

HCCT 87/2023
[2026] HKCFI 1280

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTRUCTION AND ARBITRATION PROCEEDINGS
NO 87 OF 2023**

IN THE MATTER OF a settlement
agreement treated as an arbitral award
pursuant to S66(2) of the Arbitration
Ordinance

and

IN THE MATTER OF Procedural Order
No 7 dated 28 August 2023 in HKIAC
Case No HKIAC/A22209 (A22219)
terminating the proceedings

and

IN THE MATTER OF section 81 of the
Arbitration Ordinance (Cap 609)

and

IN THE MATTER OF the inherent
jurisdiction of the Court

BETWEEN

LT Plaintiff

and

RV Defendant

Before: Hon Mimmie Chan J in Chambers
Dates of Hearing: 29 and 30 September 2025
Date of Decision: 3 March 2026

DECISION

1. This is the substantive hearing of the Originating Summons dated 13 November 2023 (as amended on 14 February 2024) (“**OS**”), whereby the Plaintiff (“**LT**”) seeks to set aside (1) a Settlement Agreement dated 12 August 2023 (“**Settlement Agreement**”) signed by LT and the Defendant (“**RV**”); and (2) a Procedural Order dated 28 August 2023 (“**PO7**”) made by the tribunal (“**Tribunal**”) in an arbitration which had been initiated by RV against LT in Hong Kong (“**Arbitration**”).

2. The grounds stated in the OS for the setting aside are that firstly, the terms of the Settlement Agreement were contrary to a Scheme of Arrangement for LT which had been sanctioned by the Supreme Court of the Seychelles on 6 March 2023 (“**Scheme**”), and that the Settlement Agreement had been signed by a director of LT (“**ML**”) without authority. The second ground for the setting aside is that PO7 was a final decision of the Tribunal in relation to the subject matter of the Arbitration, and was against public policy as it was based on the Settlement Agreement which was contrary to the Scheme and signed without authority, and further, that LT was unable to present its case to the Tribunal on the lack of authority of the director who had signed the Settlement Agreement for LT.

Background

3. LT is a limited liability company incorporated in the Seychelles. It formerly operated a now-defunct cryptocurrency trading platform known as [REDACTED] (“**Platform**”). ML was one of the co-founders of LT, and its sole director from 6 December 2018.

4. RV is described as a seasoned investor in Bitcoin and was a customer of LT and who made investments in LT.

5. The prices for cryptocurrency collapsed in 2022, and this led to the collapse in turn of LT.

6. On 25 June 2022, RV commenced the Arbitration against LT before the HKIAC, claiming for losses suffered as a result of (*inter alia*) alleged misrepresentations and breaches of a margin agreement (“**Margin Agreement**”) for RV’s investments. The damages sought against LT were for US\$249,306,454.80.

7. In turn, LT also started arbitration proceedings against RV, alleging RV’s breach of contract and seeking damages of approximately US\$84 million. The two sets of proceedings were consolidated on 17 August 2022, and the Tribunal was constituted on 27 October 2022.

The Scheme

8. In and around the same time when the Arbitration was commenced, proceedings took place in the Seychelles Courts concerning the Scheme.

9. On 23 June 2022, LT announced that it was under financial distress and halted withdrawals on the Platform.

10. On 28 July 2022, LT applied to the Supreme Court of Seychelles for approval of the Scheme (“**Seychelles Court**”). According to the Judgment of the Seychelles Court delivered on 6 March 2023, the application to the Court was made for a company reorganization under the International Business Company Act (“**IBC Act**”), in order “to allow LT to reorganize its business, property and affairs in a way which provides the opportunity for LT to continue”. During the reorganization process, creditors of LT would be barred from enforcing any claims or judgments against LT.

11. The evidence presented to the Seychelles Court was that as a result of the volatility of the crypto market, LT had suspended its clients’ activities of withdrawing funds on the Platform. According to ML’s evidence to the Seychelles Court, this was because of the default of a large individual customer which had caused LT to become insolvent. It was claimed that LT had total assets of US\$133,845,486, a net deficit of US\$32,836,578, and that LT had commenced arbitration in Hong Kong for the recovery of US \$84 million from the individual large customer (identified to be RV) who had defaulted on his obligation to make payment under his agreement with LT.

12. LT was seeking by the Scheme to have the votes of shareholders and creditors of LT on the Scheme and the reconstruction proposed. Under the Scheme, a special purpose vehicle (“**SPV**”) was to be established, and would be assigned the rights to LT’s claim against RV for the US \$84 million debt (“**Debt**”) payable to LT. The SPV would then issue to each creditor of LT

tokens pro rata to the amount of its debt with a “haircut” reduction, for the tokens to be redeemed on the Platform upon LT’s successful recovery of liquid assets from RV. Under the Scheme proposed, creditors would receive, in lieu of the reduced debts, pro rata rights to sums recovered from RV, and pro rata rights to the equity in LT.

13. On 17 August 2022, the Seychelles Court granted an interim order for LT to implement the Scheme on the terms it had proposed. The approval of the arrangement under the Scheme was to be obtained from the creditors of LT thereafter.

14. On 8 September and 12 September 2022 respectively, RV and the company he controls (“**SB**”) applied to the Seychelles Court to intervene in the restructuring application and the approval sought for the Scheme. As a result, the Seychelles Court directed a hearing to take place, for RV and SB to appear and be heard as interested parties. Evidence was filed and a hearing took place in December 2022, in the course of which testimony was heard from (*inter alia*) ML and RV.

15. The evidence from ML and a co-founder of LT was that the arrangement under the Scheme would maximize the outcome for the creditors of LT, as it would give creditors equity in the business, and allow them to receive a combination of assets in the new business which will constitute a recovery value token, equity and the withdrawal amount yet to be determined. They both considered that the Scheme was in the best interests of the company since 98% of the creditors had already voted in favor of the Scheme, and it was the best possible route to recover the value of lost assets.

16. RV opposed the Scheme and the arrangement proposed, and gave evidence to explain his opposition.

17. By its Final Order made on 6 March 2023 (“**6 March Order**”), the Seychelles Court issued its approval to the Scheme. In its judgment, the Court pointed out that:

(1) It was not in dispute that LT was facing financial difficulties and was insolvent.

(2) The parties had opted for arbitration in Hong Kong whereby RV had a claim of US \$200 million against LT and LT had filed a counterclaim of US \$84 million in the arbitration.

(3) On the evidence adduced, LT had provided an efficient, fair and transparent manner for all creditors of LT to vote on the Scheme, and had made a genuine attempt to reach all creditors of LT across the world.

