

HONG KONG / JUDGMENT

V v. M

[2026] HKCFI 1530

COURT
Court of First Instance

DECIDED
16 March 2026

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[2026] HKCFI 1530 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTRUCTION AND ARBITRATION
PROCEEDINGS NO 26 OF 2025

IN THE MATTER of Section 92(1) of the Arbitration Ordinance (Cap 609) and Order 73 Rules 10(1)
(d) and 10(3)(a)(v) of the Rules of the High Court (Cap 4A) and IN THE MATTER of the recognition
and enforcement of an arbitral award dated 2 December 2024

BETWEEN V Applicant (Creditor) and M Respondent (Debtor)

Before: Hon Mimmie Chan J in Chambers Date of Hearing: 6 November 2025 Date of Decision: 6
November 2025 Date of Reasons for Decision: 16 March 2026

REASONS FOR DECISION

Introduction

On 6 March 2025, this Court granted leave to the Applicant () to enforce an arbitral award dated 2
December 2024 (Award) made in an arbitration at the Shanghai International Economic and
Trade Arbitration Commission (SHIAC Arbitration) as a judgment of the Court (Enforcement
Order). On 19 March 2025, the Respondent () took out a summons to set aside the Enforcement
Order (Set Aside Summons), on the grounds that: 2.1 The Award will be set aside pursuant to M s

intended application to the Shanghai First Intermediate People's Court (Shanghai Court) to set aside the Award (Shanghai Application); 2.2 M was unable to present its case in the Arbitration; 2.3 The arbitral procedure was not in accordance with the agreement of the parties and/or the law of the Mainland; and/or 2.4 It would be contrary to public policy to enforce the Award. The Set Aside Summons alternatively sought the Enforcement Order to be stayed pending the determination of the intended Shanghai Application. On 29 April 2025, V took out a summons to dismiss the Set Aside Summons or, alternatively, for payment of security (Dismissal Summons). As will be apparent from the below, due to subsequent developments, M no longer sought stay of the Enforcement Order and V no longer sought payment of security. At the conclusion of the joint hearing of the Set Aside Summons and the Dismissal Summons, I dismissed the Set Aside Summons. These are my reasons for the determination.

Background

The relevant facts are not in dispute and the parties have submitted an agreed chronology, which I would adopt here. The material facts are summarised below. The dispute in the Arbitration arose out of an asset purchase agreement dated 8 August 2018 (Agreement) entered into between V and M for the purchase of 1/6 of the latter's interest in the assets of a mining project titled XXXXXX in XXXXX, Australia (Project). At the time of the Agreement, an Exploration License and a Retention Licence had been issued to XXXXXXXXXXXXXXXXXXXXXXXX XXXX () as licensee. Pursuant to a joint venture agreement in 2013 (), X and Y respectively held 20% and 80% of interest in the Project. In 2016, Y had sold its 80% interest in the Project to M. By the Agreement: 10.1 V agreed to purchase, and M agreed to sell, 1/6 of the latter's 80% interest and ownership of assets in the Project (representing 13.34% of the total assets of the Project) and all associated rights relating thereto (Target Assets) at the consideration of AUD \$6,250,000 which the parties agreed were inclusive of tax (Clauses 2(1) and 3(1)); 10.2 M shall upon the signing of the Agreement provide all necessary information and submit the same to the relevant government authorities in Australia to effect a change of registration, and complete the steps set out in Clause 7. It was further agreed that if the relevant government authorities refuse to effect the change of registration, M shall, at the request of V, return the consideration paid under Clauses 3(1)-(2) of the Agreement to V (Clause 4(2)); 10.3 The completion of the Agreement shall take place within 10 days of an application submitted to the Australian government for approval for registration (or such other time according to the laws and regulations of Australia). Completion requires, inter alia, the registration of the Target Assets under V's name (Clause 7(1)). Under Clause 5 of the Agreement, M warranted and/or undertook to V that: 11.1 M had already obtained the necessary authorisation from and consent of internal decision making bodies and any necessary third parties (including X) to sign the Agreement to effect a transfer of the Target Assets to V (Clause 5(5)) (Intended Transfer); and 11.2 There was no legal or factual impediment to the registration of the Target Assets under V's name (Clause 5(7)). On the same day as the Agreement, a supplemental agreement dated 8 August 2018 (Supplemental Agreement) was entered into between V, M and Mr C (), which provided for additional rights and obligations in connection with the sale and purchase of the Target Assets. It is not disputed that: 13.1 Pursuant

