

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

[2024] SGHC 244

Originating Application No 346 of 2024

Between

Vietnam Oil and Gas Group

... Applicant

And

Joint Stock Company (Power
Machines – ZTL, LMZ,
Electrosila Energomachexport)

... Respondent

Originating Application No 141 of 2024 (Summons No 988 of 2024)

Between

Joint Stock Company (Power
Machines – ZTL, LMZ,
Electrosila Energomachexport)

... Applicant

And

Vietnam Oil and Gas Group

... Respondent

GROUND OF DECISION

[Arbitration — Award — Recourse against award — Remission]
[Arbitration — Award — Recourse against award — Setting aside]
[Arbitration — Enforcement — Foreign award]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	2
THE ARBITRATION.....	5
THE PARTIES' CASES IN THE ARBITRATION.....	6
THE ARBITRATOR'S FINDINGS.....	8
PVN'S APPLICATIONS IN SUM 988 AND OA 346.....	10
THE TRIBUNAL'S FINDING IN PARA 548 OF THE FINAL AWARD	11
THE TRIBUNAL'S AWARD UNDER CL 19.6(A) OF THE CONDITIONS	17
CONCLUSION.....	20

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Vietnam Oil and Gas Group
v
Joint Stock Company (Power Machines – ZTL, LMZ,
Electrosila Energomachexport) and another matter

[2024] SGHC 244

General Division of the High Court — Originating Application No 346 of 2024, Originating Application No 141 of 2024 (Summons No 988 of 2024)
Chua Lee Ming J
19, 23 and 31 July 2024

24 September 2024

Chua Lee Ming J:

Introduction

1 Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) (“PM”) and Vietnam Oil and Gas Group (“PVN”) were the claimant and first respondent respectively in an arbitration conducted under the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016) (the “Arbitration”). As the parties have been referred to as “PM” and “PVN” in the Arbitration and the documents, for consistency, I shall use the same abbreviations in these grounds of decision.

2 A final award was issued in the Arbitration largely in favour of PM (the “Final Award”). In HC/OA 141/2024 (“OA 141”), PM obtained leave to enforce the Final Award pursuant to s 19 of the International Arbitration Act 1994 (2020

Rev Ed) (the “IAA”). In HC/SUM 988/2024 (“SUM 988”), PVN applied to set aside the order granting leave to enforce the Final Award.

3 In HC/OA 346/2024 (“OA 346”), PVN applied to set aside two findings in the Final Award, one on liability and the other on damages.

4 On 19 July 2024, I heard SUM 988 and OA 346 together as the issues were similar. PVN challenged the two findings in the Final Award on the grounds breach of the rules of natural justice and excess of jurisdiction. On 23 July 2024, I gave my decision. I rejected PVN’s application with respect to the finding on damages. I found that there was a breach of the rules of natural justice with respect to the finding on liability but declined to set aside the finding. Instead, I remitted the matter to the Tribunal and stayed the enforcement of the Final Award in the meantime.

5 On 14 August 2024, PVN filed CA/CA 48/2024 appealing against my decision to remit the finding on liability to the Tribunal. PVN did not appeal against my decision refusing to set aside the Tribunal’s finding on damages.

6 On 19 August 2024, PM filed CA/CA 49/2024 appealing against the whole of my decision on the finding on liability.

7 No application has been made for any restrictions on the reporting of these proceedings.

Facts

8 PVN was the owner of a thermal power plant project located in Vietnam (the “Project”). PM was the leading member of the consortium that undertook

the construction of the power plant (the “Consortium”). PVN and the Consortium entered into a contract relating to the Project (the “EPC Contract”);¹ the EPC Contract comprised multiple contractual documents, including Conditions of Contract (the “Conditions”).² Clause 1.4 of the Conditions provided that the EPC Contract was governed by the law of the Socialist Republic of Vietnam.³

9 Clause 20.3 of the Conditions contained an arbitration agreement to refer disputes arising out of or in connection with the EPC Contract to arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force.⁴

10 The Project commenced sometime in January 2015. PM (as it was contractually entitled to do) subcontracted part of its scope of works to various subcontractors.

