محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2024] QIC (F) 20

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 5 May 2024

CASE NO: CTFIC0075/2023

B

Claimant/Applicant

v

C

Defendant/Respondent

JUDGMENT

Before:

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Justice Dr Georges Affaki

Order

1. The Applicant's application to set aside the Award is dismissed.

2. The Applicant is to pay the Respondent's costs, to be assessed by the Registrar of the Court if not agreed.

Judgment

Introduction

1. The Applicant, B by an application notice dated 14 December 2023 (the '**Application Notice**') seeks to set aside a final award (the '**Award**') rendered by the Arbitral Tribunal (the '**Tribunal**') in ICC Case No. […] (the '**Arbitration**') between C and B (the '**Application**'). B and C are referred to as the '**Parties**'.

2. This Application Notice seeks the following relief:

    i. An order to set aside the Award because the Award is not in the interest of the Qatar Financial Centre ('**QFC**') and/or is contrary to the public order of the QFC and/or the State of Qatar.

    ii. Alternatively, an order to set aside the Award because the Arbitration was not conducted in accordance with the Parties' agreement.

3. The hearing of the Application took place remotely on 4 April 2024. Prior to the hearing the Parties had served skeleton arguments.

4. The Application relates to arbitration and so the hearing was in private. The Parties requested that the judgment in this case be redacted to respect the confidentiality of arbitration proceedings. The Court agreed to this course. The parties were provided with an unredacted judgment that will remain confidential. A redacted judgment is available to the public.

5. The Parties were agreed on the Court's jurisdiction to determine this application and on the applicable procedural framework. These matters are established by (i) articles 41(2)(A)(iv) and 41(2)(B)(ii) of the QFC Arbitration Regulations 2005 (the '**Arbitration Regulations**'); article 9.3 of the QFC Civil and Commercial Court

Regulations and Procedural Rules (the '**Rules**'); article 10.3 of the Rules; and article 33.1 of the Rules. The Court notes that the Arbitration Regulations refer to the "QFC Tribunal", but it was common ground between the Parties that this is to be treated as a reference to this Court.

Background to the Award

6. The relevant background can be taken from the skeleton arguments filed by the parties.

7. The Arbitration concerned a dispute arising between two business partners, B and C, in respect of their joint venture company that had been set up to secure major road construction projects in Qatar.

8. The claims in the Arbitration related to a Shareholders' Agreement between the Parties, dated 12 July 2013 (the '**SHA**').

9. On or around November 2013, the Parties incorporated the joint venture company in Qatar, which was subsequently renamed D. C owns 49% of D's capital, whilst B owns the balance of 51% as the Qatari shareholder. D's directors included representatives from each of C and B. The two key individuals are Mr X, who was B's representative and held the position of the Chairman of D's Board of Directors, and Mr Y, who was C's representative and held the position of D's General Manager.

10. The Arbitration was initiated by C, based on the arbitration agreement in the SHA, by its filing of a Request for Arbitration dated 1 April 2020. The Arbitration was administered by the International Chamber of Commerce (the '**ICC**') under its Arbitration Rules in force as of 1 March 2017 (the '**ICC Rules**').

11. The seat of the Arbitration was the QFC.

12. The substantive law of the Arbitration was Qatari law.

13. On 10 November 2020, the Parties and the Tribunal executed the Terms of Reference, which the Tribunal subsequently submitted to the ICC Secretariat on 1 December 2020.

14. The Parties submitted the following statements of case in the Arbitration: (i) C's Request for Arbitration dated 1 April 2020; (ii) B's Answer to the Request for Arbitration and Counterclaim dated 8 June 2020; (iii) C's Reply to the Answer dated 10 August 2020; (iv) C's Statement of Claim dated 14 December 2020; (v) B's Statement of Defence and Counterclaim dated 12 March 2021; (vi) C's Statement of Reply and Defence to Counterclaim dated 25 June 2021; (vii) B's Rejoinder dated 29 August 2021; and (viii) C's Rejoinder dated 15 October 2021.

15. The detailed procedural history of the Arbitration is set out in Section V of the Award and it is unnecessary to repeat it here. The final evidentiary hearing was held remotely from 13 to 17 December 2021.

16. Following the final evidentiary hearing, the Parties filed the following post-hearing submissions: (i) C's First Written Closings dated 7 February 2022; (ii) B's First Written Closings dated 7 February 2022; (iii) C's Reply Written Closings dated 15 April 2022; (iv) B's Reply Written Closings dated 15 April 2022; and (v) C's Further Reply Closings dated 20 June 2022, which were limited to new arguments made in B's Reply Closings of 15 April 2022 concerning C's (then) recent liquidation. Costs submissions followed.

17. On 20 April 2023, the Parties received an electronic courtesy copy of the Award from the ICC. On 26 April 2023, B received (via DHL) a physical original of the Award from the ICC.

18. The dispositive part of the Award (paragraph 675) sets out the decision of the Tribunal:

> *675. For the foregoing reasons, the Tribunal hereby declares, orders, and awards, by way of a FINAL AWARD, as follows:*
>
> *(a) DECLARES that Respondent has breached the Parties' Shareholders' Agreement and the D Articles of Association and finds, by a majority, that Respondent is liable for Claimant's lost profits on the four awarded […] project contracts in the amount of the principal sum of QAR 24,553,621.00, together with pre-award simple interest on this amount at the rate of 7.77% for the period 31 December 2019 to the date of this Final Award;*

(b) The Tribunal, by a majority, ORDERS that Respondent shall pay to Claimant QAR 24,553,621.00, plus pre-award simple interest on this amount at the rate of 7.77% for the period 31 December 2019 to the date of this Final Award;

(c) DECLARES that Claimant breached Clauses 2.4, 8, 10, 20 and 23 of Schedule 3 of the Shareholder's Agreement and is liable to Respondent for the discrepancies on the HSBC […] Account (Counterclaim No. 3) and is therefore ORDERED to pay QAR 250,410.00 plus pre-award simple interest on this amount at the rate of 7.77% for the period 31 December 2019 to the date of this Final Award;

(d) ORDERS that Claimant shall pay to Respondent QAR 250,410.00.

(e) DISMISSES all other requests and claims by Claimant;

(f) DISMISSES Respondent's Counterclaims No. 1, 2, 4, 5 and 6;

(g) DECLARES that Respondent is liable for Claimant's costs of arbitration in the following proportions: (i) 20% legal fees; (ii) 75% expert fees; and (iii) 50% of the overall ICC costs;

(h) ORDERS Respondent to pay to Claimant the costs under letter (g) which amount to GBP 670,402.00, QAR 183,609.00 and USD 385,250.00.

(i) ORDERS the accrual of simple interest on any unpaid sums awarded herein thirty (30) days after the date of issuance of this Final Award at the rate of 7.77% annually until the date of actual payment; and

(j) DISMISSES all other requests, claims and counterclaims in this Arbitration.

19. On 25 May 2023, B applied for the correction and interpretation of the Award, further to article 40(1) of the Arbitration Regulations and article 36(2) of the ICC Rules.

20. On 19 September 2023, the Parties received an electronic copy of the Addendum to the Final Award (the Addendum was dated 15 September 2023**;** the '**Addendum**') from the ICC.

