IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA(I) 10

Court of Appeal / Civil Appeal No 1 of 2024

Between

Reliance Infrastructure Limited

… *Appellant*

And

Shanghai Electric Group Co Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Award — Recourse against award — Setting aside]
[Arbitration — Agreement — Separability]
[Arbitration — Conduct of arbitration — Waiver of objections]

Version No 2: 31 Dec 2024 (20:32 hrs)

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Reliance Infrastructure Ltd
v
Shanghai Electric Group Co Ltd

[2024] SGCA(I) 10

Court of Appeal — Civil Appeal No 1 of 2024
Sundaresh Menon CJ, Steven Chong JCA, Robert French IJ
31 July 2024

17 December 2024

Robert French IJ (delivering the grounds of decision of the court):

Introduction

1 The Appellant in this case had argued in the Singapore International Commercial Court (the "SICC") that an arbitral award (the "Award") against it, based upon a Letter of Guarantee (the "Guarantee Letter"), should be set aside for want of jurisdiction on the part of the Tribunal, or alternatively, on public policy grounds. Both arguments depended upon a contention that the Guarantee Letter underpinning the Award was a forgery.

2 The Appellant had not, in its defence in the arbitration, advanced any objection to the jurisdiction of the Tribunal based on an alleged forgery of the Letter. In Opening Submissions to the Tribunal, it had made clear that it was not alleging that the Guarantee Letter was a forgery (see *Reliance Infrastructure Limited v Shanghai Electric Group Co Ltd* [2024] SGHC(1) 3 (the "Judgment")

at [25]).[1] The Appellant however relied upon fresh evidence in the SICC. The SICC found that the Appellant had waived any objection to jurisdiction, that public policy was not engaged and that, in any event, on the evidence, there was no forgery.

3 The Court dismissed the appeal against the SICC decision at the hearing on 31 July 2024 and deferred publication of its reasons. The reasons follow.

Factual and procedural background

4 Reliance Infrastructure Limited ("RINFRA") is a company incorporated in the Republic of India. Reliance Infra Projects (UK) Limited ("Reliance UK") is related to the Appellant. The Respondent, Shanghai Electric Group Co Ltd ("SEC"), was incorporated in the People's Republic of China. The present dispute arises out of a major construction project for an electricity generating power plant in Sasan Village, India (the "Sasan Project"), in which both the Appellant and the Respondent were involved.[2]

5 On 24 June 2008, Reliance UK entered into a contract with an Indian company, Sasan Power Ltd ("Sasan Power"), under which Reliance UK was to procure for Sasan Power the supply of equipment and services needed for the Sasan Project.[3]

6 At the time, Reliance UK was a wholly owned subsidiary of Reliance Infra Projects International Limited ("RIPIL"). RINFRA held 10% of the

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1 Transcript of SIAC ARB No 448 of 2019 Hearing dated 6 September 2021 at TRA.500.001.0043 lines 13-15.

2 Judgment at [4] and [5].

3 Judgment at [6].

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shareholding of RIPIL. The remaining shares were held by other Reliance Group entities. Mr Rajesh Agrawal was RINFRA's Additional Vice President at the time.

7 On 26 June 2008, Reliance UK and SEC entered into a contract under which SEC was to supply requisite equipment and services for the Sasan Project (the "Supply Contract"). Mr Agrawal signed the Supply Contract on behalf of Reliance UK.[4] It was not in dispute that he was specifically authorised by Reliance UK to sign the Supply Contract on its behalf. That contract did not contain any parent company guarantee clause, which reflected a request from Mr Agrawal to SEC on 25 May 2008 seeking the deletion of such a clause.[5]

8 On the same day, the Guarantee Letter was purportedly executed by RINFRA as guarantor of Reliance UK's obligations to SEC under the Supply Contract. Paragraph 10 of the Guarantee Letter was a provision for the submission of all disputes between the parties to arbitration, seated in Singapore and administered by the Singapore International Arbitration Centre (the "SIAC"). The Guarantee Letter was purportedly signed by Mr Agrawal, on behalf of RINFRA.[6]

9 The Guarantee Letter was allegedly signed at a ceremony in Shanghai. Ms Yu Liwen, who was SEC's Sales and Business Development Manager at the time, told the Court that she had printed out the Letter, delivered it to Mr Agrawal and witnessed him signing it. He had attended that ceremony on behalf of the senior management of the Reliance Group which was said to be

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4 Judgment at [7].