to the Agreement, V paid to M: (i) AUD \$6,250,000 as consideration under the Agreement and (ii) AUD \$118,540.80 being V's share of an upfront fee required for the transaction as agreed between the parties; 13.2 M did not transfer the Target Assets to V, whether by the completion date required under the Agreement or at all; and 13.3 No completion of the Agreement ever took place. M did not accept that it was in breach of the Agreement, claiming that non-completion of the Agreement was caused by V's refusal or failure to pay the Australian capital gains tax (.). On its part, V claimed that the object of the Agreement had failed, because X did not agree to the Intended Transfer and M had failed to obtain X's consent thereto, as warranted under Clause 5 of the Agreement. On 3 March 2022, and in accordance with the arbitration clause contained in Clause 11 of the Agreement and Clause 10 of the Supplemental Agreement, V referred the parties dispute to the SHIAC by way of a Request for Arbitration. The main disputes in the Arbitration were whether M was in breach of Clause 5 of the Agreement by failing to obtain X's consent to the transfer of the Target Assets to V, and whether the reason for the failure to complete the Agreement was X's refusal to consent to the Intended Transfer, or V's refusal to pay CGT. The Arbitration was governed by the SHIAC Arbitration Rules (SHIAC Rules) (effective from 1 January 2025). On 4 August 2022, a 3-member tribunal was constituted (Tribunal). Thereafter, evidence were filed by both parties, and two oral hearings were held respectively on 16 September 2022 and 10 July 2023. The parties filed a round of written submissions after each of the first and second oral hearings. X was not a party to either the Agreement, or the Arbitration. On 4 March 2024, M commenced proceedings against X in Australia (Australian Proceedings), to seek various declarations against X relating to the Intended Transfer from M to V. On 15 May 2024 (over 10 months after the second oral hearing in the Arbitration), M applied to the Tribunal to suspend the Arbitration pending the determination of the Australian Proceedings. The application was refused by the Tribunal by letter dated 16 July 2024. Thereafter, from 2 to 29 September 2024, both parties filed supplemental submissions together with further supporting evidence. On 18 October 2024, M made an application to the Tribunal, seeking to submit a new valuation report dated September 2024 (2024 Valuation Report) in response to V's reliance on a valuation report dated 29 March 2018, which had been sent by C to V's representative a few months before the Agreement was signed (2018 Valuation Report). M further requested that a further hearing be held in light of the 2024 Valuation Report. By letter dated 7 November 2024, the Tribunal rejected M request for a further hearing, but allowed the 2024 Valuation Report to be adduced, and invited V to provide its opinion on the same. On 15 and 26 November 2024, V and M filed their respective opinion (and reply opinion) on the 2024 Valuation Report. On 2 December 2024, the Tribunal issued the Award, finding that the Agreement shall be deemed to have been terminated since 19 March 2022, and that M is required to, inter alia:- 25.1 return the consideration in the sum of AUD \$6,250,000 and the upfront fee of AUD \$118,540 which V had paid under the Agreement; and 25.2 pay to V AUD \$26,414,792.53 in damages to compensate for V loss of profits under the Agreement. On or around 22 April 2025, after the issue of the Set Aside Summons, M applied to the Shanghai Court to set aside the Award. On 17 June 2025, the Shanghai Court handed down its judgment, dismissing the Shanghai Application (Mainland Dismissal Decision). On 30 June 2025, M applied to the First Branch of the Shanghai People's Procuratorate for a review of the Mainland Dismissal Decision (Supervision Application), but the same was

rejected some time before 8 August 2025. On 27 September 2025, M further applied to the Shanghai People's Procuratorate for a reconsideration of the Review Application either by the First Branch of the Shanghai People's Procuratorate or itself (Further Supervision Application). At the hearing, I was informed that based on the latest update, the Shanghai People's Procuratorate had returned the Further Supervision Application to M and the application was not accepted. By virtue of these developments on the Mainland, M no longer asks for any stay of the present proceedings, and the stay application has been rendered academic. Set Aside Summons Before dealing with the grounds for setting aside raised by M, this Court will highlight a few matters on how the Set Aside Summons was handled. It is pertinent that when a party applies to set aside an enforcement order granted by the Court, it is required by Order 73 rule 10(6A) RHC to make the application by summons supported by affidavit, which affidavit must be filed at the same time as the summons. It has also been held that in compliance with Order 73 rule 10(6A), the applicant should clearly set out in the summons and in the affidavit filed in support the grounds and the evidence relied upon to set aside the enforcement order (see Hong Kong Civil Procedure 2025 73/10/8 and K&C Asia Pacific Ltd v G HYPERLINK "https://legalref.judiciary.hk/lrs/common/search/jud_search_ncn.jsp?selDatabase=ALL&ncnValue=2021+HKCFI+865" \t "_blank"