Application/ Grounds of Challenge

21. B advances four grounds for setting aside the Award founded in article 41 of the Arbitration Regulations:

i. The Award is not in the interest of the QFC (see article 41(2)(B)(ii) of the Arbitration Regulations). This covers Grounds 1-3 (see below).

ii. The arbitral procedure was not in accordance with the agreement of the Parties (see article 41(2)(A)(iv) of the Arbitration Regulations. This covers Ground 4.

22. The four grounds can be taken from the Application Notice and are as follows:

Ground 1

23. Ground 1 (Application Notice, paragraphs 3.1 and 3.2):

> *.... in deciding the dispute between the parties, the Tribunal failed to give effect to mandatory provisions of Qatari law (which was the substantive law of the Arbitration) and from which the parties could not derogate. Those mandatory provisions precluded the lost profits claimed in the Arbitration (and awarded by the Tribunal) from being recoverable by the Respondent as shareholder in an arbitration under the [SHA] as against the Applicant, by reason of the Qatari Commercial Companies Law (Law No. 11 of 2015), as amended.*
>
> *It is averred that it is not in the interest of the QFC for the Court to uphold or enforce an arbitral award in those circumstances and/or which is accordingly contrary to the interests of the QFC and/or the public order of the QFC and/or the State of Qatar.*

Ground 2

24. Ground 2 (Application Notice, paragraphs 3.4 and 3.5):

> *... no or no adequate reasons were given by the Tribunal for finding the Respondent's primary witness of fact, Mr Y, to be a "reliable" witness and for preferring his evidence over that of the Applicant's primary witness of fact, Mr X when it had accredited them with the same qualities in paragraph 542 of the Award.*
>
> *It is averred that it is not in the interest of the QFC for the Court to uphold or enforce an arbitral award in those circumstances.*

Ground 3

25. Ground 3 (Application Notice, paragraphs 3.6 and 3.7):

> *.... In the Final Award, the Tribunal ordered the Applicant to pay pre- and post-award interest accruing on the principal amount awarded to the Respondent as damages. The governing law of the arbitration was Qatari mainland law, which prohibits the award of interest as a matter of public order.*
>
> *It is averred that it is not in the interest of the QFC for the Court to uphold or enforce an arbitral award in those circumstances and/or which is accordingly contrary to the public order of the State of Qatar.*

Ground 4

26. Ground 4 **(**Application Notice, paragraphs 3.8 and 3.9):

> *... it is submitted that the parties' agreement was to arbitrate under the procedure contained within the ICC Rules (effective on 1 March 2017), with the Arbitration Regulations to serve as the curial law of the Arbitration. However, for the reasons which follow, it is averred that the Arbitration was not conducted in accordance with the parties' agreement.*
>
> *By virtue of Article 32(2) of the ICC Rules and Article 37(2) of the Arbitration Regulations, the parties had expressly agreed that the Award should state the reasons upon which it is based. However, and contrary to Article 32(2) and Article 37(2), the Tribunal did not provide any or any adequate reasons for finding Mr Y to be a "reliable" witness and for preferring his evidence over that of Mr X when it had accredited them with the same qualities in paragraph 542 of the Award.*

27. There are two preliminary matters that need to be considered involving admissibility:

i. C contended that the Court should reject all the Grounds but took an admissibility issue on the basis that the Application Notice was out of time and should be dismissed.

ii. B contended that C's Reply was out of time and should be disregarded by the Court.

Admissibility/ Time Limits

Application Notice

28. C submitted that pursuant to article 41(3) of the Arbitration Regulations, B's

Application for setting aside the Award was to be made within three months from the date when the Addendum was "*disposed of*", that is from 15 September 2023.

29. Article 41(3) of the Arbitration Regulations provides:

> *Except as set out herein, an application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the Award or, if a request had been made under Article 40, from the date on which that request had been disposed of by the Arbitral Panel.*

30. C argued that while the three-month period for making an application starts, with respect to the award, from the date when the award was received, when a tribunal rendered an addendum to the award, the three-month period would start from the date when the addendum was "*disposed of*". In the present case, it contends that the Addendum was "*disposed of*" on 15 September 2023, when the President of the Arbitral Tribunal signed it. Therefore, B was required to serve an Application Notice from 15 September 2023, that is on or before 15 December 2023.

31. C further contends that even if the three-month period to challenge the Award had commenced from the date when the Addendum was communicated to the Parties (19 September 2023), the Applicant would have been required to serve an Application Notice three months from 19 September 2023, that is on or before 19 December 2023.

32. It contends that valid service of the Application Notice did not occur before 20 December 2023. It relies on the messages exchanged between B's Counsel and the Registrar of the QFC Civil and Commercial Court relating to the fact that the Applicant made a first invalid attempt to serve the Application Notice without all the accompanying documents. The Registrar in an email dated 20 December 2023 stated "…*The case has not formally been served yet as the Regulations and Procedural Rules require all documentation along with the letter of issue – attached to your email – to be served".*

33. C contends that time limits prescribed by the Arbitration Regulations are strict as provided for in article 14.6 of the Rules:

> *Subject to any contrary provision in the QFC Law or in QFC Regulations, the Registrar or a Judge has power to extend or abridge any time limit set out in these Regulations and Procedural Rules or ordered by the Court; but nothing this article empowers the Court to abridge any time limit set out in the QFC Law.*

34. This means that under article 14.6, the Court cannot extend time limits set out in other QFC regulations, including the Arbitration Regulations. It relies on the decision in *Abdulla Jassim Al Tamimi v Employment Standards Office and Qatar Finance and Business Academy* [2018] QIC (RT) 2 at paragraph 14.

35. Before considering these arguments, the Court notes that legal practitioners are aware of the importance of observing time limits for the service of documents. B had ample time to make this Application and there would be little sympathy if it transpired that it was out of time. The time limit is strict and there is no discretionary power under the Rules to extend it.

36. The Court now turns to the issues raised.

37. The first issue is whether B was out of time because the Application Notice was served on 20 December 2023. The Application Notice is dated 14 December 2023. It appears that it was filed with the Court through the Court's online filing system via an email to the Registrar on 14 December 2023. The next working day after 14 December 2023 was 19 December 2023 and this is when the Registrar issued the Letter of Issue and Next Steps ("**LoI**") which directed B to serve the LoI on C.

38. The Court finds that although the Application was served on 20 December 2023, it was filed on 14 December 2023. This is within the three-month period prescribed by article 41(3) of the Arbitration Regulations, be it from the date of signature or receipt of the Addendum. The Court considers that the date of filing – rather than that of service – is the date to be taken into account, in line with the overriding objective in the Rules. This is because there may be practical issues in serving an application notice and it would be undesirable that a time limit would expire because of service issues.

39. Accordingly, the Court need not consider whether the time limit started to run from the signature or the receipt of the Addendum.

The Reply

40. B asks the Court to strike out C's Reply because it was served late. It argues that the Reply should have been served on 17 January 2024 (rather than on 22 January 2024), that is 28 days from 20 December 2023, pursuant to article 23(4) of the Rules. At the hearing on 4 April 2024, B indicated in its oral submissions that it would not press this application, but maintained it remained relevant for costs.

