

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

[2026] SGHC 163

Originating Application No 164 of 2026

Between

Bangladesh Rural
Electrification Board

... Claimant

And

KSE Electricals Pte Ltd (India)

... Defendant

JUDGMENT

[Arbitration — Award — Recourse against award — Setting aside — Arbitral procedure not in accordance with parties' agreement]

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

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Bangladesh Rural Electrification Board

v

KSE Electricals Pte Ltd (India)

[2026] SGHC 163

General Division of the High Court — Originating Application No 164 of 2026

Kristy Tan J

22 July 2026

5 August 2026

Judgment reserved.

Kristy Tan J:

Introduction

1 HC/OA 164/2026 (“OA 164”) is an application by Bangladesh Rural Electrification Board (“BREB”) to set aside parts of the Consolidated Final Award dated 7 November 2025 (“Award”) made by the arbitral tribunal (“Tribunal”) in an *ad hoc* consolidated arbitration of “Matter No 1” and “Matter No 2” (“Arbitration”) between BREB and KSE Electricals Pte Ltd (India) (“KSE”). OA 164 concerns only Matter No 1, in which BREB was the claimant and KSE the respondent. All references henceforth to the Arbitration and Award are as they relate to Matter No 1.

2 BREB premised its setting aside application on three main grounds:

(a) Pursuant to s 24(b) of the International Arbitration Act 1994 (2020 Rev Ed) and/or Art 34(2)(a)(ii) of the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”), there was a breach of natural justice in that the Tribunal failed to apply its mind to the essential issues arising from BREB’s arguments in deciding:

- (i) the Defective Goods Claim (defined at [12] below) (“Ground 1”); and
- (ii) the Wilful Misconduct Claim (defined at [13] below) (“Ground 2”).

(b) Pursuant to Art 34(2)(a)(iv) of the Model Law, there was a breach of agreed arbitral procedure in respect of the Further Joint Testing (defined at [16] below) (“Ground 3”).

3 Having considered the parties’ evidence and submissions, I dismiss OA 164 for the reasons that follow.

Facts

The parties

4 BREB is a corporation established, owned and operated by the Government of Bangladesh.¹

¹ Letter from WongPartnership LLP (“WongP”) to the court dated 29 June 2026 enclosing “List of Issues, Common Ground and Time Bank”: Table on “Common Ground between the Parties” – “Key facts that are not in dispute” (“Agreed Facts”) at s/n 1.

5 KSE is an entity incorporated in India and in the business of electrical distribution line accessories.²

The relevant contracts

6 At various times in 2017 and 2018, BREB and KSE entered into six contracts. Four contracts (“Contracts A to D”) were for KSE to supply conductor accessories and guy accessories to BREB. The remaining two contracts were for KSE to supply steel cross arms to BREB.³

7 Each contract comprised, *inter alia*, the General Conditions of Contract (“GCC”), Special Conditions of Contract (“SCC”) and Schedule of Supply (“SS”).⁴ The material provisions in the GCC, SCC and SS were the same across the contracts.⁵ The governing law of the contracts was Bangladeshi law.⁶

8 The GCC provided, *inter alia*:⁷

13. Supplier’s Responsibilities	13.1 The Supplier [<i>ie</i> , KSE] shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
...	
26. Inspections and Tests	26.1 The Supplier shall at its own expense and at no cost to the Purchaser [<i>ie</i> , BREB]

² Agreed Facts at s/n 2.

³ Agreed Facts at s/n 3; Affidavit of Md Arshad Hossain dated 6 February 2026 filed on behalf of the claimant in HC/OA 164/2026 (“OA 164”) (“MAH”) at para 13.

⁴ Agreed Facts at s/n 6.

⁵ Letter from WongP to the court dated 8 July 2026 at paras 4–11; Letter from PDLegal LLC to the court dated 13 July 2026 at para 3.

⁶ See, *eg*, MAH at p 3335.

⁷ See, *eg*, MAH at pp 3328 and 3330–3332.

carry out all such tests and/or inspections of the Goods and Related Services as are specified in Sections 6 (Schedule of Supply).

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC Subclause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

...

26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-clause 26.4.

...

...

28. Warranty

...

28.2 ... the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

...

...

30. Limitation of Liability

30.1 Except in cases of gross negligence or willful [*sic*] misconduct,

(a) neither party shall be liable to the other party for any indirect or consequential loss or damage...

...

9 The SCC provided, *inter alia*:⁸

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

...

GCC 26.2 (Inspections and Tests)	Inspections and Testing of the materials to be supplied shall be carried out in accordance with Sub-clause 6.1 & 6.2 (Pre-Shipment/Pre-Delivery Inspection /post landing Inspection/Delivery Inspection) specified in Section 6 [ie, the Schedule of Supply]
-------------------------------------	--

10 The SS provided, *inter alia*:⁹

6. Inspection/Tests:

Inspection and tests shall be:

Goods: [descriptions cover the guy accessories supplied under the relevant contracts]

Type of test, Time or milestone, Place & Procedure: as per specification and as follows:

- | | |
|--|---|
| 6.1 Pre-shipment/Pre-delivery Inspection | (a) PSI Conducted by: Pre-shipment Inspection will be carried out by the purchaser's nominated Inspection Team of 3 members and/or purchaser's appointed PSI agent. |
| | (b) Time and Place of Inspection: At least three weeks before the shipment of goods. Tests will be conducted in |

⁸ See, *eg*, MAH at pp 3335 and 3339.

⁹ See, *eg*, MAH at pp 3318–3319.

presence of the Purchaser's nominated inspection team/agent at the manufacturer's laboratory or any other recognized facility as accepted by the Purchaser.

...

- (f) Shipment Clearance: Purchaser will issue a shipment clearance to the supplier upon receipt of satisfactory PSI report within one week from the date of inspection. The supplier will not ship the materials before obtaining shipment clearance from the BREB.

6.2 Post Landing/
Delivery
Inspection

- (a) The supplier shall inform the Purchaser immediately after arrival of the goods at Final destination. An inspection team nominated by the Purchaser shall perform the post landing inspection in presence of Supplier's representative (if they desire so).
- (b) The Inspection Team will visually inspect the physical conditions (identification mark, manufacturer's symbol and year, dimension, pin-hole gauge, damage, deformity, finishing, etc.), quantity and packaging of the goods delivered. ...

[emphasis in original omitted]

The Arbitration proceedings

11 BREB commenced the Arbitration against KSE on 21 April 2021.¹⁰

12 One of the claims advanced by BREB in its Statement of Claim filed on 28 February 2022 ("SOC") was that KSE had breached Contracts A to D by supplying guy accessories the zinc coating of which did not comply with

¹⁰ MAH at p 1872: Notice of Arbitration dated 21 April 2021.

contractual specifications (“Defective Goods Claim”).¹¹ The technical evidence adduced by BREB in support of the Defective Goods Claim comprised (a) four post-landing inspection (“PLI”) test reports (one in respect of each of the four contracts) issued by BREB in 2020 and (b) a test report from the Bangladesh University of Engineering and Technology (“BUET”) procured by BREB in 2020, all of which apparently showed that the zinc coating of the tested material had a mass below that stipulated in the contractual specifications.¹² BREB contended that it was entitled to reject the allegedly non-compliant goods and impose a 10% penalty on the value of the rejected goods.¹³

13 The SOC contained no mention of “wilful misconduct” on KSE’s part. BREB first mentioned “wilful misconduct” in its written Opening Statement filed on 19 December 2022, alleging that “BREB could not complete [its] project properly for wilful misconduct of KSE, (i.e. for not supplying the goods in time and/or supplying faulty goods which is not consistent with the contract document) [*sic*]”¹⁴ (“Wilful Misconduct Claim”).

14 The evidentiary hearing in the Arbitration took place from 19 to 23 December 2022.¹⁵

¹¹ MAH at para 22; MAH at p 1883: Statement of Claim filed on 28 February 2022 (“SOC”) at para 6.

¹² Award at [139.3]; MAH at para 22; MAH at pp 1883–1884 and 1889–1890: SOC at paras 6 and 12.

¹³ MAH at para 33(b).

¹⁴ MAH at p 4393: BREB’s Opening Statement filed on 19 December 2022 (“BREB’s Opening Statement”) at para XXI.

¹⁵ MAH at p 367.

15 At the hearing on 23 December 2022, the Tribunal expressed concerns that the evidence of the zinc coating tests before the Tribunal was not satisfactory given sampling uncertainties:¹⁶

PRESIDING ARBITRATOR: ... I mean, the current state of the evidence on the testing does not seem to be completely satisfactory, because issues had been raised on the methodology of sampling.

[BREB'S ARBITRATION COUNSEL]: Yes, sir. Right.

PRESIDING ARBITRATOR: We, certainly, you know, I think there is quite a fair amount of uncertainty as to how the sampling was carried out: who carried out the sampling, how many samples were carried out, from which part of which consignment, from which warehouse and when. So, because of that, I think the suggestion has been made that proper sampling be carried out now, because, as we understand it, it's not too late; there are intact boxes, right?

[BREB'S ARBITRATION COUNSEL]: Yes, sir.

PRESIDING ARBITRATOR: Right, and [the co-arbitrator] has just reminded me to say that, you know, this is at the heart of the dispute. The heart of the dispute is, is there non-compliance with the specifications, and to what extent, the entire consignment which has been rejected, parts of the consignment; right? And so, do we take it that you have -- you see, would it be your case that such an inspection and testing now, proper sampling and testing now would be helpful? ... Because, you see, if both [parties] come and tell us neither of you are interested in doing these tests, you want us to decide on the evidence before us, you want to play Russian roulette, fine.