[2021] HKCFI 865 ; S v K [2025] HKCFI 683 3). The Affirmation of Hung XXXXX filed in support of M's Set Aside Summons (Hung 1) should have stated the facts in support of the grounds relied upon for the application. However, much of Hung 1 focussed on the intended Shanghai Application, and the grounds for the intended Shanghai Application. Hung 1 only states (at paragraph 21) that if the Award is set aside by the Shanghai Court in the intended Shanghai Application, the Enforcement Order should also be set aside. For the intended Shanghai Application, Hung 1 sets out (at paragraph 20) the Tribunal's breach of the applicable procedure, as follows: 33.1 In assessing the lost profits claimed by V as damages, the Tribunal should not have simply adopted the figures in the 2018 Valuation Report, and should instead have consulted or appointed experts or appraisers to assess the alleged lost profits, pursuant to Article 39 of the SHIAC Rules. 33.2 The Tribunal wrongly refused to hold another hearing to allow M to properly present its case orally following the receipt of the 2024 Valuation Report and V's belated amendment of the relief it sought during the second hearing on 10 July 2023. 33.3 The Tribunal wrongly refused to suspend the Arbitration in view of the related Australian Proceedings, which would have resolved the disputed issue of whether M had breached the Agreement by failing to obtain the consent of X for M's transfer of the Target Assets to V. 33.4 The Tribunal wrongly failed to ascertain Australian law on CGT by consulting or appointing experts pursuant to the SHIAC Rules. Hung 1 then claims (at paragraph 23) that in any event, M was unable to present its case, the arbitral procedure was not in accordance with the parties agreement and/or Mainland law, and/or it would be contrary to public policy to enforce the Award, for the same reasons set out for the intended Shanghai Application. On 25 July 2025, M filed the third affirmation of Hung XXXXXX (Hung 3) (which was of course not an affidavit filed at the same time as the Set Aside Summons in compliance with Order 73 rule 10(6A)). This was in reply to the evidence served by V in opposition to the Set Aside Summons. By

Hung 3, M sought to introduce entirely new facts to support the Set Aside Summons, arguing that the Tribunal had made no or no serious analysis of key issues which were found against M in the Award. Counsel for M argued this as the failure to give adequate reasons ground to set aside the Award. As I indicated at the hearing, the entirety of Hung 3 consists of legal submissions and arguments, rather than any matter of fact or evidence relevant to the determination of the Set Aside Summons. This is notwithstanding the express direction contained in the Order made by this Court on 9 May 2025, that all affidavits to be filed shall be confined only to matters of fact. The second point of observation is that the Set Aside Summons states one of the grounds relied upon to be that it would be contrary to public policy to enforce the Award. The courts have held that public policy is to be narrowly construed. In *Qinhuangdao Tongda Enterprise Development Co v Million Basic Co Ltd* [1993] 1 HKLRD 173, 178, Kaplan J (the arbitration judge) had warned: The public policy ground for refusal must not be seen as a catch-all provision to be used wherever convenient. It is limited in scope and is to be sparingly applied. That underscores the importance of parties compliance with Order 73 rule 10(6A) and is the reason why the court has held that the summons to set aside an enforcement order should state the grounds relied upon, and that the affidavit filed at the same time as the summons should set out all the facts relied upon in support of its application. It is inadequate and an abuse to simply state that the enforcement order (or an award) should be set aside on the ground of public policy, without clearly specifying the facts relied upon as showing how enforcement of the award would be in breach of or contrary to public policy, by reason of a serious defect in the procedure of the arbitration, or as to how the party's rights were violated. A party cannot simply assert breach of public policy in the summons, without specifying all the relevant facts constituting the alleged breach, and then wait until the hearing to comb through the award or the procedure to make submissions on how or why enforcement of the award should be refused on the general ground of public policy. That is totally contrary to the aims of the Arbitration Ordinance (Ordinance) to uphold arbitration agreements and awards, and against the RHC objectives of speedy resolution of disputes and avoiding the waste of judicial resources and costs. Hung 3 will be disregarded in toto, for being non-compliant with Order 73 rule 10(6A) and raising new facts and grounds not set out in the Set Aside Summons and Hung 1.

Legal principles The principles for refusing enforcement of a Mainland arbitral award are well established and undisputed. As provided under Section 95(1) of the Ordinance, enforcement of a Mainland award may not be refused except as mentioned under Section 95. In considering whether any of the grounds are made out, the court will not review the merits of the dispute, or the correctness or otherwise of the award, whether concerning errors of fact or law. A party seeking to set aside or to oppose enforcement of an award bears the burden of demonstrating that the complaints go to the structural integrity of the arbitral process and that it has been deprived of its due process rights: *Grand Pacific Holdings Ltd v Pacific China Holdings Ltd* [2012] 4 HKLRD 1 (CA) at 7. As held in *CNG v G* [2024] 2 HKLRD 152 at 1: 44.1 The limited recourse parties have under the AO is not intended to afford them with an opportunity to ask the Court after the event to go through