41. The Court deals with this point shortly. The Court clearly has the power to extend time under article 23.6 of the Rules by article 14.6 of the Rules. In circumstances where (i) no prejudice has been shown, (ii) the delay is short, and (iii) the parties have fully set out their respective cases in skeleton arguments and it is not suggested that the Court should refuse to receive or consider C's skeleton argument, there is no justification for excluding the Reply.

42. As far as costs are concerned, the Court does not think that pursuing this application was reasonable or consistent with the overriding objective. Even if the Reply was out of time, consent should have been given to the Reply because of the lack of any prejudice and the shortness of the delay.

Legal Framework

43. In the Arbitration Regulations, article 41 governs applications for setting aside arbitral award. This is common ground between the Parties.

Article 41 of the Arbitration Regulations

44. Article 41 of the Arbitration Regulations provides:

> *ARTICLE 41 – APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST AWARD*
>
> *(1) Recourse to the QFC Tribunal against an Award may be made only by an application for setting aside in accordance with paragraphs 41(2) and 41(3) of this Article. Such application may only be made to the QFC Tribunal.*
>
> *(2) An Award may be set aside by the QFC Tribunal only if:*

(A) the party making the application furnishes proof that:

(i) a party to the Arbitration Agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the QFC;

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;

(iii) the Award deals with a dispute not contemplated by or not falling within the terms of the submission to Arbitration, or contains decisions on matters beyond the scope of the submission to Arbitration, provided that, if the decisions on matters submitted to Arbitration can be separated from those not so submitted, only that part of the Award which contains decisions on matters not submitted to Arbitration may be set aside; or

(iv) the composition of the Arbitral Panel or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of these Regulations from which the parties cannot derogate, or, failing such agreement, was not in accordance with these Regulations; or

(B) if the QFC Tribunal finds that:

(i) the subject-matter of the dispute is not capable of settlement by Arbitration under QFC Law; or

(ii) the Award is not in the interest of the QFC.

(3) Except as set out herein, an application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the Award or, if a request had been made under Article 40, from the date on which that request had been disposed of by the Arbitral Panel. The time limit set out above shall not apply to an application to the QFC Tribunal to have an Award set aside on the grounds that the Award is in conflict with the public policy of the QFC.

(4) The QFC Tribunal, when asked to set aside an Award, may, where appropriate and so requested by a party, suspend the setting-aside proceedings for a period of time determined by it in order to give the Arbitral Panel an opportunity to resume the arbitral proceedings or to take such other action as in the Arbitral Panel's opinion will eliminate the grounds for setting aside.

Interpretation

45. The Parties in their respective skeleton arguments made detailed submissions on how

the Arbitration Regulations, and in particular the reference to the "*interest of the QFC*", should be interpreted.

46. B's skeleton argument stated at paragraph 25:

> *As far as B is aware, there are no precedents of this Court that guide or inform the Court's approach to the interpretation and/or application of Article 41 of the Arbitration Regulations. The Court is therefore asked to interpret and apply Article 41 (particularly the grounds of challenge in Articles 41(2)(A) and (B)) according to its natural meaning, with regard to the position in mainland Qatar, and take guidance from foreign jurisprudence as a last resort ...*

47. In support of this submission, B relied on the approach commended by the Appellate Division of this Court in *Chedid & Associates Qatar LLC v Said Bou Ayash* [2015] QIC (A) 2 ('**Chedid**'), in paragraph 18, per Lord Phillips of Worth Matravers, President:

> *"[O]n behalf of the Defendant it was submitted that in order to resolve the issue of whether the restraint provisions were in unlawful restraint of trade the Court should be guided by English case law. This is not the correct approach. QFC Regulations set out detailed codes of employment law and general law. Some of the provisions reflect principles of common law, but in many respects conditions in Qatar differ markedly from conditions in England and other common law countries. Where an issue is governed by a QFC Regulation, the correct approach is to apply that Regulation according to its natural meaning and having particular regard to conditions in Qatar. Foreign jurisprudence can sometimes be of assistance, but it should be used sparingly as a last and not as a first resort."*

48. C disagrees with this approach and, relying on *Manan Jain v Devisers Advisory Services LLC* [2024] QIC (A) 2, stated at paragraph 42 of its skeleton argument:

> *In Manan Jain v Devisers Advisory Services LLC [2024] QIC (A) 2, paras. 28-29, the Appellate Division of this Court explained that foreign cases, and in particular English case law, were relevant for the purpose of interpreting the QFC Regulations, even though the provisions of Qatari Law may also be relevant.*

49. The Court considers that the right approach on interpretation of the Arbitration Regulations is to consider the fact that article 41 of the Arbitration Regulations is based on the UNCITRAL Model Law on International Commercial Arbitration (the '**Model Law**'). Cases like *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1 at

paragraphs 41-46 and *IFSQ v Employment Standards Office* [2022] QIC (A) 1 at paragraphs 28-31 and 55 are examples of this Court taking account of international practice (cited in *Manan Jain v Devisers Advisory Republic Services LLC* [2024] QIC (A) 2).

50. Article 34 of the Model Law states:

> *(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.*
>
> *(2) An arbitral award may be set aside by the court specified in article 6 only if:*
>
> *(a) the party making the application furnishes proof that:*
>
> *(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or*
>
> *(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
>
> *(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or*
>
> *(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or*
>
> *(b) the court finds that:*
>
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or*
>
> *(ii) the award is in conflict with the public policy of this State.*

51. The Model Law has been adopted in many important places of arbitration and has been considered in many cases. *Webster: Handbook of UNCITRAL Arbitration (4th Ed)* at

paragraphs 34-55 points out that, "*although the caselaw under the UNCITRAL Model Law is not uniform, the principles in the caselaw have been developed based on the same underlying approach*".

52. The Model Law is modelled on the almost universally accepted United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the '**New York Convention**'). As Lord Thomas of Cwmgiedd stated (giving the opinion of the Privy Council) in *Betamax Ltd v State Trading Corporation (Mauritius)* [2021] UKPC 14; [2021] 2 Lloyd's Law Reports 559 ('**Betamax**') at paragraph 21:

> *Article 34 of the Model Law, as the UNCITRAL Explanatory Note to the Model Law makes clear, contains an exclusive list of grounds for setting aside an award. This is essentially the same list as that contained in the provision in article 36 of the Model Law for the recognition and enforcement of arbitral awards which was itself taken from article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"). As "public policy" is determined in the courts of the state before which proceedings are brought, there may well be differences in the view taken as to the nature and scope of the public policy between a supervisory court which is considering setting aside the award and a court enforcing the award in a different state. However, there is no reason for difference as to the extent of a court's right of intervention in respect of public policy under articles 34 and 36 and the decisions in this respect on enforcement are applicable in respect of applications to set aside.*

53. It is to be noted that the language of article 41 of the Arbitration Regulations and article 34 of the Model Law is not precisely the same. The former speaks of "*the Award is not in the interest of the QFC*" (article 41(B)(ii)) and the later refers to "*public policy*" (article 34 (B) (ii)). This difference between "*interest*" and "*public policy*" is considered below.

54. In *Betamax*, the Privy Council was concerned with the International Arbitration Act 2008 of Mauritius. Although the Court was not supplied with any materials relating to the circumstances in which the Arbitration Regulations were enacted, Lord Thomas' remarks at paragraph 17 that, "*The International Arbitration Act, based as it is on the Model Law, was intended to make Mauritius attractive to users of international commercial arbitration*" apply with equal force to the QFC.