5 Judgment at [9].

6 Judgment at [18].

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demonstrated by the contents of Mr Agrawal's speech delivered at the ceremony.[7]

10 Mr Agrawal was described as an "Authorized Signatory" for RINFRA in a letter dated 4 July 2008 signed by him and addressed to SEC's Vice President.[8]

11 In an email to SEC dated 26 August 2008, Mr Agrawal had said in connection with two other power plant projects in India:

> RIL Guarantee Letter similar to Sasan would be given for Reliance Infra behalf.

12 A dispute arose between SEC and Reliance UK. SEC claimed that money owed to it under the Supply Contract was unpaid in breach of that contract.[9] It invoked the arbitration agreement under the Guarantee Letter and sought enforcement of RINFRA's guarantee of Reliance UK's liabilities under the Supply Contract.[10]

13 RINFRA contended, in its Statement of Defence in the arbitration, that the Guarantee Letter was invalid. It claimed that it was not aware of its existence and that Mr Agrawal had no authority to execute it. It did not assert that his signature was a forgery, nor did it plead in its defence that the Tribunal lacked jurisdiction.[11] In its Opening Submissions to the Tribunal on 6 September 2021, RINFRA made clear that it was not alleging that the Guarantee Letter was a

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7 Judgment at [18] and [19].

8 Judgment at [21].

9 Judgment at [23].

10 Judgment at [23].

11 Judgment at [24].

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forgery. It did not adduce before the Tribunal any witness statements from Mr Agrawal nor any handwriting expert evidence to show that the Letter was a forgery.[12]

14 On the last day of oral closing submissions on 21 January 2022, the Tribunal asked SEC if the RINFRA letterhead was embossed or computer-generated. In an email to the Tribunal dated 30 January 2022, SEC's counsel clarified that the original Guarantee Letter (inclusive of the letterhead) had been printed in black and white but that Mr Agrawal's signature, name and title on the last page of the Letter were in blue ink.[13]

15 RINFRA's legal representative sent an email to the Tribunal on 4 February 2022, in which they referred to the explanation contained in the email of 30 January 2022 and said:

> 11. Subject to further enquiry, this would prima facie constitute the making of a "false instrument" within the meaning of the Forgery and Counterfeiting Act, 1981. If this was done by Mr Rajesh Agarwal [*sic*], who is an Indian citizen, he could also be guilty of an offence of forgery under section 463 of the Indian Penal Code, 1860 (IPC). Even if Mr Rajesh Agarwal [*sic*] participated in this misadventure, he would be a conspirator along with those persons of the Claimant who resorted to this tactic to obtain the purported Guarantee Letter.
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> 12. It is increasingly apparent that the Claimant acted in bad faith and all protestations of being persuaded by the principle of apparent authority in accepting the Guarantee Letter are false. In the least, the purported Guarantee Letter which appears to be a nullity (as all forgeries are nullities) was clearly something created by the Claimant (with or without the connivance of Mr Rajesh Agrawal) and is not a guarantee which was given in circumstances in which the Claimant could bona fide come to the belief that it was given with due authority.

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12 Judgment at [25].

13 Judgment at [26].

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16 As to that, it may be noted that the mere fact that a document duly signed uses a scanned letterhead does not make that document a forgery.

17 In any event what was said in the email was not converted into a contention in the arbitration that the letter was a forgery and that the Tribunal thereby lacked jurisdiction.

18 The Tribunal inquired by an email dated 16 February 2022 about the "specific findings" that the parties wanted the Tribunal to make in respect of the Guarantee Letter.

19 In an email dated 18 February 2022, the legal representatives of RINFRA stated that the Tribunal should declare that the purported Guarantee Letter was invalid and unenforceable and that it ought to be disregarded in its entirety. This was not an objection to the jurisdiction of the Tribunal.

20 RINFRA's Summary Schedule of Issues in the arbitration, updated on 11 February 2022, put in issue the general question of whether the purported Guarantee Letter was valid, enforceable and binding upon it. It stated: [14]

> Purported Guarantee Letter is invalid, unenforceable and non-binding upon the Respondent as *inter alia* its execution is without authority, without Respondent's knowledge or consent, is in contravention of various laws, and is otherwise impossible to perform.

21 RINFRA did not put in issue the question of whether the signature on the letter was a forgery. Implicit in RINFRA's framing of the above issue is an acknowledgment that the Guarantee Letter was in fact signed by Mr Agarwal albeit without authority. Nor did it object to the jurisdiction of the Tribunal. The

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[14] BDSSO(II)(L)-161.

