous documents, which recorded the [Founders] understanding that the CLNs would be dilutive. If that is not enough of a reason to reject the [Founders]’ unprincipled and avaricious argument: the [Founders] seek a buyout on a Valuation Date seven months after the rights issue. ...

[emphasis in original and internal citations omitted]

153 We disagree with the Applicants that they sit in an analogous position to the respondent in *CAJ (CA)*. The respondent in *CAJ (CA)* took two crucial steps which materially distinguishes it from the Applicants in this case. Before the arbitral tribunal, the respondent in *CAJ (CA)* (a) expressly identified the very

¹⁷¹ ARS at paras 56–57 (CBOD at p 390).

same due process complaint which it raised in its setting aside application (that the appellant had raised an unpleaded defence without any amendment application having been made); and (b) more importantly, had specifically requested the tribunal to disregard the unpleaded defence *due to* the procedural unfairness that had engendered: *CAI v CAJ* [2021] 5 SLR 1031 (“*CAJ (HC)*”) at [130]. We find it material that the complaint raised at the setting aside application in *CAJ (HC)* had similarly been raised before the tribunal as a *procedural* objection.

154 The Applicants’ “objections” in their reply submissions on the other hand were not quite the same as their current grounds for setting aside the Partial Award. For one, and as we pointed out to Mr Poon SC at the Oral Hearing, the Applicants failed to make the obvious point to the Tribunal – if they *truly believed* and understood that the Founders had *agreed* not to rely on the Third Scenario as the basis for the buyout order and / or had dropped that case, the objection made to the Tribunal should have been to the effect that the Founders were *acting in breach of an agreement and / or undertaking previously given to the Tribunal*.¹⁷² The failure to do so pointed towards the real possibility that *the Applicants themselves* did not believe at the time that there was any such agreement or undertaking. In response to these observations, Mr Poon SC sought to highlight that the “thrust of [paragraph 57 of the Applicants’ reply submissions] is that there is an absence of evidence that supports the point”.¹⁷³ That may well have been the case, but a re-reading of paragraph 57 reveals that the “absence of evidence” really formed part of the Applicants’ *substantive* argument that there was no evidence to support a finding that there should be no top-up; the Applicants went further in engaging the Founders’ argument and

¹⁷² Hearing Transcript at p 160, lines 11–17 and p 162, line 1 to p 163, line 15.

¹⁷³ Hearing Transcript at p 164, lines 3–4.

contended that the Founders' submissions were commercially absurd, would result in them enjoying a windfall, and was an avaricious argument. The lack of evidence did not form part of a *procedural objection* that the Applicants had not been given the opportunity to adduce evidence relating to the propriety of awarding a top-up but was simply an argument pertaining to the lack of evidence *overall*, as a submission intended to buttress the substantive arguments advanced by the Applicants. This was far removed from what the respondent had done in *CAJ (CA)*.

155 While we acknowledge that the Applicants did make the point in their reply closing submissions that the Third Scenario was contrary to the Founders' "previous written arguments and [Expert B's] concession",¹⁷⁴ we do not think that this somewhat tepid response suffices to support the stronger point it now seeks to make that the Third Scenario was unpleaded, that there had been an *express agreement or undertaking* by the Founders not to raise the Third Scenario, and that the Applicants did raise an appropriate objection with the Tribunal. Despite some probing,¹⁷⁵ the Applicants were also not able to clearly identify for us what exactly "[Expert B's] concession" was.

156 Additionally, the Applicants' conduct following the exchange of written submissions was telling. First, the Applicants provided the aforementioned Dropdown Model (see above at [50]). The Founders have pointed out that the Applicants' model in fact allowed the Tribunal to "input a value of zero for the conversion/ top up price of the CLNs" —¹⁷⁶ thereby effectively reaching the same substantive result as a no top-up scenario. Second, in its e-mail dated 16

¹⁷⁴ ARS at para 56 (CBOD at p 390).

¹⁷⁵ Hearing Transcript at p 163, lines 17–26.

¹⁷⁶ RA-1 at para 46.

February 2024, the Tribunal sought the parties' input as to whether it should "determine the disputes having regard only to the evidence received up to the conclusion of the evidentiary hearing".¹⁷⁷ The Applicants replied that they had "no objections" to this approach.¹⁷⁸

157 Taking the Applicants' case at its highest, even if the Founders were raising a new argument belatedly and in contravention of an alleged express agreement or undertaking not to, the Applicants failed to take the opportunity to raise the objection in clear and unequivocal terms, and / or request for the chance to adduce further evidence. In our view, it is incongruent for the Applicants to have (a) provided their confirmation to the Tribunal that they were prepared for the Tribunal to adjudicate the matter based on the evidence already on record on the one hand; and (b) on the other, to now say that they were deprived of a chance to provide additional evidence in respect of the Third Scenario. The record suggests that the Applicants did not have any serious procedural or due process objections at the material time, and was instead "ready, able and willing to carry on to the award"—they cannot now be permitted to resile from that position.

Whether the Majority's finding that the DPT CLNs were "worthless as debt" bore no reasonable nexus to the parties' cases

158 To reiterate, the Applicants challenge two findings by the Majority as not bearing any reasonable nexus to the parties' cases. These findings were reproduced at [70] above. The relevant findings were:

- (a) that the DPT CLNs were "worthless as debt"; and

¹⁷⁷ Tribunal's E-mail dated 16 February 2024 (CBOD at p 418).

¹⁷⁸ Applicants' E-mail dated 19 February 2024 (CBOD at p 417).

- (b) that DPX’s pre-conversion value was the same as DPX’s post-conversion value.

159 At the Oral Hearing, Mr Poon SC contextualised these arguments as being a form of “fallback position” for the Applicants in the event we disagreed with their primary case that there had been an agreement not to rely on the Third Scenario.¹⁷⁹

160 With respect to the Majority’s finding that the DPT CLNs were “worthless as debt”, the Applicants’ position is that “[t]here was simply no evidence before the Tribunal on these points”.¹⁸⁰ In this regard, Mr Poon SC clarified at the Oral Hearing that the Applicants’ position was largely aligned with the Minority’s decision.¹⁸¹ The relevant portion of the Minority’s decision is reproduced here:¹⁸²

674 At [558] above, the majority expresses a number of conclusions in relation to the conversion of [DPT’s] debt in [DPX], including:

- [DPT’s] convertible debt was a sunk cost, being expended and irrecoverable;
- It was an “internal” debt that was not intended to be recoverable in cash but in shares if the start-up was successful;
- The conversion of [DPT’s] CLNs did not and could not inject any funds into [DPX];
- It was just a balance sheet exercise;
- The conversion of the CLNs did not increase or decrease the value of [DPX] as a “fintechstartup” before and after the conversion;

¹⁷⁹ Hearing Transcript at p 20, line 26 to p 21, line 2.

¹⁸⁰ AWS at para 39.

¹⁸¹ Hearing Transcript at p 24, lines 9–26.

¹⁸² Partial Award at [674]–[675] and [677].

- There was no change in the FMV of [DPX] whether or not the [DPT's] CLNs were converted; and
- The CLNs were converted not to improve the financial condition of [DPX] but to make the balance sheet "debt light".