(4) The Court had the power to make the initial order it had made, but also has a wide discretion to vary it.

(5) Having regard to the method and manner of giving notice to creditors and the manner of voting online, the Court considered that it was appropriate to amend the interim order by imposing a threshold that the approval of the Scheme should be obtained from a simple majority in number and 70% in value of the creditors which voted on the Scheme, and that such threshold had been met.

(6) The Court accepted the evidence of ML, that the Scheme was in the best interests of the Company.

18. The Seychelles Court only amended the terms of the Scheme, to provide (inter alia) that after the creditors have become shareholders and had been issued with ordinary shares, they should nominate one of their own to be a director of LT, and thereafter, in the event that the person nominated by the creditors has received the required majority in accordance with the Articles of Association of the company to be appointed as a director, the said person shall be the second director of the company. The Court further ordered that after approval of the Scheme, if the directors of LT should still be desirous of executing the plan, they should confirm the arrangement as approved by the Court, give notice of the approved Scheme to shareholders and directors, and take consequential steps.

19. RV appealed against the decision of the Seychelles Court to approve the Scheme.

20. On behalf of LT, it was highlighted that the terms of the Scheme as approved by the Seychelles Court required creditors' representatives to be appointed as directors of LT ("**Creditor Directors**"), and also required corporate documents such as the Articles of LT to be amended. The registration of the creditors' shareholding and the appointment of Creditor Directors took some time. The Restated Memorandum and Articles of the company were finally registered on 28 July 2023 ("**Restated Articles**"). Article 14.9 of the Restated Articles required all decisions relating to the prosecution, resolution and settlement of the "Assigned Claims" in the Arbitration to be subject to the approval of Creditor Directors. Corporate directors representing the creditors were initially appointed on 11 August 2023, but it was then determined that

individual directors had to be appointed, and this was eventually done on 22 August 2023.

The Settlement Agreement

21. The subject matter of the dispute before this Court is a Settlement Agreement which was signed on 12 August 2023 by RV and by ML, the latter purporting to act on behalf of LT. The creditors of LT were unaware of the signing of the Settlement Agreement, and only became aware of this in October 2023.

22. Under the terms of the Settlement Agreement, the parties agreed to a full and final settlement of the Arbitration on the basis that each would withdraw and/or have dismissed all claims and/or counterclaims made in the Arbitration, with the Arbitration disposed of with each party bearing its own legal and other costs, and that neither party would be liable to the other in any way. The Settlement Agreement set out terms as to the implementation of the settlement, the release of various claims and liabilities, and provides that it was to be governed by Hong Kong law, and that the High Court of Hong Kong shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Settlement Agreement, with each party irrevocably submitting to the exclusive jurisdiction of the Hong Kong Court.

23. Apparently, at a time just before the execution of the Settlement Agreement, there was a change of legal representatives of LT in the Arbitration. On 7 August 2023, the Tribunal was informed that the new legal representatives of LT were Nine Yards Chambers (“NYC”) and Mr Seow of Colin Seow Chambers (“CSC”), who had taken over from the former

solicitors of LT.

24. A joint application was then made by the respective legal representatives of LT and RV to the Tribunal on 14 August 2023, to terminate the Arbitration on the basis of the Settlement Agreement. Correspondence then ensued amongst the Tribunal, the legal representatives of RV (“MT”), CSC and another firm of lawyers (“LOS”) claiming to be LT’s corporate counsel. LOS claimed that ML had been removed by the board of LT as a director, that the board of LT had resolved and determined that ML was not authorized to act for LT in the Arbitration, that NYC was not authorized to act on behalf of LT, and in essence, that the Settlement Agreement had no effect on LT.

25. On its part, NYC and CSC maintained in the correspondence that they had been duly authorized to act for LT in the Arbitration and in concluding and procuring the execution of the Settlement agreement by ML.

26. The Tribunal invited the parties and their representatives on the record, as well as LOS, to submit evidence of their authority to act in the Arbitration. Submissions were accordingly made. RV relied on the fact that ML remained a director of LT on 12 August 2023, that RV and his lawyers had no knowledge of LT’s internal matters, and that RV and his legal advisors had relied on their being informed by NYC/CSC that the Settlement Agreement had been signed by ML in his capacity as the sole director of ML, and that NYC had full authority to act for LT in the Arbitration. The Tribunal was referred (*inter alia*) to the fact that the register of directors of LT showed that ML was the sole director.

27. On its part, LOS claimed that its engagement had been approved by the consent of a majority of the board of LT on 13 August 2023, and that LT's board had passed a written resolution on 14 August 2023, that NYC was not authorized to act for LT. On 25 August 2023, LOS asked the Tribunal for an adjournment of the case management conference, to give sufficient time to the new board of LT to assess the situation and to engage or reengage appropriate counsel. LOS maintained that the board of LT had not authorized anyone to settle the Arbitration on LT's behalf.

The orders made by the Tribunal

28. On 28 August 2023, the Tribunal handed down PO7 which terminated the Arbitration. The application which was made to the Tribunal on 14 August 2023 was to terminate the Arbitration pursuant to Article 37.2(a) of the HKIAC Rules ("**Rules**"). This was for the tribunal to either issue an order for the termination of the arbitration or to record the settlement in the form of an arbitral award on agreed terms.

29. Article 37.2(a) of the Rules follows the language of Article 30 of the Model Law, adopted by section 66(1) of the Arbitration Ordinance ("**Ordinance**"):

"Article 30. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case."

30. Section 66(2) of the Ordinance further states:

“If, in a case other than referred to in article 30 of UNCITRAL Model Law, given effect to by subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement (‘settlement agreement’), the settlement agreement is, for the purposes of its enforcement, to be treated as an arbitral award.”

31. The orders made by the Tribunal in PO7 were simply to terminate the Arbitration, decided the costs of the Arbitration, and further decided that each party is to bear 50% of the costs so determined.

32. The matter was explained by the Tribunal in PO7. The Tribunal referred to the Settlement Agreement, and also to the dispute which had arisen as to the representation of LT and as to the authority of ML to sign the Settlement Agreement submitted to the Tribunal. It then stated at paragraphs 43 and 44, as follows:

“43. The Tribunal decides to terminate the present proceedings in the form of a procedural order and not in the form of an award, as requested by the Parties. It does so because there are no terms of the settlement to record.