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Tribunal held that RINFRA had not put in issue whether the Letter was a forgery and must be taken to have conceded that it existed.[15] On the other hand, Mr Agrawal's authority to sign the letter was put in issue. The Tribunal found that he had apparent authority to sign it on behalf of RINFRA.[16] In the event, the Tribunal awarded SEC damages to be paid.

22 In the SICC, RINFRA sought to set aside the Award. It sought to rely upon what was said to be fresh evidence never put before the Tribunal, namely Mr Agrawal's evidence that he did not sign the Guarantee Letter and the report of a handwriting expert who contended that the initials and signature found on the Guarantee Letter were all forgeries.[17]

23 The SICC allowed five witnesses to be cross examined at a hearing in January 2024. These included Mr Agrawal who said he had never signed the Guarantee Letter and Ms Yu who said that she had seen him sign the Guarantee Letter.[18]

The terms of the Guarantee Letter

24 The Guarantee Letter appeared on the letterhead of Reliance Energy and was purported to be issued on 26 June 2008. It recited, inter alia:

> B. The Contractor [a reference to SEC] has requested RELINFRA [a reference to RINFRA] to issue a guarantee letter (hereinafter referred to as the "Guarantee Letter") in favor of the Contractor to guarantee due performance and payment by the Purchaser [a reference to Reliance UK] of all its obligations under BTG Contract [a reference to the Supply Contract] and

15 Judgment at [29] and [30].

16 Judgment at [31].

17 Judgment at [33].

18 Judgment at [34].

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> RELINFRA has agreed to issue the same under certain terms conditions.

25 The substantive provisions included:

> (2) RELINFRA hereby unconditionally and irrevocably guarantee to and covenants with Contractor that Purchaser will well and truly perform and observe all the obligations, terms, provisions, conditions and stipulations mentioned or described in the BTG Contract on its part to be so performed and observed according to the true purport intent and meaning thereof, In the event that the Purchaser fails to perform any of its obligations under the BTG Contract including but not limited the full and timely payment to the Contractor, RELINFRA shall be responsible as primary obligor and assume all such work and obligations of the Purchaser towards the Contractor and shall cure the default/non-performance of the obligations there under in full and timely manner. RELINFRA shall indemnify the Contractor with respect to all damages, losses, costs, charges and expenses suffered by the Contractor with respect to the Default/s.

26 Clause 10 of the Guarantee Letter was the arbitration provision in the following terms:

> (10) In all cases of disputes arising out of or relating to this Guarantee Letter and provided no agreement can be reached for the settlement of the dispute within sixty (60) days from the date of written notice of dispute issued by either party, the matter shall be finally settled by arbitration. If no settlement is achieved within the aforementioned sixty (60) day period, either party may submit the dispute to the Singapore International Arbitration Centre (SIAC). The SIAC shall apply the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) as in force on date of reference of dispute. … All arbitration proceedings shall be held in Singapore and conducted in the English language. The tribunal's decision shall be final and binding upon the Parties, and such decision shall not be subject to modification or appeal, except as allowed by the UNCITRAL rules. All awards shall be payable in United States dollars free of any tax or other deduction. In no event shall the tribunal award punitive or criminal damages or sanctions. If a party fails to comply with the tribunal's decision, judgment may be entered upon the tribunal's decision in any court having jurisdiction.

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27 The letter concluded:

> IN WITNESS WHEREOF, RELINFRA has caused this Guarantee Letter to be duly executed by their respective officers thereunto duly authorized, to be effective as of 26th day of June, 2008.

There then appeared a signature above the name "Rajesh Agrawal" and the title "Addl Vice President".[19]

The decision of the SICC

28 RINFRA contended before the SICC that the Tribunal had lacked jurisdiction as the Arbitration Agreement was invalid and that the Award was affected by SEC's fraud.[20] Its factual premises were that SEC had forged the Guarantee Letter, and in the alternative, that Mr Agrawal had lacked authority to execute it.[21] RINFRA contended that it had not waived its objections to the Tribunal's jurisdiction on the grounds being advanced before the SICC, had lacked actual knowledge of the facts required to plead its case for forgery and had only learnt after the Award had been published that Mr Agrawal had never signed the Guarantee Letter. Prior to that time, it had been unable to obtain his cooperation because he was working for a competitor.

29 On the issue of lack of authority, RINFRA said that it did not waive its right to object to jurisdiction on the ground of want of authority because it did put in issue that Mr Agrawal was never authorised to sign the Guarantee Letter and that it was not necessary to expressly frame that argument as an objection to jurisdiction. The argument that Mr Agrawal lacked authority to sign the

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19 BDSSO (II)(C) 241-245.