675 With the greatest of respect, with the exception of the third and the last points above, I am not aware of any evidence which would sustain these conclusions. In my respectful view, the evidence supports the conclusion that the debt to [DPT] arose because [DPT] advanced cash money to [DPX] totaling [the CLN Debt] in order to fund [DPX's] operations and growth. [DPT] had the option of either converting its debt into equity or calling for repayment of the debt. The inference which I would draw from the evidence is that [DPT] elected to convert its debt into equity for three reasons:

- (a) It diluted the [Founders'] shareholding into a meaningless proportion;
- (b) It was an essential prerequisite to the investment of [B Group Sum] by [B Group]; and
- (c) It would be of some assistance in relation to the application for the Banking Licence.

...

677 For these reasons I conclude that:

- (a) The [CLN Debt] was "real" and reflected monies which had been advanced by [DPT] to be [DPX];
- (b) The debt was repayable to [DPT] if not converted into equity;
- (c) [B Group] would not have invested [B Group Sum] into [DPX] unless [DPT's] debt had been converted into equity; and
- (d) It follows, for the reasons already given, that the debt must be taken into account in valuing the [Founders'] shares in [DPX] if they are to be put in the position in which they would have been if the dilution had not occurred; and
- (e) This has the consequence that the value to be derived from the [B Group] transaction should be reduced by [the CLN Debt], because restoration of [DPT's] debt reduces [DPX's] net assets by precisely that amount.

161 The core of the Applicants’ argument was that by making a finding completely unsupported by any evidence, the Tribunal (specifically, the Majority) had adopted a defective chain of reasoning.

162 For a chain of reasoning to be defective due to a poor evidential basis, the Tribunal’s decision must be “wholly at odds with the established evidence” (*BZV v BZW* [2022] 3 SLR 447 (“*BZV*”) at [52(l)], affirmed on appeal in *BZW (CA)*) such that the Tribunal has acted in an irrational and capricious manner (see above at [87]). In our view, this high bar has not been met.

163 The impugned section where the Majority explains its finding that the DPT CLNs were “worthless as debt” (as it described them at paragraph 512) is found at paragraph 558 of the Partial Award. It is worth reproducing paragraph 558 here again:

The [Founders] should not have to bear the costs of making a notional top-up to prevent the improper dilution of their shares. The issue of a top-up has arisen solely because of the [Applicants / DPX]’s wrongful and oppressive dilution of the [Founders]’ shareholdings. As far the [Founders] are concerned, they were entitled to 12.28% of the issued capital of [DPX], irrespective of how many shares are issued to [DPT]. Irrespective of whether the [Applicants / DPX] had a right to convert the CLNs, the CLNs were plainly wrongfully converted with oppressive intentions carried out in breach of the [Founders]’ rights under SHA/IA. [DPT’s] convertible debt was a sunk cost for [Company A]. It was expended and irrecoverable.⁷³⁸ It was an “internal” debt that was not intended to be repaid by [DPX] (which was majority-owned by [DPT]) but recoverable in a future IPO or in a buyout by an investor interested in it as a fintech startup. The conversion of [DPT’s] CLNs did not, and could not, inject any fresh funds into [DPX]. It appears it was just a balance sheet exercise, which did not increase or decrease the valuation of [DPX] as a fintech startup, before and after the conversion, as the loan proceeds had been fully expended at the time of conversion. There was no change in the FMV of [DPX] whether or not the [DPT’s] CLNs were converted. In fact, the one reason proffered by [the Applicants] for converting the CLNs was not to improve the financial condition of [DPX] but to make the balance sheet debt-light in

order to improve its chances of obtaining an e-banking licence from [Country A's central bank].

[emphasis added in bold to footnote 738]

164 The paragraph contains a footnote (numbered 738 and emphasised in bold in the excerpt above), which reads:

See Transcript Day 4 [5 October 2023], 33:16-21 where Mr [X] agrees that [DPX] was running out of cash and investment was necessary; Transcript Day 4 [5 October 2023], 61:23 - 62:16 where Mr [X] referred to the debt as “arbitrary debt” *[sic]*; [Witness 2] 1st [Witness Statement], [38] where he states that at the time of making a call on the CLNs, it was clear that the debt could not be repaid.

165 In our view, this suffices to insulate the Partial Award from challenge on this point. The evidence cited at footnote 738 is not so irrelevant such that it would be irrational for the Majority to have regard to it. It contains statements from key witnesses as to the nature of the debt represented by the DPT CLNs. In so far as it contains references to Mr [X]’s evidence, we consider this in greater detail under the Responsive Evidence Issue. For present purposes, it suffices to say that we are unable to conclude that the Majority’s finding arising from this evidence is “*wholly at odds* with the established evidence” [emphasis added]. Additionally, we consider it material to note that neither the Applicants nor the Minority (whose dissent the Applicants rely on) referred to any contrary evidence to positively refute the Majority’s finding – the complaint has instead largely comprised a bare assertion that there is *insufficient* evidence to support the Majority’s finding. In these circumstances, there is limited (if any) evidence which the Majority’s decision can be said to be “at odds” with.

166 Alternatively, in so far as the Majority’s finding was an inference from the available evidence, it cannot also be said that the inference was unreasonable or unsupported by the evidence. We would go further – even if the inference could not be supported by any direct evidence or was impermissibly drawn, we

would view any such error as a mere error of fact or law. It is trite law that such an error cannot form the subject matter of a natural justice challenge. Once the wheat is separated from the chaff, it appears to us that the Applicants' complaint is in substance directed more to the *merits* of the Majority's decision – it is, however, hornbook law that a challenge to the merits (however well-disguised) is also beyond this court's remit. We therefore dismiss the Applicants' complaint on this issue.

167 Additionally, while the point was not raised, we note that the Applicants' arguments are in substance a recast of the “no evidence rule” which has already been rejected in Singapore by the Court of Appeal: *CEF v CEH* [2022] 2 SLR 918 (“*CEF*”) at [101]–[102]. The “no evidence rule”, which has been applied in certain jurisdictions like Australia and New Zealand, provides that “an award which contains findings of fact made with no evidential basis at all is liable to be set aside for breach of natural justice”: *CEF* at [101].

168 The Court of Appeal in *CEF* held (at [102]) that the rule had no place in Singapore law:

In our judgment, the “no evidence rule” should not be adopted as part of Singapore law, as to do so would run contrary to the policy of minimal curial intervention in arbitral proceedings (*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 at [37]–[38]). Further, it would not add anything to the existing grounds for setting aside an award but would instead be (as the Judge stated) “an impermissible invitation to the courts to reconsider the merits [of] a tribunal's findings of fact as though a setting-aside application were an appeal” (GD at [152]).

169 We therefore reject the Applicants' submission that the Majority's finding that the DPT CLNs were “worthless as debt” bore no reasonable nexus to the parties' cases.