11 On 26 January 2018, the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) placed PM on the United States Sanctions list (the “US Sanctions”). Consequently, all US persons were prohibited from engaging in transactions involving PM.

12 The US Sanctions resulted in many of PM’s subcontractors suspending their obligations under the subcontracts. On 5 February 2018, PM gave notice

¹ Agreed Bundle of Cause Papers (“AB”), at pp 1314–1727.

² AB 1330–1440.

³ AB 1344.

⁴ AB 1439.

to PVN that the US Sanctions amounted to a *force majeure* event pursuant to cl 19.2 of the Conditions.

13 In the meantime, PM had submitted applications for payment pursuant to cl 14.5 of the Conditions, and certain amounts were due and outstanding (the “Outstanding Payment Applications”).

14 On 28 November 2018, PM gave PVN notice of its intention to terminate the EPC Contract on the ground of *force majeure*. Clause 19.6 of the Conditions gave PM the right to terminate the EPC Contract if the execution of substantially all the works in progress was prevented for 84 days by reason of *force majeure*.⁵

15 On 10 January 2019, PM reiterated its demand for payment of the amounts due under the Outstanding Payment Applications by 16 January 2019, failing which it would terminate the EPC Contract for non-payment pursuant to cl 16.2(b) of the Conditions. Clause 16.2(b) of the Conditions gave PM the right to terminate the EPC Contract if it did not receive payment of amounts due under the EPC Contract within 150 days after the expiry of the time provided in the EPC Contract for payment.⁶

16 On 28 January 2019, PM issued a notice of termination of the EPC Contract pursuant to cl 19.6 of the Conditions on the ground that the US Sanctions constituted a *force majeure* event (the “First Notice of Termination”).⁷ The First Notice of Termination stated that the EPC Contract was to terminate on 18 February 2019.

⁵ AB 1436–1437.

⁶ AB 1424–1425.

⁷ AB 4560–4562.

17 On 8 February 2019, PM issued a second notice of termination of the EPC Contract pursuant to cl 16.2 of the Conditions on the ground that PVN had defaulted in making payments (the “Second Notice of Termination”).⁸ The Second Notice of Termination stated that the EPC Contract was to terminate on 22 February 2019.

The Arbitration

18 On 23 August 2019, PM issued a Notice of Arbitration.⁹ On 16 September 2019, PVN filed its Response to the Notice of Arbitration.¹⁰

19 The arbitral tribunal (the “Tribunal”) comprised two Co-Arbitrators – Mr Ilya Nikiforov (who was nominated by PM) and Mr David Bateson (who was nominated by PVN) – and the Presiding Arbitrator, Professor Douglas Jones AO, (who was appointed by the Registrar of the Court of Arbitration of the SIAC).

20 The following pleadings were filed in the Arbitration:

(a) On 26 July 2021, PM filed its Statement of Claim,¹¹ and PVN filed its Statement of Counterclaim.¹²

⁸ AB 4563–4566.

⁹ AB 1971–1993.

¹⁰ AB 1995–2017.

¹¹ AB 2019–2216.

¹² AB 2218–2339.

(b) On 22 July 2022, PVN filed its Statement of Defence,¹³ and PM filed its Statement of Defence to PVN’s Counterclaim.¹⁴

(c) On 21 November 2022, PM filed its Statement of Reply to PVN’s Statement of Defence.¹⁵

(d) On 22 November 2022, PVN filed its Statement of Reply to PM’s Statement of Defence to Counterclaim.¹⁶

The parties’ cases in the Arbitration

21 PM’s case in the Arbitration, in so far as it was relevant for the purposes of these proceedings, was as follows:

(a) The US Sanctions constituted a *force majeure* event as defined in cl 19.1 of the Conditions and the EPC Contract was deemed to have terminated pursuant to cl 19.6 of the Conditions by reason of *force majeure* on 18 February 2019.¹⁷

(b) In the alternative, the EPC Contract was deemed to have been terminated by reason of non-payment pursuant to cl 16.2 of the Conditions on 22 February 2019.¹⁸

¹³ AB 2341–2470.