the award with a fine-tooth comb, to look for defects and imperfections under the guise that the tribunal had failed to act in accordance with its remit or the agreed procedure. The Court does not sit on appeal against the tribunal's findings of fact or law. 44.2 Further, the Court must not only respect the autonomy of the tribunal, but also leave the tribunal free to decide the dispute with the proper exercise of its case-management powers, when the tribunal is clearly in the best position to manage its own proceedings and procedure in the light of the issues put before it, the complexities of the case, and the timetable which best suits the tribunal, the parties and their legal representatives, with the aim of achieving a speedy resolution without unnecessary legal expense. 44.3 Matters which should have been raised with the tribunal, on procedure, pleadings, and timing, but were not so raised or objected to, should not be brought before the Court as a matter of complaint at the time of resistance to enforcement or by way of setting aside of the award. I now turn to each of the grounds (as summarised at REF _Ref213517237 \r \h above). To say the least, M's submissions are difficult to follow given that they do not directly correspond with the grounds set out in the Set Aside Summons. M's written and oral submissions have also evolved beyond the scope of the Set Aside Summons to focus on new facts, purportedly on a new ground and facts which are not stated either in the Set Aside Summons or Hung 1, ie the alleged failure of the Tribunal to give reasons on certain issues. As I have indicated above, the new facts set out in Hung 3 will not be considered for the Set Aside Summons. I would add that even if they were, they fail to show any good ground to refuse enforcement of the Award.

Ground 1 - Shanghai Application on the Mainland There is no ground disclosed in paragraph 1(1) of the Set Aside Summons. Under Section 95(2)(f) of the Ordinance, a ground may be invoked if it is proved that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the Mainland under the law of the Mainland. There is no provision that enforcement may be refused if the applicant intends to apply to the Mainland Court to set aside the award, or that the award will be set aside or is likely to be set aside on such application made or intended to be made on the Mainland. There is no claim in Hung 1 that the Award had been suspended under PRC law by virtue of the Shanghai Application relied upon. In any event, the Shanghai Application which was only made on 22 April 2025 (after the date of the Set Aside Summons) was on 17 June 2025 dismissed by the Shanghai Court. Further, the Supervision Application and the Further Supervision Application have both been dismissed by the Mainland Court. It is undisputed, and indisputable, that in the Shanghai Application, M raised the same grounds as it now seeks to rely on in the Set Aside Summons, namely:

49.1 The Tribunal's alleged failure to consult or appoint experts pursuant to Article 39 of the SHIAC Rules for the purposes of: (1) assessing the lost profits claimed by V; and (2) ascertaining Australian law on CGT; 49.2 The Tribunal's refusal to grant M's application made on 18 October 2024 requesting that another hearing be held to enable it to present its case orally to address, inter alia, M's submission of the 2024 Valuation Report and V's amendment of relief sought during the second hearing on 10 July 2023; and 49.3 The Tribunal's refusal to grant M's application made on 23 2024 to suspend the Arbitration pursuant to Article 42 of the SHIAC Rules in view of the Australian

Proceedings. The decision and findings of the Shanghai Court on the above are highly relevant to this Court's determination of the same grounds relied upon in this Set Aside Summons. The underlying Agreement in this case and the Arbitration are governed by PRC law, and the Hong Kong Court will give due regard and weight to the PRC Court's findings and decision (*Gao Haiyan v Keeneye Holdings Ltd* [2012] 1 HKLRD 627 at para 102), to dismiss the application made to the supervisory PRC Court to set aside the Award in the seat of arbitration. Such a decision is evidence of the applicable foreign law, and whether there is breach of such law and of the applicable arbitration rules: *TGL v SDC* [2024] HKCFI 1796 at 28. To conclude, there is absolutely no basis to refuse enforcement of the Award on the ground set out in paragraph 1(1) of the Set Aside Summons, or under Section 95(2)(f) of the Ordinance. Ground 2 Inability to Present Case I agree with the submissions made by Ms Tong SC, Counsel for V, that ample reasonable opportunity (*COG v ES* [2023] HKCFI 294

- 18) had been given to both V and M to present their case in the Arbitration. Various rounds of written submissions had taken place, and oral hearings were held by the Tribunal. This must be borne in mind when assessing the merits of M's individual complaint under this ground. The number of hearings to be held is a matter to be decided by the Tribunal under its broad case-management powers, which the Court should not easily interfere with unless there is a serious denial of natural justice: *Sky Power Construction Engineering Ltd v Iraero Airlines JSC* [2023] 3 HKLRD 654
34. A tribunal does not have to give full or unlimited opportunity to the parties to submit justification of their evidence before giving judgment, without regard to considerations of costs, saving in time, and reasonable necessity. As Kaplan J rightly observed in *Qianhuangdao Tongda Enterprise Development Co Ltd* [1993] 1 HKLR173, public policy requires proceedings both in the courts and in arbitral tribunals to have a finite end. Overall, I do not see anything in relation to the Tribunal's exercise of its case-management powers that can justify intervention by the Court. Due to the inadequacy of Hung 1, it is difficult to discern precisely M's case on the alleged inability to present case. I repeat the observations made at paragraphs 32 and 39 above. The facts deposed to in Hung 1 are confined to those relied upon for the Shanghai Application, and the Set Aside Summons will only be decided on the facts raised in Hung 1. As rightly submitted by Counsel for V, the claims made by M (and as summarized at paragraph 49 above) had all been made and argued before the Shanghai Court in the Shanghai Application, and they have all been rejected. The Shanghai supervisory court found that: 56.1 Under Article 39(1) of the SHIAC Rules, the parties may request for consultation or appraisal on specific issues of a case, and the tribunal then has the discretion to decide whether to grant such request. The tribunal may consult or appoint experts and/or appraiser for clarification on specific issues of a case as it consider necessary. In either case, the decision of whether an expert or appraiser is to be appointed falls within the independent judgment of the Tribunal. In any case, M did not apply for the appointment of such expert/ appraiser in the course of the Arbitration. 56.2 Under Article 29(1) of the SHIAC Rules, the Tribunal may examine the case in any manner