Whether the Majority's finding that DPX's pre-conversion value was the same as its post-conversion value bore no reasonable nexus to the parties' cases

170 The relevant finding by the Majority reads:¹⁸³

558 ... The conversion of [DPT's] CLNs did not, and could not, inject any fresh funds into [DPX]. It appears it was just a balance sheet exercise, which did not increase or decrease the valuation of [DPX] as a fintechstartup, before and after the conversion, as the loan proceeds had been fully expended at the time of conversion. There was no change in the FMV of [DPX] whether or not the [DPT's] CLNs were converted. ...

...

561 Further, the [Founders'] case is also that if they did not agree with the dilution or to top-up, they would have exited by seeking a buyout at the material time. This further lends force to their contention there should not be a deduction for a notional top up. Pertinently, all the valuation reports on record (other than [Company C]) valued [DPX] above USD 120 million as a fintech start-up.

562 If the [DPT] CLNs were not converted, it is improbable that [DPX] would have been valued less than USD 120 million. This view is supported by [Witness 1's] conversation with [DPV] on 4 September 2020 where he stated that [DPX's] valuation would be in the region of USD 150 million.

171 In the Applicants' view, notwithstanding that the Majority had ostensibly applied a post-conversion valuation with no top-up analysis, by treating DPX's post-conversion value *as the same as* DPX's pre-conversion value,¹⁸⁴ the Majority had effectively put DPX's pre-conversion value into issue.¹⁸⁵

172 The Applicants' objection flows from their earlier case that the Founders had confirmed to the Tribunal that they would be seeking a buyout based on a

¹⁸³ Partial Award at [558] and [561]–[562].

¹⁸⁴ Partial Award at [558] and [562],

¹⁸⁵ Hearing Transcript at p 30, lines 9–16.

post-conversion scenario *with* a top-up. Because of this alleged “common ground” [emphasis in original omitted],¹⁸⁶ the parties “did not argue that the valuation of [the Founders’] shareholding should be on a pre-conversion basis”.¹⁸⁷ Reference is made to the exchange between the Tribunal and Mr Liang, reproduced from above at [128]:

[TRIBUNAL]: Moving on to the question of the impact of the conversion of the [DPT] CLNs in May 2021, I don’t think anybody is suggesting that the valuation should be conducted on the basis that they had not been converted; is that right? Nobody is contending that?

MR LIANG: No.

173 Arising from this exchange, the Applicants say the Founders had “argued the opposite basis for the valuation” (*ie*, a post-conversion scenario).¹⁸⁸ If the Tribunal wished to depart from the agreed position of the parties, and make findings on issues that were not in play, it needed to “refer these issues to the parties for their submission”.¹⁸⁹

174 Moreover, if they were given the opportunity to, the Applicants would have led evidence on DPX’s pre-conversion value. In this regard, in their supporting affidavit, the Applicants had exhibited a further affidavit dated 26 March 2025 prepared by [Expert A] in which he provides a summary of “what [his] evidence would have been” had the Tribunal sought his evidence on the pre-conversion value of DPX.¹⁹⁰ [Expert A] opined that “if the [DPT] CLNs were not converted to equity, the risk of failure to obtain the digital bank license

¹⁸⁶ AWS at para 38.

¹⁸⁷ AWS at para 42.

¹⁸⁸ AWS at para 43.

¹⁸⁹ AWS at para 44.

¹⁹⁰ Affidavit of [Expert A] dated 26 March 2025 (“AEA”) at para 4 (SA-1 at p 6055); AWS at para 52.

would have been significantly higher”, and this might have led to a different basis of valuing DPX.¹⁹¹ Additionally, DPX’s equity value would also have been lower by virtue of the debt represented by the DPT CLNs remaining on its books.¹⁹²

175 We pause here to note our reservations about exhibiting [Expert A’s] affidavit within the Applicants’ supporting affidavit for OA 10. It struck us as an attempt by the Applicants to circumvent the need to obtain leave to file a further affidavit.¹⁹³ Going forward, we do not think such a practice should be countenanced.

176 Reverting to the issue at hand, in response, the Founders reiterate the broad and unfettered discretion of the Tribunal to reach a fair and equitable result in the valuation exercise.¹⁹⁴ Even apart from that general proposition, Mr Liang argues that the pre-conversion valuation of DPX had always been in issue. He explained at the Oral Hearing that the very nature of a valuation exercise means that both the pre- *and* post-conversion valuations would be in evidence before the Tribunal.¹⁹⁵ Pre-conversion valuations of DPX had in fact been before the Tribunal, in the form of an October 2019 valuation and a 13 August 2020 valuation by two other companies.¹⁹⁶

177 We disagree that the Majority had unduly taken into account the pre-conversion value of DPX for two reasons.

¹⁹¹ AEA at para 10 (SA-1 at p 6057).

¹⁹² AEA at para 22 (SA-1 at p 6061).

¹⁹³ RA-1 at para 58.

¹⁹⁴ RWS at para 46(a).

¹⁹⁵ Hearing Transcript at p 68, lines 6–15.

¹⁹⁶ RWS at para 46(b).

178 First, it is not entirely accurate to say that the Majority had valued the Founders' shareholding using DPX's pre-conversion value. The Majority's approach towards valuation proceeded in three, and in our view logical, steps as outlined in the Partial Award:¹⁹⁷

- (a) first, calculate the shareholding that the Founders are entitled to;
- (b) second, determine the value of DPX at the agreed valuation date of 31 December 2021;¹⁹⁸ and
- (c) third, consider whether any deductions need to be made to DPX's value.

179 Even if we assume that the Founders had agreed not to use the pre-conversion valuation to value DPX and that the valuation of DPX should be a post-conversion value, that was precisely what the Majority did when it determined that DPX should be valued at US\$120m,¹⁹⁹ based on DPX's post-conversion value as at the agreed valuation date of 31 December 2021. It is thus not strictly speaking correct to say that the Tribunal had valued DPX on a *pre-conversion* valuation basis.²⁰⁰ The analysis at paragraphs 558 to 562 of the Partial Award (concerning the relevance of DPX's pre-conversion valuation) which the Applicants take issue with, takes place within *the third step* of the Tribunal's analysis (see [178(c)] above) justifying why a *top-up* (ie, a deduction) was not required.

¹⁹⁷ Partial Award at [583].

¹⁹⁸ Partial Award at [544].

¹⁹⁹ Partial Award at [553].

²⁰⁰ AWS at paras 41–42.

180 Thus, even assuming that the Founders had confirmed that they were not relying on a pre-conversion valuation to value DPX, we do not think that any such confirmation extends to precluding the Tribunal from considering the pre-conversion valuation of DPX at the *third stage* of determining whether any appropriate deductions ought to be made. This is especially so considering the Tribunal’s broad and flexible discretion to balance the equities between the parties.

181 Second, a close reading of paragraph 558 (read with paragraph 562) of the Partial Award reveals that the Majority’s reference to DPX’s pre-conversion value flowed from its finding that there “was no change to the [fair market value] of [DPX] whether or not the [DPT] CLNs were converted”.²⁰¹ In other words, notwithstanding that the Majority was assessing DPX’s *post-conversion* value, it needed to consider DPX’s pre-conversion value because it had taken the view that the conversion of the DPT CLNs did not have any effect on DPX’s value.