16 The parties subsequently expressed that they were agreeable to the conduct of a further and joint inspection and testing on the guy accessories

¹⁶ Claimant's Written Submissions in OA 164 dated 15 July 2026 ("CWS") at para 52; MAH at pp 1191–1192; Transcript of the Arbitration hearing on 23 December 2022 at pp 75:7–76:13.

(“Further Joint Testing”).¹⁷ This led to the Tribunal issuing a Procedural Order dated 23 December 2022 (“23 Dec 2022 PO”) with directions that, *inter alia*:¹⁸

- (a) Each party was to propose to the Tribunal by 30 December 2022 three institutions for collecting samples and conducting zinc coating tests on the samples.
- (b) After considering the proposals, the Tribunal would appoint an institution (“Institution”) to collect the samples and transmit a test report to the Tribunal and parties.
- (c) Inspections were to be made at BREB’s warehouses and at customs and/or the port warehouse if allowed, with the parties to seek the Tribunal’s further instructions if they faced hurdles.
- (d) The first round written closing submissions (“First Round CS”) were due “subject to receiving the test result from the Institution, within [three] weeks from receiving such Test Report”.
- (e) The written replies to the First Round CS (“First Round RS”) were due within two weeks of the latter.
- (f) The hearing for oral closing submissions (“Oral Hearing”) was to take place from 22 to 24 March 2023 “subject to fulfillment [*sic*] of the earlier stages of the hearings”.
- (g) The date for the final written closing submissions would be determined later.

¹⁷ MAH at p 1208; Transcript of the Arbitration hearing on 23 December 2022 at p 92:11–12.

¹⁸ MAH at pp 376–379; Award at [48.1.2]–[48.1.4] and [48.3.2].

17 The Tribunal also directed in the 23 Dec 2022 PO that the parties were to submit their respective lists of issues (in the absence of an agreed list) by 6 January 2023.¹⁹ BREB submitted its proposed list of issues on 5 January 2023 (“BREB’s Proposed LOI”)²⁰ and KSE submitted its proposed list of issues on 6 January 2023.²¹

18 On 28 February 2023, the Tribunal issued another Procedural Order (“28 Feb 2023 PO”) directing the parties to appoint Bureau Veritas (Bangladesh) Pvt Limited (“BV”) to draw samples from the items at BREB’s warehouses and send them for zinc coating tests at specified laboratories.²²

19 On 14 March 2023, the Tribunal issued Further Directions on the 28 Feb 2023 PO (“14 Mar 2023 Further Directions”) clarifying that the samples were to be drawn by 7 April 2023 and that the test reports from the laboratories were to be obtained by 28 April 2023.²³

20 On 10 April 2023, the Tribunal noted that the parties appeared to be making slow progress in obtaining the Further Joint Testing report and that the Tribunal was not inclined to postpone the Oral Hearing which had already been (re-)fixed for 15 to 17 May 2023.²⁴ The Tribunal thus made the following orders

¹⁹ MAH at p 378; Award at [48.3.1].

²⁰ Award at [70] and Annex A.

²¹ Award at [70] and Annex B.

²² MAH at pp 383–387.

²³ MAH at pp 389–390.

²⁴ MAH at pp 392–393; Correspondence from the Tribunal to the parties at paras 2, 4 and 6; Award at [49.3.1] and [49.3.3].

which superseded those parts of the 23 Dec 2022 PO at [16(d)]–[16(f)] above (“10 Apr 2023 PO”):²⁵

- (a) The First Round CS were to be served by 21 April 2023, “irrespective of whether the Test Report ha[d] been issued by then”.
- (b) The First Round RS were to be served by 5 May 2023.
- (c) The Tribunal would provide further directions “should the parties wish to supplement their closing submissions ... upon receipt of the Test Report”.
- (d) The Oral Hearing on 15 to 17 May 2023 would proceed as planned.

21 On 19 April 2023, BREB filed its First Round CS.²⁶

22 On 24 April 2023, KSE filed its First Round CS.²⁷

23 On 29 April 2023, BREB filed an application, purportedly under Art 32 of the UNCITRAL Arbitration Rules applicable to the Arbitration (“Art 32 Application”).²⁸ In its Art 32 Application, BREB (a) alleged that KSE had refused or was unwilling to participate in the Further Joint Testing; (b) argued that this “casts a reasonable aspersion that the disputed goods were in fact fails to meet the minimum standard criteria [*sic*], as set out under the terms of the

²⁵ MAH at pp 392–393; Correspondence from the Tribunal to the parties at paras 4–6; Award at [49.4].

²⁶ Award at [52].

²⁷ Award at [53].

²⁸ Award at [55]; MAH at pp 6043–6050.

Contract”; and (c) prayed for the Tribunal to declare that the PLI tests and BUET test hitherto conducted (see [12] above) were “done in a proper manner” and “hence the disputed goods ... ought to be rejected”.²⁹ BREB did not at any time ask for its Art 32 Application to be decided before the Tribunal’s substantive determination of the Arbitration.³⁰

24 On 8 May 2023, the parties filed their respective First Round RS.³¹

25 On 13 May 2023, KSE filed an affidavit in response to BREB’s Art 32 Application.³² KSE denied BREB’s allegations; countered that it was BREB that had delayed and frustrated the conduct of the Further Joint Testing; argued that the application was misconceived and should be rejected; and submitted that the Tribunal should “proceed with the matters independently without the inspection of the materials”.³³

26 The Oral Hearing took place from 15 to 17 May 2023. The Tribunal heard BREB’s Art 32 Application in addition to the parties’ oral closing submissions.³⁴

²⁹ MAH at pp 6047–6048; BREB’s Art 32 Application at paras 7 and 8.

³⁰ Notes of Arguments of the hearing of OA 164 on 22 July 2026 (“NE 22 July 2026”) at pp 21:15–22:2.

³¹ Award at [56] and [57].

³² Award at [59].

³³ MAH at pp 6052–6064.

³⁴ Award at [60].

27 On 19 June 2023, the Tribunal circulated its draft list of issues for the parties to provide their responses on the draft by 28 June 2023. KSE and BREB provided their responses on 27 and 28 June 2023 respectively.³⁵

28 On 8 October 2023, the Tribunal issued a final list of issues (“LOI”) which it described as “a summary of all the issues raised by the parties” (Award at [61] and [72]).³⁶

29 On 13 November 2023, BREB filed its final round of written closing submissions (“Final CS”).³⁷

30 On 12 December 2023, KSE filed its Final CS.³⁸

31 On 12 February 2024, the parties filed their respective written replies to the other party’s Final CS (“Final RS”).³⁹

32 On 4 December 2024, KSE’s Arbitration counsel sought a status update from the Tribunal.⁴⁰ On 5 December 2024, the Tribunal informed the parties’ Arbitration counsel that the Tribunal was “working on the award” and would do its utmost to “finalise the award at the soonest”.⁴¹

³⁵ Award at [71].

³⁶ Award at [61] and [72].

³⁷ Award at [61.1].

³⁸ Award at [61.2].

³⁹ Award at [62.1] and [62.2].

⁴⁰ Affidavit of Rakesh Mitra dated 24 March 2026 filed on behalf of the defendant in OA 164 (“RM”) at para 76.

⁴¹ RM at para 76 and p 150.

33 The Further Joint Testing was never completed. No Further Joint Testing report was produced to the Tribunal or at all.⁴²

The Award

34 On 7 November 2025, the Tribunal issued the Award.⁴³

35 The Tribunal dismissed the Defective Goods Claim, stating, *inter alia*, as follows (Award at [133]–[146]):

[VI.]B. Was there a breach of Contract by KSE because the materials were non-compliant and hence rejected by BREB?

133. The issue is whether KSE breached the Contract(s) by supplying non-compliant materials thereby permitting BREB to reject them.

134. According to BREB, KSE breached the Contract by delivering goods that did not comply with the contractual specifications. BREB is therefore entitled to exercise its right to reject the goods by refusing acceptance of delivery.

135. Specifically, BREB alleges that:

135.1. KSE fell short of its obligation to supply the goods free from defect under Clause 13.1 read with 28.2 of the GCC. The goods were defective because its zinc coating did not meet the contractual specifications. In this regard, zinc coating can be a subject matter of post landing inspection because the contractual documents do not preclude further tests in addition to the visual inspection.

...

136. In response, KSE argues that the claim should be dismissed.

⁴² Agreed Facts at s/ns 13–14.

⁴³ MAH at pp 74–365.

137. KSE’s first argument is that the issue of zinc coating could not have been the subject matter of a post landing inspection.

137.1 First, under Clause 26 of the GCC, the inspection and test may be conducted at the premises of the supplier or at the point of delivery or at final destination or as specified in the SCC. The SCC states that “inspection and testing of materials to be supplied shall be carried in accordance with sub-clause 6.1 and 6.2 specified in section 6 of the contract document”. Clause 6.2 states that the extent of post landing inspection conducted by “inspection team nominated by the Purchaser” is restricted to “visually inspect the physical conditions ... goods delivered”.

...

...

139. KSE’s third argument is that BREB has not established the deficiency of zinc coating for Contracts A, B, C, and/or D because the contractual requirements for inspection were not adhered to for the following reasons.

...