that it deems appropriate unless otherwise agreed to by the parties. Thus, in the absence of any agreement in the case, the number of hearings to be held was entirely a matter to be decided by the Tribunal, and the decision of whether to hold a further hearing (as requested by M) falls within the Tribunal's discretion. 56.3 Under Article 42(1) of the SHIAC Rules, the arbitral proceedings may be suspended when the parties so request, or if other circumstances occur during the proceedings which make such suspension necessary. The decision of whether the proceedings are to be suspended falls within the Tribunal's discretion. 56.4 M was not unable to present its case, as evidenced by the fact that M had made oral submissions at the second hearing, and had submitted further written submissions thereafter. These issues all concern the proper procedure of the Arbitration conducted under and as governed by the Mainland SHIAC Rules, and are matters to which the Court of enforcement should give due regard and weight, and treat as evidence of the applicable PRC law and as to whether there was breach of PRC law and the SHIAC Rules. In any event, even if this Court should consider the matter independently, it is clear that there is no merit in the inability to present case claim. M cannot assume that the Tribunal must allow a third hearing to take place. The authorities are clear that a party only has the right to have a reasonable opportunity to present its case, as opposed to a full opportunity. The right is not unlimited in scope and breath, to entitle a party to make unreasonable demands and to ignore of the relevant principles and aims of efficiency and speedy resolution of the dispute. As the learned editor of Born, International Commercial Arbitration observed, there is no general right to multiple hearings, and a party is only entitled to a hearing at the time, and of the character, that enables it to present its case. Although the Tribunal in this case rejected M's request for a third hearing to address the 2024 Valuation Report, it allowed the parties to file written opinions to address the evidence, and they accordingly did so. The burden is on M to show how it had been prejudiced, but it has not been able to explain how the absence of the a third hearing resulted in its being unable to present its case on the 2024 Valuation Report, and what further evidence or submissions it could have made at a third hearing. As for the appointment of experts or appraisers, it was open to M to apply for such appointment if it considered that it was necessary to do so, instead of waiting for the Tribunal to order the appointment on its own accord. As the Tribunal pointed out, M did not apply for the appointment of experts or appraisers in the course of the Arbitration, and it cannot now be heard to complain about it (*Hebei Import & Export Corp v Polyteck Engineering Co Ltd* (1999) 2 HKCFAR 111). Counsel for M repeatedly referred to the No Consent Issue, claiming that the Tribunal should have suspended the Arbitration pending the Australian Court's determination of the No Consent Issue in the Australian Proceedings - as to whether X was entitled to and had validly withheld consent to the Intended Transfer. I accept Ms Tong's submissions for V, that the real issue in the Arbitration is not whether or not X was entitled to withhold, or had validly withheld, consent to the Intended Transfer (as claimed by Mr Suen on behalf of M), but whether or not as a matter of fact, M had obtained the necessary consent from third parties including X for the Intended Transfer. The complaint made by Mr Suen, that the No Consent Issue arises out of the JVA between X and M, and should be properly resolved by the Australian Court in the Australian Proceedings,

goes nowhere towards assisting M's Set Aside Summons. The Tribunal did not have to decide on the rights and liabilities of the parties to the JVA and it did not purport to do so. The issue before the Tribunal in the Arbitration was simply whether M had obtained the consent from X to the Intended Transfer - and not whether X was in breach of the JVA under its governing law, by withholding consent. It was not necessary at all for the Tribunal to suspend the Arbitration pending the resolution of the dispute and the issues raised in the Australian Proceedings, and it was perfectly open to the Tribunal to refuse the suspension sought, in the exercise of its discretionary and case-management powers. Similarly, there is no basis for M to complain that the Tribunal should somehow have given an opportunity to M's witness, C and Mr XXXXXX (), to deal with the weaknesses in their evidence. According to Counsel for M, the Tribunal's failure to permit C and G to explain their evidence had deprived M of a fair opportunity to present its case on the No Consent Issue, and as to whether M could effect the Intended Transfer in compliance with the JVA. According to Mr Suen, the Tribunal found in the Award that the written statements given by C and G were themselves incapable of proving that X had consented to the Intended Transfer at the time of the execution of the Agreement. The Tribunal referred to the absence of a relevant board or shareholders resolution, but did not give C and G an opportunity to explain such absence. Mr Suen drew analogy to *P v D & Ors* [2019] EWHC 1277 (Comm), where an arbitral award was set aside for serious irregularity due to the lack of cross-examination of a party's witness on a material issue. The Court found that if the witness had been properly cross-examined and given the opportunity to deal with what were seen as weaknesses by the arbitrators, it might have led to a different outcome. There is no merit in this submission.