182 Further, it is plain to us that the Tribunal’s approach at the third step of its analysis was to agree with and adopt the Founders’ submission that in exercising its broad and unfettered discretion, the Tribunal could exclude completely the dilutive effect of the conversion of the DPT CLNs. Indeed, in the Partial Award, the Tribunal reproduced three paragraphs from the Founders’ closing submissions which set out the applicable principles and cases under Singapore law on the point.²⁰²

²⁰¹ Partial Award at [558].

²⁰² Partial Award at [563].

183 By stripping out the dilutive effect of the conversion of the DPT CLNs, which the Tribunal found to be unlawful and illegitimate, and in deciding that no top-up should be required, the Tribunal was applying the principles and cases cited to it by the Founders. Thus, in substance, by deciding that no top-up was required and that the dilutive effect of the conversion of the DPT CLNs was to be ignored, the buyout order would necessarily be on the basis of DPX's pre-conversion value *and* with no top-up. This is evident from the Partial Award:²⁰³

Crucially, as the conversion scheme for the [DPT] CLNs has been declared to be invalid as against the [Founders], axiomatically the requirement for a top up simply does not arise. It is also plain that the Majority has an unfettered discretion on valuation, subject only to the overriding requirement of fairness.

[emphasis added; internal citations omitted]

184 More to the point, as we have found (at [135]–[146] above), the Founders' case (as pleaded in the SOC(A1)) was broad enough to encompass the Third Scenario, and the Third Scenario remained a live issue throughout the Arbitration. We agree with the Founders' observation that evidence on DPX's pre-conversion value had been put on record (see above at [176], as well as [65]). Thus, even if we were to countenance the Applicants' complaint that they had no opportunity to present evidence on DPX's pre-conversion value, that is an outcome that was entirely of the Applicants' own doing. Either the Applicants misunderstood what the Founders' primary case was, or they took a calculated gamble not to put in evidence of DPX's pre-conversion value but instead, sought to press a case (if oppression was found and a buyout ordered) of a post-conversion valuation with a top-up. Whatever the real reason, it is clear to us that there is no basis for the Applicants to now cry foul or for us to rescue them from the consequences of a game plan that, with hindsight, they wished

²⁰³ Partial Award at [566].

they had executed differently. The caselaw is clear – that is not our role in an application of this nature and the chips must lay where they fall.

185 Lastly, in light of our finding above that the Majority was entitled, whether rightly or wrongly, to determine that the DPT CLNs were “worthless as debt”, we also hold that the Majority was entitled to come to the view that the pre-conversion value of DPX was relevant to its assessment of DPX’s post-conversion value, and by extension, to have regard to the available evidence in support of this. In this regard, we agree with the Founders that the pre-conversion value of DPX was necessarily something that the Tribunal could and should have been alive to in order to determine the post-conversion value of DPX.

Conclusion on the Buyout Issue

186 For these reasons, we dismiss the Buyout Issue. There was no breach of natural justice occasioned by the Tribunal adopting the Third Scenario as the basis for its valuation of the buyout price.

The Responsive Evidence Issue

Parties’ arguments

187 We turn to consider the Responsive Evidence Issue. The arguments here are highly factual as well. Accordingly, we adopt the same approach as for the Buyout Issue, and deal with the evidence in detail at the relevant portions of our analysis.

188 The Applicants’ general complaint is that the Tribunal had failed to consider the Responsive Evidence, which the Applicants say can be broadly categorised into: (a) evidence contradicting Mr [X]’s and Ms [Y]’s account of

events relevant to the issues in the Arbitration (“Substantive Evidence”); and (b) evidence going to the credibility of Mr [X] and / or Ms [Y] (“Credibility Evidence”).²⁰⁴

189 The Applicants’ submission, broadly speaking, is that the Tribunal had committed a breach of natural justice as it wholly failed to refer to the Responsive Evidence in the Partial Award, and the corresponding inference to be drawn is that the Tribunal had “failed to consider the Responsive Evidence”.²⁰⁵

190 This breach was connected to the making of the Partial Award because by accepting Mr [X]’s evidence “without qualification”,²⁰⁶ the Tribunal was led to making two consequential findings:

(a) that the Applicants’ cumulative conduct constituted minority oppression within the meaning of s 216(1) of the Companies Act;²⁰⁷ and

(b) that because the Tribunal had found the conversion of the DPT CLNs to be an oppressive act, the buyout order was calibrated in a manner which would “exclude the dilutive effects of the conversion”.²⁰⁸

191 The Applicants submit that they have suffered prejudice because *if* the Credibility Evidence had been considered, there was a real chance of the Tribunal considering Mr [X]’s evidence “with greater circumspection”.²⁰⁹ In

²⁰⁴ AWS at para 55; SA-1 at para 100.

²⁰⁵ AWS at para 70.

²⁰⁶ AWS at para 72.

²⁰⁷ AWS at para 74.

²⁰⁸ AWS at para 75.

²⁰⁹ AWS at para 77.1.

respect of the Substantive Evidence, this would also have “affected the Tribunal’s assessment of the credibility of Mr [X]’s evidence and thus the Tribunal’s consequent finding that the conversion of the [DPT] CLNs was for the dominant purpose of diluting [the Founders’] shareholding”.²¹⁰

192 In response, the Founders point to various comments by the Tribunal over the course of the Arbitration Hearing to the effect that it had “read [Witness 5’s] statement”,²¹¹ and / or otherwise considered the Responsive Evidence filed.²¹² Additionally, the Tribunal had in substance, addressed the Substantive Evidence.²¹³ In any case, there would also have been no prejudice because there was “an abundance of contemporaneous evidence which independently demonstrated [DPT’s] motive to dilute the Founders by conversion of the CLNs” [emphasis in original omitted], and Mr [X]’s evidence was “simply one more nail in the coffin”.²¹⁴

Analysis

193 The Applicants point to the following facts which they say cumulatively lead to the “clear and virtually inescapable” inference that the Tribunal did not consider the Responsive Evidence: *DKT* at [8(c)], citing *AKN v ALC* [2015] 3 SLR 488 at [46] and *BZW (CA)* at [60(a)].²¹⁵

²¹⁰ AWS at para 77.2.

²¹¹ 3 October 2023 Transcript of the Arbitration Hearing (“3 Oct Transcript”) at p 173, lines 7–8 (SA-1 at p 3617).

²¹² RWS at para 56(a).

²¹³ RWS at para 56(b).

²¹⁴ RWS at para 79.

²¹⁵ Hearing Transcript at p 33, lines 7–11.