¹⁴ AB 2471–2644.

¹⁵ AB 2646–2716.

¹⁶ AB 2718–2834.

¹⁷ PM’s Statement of Claim in the Arbitration (“SOC”), at paras 186–187 (AB 2128).

¹⁸ SOC, at paras 207–208 (AB 2133–2134).

(c) PM was entitled to a declaration that the EPC Contract had been validly terminated by reason of *force majeure* under cl 19.6 of the Conditions or by reason of non-payment of invoices under cl 16.2(b) of the Conditions.¹⁹

(d) PM was entitled to payment of certain sums, including:²⁰

- (i) sums under or quantified at cl 19.6 of the Conditions, and
- (ii) the sum of USD 110,566,830.53 being the amount due under the Outstanding Payment Applications under cl 14.5 of the Conditions.

22 PVN’s case, in so far as it was relevant for the purposes of these proceedings, was as follows:

(a) The First Notice of Termination was a wrongful termination of the EPC Contract because the US Sanctions did not amount to a *force majeure* event under the EPC Contract.²¹

(b) The Second Notice of Termination was not a valid termination notice since PM had previously (and wrongfully) repudiated the EPC Contract by the First Notice of Termination and abandoned the works.²²

¹⁹ SOC, at paras 362(a) and (c) (AB 2214).

²⁰ SOC, at paras 363(a) and (c) (AB 2214).

²¹ PVN’s Statement of Defence in the Arbitration (“PVN’s Defence”), at para 178 (AB 2405).

²² PVN’s Defence, at para 195(i) (AB 2408).

- (c) In any event, the outstanding amount due to PM should be USD 91,890,047.34 instead of USD 110,566,830.53 as claimed by PM.²³

The Arbitrator's findings

23 The relevant findings by the Tribunal were as follows:

- (a) PM could not rely on *force majeure* to exercise the right of termination under cl 19.6 of the Conditions.²⁴ PM's purported termination of the EPC Contract by way of the First Notice of Termination was ineffective.²⁵
- (b) As a matter of Vietnamese law, a notice of termination issued without basis was sufficient, without more, to terminate the contract, whereupon the parties were released from their obligations under the contract.²⁶
- (c) The effective date of termination was the date regulated by the notice of termination, and not the date of the notice of termination itself.²⁷
- (d) The effective date of termination under the First Notice of Termination was 18 February 2019 (see [16] above). Therefore, at the

²³ PVN's Defence, at para 305 (AB 2431–2433).

²⁴ Final Award, at para 521 (AB 1839).

²⁵ Final Award, at para 525 (AB 1840).

²⁶ Final Award, at para 543 (AB 1844).

²⁷ Final Award, at para 545 (AB 1844).

time when the Second Notice of Termination was issued on 8 February 2019, the EPC Contract “was, in any event, still effective”.²⁸

(e) “[A] valid Second Notice of Termination issued while the contract remains on foot overrides and supersedes the ineffective First Notice of Termination. By issuing a Second Notice of Termination prior to the First Notice taking effect, [PM] must be taken to have intended the Second Notice to replace or, at the very least, supplement the First Notice.”²⁹

(f) Although the Vietnamese law experts did not specifically deal with the scenario involving an unlawful first notice of termination and a lawful second notice of termination, the Tribunal was satisfied to proceed on this basis.³⁰

(g) PM validly terminated the EPC Contract (pursuant to cl 16.2 of the Conditions) on 22 February 2019 by way of the Second Notice of Termination.³¹

(h) PM was entitled to payments upon termination pursuant to cl 16.4 of the Conditions, including the following:

²⁸ Final Award, at para 547 (AB 1844–1845). Paragraph 547 states the date of the Second Notice of Termination as 8 February 2021; this is an error as the correct date is 8 February 2019 (see AB 4563–4566).