139.3. Third, even assuming but not admitting any post landing inspection could have taken place, there is only one document in respect of each contract, and the Bangladesh University of Engineering and Technology (“BUET”) report as follows:

139.3.1. Post landing sample test report dated 5 February 2020 for Contract A;

139.3.2. Post landing sample test report dated 10 June 2020 for Contract D;

139.3.3. Post landing sample test report dated 17 June 2020 for Contract C;

139.3.4. Post landing sample test report dated 29 December 2020 for Contract B; and

139.3.5. BUET report dated 8 November 2020.

139.4. It is not sufficient for BREB to point to a single post landing inspection report which does not

identify the lot in respect of which the sample was tested as its basis for suggesting that all the goods in respect of the same contract pertaining to [the guy accessories] are defective. Similarly, BREB cannot rely on the BUET report because the method and manner of sampling and inspection is not known to KSE.

The Tribunal's Reasoning

140. After careful consideration, the Tribunal dismisses this claim of BREB in its entirety.
141. First, the Tribunal is not persuaded that KSE breached its responsibility to supply goods free from defect under Clause 13.1 read with Clause 28 of the GCC. As contended by KSE, the Tribunal is unable to accept that zinc coating can be a subject matter of post landing inspection. Specifically, BREB's principal justification is that although the contractual documents provide for the conducting of a visual inspection, it does not bar further tests. BREB thus submits that it is entitled to conduct tests on zinc coating during post landing inspection.
142. However, the Tribunal's view is that, in the absence of an express provision for zinc coating testing at the post landing inspection, the Parties neither envisaged nor intended for zinc coating to be the subject matter of a post landing inspection.
143. The Tribunal's view is supported by the contractual arrangement between the Parties. Clause 6.2 of Section 6 (Schedule of Supply), which governs post landing inspection, is silent on zinc coating testing and only states that the "Inspection Team will visually inspect the physical conditions (identification mark, manufacturer's symbol and year, dimension, pin-hole gauge, damage, deformity, finishing, etc.), quantity and packaging of the goods delivered ...". This can be juxtaposed against Clause 6.1 of Section 6 (Schedule of Supply), which governs pre-shipment inspection. It provides that "Process of Test: Inspection Team and/or PSI [ie, pre-shipment inspection] agent will randomly collect 5 (five) nos. of samples of each item for inspection from the production line as well as from the manufactured quantity." It is telling that Clause 6.2 of Section 6 (Schedule of Supply) only provides for a visual inspection and does not provide for a "Process of Test", unlike Clause 6.1 of Section 6 (Schedule of Supply).

144. In addition, the Tribunal accepts that Publication 242-1988 (which is published by BREB) and the ASTM A475 (which is an international standard), both of which are incorporated into the Contracts, also suggest that zinc coating could not have been a subject matter of post landing inspection. Clause 6 of Publication 242-1988, which governs inspection, provides that “the manufacturer shall conduct inspection and test ... BREB reserves the right to witness factory inspection and test and shall request test report”. Further, Clause 10 of Publication 242-1988 refers to ASTM A475, Clauses 15 and 16 of which provide the manner and method of sampling and inspection. In particular, Clause 16.1 of A475 – 03 states that “all test and inspection shall be made at the place of manufacture prior to shipment, unless otherwise specified”.
145. On the basis of the contractual arrangement between the Parties, the Tribunal finds that the Parties had intended for any zinc coating testing and/or inspection to be done during the pre-shipment inspection and not during the post landing inspection. The post landing inspection is clearly limited to a visual inspection. The Tribunal is therefore satisfied that BREB has no legal basis to conduct a further zinc coating test during the post landing inspection. Since the sole basis for BREB’s claim that the goods were non-compliant is the deficiency in zinc coating, BREB’s claim must necessarily fail on this basis alone. In this regard, the Tribunal also notes that the material in question had passed all zinc coating tests carried out at the pre-shipment stage. Pre-shipment inspection was duly carried out at KSE’s place and inspection reports were duly approved and signed by BREB’s representative.
146. In view of the Tribunal’s finding that there is no legal basis to conduct a further zinc coating test during the post landing inspection, the Tribunal does not find it necessary to delve into the issue of whether the requirements for any such inspection were followed here.

[emphasis in original omitted; references omitted]

36 Related to the Defective Goods Claim, KSE had brought a counterclaim for BREB to pay the balance 80% of the contract sum under Contracts A to D

in respect of, *inter alia*, the guy accessories (“KSE’s 80% Balance Payment Counterclaim”) (Award at [238]–[239]). BREB resisted this counterclaim, arguing, *inter alia*, that the goods delivered to its warehouse were defective and therefore its liability pay the balance contract sum did not arise (Award at [240.2]). The Tribunal rejected this argument (Award at [240.2], [241.2], [242] and [245.1]):

[VII.]B. Is KSE entitled to the remaining sum in respect of 80% of the contract sum for Contracts A, B, C and D?

...

240. BREB resists any liability to pay the outstanding sums of the 80% payment for the following reasons:

...

240.2. Second, in respect of the goods that were delivered to its warehouse, these were defective and therefore the liability to pay the balance does not arise.

241. In response, KSE’s case is as follows:

...

241.2. Second, the goods that were delivered to BREB’s warehouse were not defective, and they had already passed the pre-shipment inspection in the first place. KSE further argues that zinc coating cannot be the subject matter of post landing inspection, and therefore BREB’s alleged rejection on this basis should not be allowed.

Tribunal’s reasoning

242. As the Tribunal has set out in detail at [140]–[146] above, the Tribunal is not persuaded that KSE breached its responsibility to supply goods free from defect under Clause 13.1 read with Clause 28 of the GCC because the Tribunal does not accept that zinc coating can be a subject matter of post landing inspection. *Further and in any event, the Tribunal has found that BREB has failed to establish the alleged deficiency in zinc coating.*

...

245. In respect of the [guy accessories], the Tribunal finds that BREB is obliged to pay the unpaid 80% payment against the shipping documents.

245.1. In respect of the [guy accessories] that were delivered to BREB's warehouse, the Tribunal finds that BREB is obliged to pay the unpaid 80% payment. There is no reason why BREB should be allowed to withhold payment of the unpaid portion of the 80% payment when it has in fact received the goods. As explained at Section VI(B) above, BREB's claim that the items were defective has been dismissed.

...

[emphasis in original omitted; emphasis added in italics; references omitted]

37 The Tribunal also dismissed BREB's Art 32 Application on the back of its dismissal of the Defective Goods Claim (Award at [205]–[209]):

[VI.]F. Should BREB's application under Article 32 of the UNCITRAL Rules 2010 be granted?

205. BREB makes an application under Article 32 of the UNCITRAL Rules 2010, "praying for passing necessary order by this Hon'ble Arbitral Tribunal against the Respondent, KSE, for declaring the non-complied goods [*ie, the guy accessories*] as rejected, being failed to comply with the standard of ASTM475".

206. According to BREB, the Tribunal should exercise its authority under Article 32 to "treat Respondent-KSE's unwillingness to participate in the further zinc coating testing process and its acquiescence and hence pass necessary holding that the test conducted by BREB as well as BUET are done in a proper manner".

207. KSE in turn argues that Article 32 does not apply to the facts of the present case. Article 32 provides that "a failure by any party to object promptly to non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified". Here, there is no reliance by BREB on the Rules or any requirement of the arbitration agreement.

208. Additionally, KSE argues that the tests conducted by BREB and BUET were not done in a proper manner and the veracity of such reports has not been admitted by KSE.

Tribunal's reasoning

209. Given the Tribunal's findings in Section VI(B) above, namely that BREB is not entitled to its claim for defective materials, BREB's Article 32 Application falls away. The Tribunal thus answers this issue in the negative.

[emphasis in original omitted; references omitted]

38 As for the Wilful Misconduct Claim, the Tribunal addressed this in the context of BREB's claim for consequential losses based on KSE's alleged wilful misconduct, and dismissed the claim (Award at [190]–[204]):

[VI.]E. Is BREB entitled to the consequential losses claimed on the basis of KSE's alleged wilful misconduct?

190. According to BREB, KSE's failure to supply the goods to its final destination despite receiving "L/C payment as well as CD-VAT [sic]" amounts to wilful misconduct. ...

...

192. According to KSE, BREB is not entitled to consequential losses as:

192.1. First, BREB has failed to plead a case of wilful misconduct in its SOC.

192.2. Second, such a claim is barred under Clause 30 of the GCC on limitation of liability. In this regard, BREB has not proved any misconduct by KSE, let alone "wilful misconduct".

Tribunal's reasoning

193. Preliminarily, as KSE rightly points out, BREB did not plead this claim in its SOC. The claim was made late in the day. Even after the issue was raised, BREB did not properly particularise it.
194. KSE also rightly points out that any claim for consequential losses must satisfy Clause 30 of the GCC...

195. ... Clause 30 of the GCC prohibits a claim for consequential losses unless the party making such claim can show that there was “gross negligence” or “wilful misconduct” on the part of the other party. BREB relies on the wilful misconduct limb.

...

200. ... BREB is claiming for wilful misconduct on the sole basis that KSE had failed to supply the goods to the final destination despite receiving some payment. ...

...

202. ... Further, there is simply no sufficient evidence here that KSE was in wilful misconduct in respect of the breaches of delayed delivery of materials and short materials.

203. In the circumstances, the Tribunal finds that BREB has not discharged its burden of proving wilful misconduct on KSE's part. Clause 30 of the GCC thus applies to preclude any claims for consequential losses by BREB.