194 The Applicants’ first broad argument is that the Responsive Evidence was not referred to anywhere in the Partial Award:²¹⁶

(a) In the “Procedural History” section of the Partial Award, the Tribunal “identified, named, and listed each witness statement that was filed in the [first] two rounds of witness statement exchanges” but did not do so for the third round of witness statements containing the Responsive Evidence.²¹⁷

(b) In the “Witnesses” section of the Partial Award, the Tribunal “omitted three of [the Applicants’] fact witnesses who filed witness statements on 2 October 2023: (i) [Witness 11]; (ii) [Witness 12]; and (iii) [Witness 13]”.²¹⁸ This was a “positive indication in the award that the evidence ha[d] not been considered”.²¹⁹

195 At the outset, we first address a point raised by the Founders, which is that in the Partial Award the Tribunal had stated that it had “considered all the pleaded cases, evidence and submissions of the Parties”.²²⁰ We however accept the Applicants’ submission that a general paragraph of this nature cannot operate, in itself, to “immunise an award against an allegation that the tribunal has breached the fair hearing rule”: *BZV* at [128].²²¹ The Founders seek to distinguish the applicability of *BZV* on the basis that the Tribunal had previously obtained the parties’ confirmation that there was no “need to state every

²¹⁶ AWS at para 59.

²¹⁷ SA-1 at para 213.3.

²¹⁸ SA-1 at para 213.4.

²¹⁹ Hearing Transcript at p 45, lines 24–25.

²²⁰ Partial Award at [483]; RWS at para 56(c).

²²¹ AWS at para 67.3.

correspondence and [no] need to summarise every argument because we have read all your submissions”.²²² We disagree that these observations from *BZV* do not apply simply because the Tribunal had previously confirmed with the parties that there is no need to reproduce *every argument*. It is already well-established that “the tribunal should not have to deal with every argument canvassed under each of the essential issues”: *CZT v CZU* [2024] 3 SLR 169 at [35]. All this is to say that the general references to the evidence (or lack thereof) in the Partial Award were not determinative – we thus go on to consider the other arguments raised by the parties.

196 Having regard to the apparent failures to refer to the Responsive Evidence (referenced above at [194]), we do not agree that these features, on their own, are relevant (much less definitive) considerations. We find the following observations by the Court of Appeal in *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 (“*Glaziers*”) to be apposite (at [36]):

... where the allegation is that the decision-maker has wholly failed to consider an important pleaded issue, the court must be especially careful. *It is often being invited to conclude, not from any “explicit indication” (at [46]), but rather from the decision-maker’s silence on a submission that he has failed to even address his mind to that submission. **Yet such silence may be equally consistent with the decision-maker considering the submission, but then choosing to disregard or reject it without explaining himself.*** The difficulty in drawing such an inference is that the decision-maker’s silence is inherently ambiguous. This may be contrasted against other breaches of natural justice which may be more easily verified, such as where the decision-maker decided the case on the basis of an issue which was never raised by the parties (which will be clear from the determination itself), or where the decision-maker never heard or received submissions from one party on a given point (which will often be clear from the record of the proceedings) or where the decision-maker decided not to address a specific issue on his mistaken

²²² 12 Oct Transcript at p 99, lines 8–21 (SA-1 at p 5230); RWS at para 74.

understanding that the issue had been abandoned. *Given the ambiguities inherent in the decision-maker's silence, the court must be wary that a disaffected party may wrongly characterise what is, in truth, the decision-maker's misunderstanding of or disagreement with a certain submission as a failure to consider that submission entirely.*

[emphasis in original omitted; emphasis added in italics and bold italics]

197 While the observation in *Glaziers* pertains to an alleged failure to consider a pleaded issue, it is our view that it is equally applicable to an alleged failure by a tribunal to consider evidence adduced by a party in an arbitration. We thus do not consider the mere fact that the Tribunal omitted to specifically refer to the Responsive Evidence in the Partial Award as being particularly material to our assessment.

198 In relation to the three factual witnesses who had been omitted from the “Witnesses” section of the Partial Award (see above at [194(b)]), we would add that it is equally possible that the Tribunal had omitted to refer to them as their evidence consisted *only* of Credibility Evidence (relating to the circumstances of Mr [X]’s and Ms [Y]’s departure from DPX) and was thus not seen by the Tribunal as being particularly material to the resolution of the underlying dispute and the essential issues submitted to it for determination. Directions had in fact been given by the Tribunal for the parties to avoid cross-examination on such matters which had only arisen after the commencement of the Arbitration (this is discussed in greater detail below at [207]–[209]), and arising from this, the Tribunal had also reproduced in the Partial Award an excerpt of an e-mail from the Founders indicating that they would be dispensing with the cross-examination of, *inter alia*, the three “omitted” factual witnesses.²²³

²²³ Partial Award at [186].

199 In any case, it is our view that the Tribunal *did* refer to the Responsive Evidence, or at least had referred to it sufficiently. Accordingly, we disagree that a clear and virtually inescapable inference may be drawn that the Tribunal had completely failed to consider the said evidence.

200 In the “Procedural History” section of the Partial Award, the Tribunal had referred to the Responsive Evidence in the following manner:

178 On 2 October 2023, [the Applicants’] Counsel apologised for their delay and submitted the 1st and 2nd Responsive Witness Statements with accompanying exhibits.

...

180 On 2 October 2023, the [Founders’] Counsel updated the Tribunal that Mr [X] and Ms [Y] have provided, through their solicitors, an undertaking that all new material shared with Mr [X] and Ms [Y] contained in the [Applicants’ / DPX’s] Responsive Witness Statements would be subject to the confidentiality requirements of the Arbitration and furnished the correspondence containing said undertaking. The [Founders’] Counsel further informed that they have accordingly circulated the [Applicants’ / DPX’s] Responsive witness statements on the basis of the undertaking provided by Mr [X] and Ms [Y].

...

182 On 4 October 2023, [the Applicants’] Counsel informed the Tribunal that the following documents have been uploaded onto the Opus2 platform:

...

(d) The [Applicants’ / DPX’s] responsive witness statements and exhibits have been uploaded to the folder “Bundle J – Additional Witness Statements”. This includes a new document 1R-500, which has been referred to in the witness statements but was inadvertently omitted from the link sent to the Tribunal on 2 October 2023, which has also been uploaded.

[internal citations omitted]

201 While a mere reference to the receipt of the Responsive Evidence in the “Procedural History” section of the Partial Award is certainly not dispositive,

the point remains that this is an additional factor pointing away from us drawing the requisite clear and virtually inescapable inference.

202 Additionally, we note that at paragraph 510 of the Partial Award – in considering Mr [X]’s evidence on a different issue, viz, who was responsible for procuring the depressed valuation of DPX from [Company C] (a valuation firm) – at footnote 680, the Tribunal referred to paragraph 128 of the Applicants’ closing submissions where the Applicants had (albeit in a footnote) referred to some of the Responsive Evidence – in particular, the third witness statements of [Witness 1], [Witness 2], [Witness 3] and [Witness 5] .²²⁴

203 Paragraph 510 of the Partial Award (with footnote 680 emphasised in bold) reads:

[DPT] argues that it is Mr [X] that is at fault for the depressed [Company C] Valuation. They contend that Mr [X] has not produced any evidence to support his bare assertion that [DPT] instructed him to obtain a diminished valuation.⁶⁸⁰ According to [DPT], only Mr [X] stood to gain from a greater dilution of the [Founders]’ shareholding by getting a greater shareholding from the ESOP following: (i) the [B Group] Investment; and (ii) obtaining the [Digital Banking License].⁶⁸¹ However, this particular contention is difficult to reconcile with the objective evidence. The messages between [Witness 1] and Mr [X] evince [Witness 1’s] unhappiness with the [Founders] and his strong desire for them to be diluted. Further, the Board knowingly adopted two very different valuations (the [Company C] Valuation of USD 3.4 million for conversion and the pre-money valuation of USD 120 million for the [B Group] investment) on the very same day. [DPT] cannot baldly claim that it was unaware of the different standards being applied or that Mr [X] was the driving force behind the depressed valuation. Additionally, [DPT] stood to substantially gain from diluting the [Founders] since it provided it with more shares and control of [DPX], and better leverage over the [Founders]. In any event, Mr [X] alleged personal motives were not established during his lengthy cross examination.