²⁹ Final Award, at para 548 (AB 1845).

³⁰ Final Award, at para 549 (AB 1845).

³¹ Final Award, at para 576 (AB 1857).

(i) USD 307,755,346.38 under cl 19.6(a) of the Conditions,³² and

(ii) USD 110,566,715.54 being the amount due under the Outstanding Payment Applications.³³

PVN’s applications in SUM 988 and OA 346

24 As stated above, in OA 141, PM obtained leave to enforce the Final Award. In SUM 988, PVN applied to set aside the order granting leave to enforce the Final Award.

25 In HC/OA 346/2024 (“OA 346”), PVN applied to set aside:

(a) the Tribunal’s finding in para 548 of the Final Award and such other parts of the Final Award consequent to or otherwise arising from para 548 (including paras 549 to 956), and

(b) alternatively, the Tribunal’s findings in paras 580 to 680 of the Final Award and consequently paras 952 to 956 of the Final Award.

26 Paragraph 548 of the Final Award³⁴ concerned the Tribunal’s findings that the Second Notice of Termination superseded the ineffective First Notice of Termination and PM must be taken to have intended the Second Notice to replay or supplement the First Notice (see [23(e)] above).

³² Final Award, at paras 646 and 669 (AB 1876 and 1881). The reference to USD 307,755,346.40 in para 646 of the Final Award is an error (see paras 647 and 669 of the Final Award) (AB 1876 and 1881).

³³ Final Award, para 680 (AB 1883).

³⁴ AB 1845.

27 Paragraphs 580 to 680 of the Final Award³⁵ concerned findings by the Tribunal on PM’s claims for payment under cll 19.6(a), (c) and (e), and the Outstanding Payment Applications. In fact, the Tribunal had rejected PM’s claim under cl 19.6(c).³⁶ At a case conference on 9 July 2024, PVN clarified that it was seeking to set aside only the Tribunal’s award of USD 307,755,346.38 under cl 19.6(a) of the Conditions (see [23(h)(i)] above).

28 PVN’s grounds for its application in SUM 988 were the same as its grounds under OA 346.

The Tribunal’s finding in para 548 of the Final Award

29 PVN challenged the Tribunal’s finding in para 548 of the Final Award and such other parts of the Final Award consequent to or otherwise arising from para 548 (including paras 549 to 956).

30 Paragraphs 548–549 of the Final Award state as follows:³⁷

548. In the Tribunal’s opinion, a valid Second Notice of Termination issued while the contract remains on foot overrides and supersedes the ineffective First Notice of Termination. By issuing a Second Notice of Termination prior to the First Notice taking effect, [PM] must be taken to have intended the Second Notice to replace or, at the very least, supplement the First Notice. To hold otherwise would lead to the absurd conclusion that a party seeking to terminate a contract only has ‘one shot’ to do so, and cannot afterwards, even while the contract remains effective, do anything to withdraw or amend its attempt.

549. For completeness, the Tribunal notes that the Vietnamese law experts did not specifically deal with the

³⁵ AB 1858–1883.

³⁶ Final Award, at para 662 (AB 1879).

³⁷ AB 1845.

present scenario involving an unlawful first notice of termination and a lawful second notice of termination (albeit, in any event, the Tribunal is satisfied to proceed on the basis of the above).

31 Paragraphs 550–579 of the Final Award dealt with the question of whether the Second Notice of Termination was effective to bring the EPC Contract to an end, in light of the Tribunal’s finding in para 548 of the Final Award. The Tribunal concluded that PM validly terminated the EPC Contract on 22 February 2019 by way of the Second Notice of Termination.³⁸

32 Paragraphs 580 to 956 of the Final Award dealt with PM’s entitlement to payments upon termination pursuant to cl 16.4 of the Conditions, PVN’s counterclaims, interest, costs and currency of payments under the Final Award, and set out the net awards and the dispositive orders.