44. In reaching its present decision, the Tribunal notes as follows:

(a) The Tribunal does not make any determination as to the validity of the Settlement Agreement. Pursuant to Clause 7.2 of the Settlement Agreement ‘[t]he High Court of the Hong Kong SAR shall have exclusive jurisdiction to settle any dispute(s) which may arise out of or in connection with this Settlement Agreement and the Parties irrevocably submit to the exclusive jurisdiction of the High Court of the Hong Kong SAR.’

(b) The Tribunal does not make any determination as to the composition or authority of the Respondent’s Board or the Respondent’s rights under the scheme of arrangement approved by the Supreme Court of

Seychelles on 6 March 2023.

- (c) The Tribunal is satisfied, based on the powers of attorney or letters of engagement presented in the present arbitration by the Claimant and Respondent, respectively, that the Parties, duly represented by their respective counsel on record, jointly requested the termination thereof.
- (d) The Tribunal does not rule on the merits of any claims or counterclaims presented in the present arbitration as the Parties have agreed that the Arbitration is to be terminated.”

The Dispute

33. In these proceedings, LT seeks to set aside the Settlement Agreement which LT claims should be treated as an arbitral award pursuant to section 66(2) of the Ordinance. The ground relied upon for the setting aside is that it is contrary to the public policy of Hong Kong, when LT had no authority either to sign it or to settle the Arbitration, and it is contrary to the Scheme approved by the Seychelles Court. LT further claims that PO7 is a final decision in the Arbitration, and should be set aside on the same basis that it is against public policy (for the same reasons as relied upon for the Settlement Agreement), and on the further ground that LT was unable to present its case to the Tribunal in relation to ML’s lack of authority to act for LT. LT claims that before setting it aside, the Court should remit PO7 to the Tribunal to give it the opportunity to take such action as it considers to eliminate the grounds for setting aside PO7.

34. LT further claims that the Court has the jurisdiction under the express provisions of the Settlement Agreement to decide on the validity of the Settlement Agreement, and should declare it null and void on the same grounds, that ML had no authority to sign the Settlement Agreement, that it is

contrary to the Scheme approved by the Seychelles Court, and that the Settlement Agreement is against public policy.

Whether Settlement Agreement/PO7 are Awards

35. The first ground of RV’s opposition to the OS is that there is no jurisdiction for the Court to set aside either the Settlement Agreement or PO7, because the grounds for setting aside as set out in section 81 of the Ordinance only apply to arbitral awards, and neither the Settlement Agreement nor PO7 is an award.

36. The “exclusive recourse” of setting aside as provided for under section 81 of the Ordinance (which gives effect to Article 34 of the Model Law) only applies to an “arbitral award”. The New York Convention, the Model Law and modern international arbitration legislation adopting the pro-enforcement bias advocated by the New York Convention give recognition only to “awards”. As the learned author pointed out at para 22.02[B] of *Born, International Commercial Arbitration*:

“Leading international arbitration conventions and national arbitration statutes apply only to ‘arbitral awards,’ and not to other instruments or decisions. Other types of decisions (eg procedural or interim orders by arbitral tribunals) may be entitled to judicial deference or non-interference, but not to judicial recognition and enforcement under international arbitration conventions and national arbitration legislation.

There are a number of instances in which the categorization of the decision as an arbitral ‘award’, rather than something else, can have vital importance. Under many national legal regimes, an ‘arbitral award’, and only an ‘arbitral award’: (a) has res judicata or other preclusive effect; (b) is subject to being annulled pursuant to national arbitration legislation; (c) is capable of being recognized and enforced under international arbitration conventions and most national arbitration legislation; (d) satisfies requirements in some

national arbitration legislation that a final arbitral decision resolving the parties' claims in the arbitration be made within a specified time period; and (e) is required to satisfy form requirements or procedural steps imposed by some arbitration statutes for institutional arbitration rules."

37. "Award" is not defined in the Ordinance, nor in the Convention or Model Law (Article 31 of which only sets out the form and contents of an award).

38. The meaning of an "award" was considered by this Court in *G v N* [2024] 4 HKC 1 and in *W v Contractor* [2024] 3 HKLRD 179, by reference to the decision in *ZCCM Investments Holdings PLC v Kansanshi Holdings Plc* [2020] 1 All ER (Comm) 132. The relevant factors for consideration in the classification of an order as either an award, or an interim order, were summarized by Cockrell J in *ZCCM*:

"A consideration of these authorities ... suggests the following points:

- (a) The court will certainly give real weight to the question of substance and not merely to form ...
- (b) Thus, one factor in favour of the conclusion that a decision is an award is if the decision is final in the sense that it disposes of the matters submitted to arbitration so as to render the tribunal *functus officio*, either entirely or in relation to that issue or claim ...
- (c) The nature of the issues with which the decision deals is significant. The substantive rights and liabilities of parties are likely to be dealt with in the form of an award whereas a decision relating purely to procedural issues is more likely not to be an award ...
- (d) There is a role however for form. The arbitral tribunal's own description of the decision is relevant, although it will not be conclusive in determining its status ...

- (e) It may also be relevant to consider how a reasonable recipient of the tribunal’s decision would have viewed it ...
- (f) A reasonable recipient is likely to consider the objective attributes of the decision relevant. These include the description of the decision by the tribunal, the formality of the language used, the level of detail in which the tribunal has expressed its reasoning ...
- (g) While the authorities do not expressly say so I also form the view that:
- (i) A reasonable recipient would also consider such matters as whether the decision complies with the formal requirements for an award under any applicable rules.
- (ii) The focus must be on a reasonable recipient with all the information that would have been available to the parties and to the tribunal when the decision was made. It follows that the background or context in the proceedings in which the decision was made is also likely to be relevant. This may include whether the arbitral tribunal intended to make an award ... (citations omitted)”

39. The authorities place focus on the requirement that an award must be a final determination of the outstanding issues submitted for determination in the arbitration, in the sense of its being a complete decision without leaving matters to be dealt with subsequently or by a third party (*Russell on Arbitration*, 24th edition, para 6-002, cited in *G v N* and *W v Contractor*).

40. Procedural orders for discovery (*Gingerbread Investments Ltd v Wing Hong Interior Contracting Ltd* [2008] 2 HKLRD 436), on admissibility of evidence (*K v S* [2020] Bus LR 337) and even preliminary rulings on jurisdiction (*Weltime Hong Kong Ltd v Ken Forward Engineering Ltd* [2001] HKC 458) are not considered as “awards”. In *PT Asuransi Jasa Indonesia*

(*Persero*) v *Dexia Bank SS* [2006] SGCA 41, the Court held that an order that did not relate to the substance of the dispute, and without any determination of the claims, was not an “award”, and that in the absence of an award, there was nothing to set aside.