55. This is because the promotion of arbitration as a form of dispute resolution is an important aspect of public policy and is reflected in the Rules at article 5.1:

> *The Court will encourage the parties, whenever it is appropriate to do so, to resolve their disputes by resorting to arbitration or mediation or any other method of alternative dispute resolution.*

56. In *Betamax*, although the Privy Council was concerned with an appeal from Mauritius, Lord Thomas referred to cases decided in England and Wales, India, Singapore and the European Union. The Court considers that there is a body of jurisprudence that has been built up from the many jurisdictions that have adopted the Model Law and it is possible to consider that there are important general principles in international arbitration law and that it is entirely appropriate to use international materials when interpreting article 41 of the Arbitration Regulations. In other words, the QFC follows the same approach as other major arbitration jurisdictions do when it comes to applications to annul or enforce arbitration awards.

57. As Lord Thomas said in *Betamax* at paragraph 48:

> *It is therefore the policy of modern international arbitration law to uphold the finality of the arbitral tribunal's decision on the contract made within the arbitral tribunal's jurisdiction, whether right or wrong in fact or in law, absent the specified vitiating factors*.

58. The Court considers that this is the right approach to adopt in the present case. Arbitration is a consensual process that ends in a determination by a tribunal that is final with very limited and specific grounds of challenge. This approach is reflected in the ICC Rules, article 35(6), that states:

> *Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.*

59. Having explained the approach to interpretation, it is now necessary to consider the specific grounds of challenge in article 41 of the Arbitration Regulations and the legal framework.

Interest of the QFC

60. Article 41(2)(B)(ii) of the Arbitration Regulations provides, "*An Award may be set aside by the [Court] only if: […] the [Court] finds that: […] the Award is not in the interest of the QFC*."

61. There are two points that emerge from this article. First, as mentioned above, the article speaks of the "*interest of the QFC*" rather than following the language of article 34 of the Model Law that is in terms of "*public policy*". Second, the article concerns the interest of the QFC rather than the interest of State of Qatar.

62. As to the first point, the Court considers that there is no material difference between "*interest*" and "*public policy*". The intention is to preclude enforcement of awards that engage the interest of the QFC, and this interest is the same as public policy.

63. This conclusion flows from article 41(3) which is dealing with time limits and states that the 3-month period referred to "*...shall not apply to an application to [the Court] to have an Award set aside on the grounds that the Award is in conflict with the public policy of the QFC*".

64. The reference here to public policy must be a reference to article 41(2)(B)(ii) of the Arbitration Regulations as it could not be a reference to anything else. It is also reflected in article 43 of the Arbitration Regulations setting out grounds for refusing recognition or enforcement, which states that the Court may refuse to recognise or enforce an award that "…*would be contrary to the public policy of the QFC*" (see: article 43(1)(B)(ii)).

65. In oral submissions, B accepted that there was no difference between "*interest of the QFC*" and "*public policy of the QFC*". C said there was a difference and "*interest*" was narrower than "*public policy*". The Court does not agree with C. It is unclear why C contends that "*interest*" is narrower when it could also be broader. There is nothing in the word "*interest*" which indicates whether it has a narrow or broad interpretation. Moreover, C could offer no coherent explanation of the practical implications of the difference that it alleges to exist between interest and public policy. The Court can see no reason for making a distinction between "*interest*" and "*public policy*" depending on whether the application is brought under articles 41 or 43. The Court considers that there is likely to have been a drafting error in using the term "*interest*" and not "*public*

policy" but even if there was no error the matters covered are the same.

66. As to the second point, we consider that the Arbitration Regulations do make a distinction between the QFC and the State of Qatar. However, this is a distinction that does not have any practical effect because it is difficult to think of a case where the interest of the QFC and that of the State of Qatar are not aligned or the same. B gives examples of cases which illustrate the point that the public order of the QFC is consistent with the public order of the State of Qatar: *Marilon QFZ LLC v Dalba Engineering & Projects Co Limited* [2023] QIC (F) 40 and *Nasco Qatar LLC v Misr Insurance (Qatar Branch)* [2020] QIC (F) 17. The Court was not directed to any contrary examples and believe there are none.

67. It is unnecessary for the Court to seek to define what may be covered by the public policy ground. One can think of cases where public policy might be engaged where for example the award involves terrorism financing or money laundering. In other words, it covers the rules designated to serve a State's essential political, social or economic interests. In Appeal No. 348/2015, the Qatari Court of Cassation held that public order means "*the set of basic principles that govern the political system, social consensus, economic rules, and moral values on which the entity of society is based and by which the public good is achieved*". This helpfully states the nature of public order and the considerations involved. But this type of case is far removed from the present case. As explained below, public policy is a narrow exception.

68. The real issue for the Court's consideration in the present case is whether any of the matters argued by B, set out below, are capable of falling within the "*interest of the QFC*".

69. B's submissions were contained in paragraphs 32-36 of its skeleton argument. It states:

> *32. It is submitted that the natural meaning of this phrase is straightforward. It must mean any actions, decisions or policies which would be beneficial to the QFC or otherwise not inflict any harm on the QFC. It is important to contextualise this with reference to the QFC's purpose, aims and objectives.*
>
> *33. The QFC was established by the State of Qatar, by the promulgation of the QFC Law, as an onshore "financial and*

business centre… located in Doha" (QFC Law, Article 2(1), which offers its "own legal, regulatory, tax and business environment, contributing to the decisive economic development and diversification prescribed by the Qatar National Vision 2030".

34. The QFC is therefore a creature of Qatari statute, which would be expected to operate within the boundaries set by the State of Qatar's public order. This is more so because Article 8(6) of the QFC Law states that the QFC (which includes this Court) is funded by the State of Qatar and this Court is a Qatari court (see Aycan). One of the benefits of the QFC, as marketed on its website, is that it is "an onshore business and financial centre that allows companies to operate in Qatar and in the region within a legal and tax environment aligned to international standards" (emphasis added). QFC's vision is to transform "Doha into a leading global, financial and commercial capital".

35. Notably, one of the QFC's fundamental aims is to create an environment where businesses can repose confidence in the legal system that it has to offer. The "interest of the QFC" would therefore encompass the imperative of maintaining a legal system that is aligned with the laws and principles of the State of Qatar, given that the QFC is an onshore jurisdiction, and its aims and objectives are intrinsically linked to the economic success and development of Qatar. In other words, the legal regime of the QFC cannot operate in a vacuum which is removed from the legal system of the State of Qatar.

36. The QFC also aims to establish itself as a leading jurisdiction for alternative dispute resolution, including arbitration. To this end, it is submitted that it is in the interest of the QFC for an arbitral tribunal in QFC-seated arbitrations to render legally coherent and reasoned awards, which are not only demonstrative of a transparent system, but which also take into account the substantive law chosen by the parties.