33 PVN submitted that by proceeding on the basis of its findings in para 548 of the Final Award, the Tribunal breached s 24(b) of the IAA and Arts 34(2)(a)(ii) and (iii) of the UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”).

34 Under s 24(b) of the IAA, PVN had to show that the Tribunal breached the rules of natural justice and that its rights have been prejudiced by the breach. The twin pillars of natural justice are (a) the rule against bias (*ie*, the tribunal must be disinterested and unbiased), and (b) the fair hearing rule (*ie*, parties must be given adequate notice and opportunity to be heard): *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [43].

³⁸ Final Award, at para 576 (AB 1857).

35 A breach of the fair hearing rule can arise from the chain of reasoning that the tribunal adopts in its award; to comply with the fair hearing rule, the chain of reasoning must be (a) one which the parties had reasonable notice that the tribunal could adopt, and (b) one which has a sufficient nexus to the parties' arguments: *BZW another v BZV* [2022] 1 SLR 1080 at [60(b)].

36 Under Art 34(2)(a)(ii) of the Model Law, PVN had to show that it was unable to present its case in the Arbitration. Under Art 34(2)(a)(iii) of the Model Law, PVN had to show that the Tribunal's findings in para 548 of the Final Award dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contained decisions on matters beyond the scope of the submission to arbitration.

37 The First Notice of Termination was given on 28 January 2019 and stated that the EPC Contract was to terminate on 18 February 2019. The Second Notice of Termination was given on 8 February 2019 and stated that the EPC Contract was to terminate on 22 February 2019.

38 PM's case in the Arbitration was that the Second Notice of Termination was effective because it was given on 8 February 2019 when the EPC Contract was still effective.³⁹

39 On the other hand, PVN's case was that the Second Notice of Termination was invalid because the effective date of termination under the Second Notice of Termination was 22 February 2019, but the EPC Contract had already terminated on 18 February 2019 as a result of the First Notice of

³⁹ PM's Reply to PVN's Defence, at paras 187–188 (AB 2689); PM's Defence to PVN's Counterclaim, at para 476 (AB 2587).

Termination. It will be recalled that the Tribunal found that as a matter of Vietnamese law, a notice of termination issued without basis was sufficient, without more, to terminate the contract (see [23(b)] above). Thus, even though the Tribunal found that the basis for the First Notice of Termination (*ie, force majeure*) was not made out, the First Notice of Termination nevertheless was sufficient to terminate the EPC Contract. PVN argued that there was no EPC Contract in existence that could be terminated under the Second Notice of Termination on 22 February 2019.

40 It can be seen that the difference between PM’s and PVN’s cases was that PM’s case (that the Second Notice of Termination was effective) relied on the date that the Second Notice of Termination was *given*, whereas PVN’s case (that the Second Notice of Termination was invalid) relied on the *effective termination date* under the Second Notice of Termination.

41 The Tribunal had found that the effective date of termination was the date regulated by the notice of termination, and not the date of the notice of termination itself (see [23(c)] above). PVN’s case was consistent with this finding.

42 The Tribunal answered PVN’s case by finding (in para 548 of the Final Award) that PM must be taken to have intended the Second Notice of Termination to replace or, at the very least, supplement the First Notice of Termination. In other words, the First Notice of Termination did not have the effect of terminating the EPC Contract.

43 I agreed with PVN that the Tribunal’s chain of reasoning in para 548 of the Final Award had departed from, and had no nexus to, both PM’s and PVN’s

cases. PM pointed out that its pleadings had repeated its Vietnamese law expert's observation that in cases where two termination notices were filed consecutively, it was necessary to examine whether the subsequent notice amended or withdrew the previous notice. However, the fact remained that PM did not make it a part of its case that the Second Notice of Termination amended or withdrew the First Notice of Termination. In fact, PM's pleaded case was that it could *not* be inferred that the Second Notice of Termination was intended to withdraw the First Notice of Termination. PM's case relied only on the fact that the Second Notice of Termination was submitted before 18 February 2019, *ie*, when the EPC Contract was still effective. PVN could not have known or expected that the Tribunal would proceed on the basis of its reasoning set out in para 548 of the Final Award.