41. These are the relevant legal principles for the determination of the key issue in dispute.

PO7 and its status

42. Having signed the Settlement Agreement, the parties had submitted it to the Tribunal, with a joint application for an award to be issued by the Tribunal, on terms that the parties’ respective claims and counterclaims be withdrawn, and for the Arbitration to be terminated on the terms set out in the Settlement Agreement, on what was stated to be a “drop hands” basis, to settle all and/or any actions, claims, rights, demands and setoffs of any nature which the parties had or may have against each other.

43. The Tribunal instead issued PO7, simply to terminate the Arbitration, stating that there were no terms of settlement to record. It expressly pointed out that the termination was “in the form of a procedural order and not in the form of an award, as requested by the Parties”.

44. Article 30(2) of the Model Law (adopted by section 66 of the Ordinance) states that an award on agreed terms shall be made in accordance with Article 31 (with regard to form and contents) “and shall state that it is an award”. Such an award then “has the same status and effect as any other award on the merits of the case”.

45. Since the Tribunal in this case did not record the settlement in the form of an arbitral award on agreed terms, Article 30 does not apply. The dispositive part of PO7 only provided for the termination of the Arbitration and recorded the parties' liability for costs only. On the face of these orders which were made, PO7 cannot be an award which has the same status and effect as an award on the merits of the case, pursuant to or by virtue of Article 30.

46. Article 30 may not be applicable to PO7, but the substance of the orders made have to be considered to decide whether it can constitute an "award". The Tribunal's own label of the order it made is not conclusive, although it is one relevant factor to be considered in determining whether PO7 is an award.

47. The Tribunal explained in its decision leading to the making of PO7 that there were no terms of settlement to record, and further, that it did not rule on the merits of any claims or counterclaims presented in the Arbitration.

48. The Settlement Agreement was annexed to PO7. Under the Settlement Agreement, the parties recited their wish to settle the Arbitration on "drop hands" basis, and "to settle all and/or any actions, claims, rights, demands and setoffs, of any nature whatsoever, that the Parties had, have, or may in future have against each other". Clause 1.1 states that the parties agreed to a full and final settlement of the Arbitration on terms that:

"1.1.1 Party A and Party B agree to each withdraw and/or have dismissed all claims(s) and/or counterclaims(s) made in the Arbitration, thereby fully disposing of the Arbitration on the basis that neither Party is liable to the

other in any way;

1.1.2 Each Party shall bear its own legal and other costs of the Arbitration; and

1.1.3 As for the non-party costs and expenses of the Arbitration (including but not limited to the Arbitrators' fees, venue fees):

(1) Each Party agrees to bear those non-party costs and expenses already paid by it; and

(2) Each party shall be responsible for 50% of any non-party costs or expenses of the Arbitration (including but not limited to the Arbitrators' fees, venue fees) outstanding as at the date of this Settlement Agreement.”

49. Whilst I am not in full agreement with the Tribunal that there were no terms of settlement which could be recorded with regard to the claims made in the Arbitration and the dismissal of such claims, together with each party's full and unconditional release of the liability of the other, the truth of the matter is that in the dispositive part of the order, PO7 only recorded and consisted of the termination of the Arbitration proceedings and the determination of the costs of the Arbitration. Although these aspects are final and binding so far as the Arbitration is concerned, there was no determination by the Tribunal at all of the claims made in the Arbitration, nor of such claims' dismissal or their release.

50. It is true that PO7 terminated the Arbitration proceedings. On behalf of LT, it was highlighted that the Tribunal thereby became *functus*. According to the guidelines set out in *ZCCM*, that is one factor in favor of a conclusion that a decision is final, and hence is an award. However, consideration should also be given to the fact that although the mandate of the Tribunal terminates with the termination of the arbitral proceedings

(Article 32(3)), a termination order by itself does not dispose of the dispute on its merits. In the absence of a final determination or dismissal of the claims which were made the subject matter of the arbitration, fresh arbitration proceedings may be instituted if the relevant limitation period has not expired.

51. Taking into account all the relevant factors of an award as outlined in the authorities, including the nature of the issues decided, and the Tribunal’s description of its decision, I have to accept that PO7 as issued cannot be considered an “award”. There was no final determination of the subject matter of the claims submitted to the Tribunal in the Arbitration.

The Settlement Agreement and its status

52. The Tribunal did not make any order or award to record the terms of the Settlement Agreement, for Article 32 apply.

53. LT relies on section 66(2) of the Ordinance (set out in paragraph 30 above), to contend that as the parties have entered into an agreement in writing which sets out the terms of the settlement of the claims made in the Arbitration, the Settlement Agreement should be treated as an arbitral award, for section 81 and the grounds for setting aside an award to apply.

54. On behalf of RV, Counsel argued that section 66(2) only provides for such settlement agreement to be treated as an arbitral award “for the purposes of its enforcement”. Relying on section 3(2)(b) of the Ordinance and the important principle that the court should interfere in the arbitration of the dispute “only as expressly provided for in the Ordinance”, Counsel argued

that the Court does not have jurisdiction to set aside the Settlement Agreement when it is not an award, and when LT is not seeking to enforce the Settlement Agreement, but to do the opposite - to set it aside.

55. Having considered the language used in section 66(2) and in section 81, and the important distinction between an award and other orders of a tribunal which do not constitute awards to be afforded international recognition under the Convention, I have to accept the submissions made for RV.

56. As highlighted in *G v N*, there is an important distinction between final arbitral awards and interim, procedural and other orders made by the Tribunal, in terms of their recognition and enforcement. Even though orders and directions made by the tribunal (which fall short of constituting an award) can be enforced, with the leave of the Court, as an order or direction of the Court under section 61 of the Ordinance, that section does not provide for the grounds on which leave may be granted, or refused, by the Court. Nor does section 61 provide for the grounds in section 81/Article 34 (for setting aside an arbitral award) to apply or extend to such interim or other orders. In contrast, by the express provisions of section 81, the exclusive recourse by way of challenge and the grounds for challenge by way of an application to set aside as set out only apply to “an arbitral award”, and not to any other order of the tribunal, even if it may be recognized as enforced by the Court.

57. Nor does section 66(2) of the Ordinance make provision for section 81 to apply to a settlement agreement. It only states that such a settlement agreement is to be treated as an award “for the purposes of its enforcement”. Enforcement of an award entails opposition to its enforcement,

on grounds which are set out under Part 10 of the Ordinance (sections 86, 89 and 95, which deal with refusal of enforcement of arbitral awards, and are essentially the same as the grounds for setting aside an award). However, I cannot agree that section 66(2) can be read or construed to mean that the grounds set out in section 81 can apply to the Settlement Agreement, to permit an application to set it aside.