66.1 First, as explained above, I do not accept that the No Consent Issue was properly an issue that was necessary for the Tribunal to decide in the Arbitration. In any event, whether or not there was any consent from X is a matter of fact, which was decided by the Tribunal.

66.2 Second, the reliance on *P v D* is misplaced. In that case, live witnesses were called in the arbitration and cross-examination was conducted. In finding that the tribunal had failed to give a fair opportunity to the witness to deal with certain issues, the Court was concerned with the well-established principle of *Browne v Dunn* (see *P v D* 28-34), which is engaged when cross-examination was a feature of the fact-finding process by the tribunal. The obvious distinction in the present case is that both parties in the Arbitration had accepted that the Tribunal could deal with all the factual disputes on the basis of documentary evidence alone, without calling live witness. It was for M to decide how to present its evidence and the evidence of its witnesses. M never applied to have their witnesses called to give evidence in the Arbitration, to explain any aspect of the case. It is obviously too late now, for M to complain about the agreed procedure after realizing that the Tribunal had made adverse factual findings against it, because the Tribunal did not believe M's witnesses and preferred V's evidence. On the unable to present case ground, Counsel for M also submitted that the Tribunal wrongly failed to hold a further hearing on the valuation issue, and M was never given an opportunity to comment on the Tribunal's proposed discretionary 30% discount on the damages to be awarded to V (Discount Issue). According to Mr Suen, the Discount Issue was never in play or in the arena, even if it was not precisely articulated. Counsel relied on

RAV Bahamas Ltd v Therapy Beach Club Inc [2021] AC 907 and this Court's decision in X v Y [2020] HKCFI 2782. It was submitted that the Tribunal never alerted the parties as to its intention to apply the discretionary discount or to raise the Discount Issue. Had the matter been raised, M claims that it could have put forward alternative bases of an appropriate discount and addressed the Tribunal on the considerations relevant to the discretion. As cited by Counsel for M, it was held in X v Y at 82 that arbitrators do not have the obligation to point out to the parties each and every aspect of the claim or evidence which they consider unsatisfactory, but in respect of matters which have never been in issue between the parties, and which do feature significantly in the arbitrators decision, great care should be taken to ensure that the parties are given a fair and ample opportunity to comment and deal with such matters. It is clear that the Discount Issue, as being a part of the issue on the quantum of damages, had all along been an issue in play or in the arena. The parties had been given full opportunity to address the Tribunal on the two valuation reports and on quantum generally (despite the Tribunal's valid refusal to accede to M's request for a further oral hearing). The basis in PRC law for applying a discretionary discount is found in Article 113 of the Mainland Contract Law, which was cited by V in its written submissions to the Tribunal dated 12 October 2022 (ie the very first set of written submissions filed by V in the Arbitration) and hence should have reasonably been brought to the attention of the Tribunal and M. V further made submission on various factors that would have affected the quantum on the basis of the valuation in the 2018 Valuation Report, including any damage caused by V's contributory fault, ancillary benefit received by V, or any set-off. The quantum of damages payable was clearly a disputed issue in the Arbitration. Nevertheless, M chose not to address quantum on the basis of the 2018 Valuation Report, and why and how it should be reduced. The Tribunal cannot be faulted for not alerting M when M only has itself to blame for not addressing the Tribunal on any fallback position in the event that the Tribunal (i) refuses to accept M's case on liability, and (ii) refuses to accept the 2024 Valuation Report (G v X & Ors [2022] HKCFI 1864). For all the above reasons, there is no basis to refuse enforcement under section 95(2)(c)(ii) of the Ordinance. Ground 3 Arbitral procedure not in accordance with parties agreement or PRC law This is a ground set out in the Set Aside Summons, but in his Skeleton Arguments, Counsel for M did not make his submissions by reference to the ground of the procedure not being in accordance with the parties agreement, or the law. Insofar as Counsel's arguments were made on the basis of the Tribunal's failure to hold a further hearing, or to appoint experts on Australian law on CGT, I have already set out (under the inability to present case ground) the reasons why the submissions are not accepted. Insofar as the challenge is based on any improper exercise of case management powers, I cannot see how, in light of the nature and complexity of the issues involved, the refusal to hold a further hearing (despite there being two oral hearings already) could amount to a serious denial of natural justice. Insofar as the challenge is based on the Tribunal's alleged failure to follow agreed arbitral procedure and PRC law (as the law of the seat), Counsel for M failed to point to any agreement of the parties or provisions in PRC law that mandated the provision for further rounds of submissions and evidence or oral hearing on the Valuation Issue. Further, as I have held above, due regard and weight must be given to