20 Judgment at [38].

21 Judgment at [39].

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Guarantee Letter was co-extensive with the argument that he lacked authority to make the arbitration agreement contained in the Letter.[22]

30 The SICC referred to the fresh evidence relied upon by RINFRA to support its contention that the Guarantee Letter was forged. The first was Mr Agrawal's testimony. The second was the forensic report of RINFRA's handwriting expert, Mr Manas.[23] RINFRA also relied upon external circumstances to support the claim of forgery including non-compliance with internal company procedures and regulatory requirements in Indian law, the absence of contemporaneous documentation, the removal of a "parent company guarantee" clause from the Supply Contract and the high amount at stake in the purported Guarantee Letter.[24]

31 As to want of authority, it was submitted that Mr Agrawal was never held out as having any authority to bind RINFRA given his junior role as an Additional Vice-President and his limited involvement in negotiations. In any event, there was a distinction between the authority to negotiate on behalf of the principal and the authority to commit the principal to a binding legal obligation.[25]

32 Other instances where Mr Agrawal had signed agreements with SEC were distinguished.

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22 Judgment at [41].

23 Judgment at [42] and [43].

24 Judgment at [44].

25 Judgment at [47].

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33 On the other hand, SEC argued that RINFRA had waived its jurisdictional objection on both grounds advanced by it before the SICC. It had all the information it needed to form its view that the Guarantee Letter was forged. It had asserted to the Tribunal that the Guarantee Letter was a "false instrument" in an email of 4 February 2022 and expressed concerns over its authenticity. On the other hand, it never sought a positive finding from the Tribunal that the Guarantee Letter was forged.[26]

34 It had also waived its right to object on the ground of want of authority as it never mounted an objection to the Tribunal's jurisdiction or sought a ruling that it had no jurisdiction over the dispute. It was insufficient for RINFRA to only put in issue the validity of the Guarantee Letter without also putting in issue the validity of the arbitration agreement in it.[27]

35 SEC went on to submit that external circumstances show that the Guarantee Letter was genuine based on the entire course of conduct between the parties before and after its execution. It referred to the terms of a Framework Agreement, an email from Mr Agrawal on 26 August 2008 which acknowledged the existence of the Guarantee Letter and, of course, the eye-witness evidence of Ms Yu.[28]

36 SEC's handwriting expert, Ms Lee, also gave evidence to the effect that Mr Agrawal's initials and signature on the Guarantee Letter were all genuine when compared to his admitted signatures on other documents.[29]

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26 Judgment at [51].

27 Judgment at [53].

28 Judgment at [54].

29 Judgment at [55].

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37 As to want of authority, SEC contended that RINFRA's arguments were directed to Mr Agrawal's want of authority to enter into a guarantee as distinct from his want of authority to bind RINFRA into an agreement to arbitrate.[30]

38 SEC said that RINFRA had held Mr Agrawal out as having apparent authority to make arbitration agreements with SEC on its behalf, as appeared from arbitration clauses contained in the Framework Agreement and other documents.

39 The SICC set out the issues to be determined as follows (Judgment at [63]):

(a) Whether RINFRA waived its right to challenge the Award on the grounds of forgery and want of authority; and

(b) If not, whether RINFRA proved that –

(i) the Guarantee Letter was forged; or

(ii) Mr Agrawal lacked authority to make agreements to arbitrate with SEC.

40 On the waiver question, the SICC started with Art 16(2) of the UNCITRAL Model Law on International Commercial Arbitration (adopted on 21 June 1985) (the "Model Law"), which provides that "[a] plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence." If raised later, the tribunal must be persuaded that the delay was justified.

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30 Judgment at [56].

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41 The SICC discussed the purpose of Art 16(2) but went on to observe that a party would only be deemed to have waived its rights to raise a jurisdictional objection in a setting aside proceeding if the objection was clear to the party and it knew of the objection (Judgment at [66]). The crucial question was whether the party had knowledge of the "*matters underlying* the jurisdictional objection so that it *could have objected* in a timely fashion during the arbitration [emphasis added]" (Judgment at [66], citing *Deutsche Telekom AG v The Republic of India* [2023] SGHC(1) 7 ("*Deutsche Telekom v India*") at [165]).

42 The SICC also considered that once a party subjectively knew of facts grounding the jurisdiction objection, failure to raise it would only be justified or excused for good reason, that being a matter for objective evaluation (Judgment at [67], citing *Deutsche Telekom v India* at [169] and [171]).