44 Whilst it was open to the Tribunal to depart from both PM's and PVN's cases, the Tribunal had to give the parties the opportunity to be heard on the approach that it was considering. The Tribunal did not do so and thus breached s 24(b) IAA and Art 34(2)(a)(ii) of the Model Law. As the Tribunal had departed from the parties' cases, its finding in para 548 of the Final Award also breached Art 34(2)(a)(iii) of the Model Law.

45 PM submitted that the matter should be remitted to the Tribunal pursuant to Art 34(4) of the Model Law, which states:

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

46 I agreed with PM that this was an appropriate case for me to exercise my discretion under Art 34(4) as it would eliminate the grounds for setting aside. In addition, the Tribunal had made other findings (including PM's entitlement to payments) in respect of which there was no reason to set aside, either because they were not challenged or the challenges failed. Setting aside para 548 of the Final Award would have necessitated setting aside many of these other findings that were consequent to or otherwise arose from para 548. On balance, it made sense to remit the matter to the Tribunal.

47 PVN objected to remitting the matter to the Tribunal. PVN pointed out that para 549 of the Final Award (see [29] above) showed that the Tribunal proceeded with its approach as set out in para 548 of the Final Award despite being aware that the evidence from the Vietnamese law experts did not specifically deal with the specific scenario before it. PVN argued that that this showed that the Tribunal cannot decide the issue fairly. I disagreed with PVN. In my view, there was no reason to believe that the Tribunal would not be able to deal with the question remitted to it fairly. In para 549 of the Final Award, the Tribunal had simply acknowledged, in a frank and transparent manner, that the scenario before it had not been specifically dealt with in the evidence on Vietnamese law.

48 In the circumstances, I remitted to the Tribunal the question whether the Second Notice of Termination dated 8 February 2019 overrode, superseded, replaced or supplemented the First Notice of Termination dated 28 January 2019 (which stated that the EPC Contract was to terminate on 18 February 2019) such that the Second Notice of Termination was effective to terminate the EPC Contract on 22 February 2019 and, in the event that the Tribunal decides that the Second Notice of Termination was not effective to terminate the EPC

Contract, what other consequential changes need to be made to the Final Award.⁴⁰

49 For completeness, as stated in [33] above, PVN also submitted that the Tribunal exceeded its jurisdiction. I disagreed. The question as to whether the Second Notice of Termination was effective was well within the scope of the parties' submission to arbitration.

The Tribunal's award under cl 19.6(a) of the Conditions

50 Following its finding that PM validly terminated the EPC Contract pursuant to the Second Notice of Termination, the Tribunal awarded PM the sums of (among other sums) USD 307,755,346.38 under cl 19.6(a) of the Conditions and USD 110,566,715.54 under cl 14.5 of the Conditions (see [23(h)] above).

51 As stated in [27] above, PVN clarified that it was seeking to set aside only the Tribunal's award of USD 307,755,346.38 under cl 19.6(a) of the Conditions.

52 Before me, PVN submitted that the Tribunal's award of USD 307,755,346.38 under cl 19.6(a) of the Conditions breached s 24(b) of the IAA and Arts 34(2)(a)(ii) and (iii) of the Model Law.⁴¹

53 PVN submitted that PM's claim under cl 19.6(a) of the Conditions applied only if PM succeeded in terminating the EPC Contract on the ground of

⁴⁰ As amended after a further hearing on 31 July 2024.