[emphasis added in bold]

²²⁴ RWS at para 56(b)(ii); ACS at para 128 (SA-1 at p 5626).

204 Paragraph 128 of the Applicants’ closing submissions reads:

Only Mr [X] claims that [the Applicants] had instructed him to obtain a compressed valuation.²⁶³ However, as explained at [93]-[95] above, Mr [X] has not produced any evidence to support this bare assertion. Further, [Witness 1], [Witness 2], and [Witness 3], all of whom allegedly gave the instruction to obtain a low valuation, have all denied giving such an instruction or having any involvement in the valuation.²⁶⁴

[emphasis added in bold]

205 As we alluded to above, footnote 264 contains citations to the third witness statements of [Witness 1], [Witness 2], [Witness 3] and [Witness 5] (*ie*, parts of the Responsive Evidence).

206 While this reference may be somewhat tangential, it also points away from a clear and virtually inescapable inference that the Tribunal completely failed to consider any of the Responsive Evidence.

207 The Applicants’ second broad argument is that the Tribunal had “made a series of comments which in retrospect suggests that it had no interest in [the Applicants’] responsive evidence despite not having fully considered the evidence”.²²⁵ In particular, the Applicants brought our attention to the following comments made by the Tribunal over the course of the Arbitration:

(a) On 3 October 2023 (Day 2 of the Arbitration Hearing):²²⁶

[TRIBUNAL]: Can I just add again, we will confer in relation to this, but a lot of the responsive evidentiary material deals with the circumstances in which Mr [X] and Ms [Y] left the company. Now, that is arguably a distraction from the real issues in this case. We are concerned that a lot of time is going to be spent on those issues, which are very peripheral indeed. Of course,

²²⁵ SA-1 at para 213.5.

²²⁶ 3 Oct Transcript at p 173, line 17 to p 174, line 15.

under the IBA guidelines, which we have taken as a guide, evidence has to be relevant and material to the outcome. It is just not clear---one of the things we need to consider is whether those sorts of issues are material to the outcome. Clearly, the evidence about the conversions of the CLNs, the evidence about the [B Group] investment, the evidence about the development of [DPT e-Wallet], that's all grist to the mill. But things like the recording of the conversations, the circumstances in which they left [DPX], the dealings between Mr [X] and [the Applicants'] employers in relation to his evidence, it all just goes to credit. We could spend days arguing about credit and it is just a distraction. But anyway, we will think about that and let you know our position overnight.

- (b) On 3 October 2023, the Tribunal directed via e-mail:²²⁷

Further, for purposes of cross examination, Parties should note that any references to any statements made or exchanges that have taken place after the commencement of these proceedings may only be made if absolutely necessary to establish facts.

- (c) On 5 October 2023 (Day 4 of the Arbitration Hearing):²²⁸

[TRIBUNAL]: If I could make my position clear on that, in case it helps. Obviously there is a lot of material about the circumstances in which Mr [X] and Ms [Y] left the employment of [the Applicants]. For my own part, I don't need to know who was right and who was wrong about that. It is sufficient for me to know that there was a dispute at the time they departed and that provides context for their testimony. But I'm not going to get bogged down into who was right and who was wrong.

- (d) On 7 October 2023, the Tribunal further directed via e-mail:²²⁹

The Tribunal also notes that many of the recordings record comments and observations in respect of matters which occurred sometime earlier, and therefore do not

²²⁷ Tribunal's E-mail dated 3 October 2023 (CBOD at p 224).

²²⁸ 5 October 2023 Transcript of the Arbitration Hearing ("5 Oct Transcript") at p 106, lines 13–22 (SA-1 at p 4049).

²²⁹ Partial Award at [184]; SA-1 at para 167; Tribunal's E-mail dated 7 October 2023 (CBOD at p 258).

provide direct evidence of those matters. The evidentiary value of those comments and observations is likely limited to possibly impugning the credit of those who give direct testimony in respect of those matters. In the circumstances of this case the Tribunal considers that lengthy and complex investigations into matters that go only to credit may be disproportionate to the evidential value to be derived from such investigations. This observation applies with equal force to evidence of matters which occurred after the commencement of the arbitration proceedings.

208 For context, these directions were given because the Tribunal was of the view that matters arising after the beginning of the Arbitration went to credibility and were not as material.²³⁰ Accordingly, the Tribunal requested parties to refrain from conducting cross-examination on these matters which arose after the Arbitration commenced.

209 We agree with the Founders that the Applicants' submissions on this point are without merit.²³¹ For one, a tribunal is entitled to direct the flow of cross-examination away from non-essential issues in the interests of efficiency. This is simply a feature of good case management. More importantly, the Tribunal did not force these directions onto the parties. After the Tribunal's observations on 5 October 2023 (*ie*, Day 4 of the Arbitration Hearing, reproduced above at [207(c)]), the Applicants' counsel did not raise any objections or concerns.²³² The Applicants were evidently content to proceed in the proposed manner at the material time – it is, as submitted by the Founders,

²³⁰ 9 October 2023 Transcript of the Arbitration Hearing at p 37, line 21 to p 38, line 11; SA-1 at para 165, footnote 74.

²³¹ RWS at para 56(a).

²³² 5 Oct Transcript at p 106, line 23 (SA-1 at p 4049).

“uncharitable” for the Applicants to now “in retrospect” view the Tribunal’s attempt at effective case management with cynicism.²³³

210 We turn to the Applicants’ third and final set of submissions on the Responsive Evidence Issue. The Applicants contend that for many of the Tribunal’s findings including its finding that Mr [X]’s evidence was credible, the Tribunal had only referred to or engaged with Mr [X]’s and / or Ms [Y]’s evidence, but had failed to consider the Responsive Evidence.²³⁴

211 Regarding the failure to consider the Substantive Evidence, the following are some examples of the Applicants’ complaints:

(a) In relation to the Tribunal’s finding “that [DPT] and [DPX] were intent on diluting the [Founders’] shareholding and the timing of the documentation for [the digital bank license] application was coordinated to create a paper trail for the conversion of the [DPT] CLNs”,²³⁵ the Applicants contend that the Tribunal only referred to Mr [X]’s and Ms [Y]’s evidence but failed to engage with [Witness 5’s] evidence to the effect that DPX had sought legal advice to reduce the risk of a dispute between the Applicants and the Founders and that there was no advice to create paper trails.²³⁶

(b) In relation to its finding that the DPT CLNs had been converted in order to dilute the Founders’ shareholding,²³⁷ the Tribunal referred

²³³ RWS at para 56(a).