70. This is a helpful description of the QFC, but the Court considers that it overlooks the fundamentals of international arbitration reflected in article 41 of the Arbitration Regulations. In particular, the fact that the public policy exception is to be narrowly construed. This is because the policies underlining enforcement of awards is that of finality and pro-enforcement. The users of international arbitration value these policies. They also value certainty and the knowledge that challenges to awards are on narrow grounds and exceptional. This means that challenges will be rare and when made must be carefully scrutinised against the strictest standards. The fact that the chosen jurisdiction of the parties made a mistake of law or of fact is not a ground of challenge. Public policy is not infringed if a tribunal incorrectly applied the law to the facts.

71. This is the approach followed by the Court in assessing the grounds raised by B.

Arbitral Procedure not in accordance with Parties' Agreement

72. The second matter relied upon by B is article 41(2)(A)(iv): "*the arbitral procedure was not in accordance with the agreement of the parties*".

73. The Court proceeds on the basis that "*arbitral procedure*" is a broad concept covering the filing of a Request for Arbitration until when the award is rendered. But the key point to keep in mind is that a tribunal will have a considerable discretion as to how it conducts the proceedings. It is not for the Court to review or second guess procedural decisions by the tribunal. This includes questions of how a tribunal goes about drafting the award. This is not a case where it is alleged that the Tribunal has failed to deal with an essential issue.

Discretion

74. Finally, consistent with the policy of minimal curial intervention, the Court will only interfere if serious prejudice has been shown by the party seeking to challenge the award. This includes a causation requirement.

75. It is important to note that article 41 of the Arbitration Regulations is not drafted in mandatory terms if one of the grounds are established; it opens with the phrase "*an arbitral award may be set aside*". This indicates a discretion. This discretion will not be exercised in favour of annulment where the matter complained of is inconsequential or minor or does not cause serious prejudice to the party seeking to challenge the award. This is because of the underlying policies of international arbitration discussed above.

76. Having set out the legal framework, the Court now considers the four grounds invoked by B.

Ground 1

77. At paragraph 46 of its skeleton argument, B summarised its Ground 1 argument as

follows:

> *... the Tribunal failed to give effect to mandatory provisions of Qatari law from which the Parties could not derogate. Those mandatory provisions precluded the lost profits claimed in the Arbitration (and awarded by the Tribunal) from being recoverable by C as a shareholder in an arbitration under the SHA as against B, by reason of Law No. 11 of 2015, as amended ("the Qatari Companies Law"). It is submitted that it is not in the interest of the QFC for the Court to uphold or enforce an arbitral award in those circumstances and/or which is accordingly contrary to the public order of the State of Qatar.*

78. B relies on the following articles of the Qatari Companies Law:

> *Article 115 – The company may file a liability claim against the members of the board of directors due to mistakes resulting in damages to all shareholders within five (5) years from the date of such mistake. The ordinary general assembly shall resolve the filing of such claim and shall appoint a representative to commence a claim. If the company is under liquidation, the liquidator shall undertake filing the claim upon a resolution passed by the general assembly.*
>
> *Article 116 – Each shareholder may file the claim individually, if the company does not file the claim, if the mistake shall cause damage to such shareholder, provided that the shareholder must notify the company of his intent to file the claim. Any provision in the articles of association of the company stating otherwise shall be void.*

79. B's argument was as follows (in summary):

i. C alleged that B committed several breaches of the SHA, the Articles of Association and Qatari law, as a result of which C incurred losses and damages.

ii. C's primary allegation was that B created an unauthorised joint venture with D (without C's approval), with a 95%-5% split in favour of B and only 5% to D, to bid for projects tendered by the […], and that the B-D joint venture succeeded in winning four projects from the '**Four […] Projects**').

iii. C's case was that B used C's credentials to secure the Four […] Projects

and that, had C's approval been sought prior to the creation of the B-D joint venture or its submission of the bids to […], C would not have agreed to a 95%-5% split (as that would have meant a 2.45% share of the profits for C, given its 49% shareholding in D).

iv. The damages sought by C, on which it succeeded, were categorised as lost profits and based on the footing that, but for B's actions, D would have 50% participation in the Four […] Projects, resulting in 24.5% participation and share of profits for C. This gave rise to what is described as the Lost Profits Claim. C succeeded on this claim.

v. B's position was that the Lost Profits Claim constituted C's loss qua shareholder of D. This is because C claimed the profit that it would have earned had D's share in the Four […] Projects been what C considered to be appropriate. In other words, the Lost Profits Claim was founded on C's reflective loss.

vi. B argued that this claim should have been dismissed in limine by the Tribunal, as it could not have been brought by C against B as a shareholder. B argued that the proper recourse was, first, for D to bring a claim against the directors of D in the other national courts of the State of Qatar or, if D did not wish to take that course, for C to bring a derivative action against D's directors in those courts, further to articles 115 and 116 of the Qatari Companies Law. It contended that both articles 115 and 116 cannot be derogated by agreement. In particular, the final sentence of article 116 expressly states that any contradictory condition in the company's constituent documents would be null and void. In those circumstances, B contended that the principles enshrined in these provisions constitute matters of public order.

80. The Tribunal's findings are set out in Section VII.A.2 of the Award. The main passages are as follows:

> *555. The Tribunal need not undertake a full analysis of the Companies Law articles cited by the Parties in relation to*

Respondent's challenge on the legal "standing" to sue and be sued. Respondent has not demonstrated, in view of the nature of Claimant's claims, that the Companies Law articles (or Qatari law) preclude Claimant from bringing the current action and that they constitute Claimant's exclusive array of remedies. Claimant's claims concern whether a shareholder has met its obligations to its contractual counterparty shareholder under their contract, which provides for rights and obligations as to each other. Whether under the articles of the Companies Law D is a possible claimant and the Board of Directors is a possible respondent is not relevant as to a shareholder's ability to bring claims against another shareholder with whom it has a separate contract. Claimant correctly relies on Articles 256-268 of the Qatari Civil Code as the foundation for its breach of contract cause of action.

556. Claimant's claims are of course inextricably tied to C's status as an D shareholder. That is the result of a Shareholders' Agreement, under which the subject of the relationship between C and B is their joint venture vehicle, D. It is the case, as the Tribunal discusses below, that at least one of Claimant's damages theories derives from Claimant's individual losses as an D shareholder due to B's alleged harm to D. Respondent, however, incorrectly takes this to mean that C is precluded from claiming, under the Shareholders' Agreement, against the entity that contractually assumed obligations to C as concerns D, the joint venture company that they agreed to establish. Claiming for acts or omissions under an agreement that constrains a counterparty from committing such acts or omissions, including when the counterparty's representatives serve as D Board members, neither transform the claims into Companies Law claims against the D Board of Directors nor bar a shareholder from bringing claims against another shareholder under their shareholders' agreement.

557. Accordingly, the Tribunal does not reach the question of what type of claim, Claimant or Respondent may or may not be permitted under the Companies Law. The claims at issue in this arbitration arise from a separate contractual relationship between two shareholders, in which the contract contains an ICC arbitration clause. Respondent's challenge to Claimant's standing under the Companies Law is misconceived, as Respondent has not shown that the Companies Law precludes, as a matter of Qatari law, Claimant from bringing claims stemming from a separate agreement with D's other shareholder, i.e., B, concerning the Parties' conduct in relation to their joint venture, D. As Claimant has pleaded, Articles 256-268 of the Qatari Civil Code permit the breach of contract action brought by Claimant.