43 The SICC then went on to consider whether RINFRA had waived its right to challenge the award based on forgery.

44 The SICC considered the state of RINFRA's actual knowledge of the facts underlying its right to object to the Tribunal's jurisdiction based on an alleged forgery of the Guarantee Letter. It was RINFRA's case that it only learnt of the existence of the Guarantee Letter when SEC raised it in the Notice of Dispute and that it saw a copy of that document for the first time appended to SEC's Notice of Arbitration. It checked its internal records and could find "no evidence of the existence of a purported Guarantee Letter in its records". It could not find copies nor any correspondence referring to the Guarantee, nor any proof that the Board ever knew and approved of it. Nor was there any record of the liability in its financial statements. On RINFRA's evidence, these were marked departures from its established internal company processes.

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45 The SICC concluded that it was obvious that when a company receives a claim on a document of which it has no records and that none of its current employees recall, one possible explanation would be that it was forged. Another would be that it was signed without authority. RINFRA was relying upon the absence of records as strong circumstantial evidence that the Letter was a forgery (Judgment at [70] and [71]). All of those matters raised in submissions by RINFRA in support of the forgery contention were known to it from the start. The SICC referred to RINFRA's Statement of Defence in which it asserted that it had "no record of issuing such purported Guarantee Letter to the Claimant" (Judgment at [72]).

46 RINFRA argued that it had good reason not to raise a jurisdictional objection at the beginning because Mr Agrawal, whom they had contacted, had declined to say anything to them as he was working for a business competitor. He was not asked whether he had signed the Letter and did not tell them that he had not signed it (Judgment at [74]). The SICC observed at [76]:

> In short, subjectively knowing that the absence of record meant that the Guarantee Letter might be forged, Reliance Infrastructure [a reference to RINFRA] did not have good reason for not raising the jurisdictional objection. It could and should have taken steps such as requesting the original Guarantee Letter from Shanghai Electric [a reference to SEC] so that it could engage an expert to analyse the signature.

47 The SICC referred to the email from SEC dated 30 January 2022 following the request from the Tribunal for a description of the original Guarantee Letter, and RINFRA's response of 4 February 2022.

48 RINFRA however had not pursued the issue further before the Tribunal. And when the Tribunal asked the parties to indicate "specific findings" sought

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on the issue of the Guarantee Letter, RINFRA did not seek any finding that Mr Agrawal had not signed the Guarantee Letter (Judgment at [79]).

49 The SICC observed that at the hearing before them, it became clear that RINFRA had consciously chosen not to raise the jurisdictional objection because it was content to rest on defences already run in the proceedings. The SICC concluded that RINFRA had thus waived its right to raise forgery as a jurisdictional objection (Judgment at [82]).

50 The SICC also held that RINFRA had waived its right to object to the Tribunal's jurisdiction based on Mr Agrawal's alleged want of authority, when it failed to put in issue the Tribunal's jurisdiction over the dispute, on the basis of Mr Agrawal's want of authority to execute an agreement to arbitrate, while clearly having had actual knowledge of all the relevant facts to mount that objection at the time of the proceedings (Judgment at [83]). The SICC said that having failed to seek a ruling from the Tribunal that it had no jurisdiction to rule on the parties' dispute, based on Mr Agrawal's absence of authority to execute an arbitration agreement, RINFRA could not then seek to make that objection before the SICC based on substantially the same facts upon which it pleaded its objection to the validity of the Guarantee Letter, based on Mr Agrawal's lack of authority to execute that agreement (Judgment at [84]).

51 The SICC rejected submissions by RINFRA that it had put the validity of the arbitration agreement in issue, just because it had put the validity of the Guarantee Letter in issue (Judgment at [85]). It had never sought a finding from the Tribunal that it lacked jurisdiction to arbitrate the parties' dispute. Instead it sought "[a] declaration that the purported Guarantee Letter is invalid and not enforceable" — a claim noted by the Tribunal in its Award (Judgment at [86]).

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The declaratory relief it sought could only be construed as substantive relief rather than as reflecting an objection to jurisdiction (Judgment at [87]).

52 The SICC rejected RINFRA's argument that in attacking the validity of an agreement which contained an arbitration provision, there was no requirement that a party expressly state that it was attacking both the main contract and the arbitration provision (Judgment at [88]). The question of whether an entire agreement was entered into without authority might well be an attack on the arbitration agreement, but it might not always be (Judgment at [91]). The attack on the main contract remained conceptually separate from an attack on the arbitration agreement within it (Judgment at [92]). The SICC concluded that RINFRA could not now recast its merits defence as a jurisdictional objection and seek *de novo* review from the SICC (Judgment at [95]).