204. For completeness, we would add that BREB has also not led any sufficient evidence to establish the heads of the following losses claimed in this respect:

7.1 delay of the ADB project for 2 years;

7.2 0.88% system loss due to the Respondent's alleged failure to deliver goods in compliance with contracts A, B, C, D, E, and F;

7.3 KSE allegedly causing BREB's failure to provide electricity connection; and

7.4 loss of reputation amounting to \$10,000,000 (see [22] at p 28 of SOC).

[emphasis in original omitted; references omitted]

Issues to be determined

39 To recapitulate, BREB advanced three main grounds for setting aside the affected parts of the Award:

- (a) Ground 1: the Tribunal failed to apply its mind to the essential issues arising from BREB's arguments in respect of the Defective Goods Claim.
- (b) Ground 2: the Tribunal failed to apply its mind to the essential issues arising from BREB's arguments in respect of the Wilful Misconduct Claim.
- (c) Ground 3: the Tribunal failed to adhere to the agreed arbitral procedure in respect of the Further Joint Testing.

40 As the events in connection with Ground 3 provide important context for the Tribunal's decisions in connection with Ground 1, I will start by addressing Ground 3, before turning to Ground 1, and finally, Ground 2.

Ground 3: alleged breach of agreed arbitral procedure in respect of Further Joint Testing

The law

41 An applicant seeking to set aside an arbitral award on the ground of breach of agreed arbitral procedure under Art 34(2)(a)(iv) of the Model Law must show that (a) there was an agreement between the parties on a particular arbitral procedure; (b) the arbitral tribunal failed to adhere to the agreed procedure; (c) the failure was causally related to the tribunal's decision in that the decision could reasonably have been different if the tribunal had adhered to the agreed procedure; and (d) he is not barred from relying on this ground by virtue of having failed to raise an objection during the proceedings before the tribunal (*AMZ v AXX* [2016] 1 SLR 549 at [102]; *GD Midea Air Conditioning Equipment Co Ltd v Tornado Consumer Goods Ltd* [2018] 4 SLR 271 at [63]). While prejudice is not a legal requirement for an award to be set aside on this

ground, it is a relevant factor that the supervisory court considers in deciding whether the breach in question is sufficiently serious to warrant the exercise of the court’s discretionary power to set aside the award (*AQZ v ARA* [2015] 2 SLR 972 at [136], citing *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114 (“*Triulzi*”) at [54], [64] and [66]).

42 However, this ground under Art 34(2)(a)(iv) of the Model Law is *not* engaged if the challenge to the arbitral award is against the arbitral tribunal’s procedural orders or directions on the way in which to progress the arbitral proceedings; such decisions fall within the exclusive domain of the tribunal (*Triulzi* at [52]).

43 Where a party’s complaint is, in truth, that he was denied his right to a fair hearing by the arbitral tribunal’s conduct of the arbitral proceedings, the court will assess whether the tribunal’s conduct/decision falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done (*China Machine New Energy Corp v Jaguar Energy Guatemala LLC* [2020] 1 SLR 695 (“*China Machine*”) at [98]). There are two aspects to this fact-sensitive inquiry:

(a) First, the arbitral tribunal’s conduct and decisions should only be assessed by reference to what was known to the tribunal at the material time. A tribunal cannot be criticised as having acted unfairly for failing to consider or address considerations or concerns which the complaining party did not bring to its attention (*China Machine* at [99] and [102]).

(b) Second, the court will accord a margin of deference to the arbitral tribunal in its exercise of procedural discretion, recognising that

(i) the tribunal possesses a wide discretion to determine the arbitral

procedure and (ii) that discretion is exercised within a highly specific and fact-intensive contextual milieu, the finer points of which the court may not be privy to. Overall, the threshold for intervention is a relatively high one (*China Machine* at [103]).

44 Relatedly, if a party intends to contend that there has been a fatal failure in the process of the arbitration, he must indicate to the arbitral tribunal that he intends to take that point at the appropriate time if the tribunal insists on proceeding. He cannot hedge against an adverse result in the arbitration by waiting until after the arbitral award to decide whether to pursue the point (*China Machine* at [168] and [170]).

BREB’s case in OA 164

45 BREB submitted that the parties agreed to the Further Joint Testing “for the specific purpose of resolving the insufficiency of evidence regarding whether the guy accessories were non-compliant”⁴⁴ and “on the understanding that the Tribunal would rely on, or at least refer to the results of the Further Joint Testing, in deciding on whether the guy accessories were non-compliant”.⁴⁵ The Tribunal gave directions for the Further Joint Testing pursuant to the parties’ agreement.⁴⁶ It was “clear” that the Further Joint Testing “was part of the parties’ agreed procedure” given:⁴⁷

⁴⁴ CWS at para 52.

⁴⁵ CWS at para 53.

⁴⁶ CWS at para 46.

⁴⁷ CWS at para 54.

- (a) the Tribunal’s directions at the evidentiary hearing on 23 December 2022 for the conduct of the Further Joint Testing;
- (b) the Tribunal’s directions in the 23 Dec 2022 PO for the parties to file the First Round CS within three weeks after receipt of the Further Joint Testing report;
- (c) the Tribunal’s directions in the 28 Feb 2023 PO for the parties to liaise and cooperate with BV to enable the drawing of samples, inspection and testing to take place; and
- (d) the Tribunal’s 14 Mar 2023 Further Directions extending the deadlines for drawing samples and for obtaining the test reports from the appointed laboratories to 7 and 28 April 2023 respectively, which contemplated the completion of the Further Joint Testing before the Oral Hearing in May 2023.

46 BREB submitted that the Tribunal breached the agreed procedure by “fail[ing] to deal with [the non-completion of] the Further Joint Testing”, “fail[ing] to enforce the procedure”, and “proceed[ing] to deliberate on the [zinc coating] issue without reference to the results of any Further Joint Testing”.⁴⁸

47 BREB submitted that the Tribunal’s failure to adhere to the agreed procedure was causally related to the Tribunal’s decision. Without the Further Joint Testing, the Tribunal could not properly determine whether the guy accessories complied with the contractual specifications. Had the Further Joint

⁴⁸ CWS at para 59; MAH at paras 123–126.

Testing been carried out, the Tribunal could have viewed the matter differently.⁴⁹

KSE’s case in OA 164

48 KSE submitted that, while the Further Joint Testing was contemplated, the parties did not agree that the Tribunal could not issue its arbitral award unless and until a Further Joint Testing report was produced.⁵⁰ The implementation of the 28 Feb 2023 PO, which was a “practical procedural direction for taking samples and testing”, depended on practical matters such as access to the goods.⁵¹

49 KSE submitted that, in any event, the non-completion of the Further Joint Testing was materially attributable to BREB’s own conduct, such as failing to facilitate the customs clearance and/or payment of duties required for access to certain goods.⁵²

50 KSE submitted that, faced with the non-completion of the Further Joint Testing, BREB made a procedural election: instead of asking the Tribunal to resolve the customs clearance issues or to give further directions to complete testing, BREB filed its Art 32 Application asking the Tribunal to treat KSE’s alleged unwillingness to participate in further testing as acquiescence and to hold that the PLI tests and BUET test were properly conducted.⁵³ In so doing,

⁴⁹ CWS at paras 55–58.

⁵⁰ Defendant’s Written Submissions in OA 164 dated 15 July 2026 (“DWS”) at para 66.

⁵¹ DWS at para 67.

⁵² DWS at para 69.

⁵³ DWS at para 70.

BREB invited the Tribunal to decide the zinc coating issue on the evidence already before it, and could not now turn around to contend that the Tribunal was barred from deciding the issue in the absence of a Further Joint Testing report.⁵⁴ BREB was “precluded by waiver and/or election” from making its present objection.⁵⁵

Decision

51 In my view, BREB has wrongly framed its complaint as one of breach of agreed arbitral procedure under Art 34(2)(a)(iv) of the Model Law. This is evident on a proper examination and appreciation of how the proceedings in the Arbitration unfolded.

52 The starting point is the 23 Dec 2022 PO, which contained directions for the Further Joint Testing to be conducted and for the parties’ written and oral closing submissions to be filed/made after receipt of the Further Joint Testing report (see [16] above). I accept that the 23 Dec 2022 PO could be said to reflect the parties’ agreed arbitral procedure, given that the 23 Dec 2022 PO was issued at the end of the evidentiary hearing following the Tribunal’s discussions with the parties and neither party raised objections to the 23 Dec 2022 PO at the material time. I am also prepared to find that the agreed procedure *at that time* was for the Further Joint Testing to be completed before the Tribunal made its determination on the relevant claims in the Arbitration, with a view to the results of the Further Joint Testing being made available to the Tribunal in reaching its substantive decision. This implicitly follows from the express directions in the

⁵⁴ DWS at paras 71–75.

⁵⁵ DWS at para 74.

23 Dec 2022 PO for the parties’ written and oral closing submissions to be made after receipt of the Further Joint Testing report.