the Mainland Dismissal Decision, where it was found that there was no breach of any of the SHIAC Rules in the Arbitration. I have no hesitation in rejecting this submission. As highlighted in the preceding paragraphs of the decision, if M had considered it necessary to rely on expert evidence on the CGT, M could have raised the matter with the Tribunal. M never made any application for expert evidence in this regard, and it is impermissible for M to belatedly complain about the matter at the present stage, when it could have raised it during the Arbitration: CNG v G 1; Hebei Import & Export. Lack of reason Ground I have held that this purported new ground and the facts relied upon in support were not included in either the Set Aside Summons or in Hung 1, and will not be considered. Even if this ground should be considered, there is no merit in the complaint, and I will only briefly explain why. In gist, M's complaint is that the Tribunal failed to give adequate reason for: (1) its refusal to suspend the Arbitration pending the Australian Proceedings; (2) its finding that M was in breach of clause 5(7) of the Agreement without explaining why the lack of consent from X could impede the registration of the Target Assets in V's name and without dealing with whether X's consent was required in the registration process; (3) its rejection of the 2024 Valuation Report; and (4) its application of a discretionary 30% discount in the calculation of damages. I accept V's submissions in answer to the complaint. To the extent that it is argued that the lack of reasons is non-compliance with the agreed procedure, this is a matter of Mainland law. The Arbitration is governed by the SHIAC Rules, which do not require reasons to be given by the Tribunal in any specific level of detail or in any particular manner. Article 45(2) of the SHIAC Rules only requires the Tribunal to include in the Award the reasons on which the award is based, and read with Article 29(1), the Tribunal has a broad discretion to determine the disputes in any manner that it deems appropriate. Any duty to give reasons only exists in respect of awards, and findings and decisions made in the award itself. A procedural order or award is not an award which is a final determination of the claim or a particular issue in the arbitration, which can be challenged by a setting aside application. For these reasons, I am not satisfied that M has identified that there is any legal requirement (whether under Mainland law or Hong Kong law) for reasons to be given for the procedural orders and decisions of the Tribunal in this case, which include its decision to refuse the suspension of the Arbitration, its refusal to direct a third hearing, and any refusal on its part to appoint an expert or appraiser. As highlighted by Counsel for M, to the extent that Hong Kong law is relevant for the consideration of public policy, a high threshold is imposed when an applicant seeks to challenge an award on the basis that the tribunal had failed to give reasons (AI & Ors v LG II & Anor [2023] 4 HKC 135). So long as the reasoning of the tribunal is expressed in an award to enable the parties to understand its conclusion, the reasons do not have to be elaborate. The reasons are expected to be proportional to the complexities of how the issue was contended. In any event, adequate reasons had been given on: (1) the liability issue of whether M had obtained the necessary approval, and whether there were impediments to the registration of the Intended Transfer; and (2) the quantum of damages. First, on the question of M's breach of Clause 5(7) of the Agreement, I agree with Counsel for V that the issue of M's liability for breach of the Agreement was extensively considered by the Tribunal. M's failure to obtain the necessary authority or