58. The reference made by Mr Clark to paragraph 64 of the “Summary of submissions and comments on the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill” 2008 does not determine the matter in favor of LT. This reads:

“The Administration considered that there are merits in retaining the provisions giving settlement agreements the same effect of arbitral awards in order to promote mediation. However, the relevant provisions may be simplified because once a settlement agreement is reached and regarded as an arbitral awards [*sic*], clause 85 of the draft Bill would apply which provides for enforcement as well as grounds for challenging the awards.”

59. As Counsel for RV pointed out, the above Summary is not a legal authority. In any event, paragraph 64 sought to justify treating a settlement agreement as an arbitral award, by stating that there are merits in retaining the provisions giving settlement agreements the same effect as arbitral awards - in order to promote mediation. As argued by Counsel for RV, that is relevant and legitimate only in the sense of encouraging mediation and *enforcing* settlement agreements, but does not justify any application to challenge and set aside such agreements. Mr Parker also pointed out that paragraph 64 of the said Summary is based on a factually incorrect premise because it referred to clause 85 of the draft bill discussed (eventually enacted as section 84 of the Ordinance), which does not concern challenging an award

at all, but its enforcement. Mr Parker further pointed out that the discussion summarized was in the context of whether leave should be required to challenge a decision on whether to enforce a settlement agreement, and not whether settlement agreements should be treated as awards for the purpose of setting aside on the section 81. I accept his submissions.

60. To conclude, the Settlement Agreement is not in my judgment an award which can be set aside under section 81 of the Ordinance.

Whether the Settlement Agreement can be set aside by the Court on other grounds

61. The application made in the OS includes, by paragraph 4, an application to the Court for a declaration that the Settlement Agreement is null and void pursuant to clause 7.2 of the Settlement Agreement. Clause 7.2 states that the High Court of Hong Kong “shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Settlement Agreement and the Parties irrevocably submit to the exclusive jurisdiction of the High Court of the Hong Kong SAR”.

62. LT claims that the Court has jurisdiction to declare the Settlement Agreement null and void, on the same grounds set out in paragraph 1 of the OS for setting aside the Settlement Agreement as an award: namely, that the terms of the Settlement Agreement are contrary to the Scheme, and that ML who had signed the Settlement Agreement on behalf of LT had no power or authority to do so, in circumstances when both RV and ML were aware of these matters at the time when the Settlement Agreement was signed by them. These grounds are already set out in paragraph 4 of the OS.

63. Counsel for RV submitted that LT has adopted the wrong procedure to seek the declaration on the Settlement Agreement. It was argued that there should be proceedings issued by a Writ, or LT should reopen the Arbitration, but that the Court has no power under the Ordinance to set aside the Settlement Agreement.

64. By virtue of Order 2 rule 1 Rules of the High Court (“**RHC**”), any failure to comply with the requirements of the rules, whether in respect of time, place, manner, form or content or in any other respect, shall be treated as an irregularity only, and shall not nullify the proceedings, or any step taken in the proceedings, or any document or judgment or order therein. I have not been referred to any earlier correspondence between the parties, whereby RV had raised any objection to the irregularity now contended. Nor can I see any prejudice that has been sustained by RV as a result of the alleged irregularity. None has been asserted by Counsel for RV. Evidence has been filed, and detailed submissions have been made, as to the issues and claims made in the proceedings instituted by the OS. It has not been alleged that RV has been unable to present his case or evidence as a result of the proceedings having been instituted by OS instead of by Writ, with formal pleadings. It is not asserted that RV has any other evidence to be filed in connection with the validity of the Settlement Agreement, or that he was not prepared or is unable to meet LT’s case as to the Settlement Agreement, the Scheme and/or ML’s lack of authority.

65. Order 73 rule 1 RHC states that an application, request or appeal to the Court under the Ordinance must be made by originating summons, to the judge. Although LT seeks by its OS to set aside the Settlement Agreement and PO7 by invoking section 81 of the Ordinance,

which I have held to be inapplicable, there is nothing to prevent this Court from dealing with the application made in paragraph 4 of the OS. The OS seeks the Court's determination and findings on the Settlement Agreement and its status under section 66 of the Ordinance, and on PO7 which was made by the Tribunal in the Arbitration which is seated and held in Hong Kong. The Hong Kong Court exercises its supervisory jurisdiction over the Arbitration, and can make its findings on the Settlement Agreement and the termination of the Arbitration pursuant to the Settlement Agreement, even if PO7 and the Settlement Agreement are not awards for setting aside under section 81. That was the basis on which service out was obtained under Order 11, that the OS relates to the Arbitration governed by Hong Kong law and held in Hong Kong. The Court also has jurisdiction under the express provisions of the Settlement Agreement.

66. Materially, RV suffers no prejudice or injustice as a result of the Court's consideration and decision on the status and effect of the Settlement Agreement. Indeed, it would be against the objectives of procedural economy, costs effectiveness and expeditiousness, to require LT to commence new proceedings by Writ to seek the declaration and determination sought on the Settlement Agreement.

67. The real issue in dispute concerning the Settlement Agreement is whether it was validly made, and whether ML had the authority to sign the Settlement Agreement and to bind LT. On behalf of LT, Mr Clark submitted that if the Settlement Agreement is held to be not an award, public policy would no longer have to be considered, although the primary basis of LT's case that the Settlement Agreement is null and void remains to be the same as LT's basis of claiming that the Settlement Agreement is against

public policy as an award - namely, ML's lack of authority, and RV's knowledge thereof.

Authority of ML in signing the Settlement Agreement

68. Even on RV's case, determination of whether ML, as director of LT, had actual authority to enter into the Settlement Agreement is a matter of Seychelles law.

69. Expert evidence was filed by both parties as to Seychelles law on directors' authority. As summarized for LT, the expert evidence does not raise much controversy. RV's expert accepts that after the Creditor Directors have been appointed, ML no longer had authority to conclude the Settlement Agreement. However, according to RV's expert, during the interim of time between the Restated Articles (filed on 28 July 2023) coming into effect (and requiring decisions relating to settlement of the Arbitration to be subject to the approval of the Creditor Directors) and the appointment of Creditor Directors on 22 August 2023, ML had the power, as the sole director of LT, to settle the Arbitration and to sign the Settlement Agreement on 12 August 2023, and that the Settlement Agreement was accordingly binding on LT. The expert for LT considered that during this interim, before the appointment of the Creditor Directors, ML had no power to enter into the Settlement Agreement. He should have consulted with the creditors before entering into the Settlement Agreement.