53 *However*, and critically, the 23 Dec 2022 PO was subsequently superseded by the 10 Apr 2023 PO (see [20] above), which BREB has tried to sidestep in OA 164. By April 2023, it was clear that, to put it neutrally, the parties faced problems implementing the Further Joint Testing. The Tribunal thus issued revised directions for the parties to proceed to file/make their written and oral closing submissions on stipulated dates *regardless* of whether the Further Joint Testing had been completed by then. While the Tribunal also gave the parties liberty to ask to supplement their closing submissions “upon receipt” of the Further Joint Testing report, the obvious corollary to this direction was that there would be no such supplementation if the Further Joint Testing was not completed. In my judgment, the directions in the 10 Apr 2023 PO would have implicitly conveyed to the parties that the Tribunal (a) recognised that, realistically, the Further Joint Testing might not be completed timeously or at all and (b) had decided that the status of the Further Joint Testing should no longer hold up the proceedings or the rendering of the arbitral award. The Tribunal’s decision encapsulated in and conveyed by the 10 Apr 2023 PO cannot be characterised as a breach of the (previously) agreed procedure embodied in the 23 Dec 2022 PO. Rather, it was a procedural decision, falling within the Tribunal’s exclusive domain, on how to progress the Arbitration in response to developments in the proceedings, *viz*, the impasse in the conduct of the Further Joint Testing (see [42] above). There was thus no breach of agreed arbitral procedure as alleged by BREB.

54 To the extent that BREB’s challenge was, in truth, directed at the Tribunal’s exercise of its procedural discretion in deciding to proceed to

consider the parties' closing submissions and render the arbitral award in the absence of a Further Joint Testing report if the Further Joint Testing was not completed before those milestones, I find that the challenge fails for the following reasons.

55 First, if BREB was concerned that it would somehow be deprived of a fair hearing or fair opportunity to present its case if the Tribunal proceeded to determine the relevant claims in the Arbitration without the benefit of any Further Joint Testing report, it was incumbent on BREB to voice that concern during the Arbitration (see [43(a)] above). BREB should have expressed, when or after the 10 Apr 2023 PO was made, its purported position (now advanced in OA 164: see [46] above) that the Tribunal had to enforce the conduct of the Further Joint Testing (notwithstanding the parties' impasse) and not proceed to deliberate on the zinc coating issue without reference to any Further Joint Testing report. However, BREB never articulated such a position during the Arbitration.

56 To the contrary, all contemporaneous indications from BREB were that it was content for the Tribunal to render the arbitral award in the absence of completion of the Further Joint Testing:

(a) Shortly after the 10 Apr 2023 PO was made, BREB filed its Art 32 Application on 29 April 2023 (see [23] above). Relying on the fact that the conduct of the Further Joint Testing had stalled, BREB asked the Tribunal to (i) draw an adverse inference against KSE that the guy accessories were defective and (ii) accept the PLI and BUET test reports as good evidence. BREB did not ask for its Art 32 Application to be decided before the Tribunal rendered the arbitral award. In my

view, BREB's carriage of its Art 32 Application shows, and would have contemporaneously indicated to the Tribunal, that BREB expected and accepted that the Further Joint Testing would no longer proceed.

(b) The parties made their oral closing submissions and filed all their written closing submissions without the benefit of any Further Joint Testing report.

(c) In the period of almost two years between the filing of the parties' Final RS on 12 February 2024 and the issuance of the Award on 7 November 2025, BREB knew full well that the Tribunal was working on the arbitral award in the absence of any Further Joint Testing report (see [31]–[34] above), yet never protested the non-completion of the Further Joint Testing or asked the Tribunal to defer its rendering of the award pending completion of the Further Joint Testing.

57 The Tribunal's procedural decision to proceed with and conclude the Arbitration regardless of whether the Further Joint Testing was completed (see [53] above) thus cannot be criticised as unfair when BREB never contemporaneously objected to the Tribunal taking this course (see [43(a)] above).

58 Second, bearing in mind the deference to be accorded to the Tribunal in its exercise of procedural discretion, the Tribunal's aforesaid procedural decision is plainly one which a reasonable and fair-minded arbitral tribunal faced with the same circumstances might have made (see [43] and [43(b)] above). The Further Joint Testing was mooted by the Tribunal in the course of the evidentiary hearing and agreed to by the parties only after some persuasion by the Tribunal. From the outset of the making of the 23 Dec 2022 PO, the

Tribunal made clear that “the nature of the inspection would require cooperation between the parties”.⁵⁶ By April 2023, there was a manifest lack of cooperation for the continued conduct of the Further Joint Testing, and each party blamed the other for the impasse.⁵⁷ This was some four months after the evidentiary hearing had concluded. In my view, it is reasonable for a tribunal in that situation to consider that (a) any attempt to compel the parties to continue with the Further Joint Testing would likely be a time-consuming and ultimately fruitless exercise; (b) it was up to the parties to continue with the Further Joint Testing if they were able and minded to, but not at the expense of further delay to the proceedings; and (c) the Arbitration should thus proceed, including to the rendering of the arbitral award, even if the Further Joint Testing was not completed. I think it likely that the Tribunal took these and/or similar reasonable considerations into account in making its procedural decision, and I find that there is no basis to fault the Tribunal for doing so.

59 Assuming, *arguendo*, that I am wrong in my characterisation of BREB’s complaint and that the Tribunal’s procedural decision to proceed with the Arbitration in the absence of any Further Joint Testing report somehow entailed a breach of agreed arbitral procedure (*cf*, [51]–[53] above), I find that BREB would nevertheless be barred from relying on such breach because of its failure to raise the objection before the Tribunal (see [41] and [55]–[56] above).

60 Further and in any event, BREB’s conduct in keeping its presently purported objections in reserve during the Arbitration and only deploying them

⁵⁶ MAH at p 1194; Transcript of the Arbitration hearing on 23 December 2022 at p 78:13–15.

⁵⁷ DWS at para 69; NE 22 July 2026 at pp 15:23–16:3.

now for the purpose of challenging the Award constitutes impermissible hedging (see [44] above).

61 I therefore conclude that BREB’s challenge to the Award under Ground 3 fails.

62 For completeness, in the light of my analysis and conclusion, it is unnecessary for me to address KSE’s arguments about BREB’s alleged fault in the non-completion of the Further Joint Testing and alleged “waiver and/or election”.

Ground 1: alleged failure to consider essential issues in Defective Goods Claim

The law

63 An applicant seeking to set aside an arbitral award on the ground of breach of natural justice must establish (a) the rule of natural justice breached; (b) how it was breached; (c) how the breach was connected to the making of the award; and (d) how the breach prejudiced his rights (*Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [29]).

64 A specific rule of natural justice is the fair hearing rule (*BZW v BZV* [2022] 1 SLR 1080 (“*BZW*”) at [60]). A breach of the fair hearing rule can arise from an arbitral tribunal’s complete failure to consider an essential issue (*BZW* at [60(a)]; *DKT v DKU* [2025] 1 SLR 806 (“*DKT*”) at [8(c)]). The court accords the tribunal fair latitude to determine what is and is not an essential issue (*BZW* at [60(a)]). The tribunal is required only to deal with essential issues and need not deal with every argument canvassed by the parties under each essential issue as long as a decision on one argument suffices to resolve the essential issue

(*ASG v ASH* [2016] 5 SLR 54 (“*ASG*”) at [59(a)], [59(c)] and [59(d)]). Moreover, the fact that an arbitral award fails to address an argument expressly does not, without more, mean that the tribunal failed to apply its mind to that argument: there may be a valid alternative explanation for the failure (*BZW* at [60(a)], citing *ASG* at [92]). For example, a tribunal may have thought it *unnecessary* to deal with the argument (*AKN v ALC* [2015] 3 SLR 488 (“*AKN*”) at [46]) or may have *implicitly* decided to reject the argument (*AKN* at [47]). Assessing whether the tribunal completely overlooked an essential point will typically be a matter of inference, and if such an inference is to be drawn at all, it must be shown to be clear and virtually inescapable (*DKT* at [8(c)]; *AKN* at [46]). The court will adopt a “generous approach” in reading the award, resolving any doubt in favour of upholding the award in accordance with the principle of minimal curial intervention (*DKT* at [8(c)]).

65 A breach of natural justice causes actual or real prejudice if complying with the rules of natural justice could reasonably have made a difference to the outcome of the arbitration (*BZW* at [63], citing *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [54]).

BREB’s case in OA 164

66 BREB submitted that the Tribunal’s dismissal of the Defective Goods Claim was premised entirely on the Tribunal’s finding that BREB was not contractually entitled to conduct zinc coating tests during the PLI, which in turn was based on the Tribunal’s interpretation of cl 6.2 of the SS as limiting a PLI to a visual inspection.⁵⁸ In so deciding, the Tribunal failed to consider three arguments which BREB had made:

⁵⁸ CWS at paras 13–14 and 19.

(a) First, BREB had argued that cl 6.2(b) of the SS and cll 26.2 and 26.7 of the GCC entitled BREB to reject any goods that failed to pass any test or inspection (“cll 26.2 and 26.7 GCC Argument”).⁵⁹ Clause 26.2 of the GCC provided that testing may be conducted at the point of delivery or at the final destination of the goods; and cl 26.7 of the GCC provided that BREB was entitled to reject any goods which failed to pass any test and/or inspection or did not conform to the specifications, and that KSE was obliged to rectify or replace such rejected goods at no cost to BREB.⁶⁰ These clauses contemplated that zinc coating tests may be conducted during a PLI.⁶¹ However, the Award contained no mention of these clauses.⁶²

(b) Second, BREB had argued that s 41 of the Sale of Goods Act, 1930 (Bangladesh) (“SGA”) gave BREB the right to inspect the goods during the PLI stage (“s 41 SGA Argument”).⁶³ However, the Award contained no mention of s 41 of the SGA.⁶⁴ The Tribunal’s finding on cl 6.2 of the SS did not resolve the issue of whether zinc coating tests could be conducted at the PLI stage because “[e]ven if BREB’s contractual entitlement under the [SS] was limited to visual inspection, it did not follow that its statutory entitlement under s 41 SGA was similarly limited”.⁶⁵

⁵⁹ CWS at paras 15(a) and 19.