²³⁴ AWS at para 60.

²³⁵ Partial Award at [496].

²³⁶ AWS at para 60.

²³⁷ Partial Award at [492(d)], [493] and [496].

only to Mr [X]’s evidence but there was no reference to [Witness 5’s] “contradictory” and “unchallenged” evidence.²³⁸

(c) In relation to its finding that Mr [X] had been instructed to dilute the Founders’ shareholding,²³⁹ the Tribunal failed to consider [Witness 5’s] evidence that no such instructions had been given.²⁴⁰

212 As might be apparent, particular emphasis was placed on the evidence of [Witness 5]. The Applicants explained at the Oral Hearing that considering the materiality of the issues which [Witness 5’s] evidence challenged, it was surprising that “nowhere in the award is it explained why [Witness 5’s] evidence was disbelieved, notwithstanding that she was not cross-examined, and notwithstanding that her evidence directly contradicted Mr [X]’s”.²⁴¹

213 Pertaining to the Credibility Evidence, the Applicants take issue with the Tribunal’s finding that it “accepts [Mr [X]’s] testimony on [Witness 1’s] and [DPT’s] improper intentions regarding the dilution of [the Founders’] shareholding”.²⁴² The Applicants say this finding was made without reference to the Credibility Evidence as to the circumstances surrounding Mr [X]’s departure from DPX which impugned his credibility.²⁴³

214 Having carefully considered the competing arguments, we are unable to draw a clear and virtually inescapable inference that the Tribunal had

²³⁸ AWS at para 62.

²³⁹ Partial Award at [492(a)].

²⁴⁰ AWS at para 63.

²⁴¹ Hearing Transcript at p 40, lines 14–29.

²⁴² Partial Award at [428].

²⁴³ AWS at paras 64–65.

completely failed to consider the Responsive Evidence – be it the Substantive Evidence or the Credibility Evidence. We explain below.

215 First, on the Substantive Evidence, we have noted above that most of the Applicants’ objections pertain to the Tribunal’s failure to consider [Witness 5’s] third witness statement. However, we note that the Tribunal did in fact refer to [Witness 5’s] third witness statement in order to rule that the Mr [X] Recordings were inadmissible.²⁴⁴ We accept the Founders’ submission that it is unlikely that the Tribunal referred to only one aspect of [Witness 5’s] witness statement to decide whether the Mr [X] Recordings were admissible, but ignored or failed to apply its mind to the rest of her witness statement in respect of other issues.²⁴⁵ We also repeat our observations above on [Witness 5’s] evidence (at [202]).

216 Second, in respect of the various extracts referred to above at [207], the Founders take the contrasting position to the Applicants that these comments actually suggest that the Tribunal *had considered* the Responsive Evidence.²⁴⁶ In *Prayudh Mahagitsiri v Nestle SA* [2025] SGHC 181, the court similarly took into account the fact that the tribunal had asked questions about certain proposals during the parties’ closing presentations and the general record of the arbitration hearing to find that the tribunal was “well-aware of the existence of [said] Proposals” (at [64]). We are inclined to agree. It would not be possible for the Tribunal to observe that “a lot of the responsive evidentiary material deals with the circumstances in which Mr [X] and Ms [Y] left the company” (see above at [207(a)]) without having first canvassed and applied its mind to the Responsive Evidence (including the Substantive Evidence) in some detail.

²⁴⁴ Partial Award at [184].

²⁴⁵ Hearing Transcript at p 124, line 21 to p 125, line 2 and p 131, lines 13–21.

²⁴⁶ RWS at para 56(a).

217 For completeness, in *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532 (“*Bintai*”), the Court of Appeal appeared to suggest that an adjudicator’s oral musings during a hearing could not be used to demonstrate that he had considered an issue (at [54]):

... In our judgment, observations made by an adjudicator in the course of an oral hearing are generally nothing more than musings on his part. At least in the absence of exceptional grounds, the adjudicator’s decision must be limited by the four corners of the adjudication determination, and should not be supplemented by speculative or provisional references to portions of the notes of any oral conference. This is so because it would be impossible to ascertain whether the thoughts expressed by the adjudicator in the course of such an oral hearing reflected his final determination on those issues or were, on the contrary, provisional and susceptible to change. Accordingly, if those observations are then wholly omitted from the adjudication determination that is later issued, far from inviting an inference that the adjudicator has implicitly rejected those submissions, such an omission only reflects a gaping lacuna in the reasoning presented in the adjudication determination and nothing more. In this light, Bintai’s attempt here to argue that the observations made by the Adjudicator in the oral conference, when read together with the Adjudication Determination, impliedly showed that the Adjudicator had made a final decision to reject Samsung’s submissions on the two issues, was wrong in principle and must be rejected.

218 We do not think that this passage from *Bintai* detracts from our analysis. In our opinion, the Tribunal’s comments here were made for the purpose of giving *directions*, which puts them on quite a different footing from the “musings” of the adjudicator in *Bintai*. Furthermore, we do not think that the Court of Appeal was intending to lay down any conclusive rule as to the weight that should be accorded to remarks made during evidential hearings – at the very least, the court had left open the possibility of considering material outside the four corners of the decision or award (“in the absence of exceptional grounds”): *Bintai* at [54].

219 Lastly, we address the Applicants’ arguments on the Credibility Evidence (as outlined above at [213]). In accepting Mr [X]’s evidence, it could be the case that implicitly, the Tribunal was rejecting the Credibility Evidence or at least, we cannot rule that out as a possibility. We raise this additional point simply to demonstrate the high threshold that the Applicants need to cross to persuade us that the Tribunal had completely failed to consider the Credibility Evidence.

220 For the above reasons, we are of the view that the Applicants have failed to establish that a “clear and virtually inescapable inference” can and should be drawn in this case that the Tribunal failed to consider the Responsive Evidence and that a breach of natural justice had thereby been occasioned.

Prejudice

221 Having found that there was no breach of natural justice in respect of either the Buyout Issue or the Responsive Evidence Issue, that would be a sufficient basis for us to dismiss the application, without any need for us to consider whether the breach was connected to the making of the award or the issue of prejudice (see above at [84]). Nonetheless, we make two observations on prejudice – one relating specifically to the Responsive Evidence Issue, and the other relating to both the Buyout Issue and the Responsive Evidence Issue.

222 First, even if our conclusions on the Responsive Evidence Issue are incorrect, we would have difficulty finding any prejudice suffered by the Applicants as a result of the Tribunal’s failure to consider the Responsive Evidence. In respect of the Credibility Evidence, the Tribunal had requested counsel not to “cross-examine the witnesses on issues relating to their

credibility”²⁴⁷ because such evidence was not particularly material to the dispute, given that it largely related to events occurring after the commencement of the Arbitration. As to the Substantive Evidence, a closer perusal of the third round of witness statements would reveal certain factors which suggest that the Substantive Evidence was not likely to have made a “real” difference to the Tribunal’s analysis:

(a) Across the board, it appears to us that much of the Substantive Evidence contained in the third round of witness statements consisted of repeated evidence that had already been adduced in the earlier witness statements. The third round witness statements contain phrases such as “I reiterate my evidence”,²⁴⁸ “[a]s I explained before”,²⁴⁹ and “as I have explained at ... of my first witness statement”.²⁵⁰

(b) Many of the third round witness statements contained bare denials²⁵¹ or qualifications as to the extent of the witness’ knowledge.²⁵² For example, in respect of a key event such as the conversion of the DPT CLNs, [Witness 1’s] evidence was that “[e]xcept for Mr [X]’s updates from time to time, I was not involved in the process for the conversion of the CLNs”.²⁵³

²⁴⁷ SA-1 at para 165.