70. However, as submitted by LT, the matter of ML's authority under Seychelles law has already been determined by the Seychelles Court on 31 July 2025 when the Supreme Court of Seychelles handed down a judgment,

finding that in the factual circumstances of this particular case, ML had no authority to sign the Settlement Agreement, and that he was in contempt of court for failing to comply with the Scheme. In *Guangzhou Green-Enhance Bio-Engineering Co Ltd v Green Power Health Products International Co Ltd* [2004] 3 HKLRD 223, Lam J (as Lam PJ then was) held (at para 3):

“(b) When there is authority directly in point, there is no room for experts to give evidence to determine the likely outcome of the foreign court applying the foreign law, see *National Bank of Egypt International Ltd v Oman Housing Bank SAOC* [2003] 1 All ER (Comm) 246.

...

(d) Although there is no specific reference to a particular point in a foreign judgment, so long as the court is satisfied that the point could not have escaped the attention of the foreign court of the parties, the foreign court should be regarded to have decided that point as well, see *Shenzhen Development Bank v New Century International (Holdings) Ltd* HCA 2976 of 2001, 31 July 2002 at para 35.”

71. At paragraph 4, His Lordship also held:

“In addition, it is not the role of an expert to act as advocate for those engaging him nor should he be asked to give evidence on the construction of certain documents (see Rogers JA (as he then was) in *Chen Paul v Lord Energy Ltd* [1998] 1 HKC 702).”

72. These points were accepted and applied by the Hong Kong Court of Appeal in *Beijing Hantong Yuzhi Convention Centre Ltd v Lao Yuan Yi* CACV 163/2014, 24 August 2015, at para 7.19.

73. It is of course trite, that the Hong Kong Court is duty bound to assess and evaluate the evidence before it, independently of the judgment of any other court. The judgment of the other court is “at most a record of how

another court viewed the evidence”, “an expression of opinion” by the other court, and is not relevant for the disposal of the matter before the Hong Kong court. Whereas decisions of foreign courts may be relied upon as evidence of foreign law, Counsel for RV submitted that the court is still not bound to apply a foreign decision if it is satisfied, as a result of the evidence, that the decision does not accurately represent the foreign law.

74. It is of course pertinent that LT is incorporated under the law of Seychelles, and all matters concerning its constitution are governed by the law of the place of incorporation (*Dicey, Morris & Collins on the Conflict of Laws* (16th edition) para 30-020). The law of the place of incorporation determines whether directors have been validly appointed (*Sierra Leone Telecommunications Co Ltd v Barclays Bank plc* [1998] 2 All ER 821) and who are the corporation’s officials authorized to act on its behalf (para 30-30, *Dicey, Morris & Collins on the Conflict of Laws* (16th edition)).

75. Having considered the judgment of the Seychelles Court of 31 July 2025, this Court can accept the following as matters of Seychelles law:

- (1) A director has the duty to act in the best interests of the company, owes fiduciary duties to the company, which duties should be exercised in conformity with the Articles of Association of the company, and should also act in good faith.
- (2) Under section 145 of the IBC Act, a director has the further duty to act in accordance with the company’s memorandum and articles.
- (3) Under section 208(10) of the IBC Act, the reconstruction of LT becomes effective from the date that the Articles of

Arrangement were registered by the Registrar.

(4) Once the Articles were registered and the Certificate of Arrangement in respect of the Scheme was received, it was incumbent on LT to follow and abide by all the terms and the Scheme.

(5) The board of directors of LT had to be reconstituted to include the Creditor Directors, and it was necessary to notify and seek approval from the Board on matters relating to the Arbitration.

76. The findings made by the Seychelles Court were that ML was aware of the amendments made to the Articles, and of the requirement for the composition of the board to include the Creditor Directors. The Seychelles Court found that ML acted in contravention of the Articles by taking the decision as the sole director to settle the claim against RV (paragraph 31 of the judgment); that ML was not acting in good faith and had breached his fiduciary duties towards LT (paragraph 31 of the judgment); and that ML was in contempt of court by failing to observe and abide by the 6 March Order of the Seychelles Court. Consequently, the Court made orders to the effect (*inter alia*) that ML had no authority to enter into the Settlement Agreement on behalf of LT which was a breach of the Restated Articles and a breach of his duties as a director, and that such action in violation of the 6 March Order was null and void.

77. My conclusion on the evidence is that unless and until the judgment of the Seychelles Court is set aside, it is authority and evidence on Seychelles law as to ML's lack of actual authority to sign the Settlement Agreement. Notwithstanding the arguments made by RV's Counsel on the

basis of the opinion of RV's expert as to how article 14.9 of the Restated Articles should be construed, I see no valid basis to depart from the judgment of the Seychelles Court as to the meaning and effect of either the Scheme and restructuring, or of the Restated Articles, and to find that ML did have authority as director to enter into the Settlement Agreement after the approval of the Scheme and the registration of the relevant Articles, and before the Creditor Directors were appointed.

78. The arguments made by Mr Parker were that to find that LT was incompetent to act in that interim (between the registration of the Restated Articles on 28 July 2023 and the appointment of the Creditor Directors on 22 August 2023) would create an unworkable and untenable situation, which suggests that ML as sole director during that interim did have the authority to conclude the Settlement Agreement. Reference was made to the fact that the Arbitration was still continuing during that interim, and important steps had to be taken by LT.

79. I do not accept such argument. With knowledge of the Scheme as approved by the Court, and the fact that it was necessary for Creditor Directors to be appointed and to approve the settlement of the Arbitration, there was nothing to prevent ML from informing the Tribunal of that fact, if necessary, to seek more time before progressing the Arbitration, or to explain to the Tribunal the need for an adjournment. The situation was far from "unworkable", as claimed.

80. In any event, on the evidence of foreign law discerned from the Judgment of 31 July 2025, and on the factual evidence adduced before this Court, I can come to the same conclusion as the Seychelles Court, that with

ML's clear notice of the Scheme, the 6 March Order, and of the contents and requirements of the Restated Articles, he had no authority to enter into the Settlement Agreement without the knowledge and approval of the creditors, and his execution of the Settlement Agreement was a breach of the Restated Articles and of the 6 March Order of the Seychelles Court.

Apparent authority?

81. I do not consider that RV's case can be assisted by his reliance on any apparent authority on the part of ML, as asserted. The reasons are as follows.