⁶⁰ CWS at para 21.

⁶¹ CWS at para 23.

⁶² CWS at paras 20 and 23.

⁶³ CWS at paras 15(b) and 19.

⁶⁴ CWS at para 24.

⁶⁵ CWS at para 25(c).

(c) Third, BREB had argued that KSE had allegedly (i) admitted in November 2020 that the guy accessories did not comply with the contractual specifications for zinc coating, (ii) undertaken in December 2020 to replace the rejected goods, and (iii) not objected to BREB’s conduct of the PLI tests at the material time, all of which was conduct that “independently established [KSE’s] liability” (“Parties’ Conduct Argument”).⁶⁶ However, the Award contained no mention of the Parties’ Conduct Argument, making it “apparent” that the Tribunal failed to consider the point.⁶⁷ The issue of whether KSE’s admissions *per se* were sufficient to ground liability ought to have been resolved separately from the issue of BREB’s contractual entitlement to conduct a PLI.⁶⁸

67 BREB submitted that it suffered prejudice as a result because the Tribunal’s proper consideration of these arguments could reasonably have led to the Tribunal (a) allowing the Defective Goods Claim and (b) reversing its findings in KSE’s favour on KSE’s 80% Balance Payment Counterclaim (see [36] above), thus making a difference to the outcome of the Arbitration.⁶⁹

KSE’s case in OA 164

68 KSE submitted that the essential issue before the Tribunal was not whether BREB had a general right to inspect goods upon arrival, but rather, whether BREB was allowed to conduct zinc coating tests during the PLI in the

⁶⁶ CWS at paras 15(c), 19 and 26–29.

⁶⁷ CWS at paras 26, 29 and 30(b).

⁶⁸ CWS at para 30(c).

⁶⁹ MAH at paras 80–87.

light of cl 6.2 of the SS.⁷⁰ Indeed, this was the issue framed by BREB in BREB’s Proposed LOI.⁷¹ The cll 26.2 and 26.7 GCC, s 41 SGA and Parties’ Conduct Arguments were “tangential arguments or evidential points” directed at the “same central issue” of whether zinc coating tests could be the subject matter of a PLI.⁷² Once the Tribunal found that zinc coating testing could not form part of a PLI under the Contracts, the Defective Goods Claim necessarily failed.⁷³

69 KSE submitted that, in any event, there was no prejudice to BREB. The three arguments cited by BREB “would not have changed the result”.⁷⁴

70 KSE submitted that BREB’s complaint was, at its highest, a disagreement with the Tribunal’s construction of the Contracts and assessment of the evidence. This was not a ground for setting aside the Award.⁷⁵

Decision

71 The Defective Goods Claim was premised on the zinc coating of the guy accessories being deficient in that the zinc coating allegedly did not meet contractual specifications. As the claimant making the Defective Goods Claim, BREB bore the burden of proving the alleged zinc coating deficiency. An essential main issue to be determined in resolving the Defective Goods Claim was thus, as framed by the Tribunal in the LOI: “Has BREB established the

⁷⁰ DWS at para 41.

⁷¹ DWS at para 42.

⁷² DWS at paras 39, 49(e), 50 and 51.

⁷³ DWS at para 47.

⁷⁴ DWS at paras 49–50 and 54.

⁷⁵ DWS at para 55.

deficiency of zinc coating as claimed for contracts A, B, C, and/or D?” (Award at [72], p 18).

72 In this regard, the *only* technical evidence placed before the Tribunal of the quality of the zinc coating comprised (a) pre-shipment inspection (“PSI”) tests, which showed that the zinc coating was *not* deficient (Award at [145]) and were thus of no assistance to BREB; (b) the PLI tests conducted by BREB, which purportedly showed that the zinc coating of the tested material was deficient (see [12] above); and (c) the BUET test procured by BREB, which purportedly showed that the zinc coating of the tested material was deficient (see [12] above). As the Further Joint Testing was not completed, the limited technical evidence was never supplemented.

73 This means that BREB had relied on the PLI tests, BUET test and KSE’s alleged conduct in its bid to prove the alleged zinc coating deficiency. In turn, this impacted how the Tribunal decided the essential main issue (*ie*, whether BREB had proven the alleged zinc coating deficiency), as I explain.

The PLI tests

74 It is undisputed that the PLI tests relied on by BREB were *zinc coating tests* conducted *during the PLIs* in question. KSE’s position in the Arbitration was that zinc coating testing could not be the subject of a PLI (Award at [137]). To rely on the PLI tests to establish (under the main issue) the alleged zinc coating deficiency, BREB thus had to show, preliminarily, that the conduct of zinc coating testing as part of the PLIs was permissible. This engaged the essential sub-issue of, as framed by the Tribunal in the LOI: “Can ‘zinc coating’ be a subject matter of post landing inspection?” (Award at [72], p 17).

75 The Tribunal answered this essential sub-issue by finding that the contractual arrangement between the parties showed that zinc coating testing was not within the scope of the PLIs, which were limited to a visual inspection (Award at [141]–[145]). The Tribunal explained its views in some detail, placing weight on cl 6.2(b) of the SS, which expressly pertained to PLIs and provided that the “Inspection Team will visually inspect the physical conditions” of the goods during a PLI (see [10] above) (Award at [143]).

76 It was not BREB’s position in OA 164 that the Parties’ Conduct Argument bore on the essential sub-issue of whether zinc coating testing could be conducted as part of a PLI; rather, BREB’s submission in OA 164 was that the Parties’ Conduct Argument “independently established [KSE’s] liability” (see [66(c)] above), a submission which I address at [86]–[93] below. At this point, what is relevant is that, on BREB’s own position, there was no necessity for the Tribunal to consider the Parties’ Conduct Argument in deciding the essential sub-issue of whether zinc coating testing could be conducted as part of a PLI.

77 As for the cll 26.2 and 26.7 GCC and s 41 SGA Arguments, in my view, they were merely arguments on the essential sub-issue and did not in themselves give rise to “essential issues” for determination. The Tribunal was entitled to decide that the essential sub-issue turned definitively on the contractual arrangement identified by the Tribunal (in particular, cl 6.2(b) of the SS), and with that, was not required to provide an answer to the cll 26.2 and 26.7 GCC and s 41 SGA Arguments. BREB’s contention in OA 164 was, in truth, that the Tribunal should have decided differently (*ie*, should have found that zinc coating testing *could* have been done during the PLIs) on account of the cll 26.2 and 26.7 GCC and s 41 SGA Arguments. However, that is a contention that the

Tribunal erred, which is an impermissible merits challenge and not grounds for setting aside the Award.

78 Further and in any event, there is no clear and virtually inescapable inference to be drawn that the Tribunal failed to consider the cl 26.2 and 26.7 GCC and s 41 SGA Arguments in deciding the essential sub-issue of whether zinc coating testing could be conducted as part of a PLI. Rather, in my judgment, a likely explanation for the Tribunal not mentioning these arguments in the Award is that the Tribunal considered them irrelevant to the essential sub-issue (thus implicitly rejecting them) and/or unnecessary to address in the light of the decision reached by the Tribunal on the essential sub-issue in the Award at [141]–[145]. This can be inferred from the following.

79 The cl 26.2 and 26.7 GCC Argument was that these clauses “contemplate[d] that zinc coat tests may be conducted during post-landing inspections”.⁷⁶ However:

- (a) Clause 26.2 of the GCC was qualified by the SCC, which was stated to “prevail” over the GCC in the event of conflict and provided that the inspections and tests mentioned in cl 26.2 of the GCC were to be carried out according to what was allowed during a PSI and a PLI under cl 6 of the SS (see [8] and [9] above). This was an argument which the Tribunal registered that KSE had made in the Arbitration (Award at [137.1]). In other words, cl 26.2 of the GCC added nothing to the question of whether zinc coating testing could be conducted as part of a PLI because cl 26.2 of the GCC (as qualified by the SCC) pointed right back at cl 6.2(b) of the SS for the answer to that question. And, the

⁷⁶ CWS at para 23.

Tribunal already reasoned at some length why cl 6.2(b) of the SS only allowed a visual inspection during the PLIs (Award at [143]).

(b) Clause 26.7 of the GCC provided that BREB could reject goods that “fail[ed] to pass any test and/or inspection or [did] not conform to the specifications”, but was entirely silent on the subject of PLIs (see [8] above). Where the PLI tests adduced by BREB were concerned, it was irrelevant whether cl 26.7 of the GCC might have contemplated the (additional) conduct of non-PLI tests. The question to be answered to establish if BREB could rely on the PLI tests was whether zinc coating testing could be conducted as part of the PLIs (*ie*, the essential sub-issue). And, cl 26.7 of the GCC simply did not speak to what could or could not be done during a PLI. Instead, the conduct of PLIs was governed by cl 6.2(b) of the SS, which the Tribunal did address in the Award.

80 In these circumstances, a likely explanation for the Award not containing mention of cll 26.2 and 26.7 of the GCC is that the Tribunal considered that these clauses (a) did not assist BREB, (b) did not contribute to the Tribunal’s decision on the essential sub-issue of whether zinc coating testing could be conducted as part of the PLIs (on which the Tribunal’s interpretation of cl 6.2(b) of the SS was dispositive), and (c) thus did not need to be discussed in the Award at all.