81. The Tribunal's decision on C's entitlement to the Lost Profits Claim is set out in paragraphs 588 to 591 of the Award. The main passage is as follows:

> *590. The Four […] Project Contracts. C's expert key assumptions are as follows: (i) valuation date as 31 December 2019; (ii) profit margin of 8.07%; (iii) payments are made equally across the period of each contract; (iv) application of a discount rate of 7.43% (which B's expert accepted as reasonable); and (v) calculation of lost profits on the basis of a 50%/50% share of D in the D-B joint venture (rather than 5%/95%). See Third Report, para. 2.4.2. See also Tr. Day 4, pp. 71-76, from which the points below are taken.*
>
> *(a) The majority of the Tribunal considers each of C's expert assumptions in relation to the lost profits on the four […] project contracts to be well-founded.*
>
> *…*
>
> *(f) Based on past agreements between C and B for bids to be submitted to […] and the use of C's credentials to win the projects, C's expert reasonably applied a 50%/50% participation share between D and B. C's expert also observed (C's expert Second Report, para. 3.3.6) that "the percentage of earthworks is not considered to be relevant [in determining participation share], as it does not reflect D's (and C's) involvement in such services as the management services, which result from the Parties agreeing to contract together [also relying on para. 12 of First Mr Y Statement]". Again, as to the […] Projects, the Tribunal views a 50%/50% participation share as a reasonable "but for world" assumption based inter alia on (i) the confirmation by Mr X that C made 'significant' investment in D and a 50%/50% split is a reasonable expectation; accordingly, (ii) B's need of C's credentials and expertise (i.e., this being the basis for establishing D and to enable it to bid for projects); (iii) Mr Y's testimony that previous MOUs between the Parties in relation to bids usually showed a 50-50 participation split between D and B; (iv) B in its own Counterclaim No. 5, which is denied as it lacks merit, sought the reimbursement of half of the costs of tendering for the 27 […] tenders, but this on its face implies that B does consider that a 50%/50% split was the default percentage; and (v) in the one past instance where an MOU showed a 65-35 participation split, this was a specifically agreed exceptional deviation from the default 50%/50% participation split.*

82. B invites the Court to come to a different conclusion to the Tribunal and to find that the Tribunal failed to give effect to articles 115 and 116 of the Qatari Companies Law in deciding C's Loss of Profits Claim.

83. The Court rejects B's argument on Ground 1 for the following reasons.

84. First, the substance of what B is seeking to say is that the Tribunal was wrong on the

law and the facts. This is not a valid ground of challenge under the Arbitration Regulations. This is the case even if mandatory national law is in play. As *Born: International Commercial Arbitration* (Vol III) 3rd Ed states at 3621:

> *Even where a mandatory law or public policy is at issue, courts have usually rejected arguments that particular awards violated public policy because of the tribunal's erroneous application of that mandatory law. Most authorities hold that an annulment court's role in reviewing the substance of the arbitrators' decision is highly circumscribed and that only very clear and serious (mis)applications of mandatory law will result in annulment. More precisely, it is not the misinterpretation or misapplication of mandatory law that warrants annulment; rather, it is only a misapplication that produces a result that conflicts directly with "fundamental notions of what is decent and just.*

85. Second, the Court does not consider that B's argument falls within "*the interest of the QFC*" provision. The Tribunal clearly set out its reasoning that C was entitled to bring a contractual claim against B concerned with the SHA. C was not required to and did not bring a claim as a shareholder against the directors of B. In other words, the claims made by C in the Arbitration were of a different nature to the claims described in articles 115 and 116 of the Companies Law.

86. It follows that B is therefore wrong to argue at paragraph 50 of its skeleton argument that "*the Lost Profits Claim was founded on C's reflective loss*". The Court considers that C's claim for lost profits was made on a contractual basis for breach of the SHA. The Tribunal fully explained this in terms that cannot be properly criticised.

87. Third, C's main claims in the Arbitration were based in contract and on a breach by B of the SHA and articles 256 to 268 of the Qatari Law No. 22 of 2004 Promulgating the Civil Code (the '**Qatari Civil Code**').

88. It was not in dispute that lost profits are recoverable under Qatari law pursuant to articles 256 to 268 of the Qatari Civil Code. Article 263 of the Qatari Civil Code provides as follows:

> *(1) The court will assess the compensation if it is not assessed in the contract or by means of a provision in the law. (2) The compensation includes the loss sustained by the creditor and the gain he has failed*

> *to achieve, on the condition that this is a natural result of nonfulfillment of the obligation or delay in performing it. The damage is considered a natural result if the creditor was not able to avoid it by exercising a reasonable effort.*

89. Before the Tribunal, C relied upon Appeal No. 512 of 2020 of the Qatari Court of Cassation, which ruled that lost profits are recoverable under Qatari law. In this decision, the Qatari Court of Cassation stated that:

> *To the extent that an opportunity is a possible event, missing it is a certain event, and the law does not deny accounting for the lost profit arising from missing an opportunity, which is one of the elements of compensation for what the injured party expected to gain from the profit. However, this is conditional on the expectation having acceptable reasons.*

90. In paragraph 585 of the Award, the Arbitral Tribunal explained that it relied on this decision to award loss of profits and stated that:

> *Lost profit is expressly recognised as a potential element of compensation – "this is conditional on the expectation having acceptable reasons" (Qatari Court of Cassation judgment 22/12/2020 (Appeal No. 512 of 2020; CLA-21; quoted at para. 209, Rejoinder).*

B is unable to go behind this finding.

91. Finally, the Court does not consider that B established that articles 115 and 116 of the Companies Law are a matter of public order under Qatari law. No authority was cited by B to support this proposition. The Court agrees with C that the mere fact that article 116 provides that, "*Any provision in the articles of association of the company stating otherwise shall be void*", does not entail that article 116 is a matter of public order.

Grounds 2 and 4

92. It is convenient to deal with Grounds 2 and 4 together because they are based on the contention that the Tribunal did not give any or any adequate reasons for finding C's primary witness of fact, Mr Y, to be a "*reliable*" witness and for preferring his evidence over that of B's primary witness of fact, Mr X.

93. The Court has no hesitation in rejecting Grounds 2 and 4. Not only are the grounds

factually misconceived; the allegations do not give rise to grounds of complaint under Article 41 of the Arbitration Regulations.

94. The starting point in the Court's analysis concerns the Tribunal's findings.

95. The primary fact witnesses were Mr Y for C, and Mr X for B. Mr Y served as C's representative in D's management structure in his capacity as D's General Manager. Mr Y was also a director of C. Mr X served as B's representative in D's management structure in his capacity as the Chairman of D's Board of Directors. Mr X was B's managing director.

96. Each of Mr Y and Mr X submitted two detailed witness statements, covering various issues relating to the business and performance of D, and the B-D joint venture. Both witnesses had their evidence tested in cross-examination and by the Tribunal at the evidentiary hearing. Their evidence was commented on in the post-hearing submissions.