82. The law relating to apparent authority has been clearly set out in the judgment of Lord Neuberger NPJ in *Thanakharn Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd* (No) 2 (2010) 13 HKCFAR 479 ("*Akai Holdings*"):

"In an often cited passage in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480, 506, Lord Diplock identified four conditions which have to be satisfied before a third party, whom he described as a "contractor", can enforce a contract against a company entered into by a purported agent with no actual authority. Those conditions are:

- (1) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;
- (2) that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates;
- (3) that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and

(4) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.”

83. Even if the Court is to accept that ML had been permitted by LT, as a director, to act in the management or conduct of LT’s business, so that the requirement of representation can be satisfied, it is clear in my judgment that the signing of the Settlement Agreement by ML in the circumstances of this case excludes the operation of the principle of apparent authority.

84. The Restated Articles were in operation from 28 July 2023, and the relevant Article 14.9 required all decisions relating to the prosecution, resolution and settlement of the Assigned Claims in the Arbitration to be subject to the approval of Creditor Directors. In August 2023 when the Settlement Agreement was signed, LT was facing financial difficulties as described to the Seychelles Court, and when the Scheme had been approved by the Court, LT was simply no longer able to enter into, or to delegate any usual authority to ML to enter into a contract in the nature of the Settlement Agreement, which was required under the Restated Articles to be approved by the Creditor Directors appointed or to be appointed. The fourth condition set out at paragraph 43 of the judgment in *Akai Holdings* was not satisfied.

85. Further, I accept the submissions made for LT, that entering into the Settlement Agreement was simply not an act in the ordinary course of LT’s business. It was made at a time when the Scheme had been approved for LT by the Court, for assignment to the SPV established under the Scheme of all the rights LT had to the claims against RV of US\$84 million in the Arbitration.

86. Paragraphs 44 and 45 of Lord Neuberger’s judgment in *Akai Holdings* are particularly pertinent to this case, where he observed:

“44. As Diplock LJ explained at p.503, apparent authority:

... is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the “apparent” authority, so as to render the principal liable [thereunder].

45. In a decision of the Supreme Court of Western Australia Court of Appeal, *Auxil Pty Ltd and Anor v Terranova* (2009) 260 ALR 164, para.176, Newnes JA said this about representations capable of creating an apparent authority:

A representation creating an apparent authority of an agent may be made in a number of ways but the most common form of representation by a principal is by conduct, that is, by permitting the agent to act in the management or conduct of the principal’s business. By permitting the agent to act in the management or conduct of the business, the principal thereby represents to anyone dealing with the agent that he or she has authority to do those acts on behalf of the company which an agent authorised to do acts of the kind which he or she is in fact permitted to do normally does in the ordinary course of such business.” (Emphasis added)

87. The Settlement Agreement was an unusual and exceptional agreement made in the exceptional circumstances then faced by LT. Its conclusion and execution cannot be an act which ML, as an agent of the company, normally carries out or is permitted to do in the ordinary course of the principal’s business.

88. The state of mind of RV is also relevant on the facts of this case.

89. RV placed much reliance on the representations made by lawyers claiming to act for LT, that the Settlement Agreement had been executed on behalf of LT by its sole director, ML, pursuant to the IBC Act.

90. RV claimed that he had no reason to doubt that the statements made by CSC/NYC at the time when the Settlement Agreement was signed were true, and further that he had no reason to doubt that the necessary internal company procedures of LT had all been properly complied with.

91. First, the legal representatives were only themselves acting as agents of ML, and cannot have any greater authority than ML.

92. Secondly, representations made by the legal representatives that they or ML had authority to represent LT in the Arbitration were not, and were totally different to, representations that ML had authority to enter into and sign the Settlement Agreement to compromise LT's claims against RV in the Arbitration.

93. Even if there had been any representation made by LT that ML had authority to sign the Settlement Agreement on its behalf, on the facts of this case, it was unreasonable for RV and those acting for him to rely on this, without making any further enquiry as to whether the Settlement Agreement had been approved by LT's creditors or the Creditor Directors.

94. Counsel for RV submitted (relying on *Akai Holdings* para 62) that a third party is entitled to rely on an agent's apparent authority unless the third party had actual knowledge of the agent's lack of authority, or the third

party was dishonest or irrational (which includes turning a blind eye or being reckless).

95. As to what constitutes blind eye knowledge, or turning a blind eye, Counsel referred to what was stated at paragraph 53 of the judgment in *Akai Holdings*:

“If the facts and circumstances are such that the judge comes to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind - I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover - I think that is dishonesty.”

96. Counsel for RV pointed out that in *PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA (2023) HKCFAR 1*, the Court of Final Appeal reaffirmed that in commercial transactions, the doctrine of constructive notice does not apply, and that there is no general duty to make inquiries as to the agent’s authority unless the facts on their face indicate a want of authority.

97. In fact, Lord Sumption NPJ clarified the question of what constitutes notice and when there is a duty to inquire, at paragraph 16 of his judgment in *PT Asuransi*, as follows:

“The critical question, whether one looks at a bank’s duty of care or at the law relating to ostensible authority, is what constitutes sufficient notice of a want of actual authority, so as to require a bank to make inquiries before paying out in accordance with its mandate. The basic rule is stated in *Bowstead & Reynolds on Agency*, 22nd ed. (2021), at article 73:

“No act done by an agent in excess of actual authority is binding on the principal with respect to persons having

notice that in doing the act the agent may be exceeding the agent's authority."

The editors' comment, at para. 8-048, as follows:

"The problem is to know what constitutes notice, and when there is a duty to inquire. It is often said that neither constructive nor presumed notice apply in commercial transactions. This certainly excludes the full doctrine of constructive notice of equitable interests in land, whereby a person is expected to take the initiative and make inquiries, being deemed to have notice of property interests which would have come to that person's knowledge if such inquiries and inspections had been made as ought reasonably to have been made. But there can be no doubt that in many situations where it is relevant to know whether one person has knowledge of facts, including those raising the doctrine of apparent authority, the court may infer from the circumstances that the person concerned must have known of the facts in question or at least ought to have been suspicious to the extent that further inquiries would have been appropriate in the context.

It seems that the proper approach in commercial cases is to apply the objective interpretation which one person is entitled to put on another's words and conduct in the light of the facts known to the former.

...