53 On the basis of the preceding findings, the SICC concluded that the application to set aside the Award must be dismissed. It went on to observe that even if RINFRA's challenges had not been waived, they were not persuaded of the merits in any event. The SICC set out brief reasons for coming to that view on the evidence before it (Judgment at [96]).

54 The SICC concluded that the objective evidence proved the existence of the executed Guarantee Letter. The most compelling evidence was an email from Mr Agrawal to officers of the SEC on 26 August 2008. In particular, the SICC cited his reference to "RIL Guarantee Letter similar to Sasan would be given for Reliance Infra behalf" — RIL being an acronym for Reliance Infrastructure Ltd (Judgment at [97]). The inference to be drawn from that email of 26 August 2008 was that, at that point of time, the Guarantee Letter had been

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executed by Mr Agrawal in favour of SEC for the Sasan Project. That was strengthened by reference to the Term Sheet of the Framework Agreement concluded between the parties on 20 May 2008 (Judgment at [100]). That agreement supported the inference of a common understanding between the parties that SEC would receive a guarantee letter from a parent company in relation to the Sasan Project (Judgment at [101]).

55 The SICC held that the objective documentary and circumstantial evidence also provided independent corroboration of Ms Yu's evidence that she actually saw Mr Agrawal sign the Guarantee Letter at the signing ceremony on 26 June 2008. It undermined the credibility of Mr Agrawal and his evidence that he did not sign the Guarantee Letter (Judgment at [107]). The SICC found Mr Agrawal's evidence about his email of 26 August 2008 to be unconvincing.

56 The SICC referred briefly to the evidence of handwriting experts, Mr Manas and Ms Lee, whose reports arrived at competing conclusions as to whether the signatures on the Guarantee Letter were forgeries. In the event, the SICC concluded that both experts had drawn broadly logical inferences from the same set of primary data, but reached differing secondary conclusions. Taking their evidence on its own, they would not prefer the expert conclusions of Mr Manas over Ms Lee. Even on the conflicting expert evidence alone, RINFRA would have failed to discharge its burden of proving forgery of the Guarantee Letter (Judgment at [122]).

57 Finally, the SICC found that Mr Agrawal had the apparent authority to commit RINFRA to agreements to arbitrate with SEC and would have dismissed its jurisdictional objection on that ground even if it had not been waived (Judgment at [124]). The SICC applied English law to determine the question

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of apparent authority to conclude an arbitration agreement, in particular, *Freeman and Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd and another* [1964] 2 QB 480. A principal may represent or hold out that an agent has ostensible authority to contract on its behalf by the conduct of the principal in permitting or acquiescing in the agent conducting the business of the principal with third parties, cloaking that agent with apparent authority to make contracts in the ordinary course of such business (Judgment at [127]).

58 On that basis, the SICC found that RINFRA had held out Mr Agrawal as having the apparent authority to make arbitration agreements with SEC on its behalf. The SICC then set out its more detailed reasons for coming to that conclusion. It referred to Mr Agrawal having authority to sign a document called the Hisar Indemnity on RINFRA's behalf, which contained an arbitration agreement, executed on 9 February 2007 before the signing of the Guarantee Letter. It also concerned a power plant project in India in which both parties were involved (Judgment at [129]). Differences between the arbitration clauses in the Hisar Indemnity and the Guarantee Letter did not affect the question of apparent authority (Judgment at [130]). A reasonable person placed in SEC's shoes considering the totality of RINFRA's conduct would conclude that Mr Agrawal had authority to make arbitration agreements with SEC on RINFRA's behalf (Judgment at [134]).

59 The apparent authority finding was also supported by external circumstances when consideration was given to the wider pattern of Mr Agrawal's involvement in the negotiations between the parties on various power plant projects they were both involved in (Judgment at [136]). The consistent course of conduct by RINFRA gave rise to the representation that Mr Agrawal

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had authority to sign the Guarantee Letter and to make the arbitration agreement (Judgment at [140]).

