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Avoiding arbitration missteps: Key lessons from a setting aside of an arbitration award for breach of natural justice



The Singapore Courts have a strong reputation for being pro-arbitration. This is because of the oft-repeated point that parties have "*a very limited right of recourse to the courts*" if they have agreed to arbitrate their disputes.¹ The Singapore Courts' restraint in exercising its power to set aside awards is demonstrated by the fact that approximately 20% of applications to set aside awards (over the past 20 years) have been allowed.²

However, this does not detract from the Courts' commitment to ensuring due process in arbitral proceedings. This is because a failure to do so may influence a Tribunal's ability to deliver a just outcome, which in turn justifies curial intervention.

The case of *Wan Sern Metal Industries Pte Ltd v Hua Tian Engineering Pte Ltd* [2025] SGCA 5 is one such exceptional case where the Singapore Court of Appeal accepted that a party was prejudiced because the procedural safeguard entitling it a right to be heard was breached, thus justifying a decision to set aside the arbitral award. Practical lessons regarding the importance of pleadings, list of issues, and the need to consistently review the same may be drawn from this decision given the increasing prevalence of documents-only arbitration.

Background

Parties' dispute arose out of a contract where the Appellant, Warn Sern Metal Industries, had engaged the Respondent, Hua Tian Engineering Pte Ltd, for the supply of labour for installation works in a construction project. The Appellant alleged that the Respondent's works were defective, and after issuing several notifications of defects, sought to terminate the contract altogether.

¹ *Swire Shipping Pte Ltd v Ace Exim Pte Ltd* [2024] SGHC 211

² *CAJ v CAI* [2021] SGCA 102

The Appellant then commenced SIAC proceedings (under the SIAC Rules 2016, being the rules then in force), with the Respondent raising counter-claims of its own. The arbitration was seated in Singapore, heard by a sole arbitrator and conducted on an expedited, documents-only basis.

The Respondent succeeded in the arbitral proceedings. The Appellant's claims were dismissed and the arbitrator allowed most of the Respondent's counterclaims.

The Appellant sought to set aside the award on various grounds. It was unsuccessful at first instance at the Singapore High Court. This decision arises out of its appeal against the decision before the Singapore Court of Appeal (being Singapore's highest court).

Parties' arguments

The Appellant's arguments on appeal generally mirrored those it raised before the High Court. However, during the hearing, it accepted that the only meritorious argument it could advance would relate to its challenge to the arbitrator's decision to allow the Respondent's counterclaim for both the completed and uncompleted work under the contract, even though the Respondent's *pleaded* case was only for the value of the completed work.

In that regard, the Appellant's grievance was that the Respondent had not pleaded a claim for *uncompleted* work under the contract (the "Expectation Damages Issue"). It argued that the arbitrator had therefore acted in breach of natural justice because she either (a) failed to apply her mind to its objection to the claim for the value of uncompleted works on the grounds that the issue was not within the scope of the arbitration, or (b) adopted a defective chain of reasoning by hearing the Expectation Damages Issue which had not been pleaded by the Respondent. The Appellant contended that the arbitrator exceeded the scope of submission to arbitration by deciding the issue, and/ or acted in breach of the agreed arbitral procedure when it decided an issue which was not on Parties' agreed list of issues.

In response, the Respondent contends that (a) the Appellant had reasonable notice of and had ample opportunity to respond to the Expectation Damages Issue, (b) the Appellant did not object to the introduction of the Expectation Damages Issue and had engaged with the merits of the same, and (c) the arbitrator is not strictly limited to the issues expressly raised in the list per the SIAC Rules.



Court's decision

The Court of Appeal agreed that the arbitrator had acted in breach of natural justice by breaching the fair hearing rule, and set aside the relevant portion of the arbitral award.

The Court of Appeal held that an arbitrator failed to apply her mind to the essential issues arising from Parties' arguments: namely, the Respondent's attempt to introduce the unpleaded Expectation Damages Issue. This failure to regard a party's submissions was a breach of the rules of natural justice (see *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80).

On the facts, the Court had doubts as to whether the arbitrator appreciated the fact that an unpleaded claim was raised given that:

- a. There was no mention of the Respondent's belated introduction of the Expectation Damages Issue;
- b. The arbitrator did not attempt to consider the scope of Parties' submission to arbitration (by reference to the agreed list of issues);
- c. There was no attempt by the arbitrator to clarify the scope of Parties' case or if the Respondent intended to amend its pleadings; and
- d. The arbitrator was not aware of the basis for the Respondent's claim.

This led to the arbitrator taking the view that the Appellant's case was premised solely an objection to the Respondent's entitlement to damages for uncompleted work based on its entitlement to terminate the contract. This caused the arbitrator to fail to take into consideration the Appellant's other contentions with regards to the basis upon which the Respondent is not entitled to damages for both completed and uncompleted work.

After consideration, the Court of Appeal declined to exercise its discretion to remit the Expectation Damages Issue back to the arbitrator, but instead decided to set aside that portion of the award given that these issues arose out of "*tactical choices*" made by the Respondent who should bear the consequences of the same.

Comment

This decision reiterates the importance of pleadings, and similar documents in arbitration proceedings, especially documents-only arbitration where an arbitrator does not have the benefit of oral advocacy.

It is noted that in practice, many parties do not place much importance to the drafting of notice of arbitrations, but choose to include standard form language relating to reserving rights to amend the claims/ reliefs sought therein, or to be able to include the same in the Statement of Claim.

Here, the Respondent's choice as to how it ran its case (including introducing a "*belated claim*" in an "*inappropriate manner*") contributed to the arbitrator's breach of the fair hearing rule. This case therefore serves as a good reminder to Parties that economy should not be prioritised over comprehensiveness in relation to how the nature and circumstances of their dispute, as well as the relief sought are described. This is especially so given increasing acceptance by arbitral institutions of disputes being dealt with solely on a

documents-only basis (see for example, Article 15(b) of the LMAA Terms 2021, Rule 13 of Schedule 2 of the SIAC Rules 2025).

Further, it is also good practice for Parties to, at the appropriate stages of the arbitration, review its pleadings to ensure that it remains relevant, or to take the necessary steps to amend the same to reflect the issues in dispute that remain or has arisen.

Separately, it is also good practice for Parties to consider and list out issues for the arbitrator's determination prior to the hearing, so as to direct the arbitrator's mind to the various issues in dispute, and more importantly, make clear what are the issues that have been submitted for determination. In this regard, we flag that the SIAC Rules have (in its latest 2025 iteration) included in Rule 34.1 a new procedural step requiring Parties to identify issues to be determined and for it to be recorded in a procedural order. This new procedural step mirrors to an extent the terms of reference required in ICC arbitrations, and the ICC model terms of reference remain a good benchmark as to how such lists of issues should be prepared. However, unlike ICC administered arbitrations, the SIAC affords more flexibility as Rule 34.1 contemplates having a continuously updated list of issues to take into account issues that inadvertently raises in the course of litigation. Parties should adopt such good practices regardless of the institution involved and/ or if the arbitration was conducted on an ad-hoc basis.

Get in touch



Justin Gan

Partner

T: +65 6622 9640

E: justin.gan@shlegal.com



John Zadkovich

Partner

T: +65 6622 6239

E: john.zadkovich@shlegal.com



Daryll Ng

Partner at Virtus Law

T: +65 6835 8656

E: daryll.ng@shlegalworld.com



Aloysius Liu

Associate

T: +65 6622 9560

E: aloyusliu@shlegal.com

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