²⁴⁸ [Witness 1’s] 3rd Witness Statement at para 31 (CBOD at p 140).

²⁴⁹ [Witness 2’s] 3rd Witness Statement at para 7 (CBOD at p 143).

²⁵⁰ [Witness 5’s] 3rd Witness Statement at para 87 (CBOD at p 162).

²⁵¹ [Witness 3’s] 3rd Witness Statement at para 12 (CBOD at p 147) (“[t]here were no such discussions at all”).

²⁵² [Witness 2’s] 3rd Witness Statement at para 13 (CBOD at p 144) (“I believe I had a virtual meeting ...”); [Witness 5’s] 3rd Witness Statement at para 92 (CBOD at p 164) (“I do not recall [Witness 2] being insistent on diluting ...”).

²⁵³ [Witness 1’s] 3rd Witness Statement at para 26 (CBOD at p 139).

223 On the whole, the Responsive Evidence simply did not strike us as being particularly cogent. In any event, we share the Founders’ view that many of the Tribunal’s findings were largely founded upon contemporaneous documentary evidence,²⁵⁴ such as the messages between [Witness 1] and Mr [X].²⁵⁵ The Tribunal also emphasised that “[m]ost importantly, [Mr [X]’s] evidence was consistent with [the] documentary evidence and did not reveal any material inconsistencies”.²⁵⁶ In the round, even if the Responsive Evidence had *not* been considered by the Tribunal at all, it is our view that it would not have had a “real as opposed to a fanciful chance of making a difference to [the Tribunal’s] deliberations”: *L W Infrastructure* at [54].²⁵⁷

224 The second and final observation applies to both the Buyout Issue and the Responsive Evidence Issue, and it pertains to our difficulty in identifying exactly what the prejudice suffered by the Applicants would have been. The Tribunal found (whether by a majority or unanimously) that a whole slew of acts, *individually and cumulatively*, amounted to oppression.²⁵⁸ Thus, even if we accept that the Tribunal had completely failed to consider the Responsive Evidence, and that it would have potentially resulted in a different finding as to whether the conversion of the DPT CLNs was an act of oppression, this would not have made any difference to the overall outcome – the Applicants would *still* be found to have acted oppressively.²⁵⁹ Indeed, the Applicants’ counsel

²⁵⁴ RWS at para 79(a).

²⁵⁵ Partial Award at [487].

²⁵⁶ Partial Award at [428].

²⁵⁷ AWS at para 49.

²⁵⁸ Partial Award at [593].

²⁵⁹ Hearing Transcript at p 60, lines 5–8.

candidly agreed that this was the position and that the Applicants were not challenging the Tribunal's conclusions on the other acts of oppression.²⁶⁰

225 For completeness, we would observe here that the Responsive Evidence only targeted the *motivations* behind the conversion of the DPT CLNs. Thus, to the extent that the Applicants also seek to strike out paragraphs of the Partial Award (see below at [228]) where the Tribunal found that the conversion of the DPT CLNs had been undertaken in breach of the provisions of the SHA, none of the Responsive Evidence could have possibly had *any* effect on those findings or the conclusion that in converting the DPT CLNs, the Applicants had acted in breach of the SHA. Flowing from this, even if the Applicants could successfully challenge the finding that the conversion of the DPT CLNs was an act of oppression, the Tribunal had (as summarised above at [60]) *independently* found the conversion of the DPT CLNs to be in breach of the SHA. All of this means that the Tribunal would still have been perfectly entitled to declare the issuance of the shares to the Applicants on 21 May 2021 null and void and to order the buyout pursuant to the other oppressive acts, even if the conversion was not found to be an act of oppression.

226 In response, the Applicants submit that there was nonetheless a real possibility that the *buyout order* would have been calibrated differently if the balance of equities had been different.²⁶¹ That was, in reality, the Applicants' real grievance with the Partial Award, *ie*, the terms of the buyout order. However, a calibrated adjustment to the buyout order also did not sit well with the Applicants' request in OA 10 for the Partial Award to be set aside in full –

²⁶⁰ Hearing Transcript at p 60, line 1 to p 62, line 31.

²⁶¹ Hearing Transcript at p 64, lines 18–29.

if the breach is “only in respect of an isolated or standalone issue, it may not be appropriate to set aside the entire award”: *DJP v DJO* [2025] 1 SLR 576 at [86].

227 Even in respect of their alternative request for the Partial Award to be set aside in part, our reservations regarding what the prejudice to the Applicants was and the appropriate reliefs they were seeking were only strengthened by the events which transpired at the end of the Oral Hearing – in response to our request to the Applicants’ counsel to identify which particular paragraphs or portions of the Tribunal’s decision in the Partial Award the Applicants were seeking to set aside (on the assumption that we found in their favour),²⁶² co-counsel for the Applicants, Mr Pradhan, had significant difficulties identifying for us with clarity exactly what relief the Applicants required from the court in circumstances where setting aside the Partial Award entirely was plainly a non-starter.

228 Ultimately, counsel informed us that the Applicants were seeking to have the following paragraphs “set aside” or struck out from the Partial Award: paragraphs 396–399, 420–432, 463(a)(iv), 466(d)(iii), 476(f), 482–513, 518, 522, 523(b), 558, 560–566, 582, 583(c), 585–587, 592(a)(iv), 593(a)(v), 595 and 598(d)(ii), (f) and (g).²⁶³

229 Needless to say, we do not think that this was a reasonable position to take. The Applicants’ request could only be interpreted as (a) a request to *vary* the Partial Award (a power the court does not have: *CAJ (HC)* at [244]); (b) a request to reverse the findings in the Partial Award that the conversion of the DPT CLNs was illegitimate and in breach of the SHA – which in effect was a

²⁶² Hearing Transcript at p 180, lines 15–23.

²⁶³ Hearing Transcript at pp 180–191.

disguised challenge against the merits of the case; or (c) a request *in substance* to set aside the Partial Award in its entirety, which would not be appropriate for the reasons we have given above. We note further that no request for remission has been made in this case: Art 34(4) of the Model Law. At the close of the Oral Hearing, it remained lost on us what relief, if any, would be appropriate for the Applicants even in the event that they had satisfied us that there was a due process failure connected to the making of the Partial Award.

Conclusion

230 For all the foregoing reasons, we dismiss OA 10 in its entirety.

231 We will hear the parties separately on costs.

S Mohan
Judge of the High Court

Roger Giles
International Judge

Anselmo Reyes
International Judge

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