97. In paragraph 542 of the Award, the Tribunal stated:

> *As a general matter, the Tribunal considers that both Mr Y and Mr X (and the other witnesses) sought to answer questions fully, to the best of their respective recollections. They did not evade questions and were generally helpful to the Tribunal. However, it was apparent that they held very different views on how the D joint venture was intended to function and the course of conduct of Claimant and Respondent. Counsel for the Parties have usefully identified the relevant contractual and legal issues, and the authorities to be considered in reaching decisions on those issues.*

98. In paragraph 549 of the Award, the Tribunal stated:

> *549. The Tribunal considers that, as a factual matter, Claimant has demonstrated the main allegations in its core case. In this regard, it is useful to refer to Mr Y's Evidentiary Hearing testimony (days 1 and 2), in which B properly tested Mr Y on these main allegations, and Mr Y proved to be a reliable witness.*
>
> *(a) Mr Y confirmed that on 10 and 11 April 2019, B did not have tendering documents for the four […] Projects; accordingly, the tenders were clearly not ready to be submitted. B provided very*

limited information about three of the four projects to Mr Y, in preparation for the April 2019 D Board meeting.

(b) While Mr X contends that the award of the four […] Projects was common knowledge in Qatar, the award was unknown to Mr Y and C. Further, while C received copies of B's internal memoranda in November 2019, discussing (to some extent) the award of the four projects, it was not apparent from these memoranda - and in any event C did not understand the situation to be - that the four projects were awarded to the JV Company. Mr Y assumed that B had submitted the tenders on its own and was fortunate to win them on its own. B might have been able to do so through its high-level connections with […] or it might have included specialist subcontractors in its bids. The Tribunal notes that it finds Mr Y's testimony in this regard to have been plausible and credible.

(c) Mr Y vigorously denied that there was a custom or practice that had developed in the 2017-2019 period by which C accepted that D's Board approval would not be needed for each tender. He testified that previous MOUs between the Parties in relation to bids were in fact the result of agreed communications between the Parties on the basis on which tenders would be submitted. Those MOUs usually showed a 50%/50% participation split between D and B. The participation split "would very much depend on the other elements that that partner is bringing to the project, such as their experience or management ability, their systems, their quality, their safety, their IMS systems. There is a whole raft of attributes that a contractor has, and not just what it employs a couple of diggers to do on the project. It is an overall project management, and project management, and project involvement and project responsibility". Thus, C would not have accepted a 5% participation in relation to the four […] Projects based on a 5 % actual work participation. The Tribunal again finds this testimony to be credible and reasonable.

(d) Mr Y was adamant, persuasively, that absent high level connections with […], B could not have won the […] Projects on its own, and B used C's credentials without the intention of putting C's expertise to use. The technical submission for the projects was clearly much stronger because of the use of C's experience, and C correctly represented its experience to the Tribunal. B's experience was not at C's level. The Tribunal accepts Mr Y's evidence.

(e) Mr Y also defended his work effectively in the role of D's General Manager. He identified his in-person visits before February 2019 and explained how he handled his duties since that time: "I took advantage of time zone differences. I used to have a phone call nearly every morning with the guys in Qatar. So as I drove to work, they started work two or three hours after me, so it was an ideal time to use the time to talk to them". Further, during the time of restructuring, it was "not the time to go out and try to rally small subcontracts; it was time to get the large contracts going and that

> *did not require my presence in Qatar". He further explained the significance of the award of the four contracts: "There would be a huge bounce from the four contracts we had won. We would have local experience".*
>
> *(f) As to the question of record-keeping, and disputes between the Parties regarding bank account transaction, Mr Y correctly observed that "all the records were on the server and the server was manipulated. So we found it very difficult to find the records after B has captured them. So they are the king with the information on the server, we are not". Once again, the Tribunal accepts Mr Y's evidence.*

99. B criticises the finding that Mr Y's evidence was "*reliable*". See paragraph 71 of its skeleton argument:

> *The way paragraph 549 of the Award had been structured would give the impression that the finding in the introductory part (i.e., Mr Y proved to be a reliable witness) would be followed by the reasons on which it was based, including the aspects of his performance in cross-examination which persuaded the Tribunal. Instead, whilst the sub-paragraphs explain the conclusions that the Tribunal reached on the basis of Mr Y's evidence (having found him to be reliable), they do not explain the reasons why the Tribunal found that Mr Y proved himself to be reliable.*

100. The Court rejects Grounds 2 and 4 for the following reasons.

101. First, the Court will not interfere with findings of fact and assessment of the evidence by a tribunal. This is particularly the case where the Tribunal has clearly taken care and shown skill in producing a comprehensive, detailed Award.

102. In the present case, the Tribunal accepted that both Mr Y and Mr X were doing their best to assist the Tribunal. It found that Mr Y was a reliable witness. In the Award, the Tribunal clearly set out its findings on the key issues. The assessment of evidence is a matter for the Tribunal and not this Court, as the matter does not involve evidence of the violation of public policy.

103. This point is well established in international arbitration. It is sufficient to refer to the decision of Teare J (in the context of an application under section 68 of the Arbitration Act 1996: *UMS Holding Ltd & Ors v Great Station Properties SA & Anor* [2017] EWHC 2398). He observed that a challenge to an award based on the allegation that

the arbitral tribunal failed to consider "*key evidence*" would require the Court to consider all the evidence and to assess it.

104. He said at paragraph 90 (as far is relevant):

> *Ground D seeks to challenge the Tribunal's finding that there was an Illicit Scheme. It is dealt with at length by Mr. Sciannaca in his witness statement between paragraphs 213 and 306. The foundation of the challenge is the assertion, as the above description of the challenge shows, that the Tribunal overlooked, misunderstood or failed to give proper consideration to key evidence relied upon by the Grigorishin Respondents. This assertion cannot be established without the court reviewing all of the evidence adduced before the Tribunal relevant to the issue and forming a view as to whether the Tribunal overlooked the evidence or, instead, considered it unhelpful or unreliable. For the reasons I have already given that is not a legitimate exercise for the court on a section 68 challenge.*

105. In paragraph 72 of its skeleton argument, B alleges that:

> *The requirement to give reasons to found a conclusion, for example, with regard to witnesses' respective credibility, is well established in this Court. In the context of preferring the evidence of one witness over another, this Court has the practice of explaining the reasons fully*.

106. This contention misunderstands the arbitration process and the limited grounds of Court review. How a tribunal expresses its reasons is a matter on which the Court cannot or should not interfere. Moreover, a deficiency in reasons is not a ground for challenging a decision.

107. The Court considers that B's reliance on court decisions is misplaced. The Court agrees with the views expressed by the Qatari Court of First Instance in a judgment rendered on 24 June 2013, in case No. 2768/2012, stating that:

> *... [t]he validity of the arbitrators' rulings is not measured by the same standards as the judicial rulings. It is sufficient for the arbitrators' ruling to be valid that it provides within its reasons a summary of the facts concluded in the debate taking place between the two parties in the dispute subject to arbitration, and that it specifies in some place the legal rules that govern it. It is no defective for stating the reasons in general or in a general way unless there is a violation of the law in their subject matter, and the contradiction that defects the judgement is what causes its reasons to be erased,*

> *such that after that nothing remains on which the ruling can be based or that is located in the basis of the ruling, such that it cannot be understood therefore on what basis the court made its decision. Moreover, the arbitration tribunal, as well as the trial judge, has full authority to understand the facts in the case, examine the evidence and documents presented to it, weigh some of them against others, give preference to those which it is convinced with, and conclude what it deems consistent with facts of the case when it bases its ruling on justifiable reasons that lead to the result it reached, and which has its origin established by the papers.*

108. Second, contrary to B's submission, the Court considers that the Tribunal did in fact explain why Mr Y's evidence was reliable. The Tribunal's reasons are set out in the passage quoted above.