81 This inference is fortified by how, in BREB’s Proposed LOI, BREB had framed the essential sub-issue as turning only on the interpretation of cl 6.2(b) of the SS:⁷⁷

⁷⁷ MAH at pp 281, 285, 287 and 290: Award at Annex A.

- VI. Whether the Claimant is allowed to conduct zinc coating test during Post Landing Inspection, in light of Part- 2 (Supply Requirement), Section- 6 (Schedule of Supply), Clause- 6 (Inspection/Tests), under sub-clause 6.2 ('Post Landing/Delivery Inspection')- contained under the contract?

This suggests that BREB itself had thought that cll 26.2 and 26.7 of the GCC bore no or marginal relevance to the essential sub-issue of whether zinc coating testing could be conducted as part of a PLI. It is unsurprising that, in a similar vein, the Tribunal likely considered cll 26.2 and 26.7 of the GCC irrelevant and/or unnecessary to address in deciding this essential sub-issue.

82 Of further note, in the Award at [135.1], the Tribunal summarised its understanding of BREB's case as being that "zinc coating can be a subject matter of post landing inspection because the contractual documents do not preclude further tests in addition to the visual inspection" (see [35] above). This shows that the Tribunal was mindful of BREB's position that the contractual scheme allowed for zinc coating testing to be conducted at the PLIs. Considering this acknowledgment in the round with the matters at [79]–[81] above, I do not think BREB has shown that the clear and virtually inescapable inference to be drawn is that the Tribunal failed to consider the cll 26.2 and 26.7 GCC Argument.

83 Turning to the s 41 SGA Argument, it is important to appreciate what exactly BREB relied on s 41 of the SGA for in the Arbitration. BREB first cited s 41 of the SGA in its First Round CS and repeated the exact same point in its Final CS, in the following terms:⁷⁸

⁷⁸ NE 22 July 2026 at p 8:1–5; MAH at pp 5132–5133; MAH at pp 5731–5732.

Furthermore, Section 41 of the Sale of Goods Act, 1930 empowers the buyer with the right to examine the goods and the same goes as follows:

“41.(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract; and

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.”

That applying the aforesaid legal provision it could safely be said that the Claimant-BREB possesses every right to inspect the goods during PLI stages and just because the goods had allegedly been inspected during the PSI stages, does not debar the Claimant-BREB to inspect the same during its arrival/delivery.

[emphasis in original omitted; emphasis added in italics]

84 It is clear that BREB relied on s 41 of the SGA in the Arbitration solely for the proposition that it had a right of inspection during the PLIs, even if the goods had already been inspected during the PSIs. BREB did *not* rely on s 41 of the SGA to contend that it had a statutory right to a particular *scope* of PLI or to conduct a particular *type of test* during the PLIs.

85 Since it was not in dispute in the Arbitration that a PLI of the goods could be conducted, the s 41 SGA Argument added nothing to BREB’s case. What *was* in dispute was whether zinc coating testing could be conducted as part of a PLI (*ie*, the essential sub-issue), but the s 41 SGA Argument was silent on this. The Tribunal was thus left to determine the essential sub-issue with reference to the parties’ contractual arrangement, in particular, cl 6.2(b) of the SS. Again, in these circumstances, the likely explanation for the Award not

containing mention of the s 41 SGA Argument is that the Tribunal considered the argument to be irrelevant and/or unnecessary to address.

The remaining evidence

86 Once reliance by BREB on the PLI tests was precluded (*per* the Tribunal’s decision on the essential sub-issue that zinc coating testing could not be conducted as part of the PLIs), BREB was left with only the BUET test and KSE’s alleged conduct in trying to establish the essential main issue of whether BREB had proven the alleged zinc coating deficiency (see [71]–[73] above).

87 In my view, the Tribunal’s decision on this essential issue was succinctly encapsulated in its holding in the Award at [242], which reads:

As the Tribunal has set out in detail at [140]–[146] above, the Tribunal is not persuaded that KSE breached its responsibility to supply goods free from defect under Clause 13.1 read with Clause 28 of the GCC because the Tribunal does not accept that zinc coating can be a subject matter of post landing inspection. ***Further and in any event, the Tribunal has found that BREB has failed to establish the alleged deficiency in zinc coating.*** [emphasis added in italics and bold italics]

88 I am cognisant that this holding is found in the section of the Award addressing KSE’s 80% Balance Payment Counterclaim. However, in its defence to this counterclaim, BREB had argued that its non-payment of the balance sum was justified because of the alleged deficiency in the zinc coating of the guy accessories (see [36] above). There was thus a shared common issue across the Defective Goods Claim and KSE’s 80% Balance Payment Counterclaim, *viz*, the essential issue of whether BREB had proven the alleged zinc coating deficiency. The holding in the Award at [242] squarely answered this essential issue in the negative. It follows that where the Defective Goods Claim was

concerned, it was also the Tribunal’s view that BREB “ha[d] failed to establish the alleged deficiency in zinc coating”.

89 Unpacking the holding in the Award at [242], the Tribunal first recapitulated that zinc coating testing could not be the subject of a PLI. The Tribunal then stated: “*Further and in any event*, the Tribunal has found that BREB has failed to establish the alleged deficiency in zinc coating” [emphasis added]. This indicates that, leaving aside the finding that zinc coating testing could not be the subject of a PLI, the Tribunal also made a *distinct* finding that BREB had failed to establish the alleged zinc coating deficiency.

90 In my judgment, the Tribunal’s finding that BREB had failed to prove the alleged zinc coating deficiency was based, minimally, on the Tribunal’s assessment that the technical evidence (*ie*, including the BUET test) simply did not bear out the alleged zinc coating deficiency:

(a) As acknowledged (and indeed, emphasised) by BREB in OA 164, the Tribunal’s provisional view at the end of the evidentiary hearing was to the effect that “the evidence on the zinc coating issue was ‘*unsatisfactory*’”⁷⁹ [emphasis in original] and there was “insufficiency of evidence regarding whether the guy accessories were non-compliant”⁸⁰ (see also [15] above). This led to the Tribunal’s directions for the conduct of the Further Joint Testing, but given that the Further Joint Testing was not completed, there is no reason to suppose that the Tribunal changed its view that the available evidence (*ie*, including the BUET test) did not satisfactorily show any zinc coating

⁷⁹ CWS at para 47.

⁸⁰ CWS at para 52.

deficiency. In fact, on BREB’s own position in OA 164, “[w]ithout the Further Joint Testing, the Tribunal could not properly determine whether the guy accessories complied with the contractual specifications”.⁸¹ What BREB perhaps did not appreciate is that the lack of satisfactory technical evidence for the Tribunal to “properly determine [if] the guy accessories complied with the contractual specifications” would logically lead to a finding that BREB had failed to prove the alleged zinc coating deficiency.

(b) The view expressed by the Tribunal at the end of the evidentiary hearing continued to echo in the Tribunal’s summation of KSE’s position in the Arbitration that: “It is not sufficient for BREB to point to a single [PLI] report [in respect of each contract] which does not identify the lot in respect of which the sample was tested as its basis for suggesting that all the goods in respect of the same contract pertaining to [the guy accessories] are defective. Similarly, BREB cannot rely on the BUET report because the method and manner of sampling and inspection is not known to KSE” (Award at [139.4]).

(c) The Tribunal also took into account the results of the PSI tests, which contradicted BREB’s allegation of zinc coating deficiency, noting that “the material in question had passed all zinc coating tests carried out at the pre-shipment stage. ... [PSI] reports were duly approved and signed by BREB’s representative” (Award at [145]).

91 Against the foregoing context, I disagree with BREB’s submission in OA 164 that a consideration of the cll 26.2 and 26.7 GCC, s 41 SGA and

⁸¹ CWS at para 58.

Parties’ Conduct Arguments was “essential” to the determination of whether BREB had proven the alleged zinc coating deficiency. In my view, these were merely arguments on the essential issue, and the Tribunal was entitled to decide the essential issue against BREB based on the (lack of) technical evidence without responding to these arguments. Again, BREB’s contention in OA 164 was, in truth, that the Tribunal should have decided differently (*ie*, should have found that the alleged zinc coating deficiency *was* proven) on account of the cll 26.2 and 26.7 GCC, s 41 SGA and Parties’ Conduct Arguments. Again, however, that is a contention that the Tribunal had erred, which is an impermissible merits challenge and not grounds for setting aside the Award.

92 Further and in any event, there is no clear and virtually inescapable inference to be drawn that the Tribunal failed to consider the cll 26.2 and 26.7 GCC, s 41 SGA and Parties’ Conduct Arguments in deciding the essential issue of whether BREB had established the alleged zinc coating deficiency. Rather, in my judgment, it is likely that the Tribunal considered these arguments irrelevant and/or unnecessary to address in reaching its decision on this essential issue. This can be inferred from the following.

- (a) It was irrelevant whether cll 26.2 and 26.7 of the GCC (or even s 41 of the SGA, if one were to overlook the limited ambit of the s 41 SGA Argument: see [83]–[84] above) permitted BREB to conduct other tests apart from tests done during the PLI⁸² because, as a matter of fact, the only tests BREB sought to rely on were the PLI tests and BUET test. And, the Tribunal already ruled out reliance on the PLI tests and BUET test.

⁸² NE 22 July 2026 at p 6:18–25.

