

Legal Update

In interpreting a contract, can an arbitral tribunal rely on contractual provisions the parties did not cite? Singapore High Court says yes—if the issue was live and the parties had a fair chance to address it

DWL v DWM [2026] SGHC 179

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The Singapore High Court in DWL v DWM [2026] SGHC 179 refused to set aside an arbitral award where the claimant argued that the tribunal had relied on unargued contractual provisions and thereby exceeded its jurisdiction and breached the fair hearing rule.

The court held that, in a contractual interpretation dispute, it is natural and foreseeable for a tribunal to construe the contract as a whole, including by reference to provisions not specifically cited by the parties, provided the issue decided was within the scope of the arbitration and the parties had a fair opportunity to address that issue.

Nevertheless, it was good practice for the tribunal to raise such matters to the parties before it ultimately concludes the matter.



Background

The dispute arose from a contract under which the claimant was to supply energy-production equipment to the respondent in Country X. Following sanctions imposed in February 2022, disputes emerged over the claimant's performance, its suspension of the contract, whether certain mitigation obligations continued to apply, and the parties' competing positions on termination.

In the arbitration, a central issue was whether the claimant's obligations under Art 27B survived suspension and termination. The tribunal concluded that they did, and in reaching that conclusion referred to Arts 45.6 and 54, even though those provisions had not been specifically raised by the parties in their submissions. That became the foundation for one of the claimant's principal setting-aside arguments.



Claimant's Argument

The claimant's argument before the court was that the tribunal had decided the dispute on a basis not argued by either side. On that footing, the claimant contended first that the tribunal had exceeded its jurisdiction, because it had determined the matter by reference to contractual provisions falling outside the scope of the parties' pleaded and argued cases. The claimant also argued that the fair hearing rule had been breached because the parties had no notice that Arts 45.6 and 54 would be treated as material, and therefore had no meaningful opportunity to make submissions on how those provisions should be interpreted or whether they affected the continued operation of Art 27B.



The Finding

The court rejected the claimant's arguments. It distinguished between the issue before the tribunal and the particular reasoning by which the tribunal resolved that issue. The relevant issue—whether Art 27B obligations survived suspension and termination—was plainly before the tribunal on the

parties' cases. That issue therefore fell squarely within the scope of the arbitration. Once that issue was live, it was neither surprising nor improper for the tribunal to consider the contract as a whole in construing the relevant provisions.

The court held that where the dispute concerns contractual interpretation, it is natural and foreseeable that a tribunal will read the contract holistically, and may refer to provisions not expressly cited by the parties if those provisions bear on the proper interpretation of the clause in dispute. A tribunal is not confined to a mechanistic choice between the precise textual arguments advanced by the parties. Nor does reliance on uncited provisions, without more, transform the tribunal's reasoning into a decision on an unsubmitted issue. The jurisdictional question is whether the tribunal decided a dispute that had been submitted to it, not whether every step in its reasoning had been expressly signposted in advance by the parties.

That same distinction also disposed of the fair hearing complaint. The court accepted that natural justice requires parties to have a fair opportunity to address the issues that may affect the outcome. But it held that this requirement had been satisfied here because the claimant had a full opportunity to argue its position on the central issue: whether Art 27B continued to apply after suspension and termination. The contract itself, including the provisions later referenced by the tribunal, was already before the tribunal.

In that context, the claimant could not show that it had been denied a fair chance to address the substance of the dispute. The court's view was, in effect, that this was a case of a party not taking an available opportunity rather than being deprived of one.

The court relied on the following authorities in reaching that decision:

- *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86, for the test whether "a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award".
- *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972, for the point that if "an unargued premise flows reasonably from an argued premise", the tribunal need not necessarily invite further submissions.
- *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768, for the proposition that a chain of reasoning is open to a tribunal if the links flow reasonably from the arguments actually advanced or are related to them.



Conclusion

The decision affirms two connected propositions. First, for excess of jurisdiction purposes, Singapore courts will focus on whether the tribunal decided an issue that was submitted to arbitration, not whether the tribunal's reasoning relied only on authorities, clauses, or arguments expressly cited by counsel. Second, for natural justice purposes, the question is whether the parties had a fair opportunity to address the substance of the dispositive issue, not whether they were specifically alerted to every textual or analytical step the tribunal might take in resolving it.

For parties in arbitration, the practical implication is clear. In disputes turning on contractual construction, parties should assume that the tribunal may examine the whole agreement, including provisions not expressly foregrounded in submissions, where those provisions are relevant to the live interpretive issue. A party seeking to resist that possibility will face difficulty if the issue itself was squarely before the tribunal and the contract was already in evidence.

The High Court did caution that tribunals should be careful when developing their own reasons in support of a party's position, because this may leave the other party feeling it was not properly heard. As a matter of good practice, the tribunal ought to have raised with parties its concerns about the relevance of Arts 45.6 and 54 before concluding that those provisions were relevant and supported the respondent's case.

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