approval was part of the overall fact-finding by the Tribunal on the issue of liability. The Tribunal had given sufficient reason on the matter of whether necessary authority or approval was obtained, and whether there were legal or factual impediments to the registration of the Intended Transfer, which included the factual finding that X did not provide the requisite consent. The Tribunal had also adequately explained why it did not accept the evidence of the written statements by C and G. Reading the Award generously, and in a reasonable and commercial way, the fact that the Tribunal had already found that X did not provide the necessary consent would already be sufficient to constitute a legal or factual impediment to the registration of the Intended Transfer, given that X's consent is a sine qua non to the registration. It is clear that this objection is an attack on the fact finding of the Tribunal, dressed up as an objection for lack of reason. Second, adequate reasons had been given in the Award as to why the figures in the 2018 Valuation Report had been used, which implicitly explained why the figure in the 2024 Valuation Report was not adopted. The Tribunal was obviously aware of the two valuation reports, but preferred the 2018 Valuation Report because, according to the Tribunal's view, there had not been any change in the Project since the signing of the Agreement, and the 2018 Valuation Report was provided by C (as an agent for M) to V. It is implicit in the Tribunal's reasoning that it considered the 2018 Valuation Report to be objectively reliable. I do not consider that the Tribunal should be expected to give detailed reasoning as to why the figures, calculations or methodologies in the 2024 Valuation Report would be considered to be unreliable before preferring the 2018 Valuation Report for the reasons given. Third, on the Discount Issue, I have already found that the Discount Issue was in play and in the arena. I cannot see how it can be said that the Tribunal had failed to give adequate reasons on the Discount Issue. For one, the Tribunal expressly identified Article 113 of the Mainland Contract Law as the legal basis for its exercise of discretion (the existence of such discretion is not disputed), and had applied the law accordingly. Given that this is a matter within the Tribunal's discretion, the Tribunal cannot be expected to give a precise calculation or to elaborate on all the relevant factors and the weight to be placed on each of the factor. As I understand from the PRC law evidence placed before me, the determination of the discretionary discount is more an art than a science. Mainland Courts commonly do not give detailed reasoning when deciding on the discretionary discount. It was reasonable for the Tribunal to make broad-brush estimates in view of all the circumstances in the case. That is nothing new even to Hong Kong courts. As Counsel for V submitted, Hong Kong courts regularly apply a broad-brush percentage discount, such as when dealing with costs or apportioning liability between parties in the context of contributory negligence or contribution claims. To conclude, there is no merit in the claim that the Tribunal had failed to analyse or adequately explain its findings in the Award. Ground 4 Public policy I bear in mind the submission made for M that the enforcement court has to apply its own standards and law when deciding whether it would be contrary to the public policy of the jurisdiction of the enforcement court (ie Hong Kong) to enforce the Award: *Song Lihua v Lee Chee Hon (No 2)* [2023] 5 HKLRD 488 53. At the risk of repetition, I have to emphasize that it is not for a party or the Court at the enforcement stage to plough through the bundles of documents in the Arbitration in an

attempt to look for facts and possible defects which may be useful to support an attack against an award on the ground of public policy. If it is claimed that there has been an egregious breach of due process and that a party's rights have been violated in a serious way, the facts should be clearly identified at the outset, either in the Arbitration itself for the Tribunal to rectify it, or if this is not rectified, to raise it clearly in the challenge to enforcement when the application is first made. It is not permissible for a party to state a general ground of public policy, and then to submit a roving case later by picking on and choosing from facts submerged in the mass of documents adduced to the Court. This is unfair to the other side, and an abuse of the time and resources of the Court. In this case, it is clear that the public policy ground is advanced as a residual ground that is derivative of the various grounds canvassed above. The ground of public policy does not add anything new. I have rejected all the other grounds canvassed, and do not see that there is anything shocking to the conscience of the Hong Kong Court to justify refusal of enforcement of the Award in the present case.

Disposition

As ordered at the hearing, M s Set Aside Summons is dismissed. I also ordered that costs be paid by M to V on the usual indemnity basis, with certificate for two counsel, to be taxed if not agreed. (Mimmie Chan) Judge of the Court of First Instance High Court Ms Sara Tong SC and Ms Astina Au, instructed by Fangda Partners, for the applicant Mr Matthew Suen, instructed by Yu Sun Yau Mak & Lawyers, for the respondent PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V hz^' gd_@| gd-M gd-M gd-M gd_@| gd_@| gdZM gdB, gdZM gd_@| pkfkZ gdUH gdUH gdUH gd> gdZM gdZM |qqeq gdUH gdUH gdUH wkwcwcwcw h/~L gd}` gdUH gdWN hf&p h[<5 h?'S hb03 hb03 ht 3 ht 3 ht 3 h.K(hy>B ozkz h.K(ht 3 h.K(h.K(ht 3 h.K(gdOA" gdOA" hT 7 hYN1 h\YA hbxS hbxS h\YA hbxS hbxS hbxS hf&p hbxS hbxS h\YA gd1= gdip gd_C gdOA" hy>B hbxS hy>B h5S9 h5S9 hW]E hW]E h5S9 h1= h1= hW]E hW]E hW]E hW]E hW]E hf&p h1= hh6' h1= h1= h1= gd}! gdip gd/G gd}! gd}! h1= h1= hf&p hf&p hf&p h1= h1= h}B4 h}B4 h=k_ h=k_ hbxS hd}3 h_6y h_6y h=k_ h=k_ h=k_ gd}! gd}! gd}! gd_6y gd}! gd}! gd}! h_6y h%k% hEL^ h%k% h%k% h%k% gdEL^ gdLJ h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% :p-M (#p# [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml z)P -zh 83;3;{]XS1IH 0H!A Ssd-]A3U mH#[A\;> K}*7c ^I77 >g^* y')f ZI\$G ,{uk< WV j k3 zjv3,j X1? Xjg YIsR3 gm~x theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> pB8\$ 9I[*Rm0# user Normal.dotm Ma Wai Fong Joanne Microsoft Office Word Judiciary Hong Kong Title _PID_HLINKS <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA"

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