(b) Whether the zinc coating met contractual specifications was a technical question, and the only technical evidence the Tribunal was prepared to consider (*viz*, the PSI tests) indicated that the contractual specifications were met. It is likely that the Tribunal did not think this *technical question* could or should be answered, or the *technical evidence* from the PSI tests controverted, by drawing inferences from the *commercial conduct* of the parties. In other words, it is likely that the Tribunal considered the Parties’ Conduct Argument irrelevant to whether the zinc coating was in fact deficient, and thus unnecessary to address.

93 In the end, there is no running away from the Tribunal’s decision in the Award at [242] that “BREB ha[d] failed to establish the alleged deficiency in zinc coating”, which definitively answered (in the negative) the essential main issue of whether BREB had proven the alleged zinc coating deficiency at the heart of the Defective Goods Claim. BREB might disagree with this finding, but that is a disagreement with the merits of the Tribunal’s decision and not grounds for setting aside the Award.

Conclusion

94 I therefore find that BREB has not shown that the Tribunal breached the fair hearing rule by failing to consider essential issues in deciding the Defective Goods Claim. BREB’s challenge to the Award under Ground 1 fails.

Ground 2: alleged failure to consider essential issues in Wilful Misconduct Claim

BREB’s case in OA 164

95 BREB submitted that its case in the Arbitration was that the “totality” of the following alleged conduct of KSE constituted wilful misconduct: (a) KSE’s delay in delivering the goods; (b) KSE’s *volte face* refusal to replace non-compliant guy accessories; (c) KSE’s continued sending of “disputed goods” to BREB; (d) KSE’s failure to deliver goods to BREB’s warehouse notwithstanding BREB’s payment of CD-VAT for them; and (e) KSE’s refusal to settle and/or remedy the issue of the defective goods.⁸³ However, the Tribunal proceeded on the basis that the Wilful Misconduct Claim rested “on the sole basis that KSE had failed to supply the goods to the final destination despite receiving some payment” (Award at [200]) and dismissed the claim after finding that there was “no sufficient evidence here that KSE was in wilful misconduct in respect of the breaches of delayed delivery of materials and short materials” (Award at [202]).⁸⁴ In doing so, the Tribunal failed to consider whether “taking all of the factual matters raised by BREB in relation to KSE’s conduct, the totality of KSE’s conduct demonstrated wilful misconduct”.⁸⁵

96 BREB submitted that it suffered prejudice as a result. Clause 30 of the GCC precluded BREB from claiming consequential loss unless it showed wilful misconduct by KSE. Had the Tribunal applied its mind to the various factors raised by BREB and concluded that there was wilful misconduct by KSE, the Tribunal could have gone on to consider whether BREB had established the

⁸³ CWS at para 32.

⁸⁴ CWS at para 31.

⁸⁵ CWS at paras 32–34 and 38.

various heads of consequential loss claimed. While the Tribunal was of the view that BREB had not led sufficient evidence to establish the heads of consequential loss listed in the Award at [204], the Tribunal had not considered BREB’s consequential loss claim for the costs incurred in procuring substitute materials and/or goods in the amount of US\$650,000. Had the Tribunal allowed this claim, BREB’s liability under the Award could have been reduced by US\$650,000.⁸⁶

KSE’s case in OA 164

97 KSE submitted that “BREB’s alleged omitted matters” were not “separate essential issues” under the Wilful Misconduct Claim but “factual matters or evidential routes relied on by BREB in support of its broader allegation that KSE had acted in wilful misconduct”.⁸⁷ In any event, the Tribunal addressed and dismissed the allegations of delayed delivery, defective goods and short materials, which were the key allegations.⁸⁸

98 KSE submitted that there was also no prejudice. There was no evidence to support BREB’s alleged consequential loss of US\$650,000 for procuring substitute materials.⁸⁹

Decision

99 In my judgment, even assuming, *arguendo*, that the Tribunal did not consider essential issues arising from BREB’s arguments in the Wilful

⁸⁶ CWS at para 42(b); MAH at paras 103–106.

⁸⁷ DWS at para 56 and p 29.

⁸⁸ DWS at paras 60(a)–(c); NE 22 July 2026 at pp 22:15–23:23.

⁸⁹ NE 22 July 2026 at pp 23:25–24:3.

Misconduct Claim, BREB would nevertheless fail in its attempt to set aside the Award because the (assumed) breach of natural justice did not cause actual or real prejudice to BREB. I explain.

100 It is important to appreciate that the Wilful Misconduct Claim was advanced by BREB for the specific purpose of claiming consequential loss. Under cl 30.1(a) of the GCC, BREB would not have been able to claim for consequential loss except in the case of wilful misconduct by KSE (see [8] above).

101 The Tribunal found that BREB had “not led sufficient evidence” to establish the four heads of consequential loss that BREB had claimed, as enumerated in the Award at [204] (see [38] above). It is clear, and cannot possibly be controversial, that in the absence of proof of a claimed head of loss, the Tribunal would reject the claim.

102 In OA 164, BREB contended that the Tribunal omitted to consider a claimed head of loss in the alleged amount of US\$650,000 for procuring replacement materials; this head was not mentioned in the Award at [204]. However, the sum of the material in the Arbitration which apparently related to this claimed head of loss was as follows:

- (a) The first mention of US\$650,000 was in BREB’s written Opening Statement, where it was stated that BREB “had to buy materials from outside source to the tune of \$650,000 as additional cost”.⁹⁰ This assertion was repeated by BREB’s Arbitration counsel during his oral

⁹⁰ MAH at p 4393: BREB’s Opening Statement at para XXI.

opening remarks.⁹¹ However, it is trite that submissions by a party and/or its counsel do not constitute evidence.

(b) In the witness statement of BREB’s representative, Mr Md Mohsin Ali (“Mr Ali”), it was averred that: “Due to KSE’s failure to fulfil its contractual liability, BREB had to collect the aforesaid items from other sources, which was supplied at a higher rate than the contracted price with [KSE]”. However, Mr Ali’s witness statement provided no figures in connection with this assertion.⁹²

(c) In cross-examination, when taken to that averment, Mr Ali conceded that the alleged procurements were for a *different* project than the project for which KSE was supposed to supply goods to BREB.⁹³ There was no attempt by BREB in the Arbitration to reconcile the inconsistency between the underlying premises of this answer and BREB’s claim to recover such costs from KSE.

(d) Later in the cross-examination of Mr Ali, he stated: “... we have calculated near about US\$.65 million needed to additional -- additional. That is about 6.5 lakh, total amount”.⁹⁴ It is unclear what exactly the “US\$.65 million” figure referred to and how the apparent calculation was derived.

⁹¹ MAH at p 470: Transcript of the Arbitration hearing on 19 December 2022 at p 74:5–7.

⁹² MAH at p 4976.

⁹³ MAH at pp 782–783: Transcript of the Arbitration hearing on 21 December 2022 at pp 57:19–58:6.

⁹⁴ MAH at p 785: Transcript of the Arbitration hearing on 21 December 2022 at p 60:22–24.

(e) BREB also tendered a bundle of documents in the Arbitration which contained a table described both as “Statement of Guy Accessories purchased from outside sources for the Financial Year 2016-2020” and “Purchase statement of [guy accessories] of *some other projects* under BREB” [emphasis added].⁹⁵ It is unclear how this table related to BREB’s alleged procurement of *replacement* materials. Further, this table was merely a compilation of rates prepared by BREB which did not reflect the figure of US\$650,000.⁹⁶

(f) Apart from the instances at [(a)] and [(d)] above, BREB’s counsel in OA 164 could point to no other instance where the US\$650,000 figure was mentioned in the Arbitration.

103 I do not think that any reasonable arbitral tribunal having regard to the matters at [102] above could say that BREB had adduced evidence of, much less proven, the alleged head of consequential loss or that it was in the alleged amount of US\$650,000. Indeed, when I pressed BREB’s counsel in OA 164 on whether she would assess there to be evidence of the purported US\$650,000 loss, she very tactfully and fairly responded by saying no more than that the matters she had presented were what was put forward in the Arbitration.⁹⁷

104 Two implications follow. First, a likely explanation for the Tribunal not mentioning the purported US\$650,000 head of consequential loss in the Award is that the Tribunal simply thought that this claim was a non-starter and had implicitly rejected it. Second, even if the Tribunal omitted to consider this

⁹⁵ MAH at pp 4445 and 4928–4929.

⁹⁶ NE 22 July 2026 at p 24:22–29.

⁹⁷ NE 22 July 2026 at p 12:20–22.

purported head of loss, BREB cannot show that the Tribunal's consideration of this (evidentially unsubstantiated) claim could reasonably have made a difference to the Tribunal's view that BREB had not led sufficient evidence of consequential loss (Award at [204]). In turn, this means that even if there was no (assumed) breach of natural justice by the Tribunal in not considering BREB's wilful misconduct arguments, and even if the Tribunal found after considering those arguments that there was wilful misconduct on the part of KSE, this could not reasonably have made a difference to the outcome of the Wilful Misconduct Claim because the Tribunal would still have found that BREB had not proven the incurrence of consequential losses and would thus still have declined to award BREB any remedy.

105 I therefore conclude that BREB's challenge to the Award under Ground 2 fails.

Conclusion

106 OA 164 is thus dismissed. The parties should endeavour to agree on costs. If they are unable to do so, they should file their written submissions on costs, limited to three pages (excluding any annexure setting out disbursements), within three weeks from the date of this judgment.

- Sgd -
Kristy Tan
Judge of the High Court

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