The Appellant's contentions on the Appeal

60 RINFRA submitted that the SICC had erred in its findings of waiver of the jurisdictional objection. Its submissions may be summarised as follows:

(a) RINFRA did not waive its jurisdictional objections on the ground of forgery.[31]

(i) RINFRA did not have actual knowledge that the signature was forged at the commencement of the arbitration.[32]

(ii) RINFRA did not have actual knowledge that the signature was forged even after the letterhead issue arose.[33]

(b) RINFRA did not waive its jurisdictional objections on the ground of want of authority.[34]

(c) RINFRA further contended that the arbitration agreement was invalid because Mr Agrawal's signature was forged.[35] It contended that the objective circumstances showed that the Guarantee Letter was not a genuine document.[36] It also contended that the handwriting expert

31 Appellant's Case [19] to [25].

32 Appellant's Case [26] to [36].

33 Appellant's Case [37] to [44].

34 Appellant's Case [45] to [63].

35 Appellant's Case [64] to [66].

36 Appellant's Case [67] to [77].

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evidence proved that the signature on the Guarantee Letter was forged.[37] It submitted that Mr Agrawal's evidence that he did not sign the Guarantee Letter should be preferred over Ms Yu's evidence.[38] It then submitted that the arbitration agreement was invalid for want of authority,[39] and that Mr Agrawal had no apparent authority to commit RINFRA to the Guarantee Letter.[40]

(d) Finally in the Appellant's Case, it was submitted that the Final Award was against public policy and/or was induced or affected by fraud.[41]

61 The outline of those submissions, by reference to the headings of the various sections in the Appellant's Case, indicated that much of this appeal involved challenges to findings of fact by the SICC.

Oral argument before the Court

62 Counsel for RINFRA, Mr Abraham Vergis *SC*, opened his oral submissions by identifying two issues, which he characterised as:

(a) preclusion by waiver; and

(b) findings on the signature forgery.

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37 Appellant's Case [78] to [87].

38 Appellant's Case [88] to [104].

39 Appellant's Case [105] to [111].

40 Appellant's Case [112] to [121].

41 Appellant's Case [122] to [123].

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He did not address the Court on the question of waiver on the issue of apparent authority.

63 The Court put to Counsel that if he failed on the first issue, that would be the end of his appeal. He agreed with that proposition. He then referred to the decision in *Deutsche Telekom v India* in support of the proposition that preclusion by waiver must be based on actual knowledge of the facts which would have given rise to grounds for objecting to jurisdiction. He posed the question: what does actual knowledge mean? He accepted the proposition from the Court that actual knowledge would involve knowledge of the circumstances from which RINFRA could mount an argument that there had been fraud.[42] Counsel contended that at the commencement of the arbitration, RINFRA had no direct evidence that the relevant signature was forged. He cited the difficulties that RINFRA had experienced in obtaining cooperation from Mr Agrawal who, at the relevant time, was working for a competitor of RINFRA. That much was corroborated by Mr Agrawal's witness statement. It was pointed out to Counsel, from the Court, that RINFRA had excluded forgery as an issue and had not left it open as a possibility.

64 Pressed on RINFRA's disclaimer of fraud before the Tribunal, Counsel said at no point did RINFRA have sufficient information to make the specific allegation that Mr Agrawal's signature was forged by SEC. They had no basis to make that allegation. Counsel said:[43]

> The highest that can be said against us at this juncture is that the circumstances were such that we should have gone on a train of inquiry to further investigate this issue, to further

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42 Transcript p 7, lines 20–25.

43 Transcript p 42, lines 18–24.

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> establish this point. But my point is if the question is did we have actual knowledge that the signature was a forgery, the point is throughout this period we had no actual knowledge of this.

65 Counsel for RINFRA then argued a fallback position that the doctrine of preclusion by waiver would not apply where the application to set aside the Award rested on grounds of public policy, namely that the Award was affected by fraud.[44] He referred in that context to *BAZ v BBA* [2020] 5 SLR 266 in which Belinda Ang Saw Ean J (as she then was) said:

> 67 With regard to the use of the doctrine of waiver to preclude a public policy objection, this is a serious contention. The importance of ensuring that an award does not offend the most basic notion of morality and justice outweighs the principle of finality in arbitration that the doctrine of waiver seeks to achieve. Thus, a genuine claim on the ground that an award would offend the public policy of the state cannot be easily waived.

66 That judgment went on to refer to preparatory materials for the Model Law and specifically the Analytical Commentary, which had noted that certain defects such as violation of public policy and non-arbitrability "cannot be cured" by submission to arbitral proceedings and a failure to raise objections during the proceedings.