Many things might be sufficient to put an outsider on inquiry as to an agent's authority. The third party's knowledge that the agent has a substantial conflict of interest in respect of the transaction is one of the more common examples, but a plain lack of benefit for the principal or commercial purpose on the face of the transaction, and unusual aspects of the transaction are another." (Emphasis added)

This statement of principle reflects long-standing authority. Both the general proposition and the editors' comments in similar terms in the previous edition were endorsed by the Privy Council, after reviewing the authorities, in *East Asia Co Ltd v PT Satria Tirtatama Energindo* [2020] 2 All ER 294, at [70]-[94]."

98. As highlighted by Mr Clark, Lord Sumption also clarified, at paragraph 20 of his judgment, any confusion between the terms “unreasonable reliance” and “irrationality”:

“A certain amount of confusion has arisen from the fact that in *East Asia*, at [83]-[92], the Privy Council, following the editors of *Bowstead & Reynolds*, considered that the “orthodox view” had been challenged by this court in *Thanakharn Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd (No 2)* (2010) 13 HKCFAR 479, where the leading judgment was given by Lord Neuberger NPJ, with whom the rest of the court agreed. The Privy Council, at [75], stated the test as being whether the third party could “reasonably” rely on the apparent authority of the agent given what it knew. The challenge was said to consist in Lord Neuberger’s preference for the word “irrationality”. I respectfully suggest that the supposed conflict stems from a misunderstanding of the reasoning in *Akai Holdings*. Although the two judgments offer different analyses of some of the authorities, there is in my view no difference between the law stated by this court in *Akai Holdings* and by the Privy Council in *East Asia*. It is necessary to distinguish between (i) the general principle governing ostensible authority and a bank’s duty of care, and (ii) its application to a particular case. The orthodox view has always been that what a third party is entitled to rely on may differ according to the commercial context and the exigencies of business. The facts in *Akai Holdings* were that the bank had lent a large sum to company S, over which a Mr Ting had management control. Company S defaulted on the loan. Mr Ting purportedly authorised what was called the “Switch Transaction”, by which liability for the loan was transferred to an unrelated company, C, of which he was the executive chairman. It was conceded that the transaction was beyond Mr Ting’s actual authority. No one doubted that if the bank was dishonest, or if (which amounted to the same thing) it was reckless or turned a blind eye to the apparent impropriety of the transaction, it could not rely on Mr Ting’s ostensible authority. But both courts below had rejected the allegation against the bank’s integrity and this Court declined to interfere with their concurrent findings on that point. The question was therefore what lesser degree of knowledge would suffice to defeat ostensible authority. The alternatives were “irrationality” and “unreasonableness”. Lord Neuberger preferred to call it a test of irrationality, although he regarded both as objective tests and doubted whether there would in practice be much difference between them: see [50]. It is, however, clear that his analysis was not intended to

qualify the general principle, as expressed in the “orthodox view”. It was directed only to its application in a commercial context such as banking. In his view a test of irrationality better reflected the exigencies of business which would normally be decisive in a commercial transaction. The bank’s belief in Mr Ting’s ostensible authority was “irrational” because the Switch Transaction on its face involved the gratuitous assumption by company C of a large liability to its obvious disadvantage, but to the advantage of company S and the bank itself. Some variant of this situation is normally the factual background when a bank is held to have no authority to act on an authorised signatory’s direction. To say that it must be “irrational” and not just “unreasonable” to proceed without inquiry simply served to emphasise that inquiry was not called for by a general duty to inquire into the customer’s transactions. It was necessitated by remarkable facts actually known to the bank which, unless explained, pointed to impropriety on the part of the agent. The bank must be shown to have proceeded with the transfer notwithstanding that without further inquiry it had no reason to regard it as a proper use of the signatory’s authority under the mandate.” (Emphases added)

99. The explanation is amply clear. The usage of different terms does not alter the essence of the test or analysis, on the basis of what facts the third party actually knew and whether that knowledge reasonably called for further inquiry.

100. On the facts and evidence in this case, RV himself had knowledge of the restructuring, the purpose and the terms of the Scheme - which he opposed and attended court to give evidence in opposition - and of the ultimate approval of the Scheme. I cannot believe that he had no knowledge, or was not informed of the terms of the 6 March Order approving the Scheme. The Settlement Agreement and the terms thereof, whereby LT’s claims against RV were all released, was directly opposed to the purpose and terms of the Scheme, whereby LT’s claims against RV’s Debt in the Arbitration were assigned to the creditors for their benefit. With such

knowledge, a reasonable person in RV's position at the time of the Settlement Agreement is bound to raise queries as to whether the creditors had knowledge of and had approved the terms of the Settlement Agreement which were acutely against their interests, and contrary to the Scheme. These facts which RV knew clearly and reasonably indicated a want of authority on ML's part in agreeing to the terms of the Settlement Agreement. In failing to make the further inquiries, RV's reliance on any representation that may have been made as to ML's authority to bind LT by the Settlement Agreement was unreasonable to say the least, and in my judgment was reckless and irrational. In the light of the unusual and remarkable facts known to RV, it cannot be said that he had acted reasonably by accepting and relying on ML's alleged authority, but had rather turned a blind eye to the apparent impropriety of the highly suspicious Settlement Agreement.

101. Further on the question of reliance, Mr Clark pointed out that on RV's own evidence filed in these proceedings, it was his case that by July 2023, he did not trust ML, given "the disingenuous evidence (ML) had filed in the Arbitration". Given his professed mistrust of ML, and his claims of ML being a perjurer and fraudster, it is dubious that he would have simply accepted ML's representation of his authority to enter into the Settlement Agreement, without any further enquiry, particularly given the background of the Scheme and the hearing which had taken place before the Seychelles Court.

102. In conclusion, my finding is that the Settlement Agreement was signed by ML without authority, whether actual or apparent, and that it is not binding on LT.

103. As I have found that the Settlement Agreement is not an award to be set aside, it is not open to this Court to refer the claims back to the Tribunal pursuant to section 81(4) which does not apply. LT will have to take such further action as may be necessary and as advised, in order to pursue its claims.

Disposition

104. For all the reasons set out above, paragraphs 1 and 2 of the OS are dismissed, no order is made under paragraph 3, and the declaration is granted under paragraph 4.

105. Having regard to the outcome of the OS, and the substance of the issues argued and considered, the order *nisi* on costs is that 50% of the costs of the OS are to be paid by RV to LT. This order will be made absolute unless application for variation is made within 14 days.

(Mimmie Chan)
Judge of the Court of First Instance
High Court

Mr Douglas Clark (Solicitor Advocate), of Tanner De Witt, for the plaintiff

Mr Timothy Parker SC and Ms Sheena Wong, instructed by TITUS, for the defendant