⁴¹ PVN's Written Submissions, at para 89.

force majeure (ie, if the First Notice of Termination was valid) and that PM’s pleaded case in respect of the Second Notice of Termination did not include payments under cl 19.6(a) of the Conditions.⁴² PVN accused the Tribunal of unilaterally reformulating PM’s case.⁴³

54 I rejected PVN’s submission. In my view, it was wholly unmeritorious. PVN knew very well that PM’s claims based on the Second Notice of Termination included a claim for payments under cl 19.6(a).

55 First, cl 16.4 of the Conditions provided that in the case of termination under cl 16.2, PVN’s payment obligations included the obligation to pay PM in accordance with cl 19.6. As stated earlier at [17], the Second Notice of Termination was issued pursuant to cl 16.2 of the Conditions.

56 Second, in the Second Notice of Termination, PM stated that PVN was liable to comply with its obligations under Clause 16.4 of the Conditions to (among other things) “[m]ake payment to [PM] in accordance of Clause 19.6 of the [Conditions]”.⁴⁴

57 Third, in para 307 of its Statement of Claim, PM had expressly pleaded that the EPC Contract was terminated by reason of non-payment pursuant to cl 16.2(b) of the Conditions, and that it became entitled to (among other things) “Clause 19.6 Claims”.⁴⁵ It was also clear that PM’s pleaded claims for damages

⁴² PVN’s Written Submissions, at paras 93–94.

⁴³ PVN’s Written Submissions, at para 95.

⁴⁴ AB 4565.

⁴⁵ AB 2176.

were the same whether the EPC Contract was terminated under the First or the Second Notice of Termination.

58 Fourth, in its opening statement, PM said that “[a]ll of the claims are payable upon the termination of the EPC Contract”.⁴⁶ PM did not limit its claim for cl 19.6 payments to only termination under the First Notice of Termination.

59 Fifth, PM did not abandon or withdraw its claim for cl 19.6 payments in connection with its claim based on the Second Notice of Termination. On the contrary, in its post-hearing brief, PM maintained its pleaded position that its claims for damages were the same whether the EPC Contract was terminated under the First or the Second Notice of Termination.⁴⁷

60 Sixth, in its Statement of Defence, PVN pleaded that PM’s claim for payments under cl 19.6 should be dismissed because the termination of the EPC Contract was wrongful, “whether by reason of (a) Force Majeure, ... and/or (c) [PVN’s] breach of its payment obligations ...”⁴⁸

61 Seventh, in its opening statement, PVN argued that even if PM’s termination was valid, its quantum claims were unsubstantiated. PVN went on to summarise PM’s claims without limiting the claim for cl 19.6 payments to the First Notice of Termination.⁴⁹

⁴⁶ AB 3617.

⁴⁷ PM’s Post-Hearing Brief, at para 331 (AB 4485).

⁴⁸ PVN’s Defence, at para 6 (AB 2352).

⁴⁹ AB 3591.

Conclusion

62 For the reasons stated above, I found no reason to set aside the Tribunal’s award on damages. However, I ordered the setting aside proceedings in OA 346 to be suspended pursuant to Art 34(4) of the Model Law in order to give the Tribunal an opportunity to resume the Arbitration and hear the parties’ submissions before deciding on the question set out in [48] above. As the court was required under Art 34(4) to determine the period of time for the Tribunal to do this, I directed the parties to jointly consult the Tribunal to ascertain the period of time that may be needed, and to inform the court accordingly. Such further directions as may be necessary will be given thereafter.

63 I adjourned SUM 988 pending the Tribunal’s decision after hearing the parties’ submissions. I also directed PM not to take any steps to enforce the Final Award pursuant to leave granted by the court (see [24] above) in the meantime.

Chua Lee Ming
Judge of the High Court

Dr Colin Ong KC (Eldan Law LLP) (instructed), Thio Shen Yi SC
and Kevin Elbert (TSMP Law Corporation) for the applicant;
Kronenburg Edmund Jerome, Sim Wei Min Stephanie and Glenn
Ang (Braddell Brothers LLP) for the respondent.