67 At the conclusion of oral submissions by Counsel for RINFRA, the Court invited Counsel for SEC, Mr Cavinder Bull *SC*, to address the assumption that if the Court were against RINFRA on the question of jurisdiction, it was nevertheless open to it to raise the forgery issue in the context of public policy.[45] Counsel submitted that where a party has made a conscious choice not to pursue

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44 Transcript p 49, line 6–9.

45 Transcript p 62.

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a particular issue, then all legal characterisations of that issue are closed. When RINFRA's legal representative said during the arbitration that RINFRA had never suggested that SEC had forged anyone's signature, he was not drawing distinctions between jurisdictional and public policy arguments.

68 Following the argument from Counsel for SEC on the limited question put to him by the Court, Counsel for RINFRA indicated that he had nothing to say in reply.

69 The Court adjourned shortly and thereafter resumed and dismissed the appeal with an order that the Appellant pay the Respondent costs of USD160,000.[46] The Court stated that it would publish its reasons at a later date.

The Court's reasons for dismissing the appeal

70 The factual and procedural background to this appeal and the Appellant's submissions have been set out above. Against that background the reasons which led this Court to dismiss the appeal can be stated shortly.

71 Despite the best efforts of Counsel for RINFRA, the appeal was without merit. RINFRA was, at the relevant time before the Tribunal, apprised of facts which might have raised a suspicion that the signature on the Guarantee Letter was not genuine — in particular, the alleged absence of any copy of the Letter or record of it having been made on RINFRA's end. RINFRA did not have to say anything about fraud, or more particularly, to disavow such a contention, in its defence and absent such a disavowal, it might have still been open to it to later allege that the signature was forged if evidence of forgery later emerged.

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[46] Transcript p 78.

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72 However, in its opening submissions to the Tribunal on 6 September 2021, RINFRA disclaimed reliance on any claim that the signature was forged. In line with this, it did not advance any such contention when it updated its Schedule of Issues before the Tribunal on 11 February 2022. Its disclaimer was thus in terms that were inconsistent with the reservation of a right to challenge jurisdiction subsequently on the basis of the alleged forgery. It was entirely within RINFRA's rights to take a given course of action, including one that amounted to taking a definitive position on the absence of fraud or forgery and on not reserving its position in that regard pending further investigation. It is beside the point that RINFRA could not ascertain the position with Mr Agrawal; as the SICC noted, it could have taken other measures, and furthermore, it is precisely when the facts are difficult to ascertain that a party would tend to reserve its position. RINFRA did no such thing. In these circumstances, it was not open to RINFRA to raise the argument now, after the conclusion of the arbitration and after it found itself faced with an adverse award.

73 There is nothing contrary to public policy in a party choosing to commit itself to a certain position, when it is not obliged to, and even more so when it evidently thought at the material time that the position was odd. Parties are entitled to choose what issues they will take in an arbitration and if it turns out that it made a wrong tactical or strategic choice, that is entirely of its own making and does not in any way implicate public policy.

74 The public policy exception is not meant to enable an unsuccessful party to an arbitration to completely undermine an award on grounds that it disavowed before the tribunal, or if it raises the issue, where the tribunal, having considered the matter, rejects the contention. If the contrary were true, then it would seem that an award could be challenged on public policy grounds where it was alleged

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by a party to an arbitration that a witness had lied to the tribunal. The Tribunal's finding of fact that the witness had not lied could subsequently be impugned on the basis that the question whether the witness had lied raised a public policy issue, namely that the Award rested upon perjured evidence. That is plainly incorrect.

75 RINFRA's position would also amount to the worst kind of hedging, in that it was staking a certain position before the Tribunal, and then completely changing course subsequently when the award was not to its liking. We have repeatedly said that this is impermissible: see *DFM v DFL* [2024] SGCA 41 at [45] and *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 at [168]–[170].

76 In the view of the Court, the SICC rightly found that RINFRA was precluded from having the Award set aside on a ground going to jurisdiction which had been waived by its disclaimer before the Tribunal.

77 This Court did not hear oral submissions from Counsel for RINFRA on the question whether there was in fact a forgery. It had, of course, read the written submissions of both Counsel. The decision of the SICC that there was not a forgery was soundly based on the evidence before it and plainly correct.

78 This Court thus dismissed the appeal.

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Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Robert French
International Judge

Vergis S Abraham SC and Liu Enning (Providence Law Asia LLC) for the appellant;
Cavinder Bull SC, Foo Yuet Min, Tay Hong Zhi Gerald, Aw Wei Jie Daryn Emmanuel, Lai Weng Han and Tan Pei Han (Drew & Napier LLC) for the respondent.

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