109. The usual way of testing oral evidence is against the contemporary documents and the likely probabilities. This is exactly what the Tribunal did.

110. Third, as to Ground 2, there is no arguable basis that a complaint about the assessment of evidence or the lack of reasons gives rise to the engagement of a QFC interest or a matter of public policy. This is a matter for the Tribunal. Article 37(2) of the Arbitration Regulations stipulates that "[t]*he Award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the Award is an Award on agreed terms under Article 36".* This indicates that the reasoning in an award is not a matter of public order as it can be contractually excluded by the parties.

111. Fourth, as to Ground 4, this too has no substance. In paragraph 87.3 of its skeleton argument, B argued that:

> *… the Arbitration was not conducted in accordance with the Parties' agreement: […] As submitted in paragraphs 70-71 above, the Tribunal did not provide reasons for finding that Mr Y proved to be a reliable witness, even though the Tribunal had accredited the same qualities to his and Mr X's evidence in paragraph 542 of the Award.*

112. The short answer to this ground is that the alleged lack of reasons has been considered and rejected by the Court under Ground 2. Ground 4 does not add anything, and it fails for the same reasons. The Applicant fails to establish that there has been a deviation from the parties' agreed procedure.

113. Finally, as C pointed out in its submissions, the Parties submitted substantial quantities of evidence. C submitted 150 factual exhibits, 4 witness statements and 3 expert reports, while B submitted 200 factual exhibits, 5 witness statements and 2 expert reports. The Tribunal also had the benefit of numerous pleadings and submissions. The findings in the Award are based on all evidence submitted by the Parties during the Arbitration, and not only on the basis of the witness evidence of Mr Y and Mr X.

Ground 3

114. Ground 3 is the final ground that the Court is required to consider. B contends that the Tribunal's order to award pre and post-award interest (see paragraphs 675(a), (b) and (i) of the Award) is inconsistent with Qatari law. It points out that the SHA is expressly governed by mainland Qatari law. It says that interest is prohibited under Qatari law save in limited exceptional circumstances that are not applicable in the present case, so that the award is not in the interest of the QFC as it infringes the public policy of the State of Qatar.

115. The Award (as far as is material) said this about interest (with footnotes omitted):

> *596. As for the matter of interest, Claimant, relying on C's expert, argues that pre-award interest should be applied, as it is "normally awarded on historical losses to compensate the damaged party for being kept out of their money".*
>
> *597. The interest rate applied by C's expert was 7.77%.*
>
> *598. Claimant also argues that Qatari Courts have consistently ruled that pre-award interest "must be awarded in order to compensate the loss the damaged party".*
>
> *599. Respondent, in reply, stated that Claimant had failed to provide legal basis for pre-award interest and that interest was contrary to principle of Sharia law and was not permitted under Qatari law. However, if the Tribunal was minded granting interest "Respondent submits that its claim for interest be considered on the same basis".*
>
> *600. The Tribunal refers to Article 38 "Costs Of Proceedings And Interest" of the QFC Arbitration Regulations of 2005 which provides:*
>
> *"Unless the parties to an Arbitration Agreement have (whether in the agreement or in any other document in writing) otherwise agreed, an Arbitral Panel may in making an Award: (1) direct to*

> *whom, by whom, and in what manner, the whole or any part of the costs that it awards shall be paid; (2) fix the amount of costs to be paid or any part of those costs; and (3) award interest on any sums it directs to be paid".*
>
> *601. According to the lex arbitri, the Tribunal has the power to award interest on any sums directed to be paid in this arbitration, compound or simple. As pointed out by Claimant, Qatari law, the substantive law in this arbitration, also empowers the Tribunal to award interest.*

116. The Court rejects this ground for the following reasons.

117. First, B invokes "*the interest of the QFC*" ground of challenge. However, C has cited several cases which indicate that both pre- and post-award interest can be awarded: *QFCRA v Horizon Crescent Wealth LLC* [2021] QIC (A) 5, paragraph 20; *Dentons & Co (QFC Branch) v United Investment Business Management (Univest) LLC* [2020] QIC (F) 25, paragraphs 12-13; and *Irfan Qureshi v Meinhardt BIM Studios LLC* [2023] QIC (F) 26, paragraph 12. The QICDRC Practice Direction No. 3 of 2021 states that the QFC Civil and Commercial Court is empowered to award both pre-and post-judgment/award interest.

118. Moreover, article 38(3) of the Arbitration Regulations provides as follows:

> *Unless the parties to an Arbitration Agreement have (whether in the agreement or in any other document in writing) otherwise agreed, an Arbitral Panel may in making an award: […] (3) award interest on any sums it directs to be paid.*

119. The fact that interest is expressly recoverable under QFC law confirms that no public policy of Qatar is engaged. QFC law does not operate in a manner that is contrary to Qatari law.

120. Second, it appears to the Court that the issue of whether interest is recoverable is not a matter going to public policy from the perspective of Qatari law either. In support of its position, B relied on a single decision of the Qatari Court of Appeal issued in Appeal No. 1856/2022. In contrast, C relied on several decisions of the Qatari Courts, including a decision of the Qatari Court of Cassation rendered on 16 June 2020 in Cassation No. 171/2020, which held that awarding interest was permissible.

121. By way of example, the Qatari Court of Appeal stated in Appeal No. 31 of 2019 that:

> *The law of the Qatari Central Bank allowed banks to receive interests on the debts due from the debtor. This shows that the Qatari legislator did not consider receiving interests for the delay of paying payments as violation of the Constitution or Islamic Sharia. Therefore, the court is of the opinion that ruling the interests does not form a violation of the public order.*

122. In addition, Qatari law includes express statutory provisions allowing the recovery of interest (see e.g., article 70 of the Law of the Central Bank and articles 83 and 85 of the Companies Law).

123. In these circumstances, the Court finds that B has not established that the award of interest is contrary to public policy – whether the public policy of the QFC or of the State of Qatar.

Conclusion

124. The Arbitration Regulations represent a modern system of dispute resolution firmly rooted on respect for party autonomy, certainty and finality. One aspect of party autonomy is that the parties choose those who are going to decide their dispute. This involves acceptance of the risk that the tribunal might come to a decision that may be thought to be wrong in fact or law. This Court does not sit on appeal from a tribunal's findings whether of fact or law. Moreover, the Court will not interfere with tribunal's case management decision or how a tribunal decides to express itself in the award when its gives reasons for its decision. Nor is a hearing before a tribunal a mere rehearsal for arguments to be later presented in a challenge before the annulment court. Challenges to awards are exceptional. The Arbitration Regulations, based on international arbitration principles observed across many jurisdictions, provide narrowly defined grounds for judicial intervention reflecting a pro-enforcement policy towards arbitration awards.

125. The Court dismisses B's application. B is to pay C's costs to be assessed by the Registrar of the Court, if not agreed.

By the Court,

[signed]

Justice Ali Malek KC

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant/Applicant was represented by Ahmed Durrani, Umang Singh and Emma Selfe of Sultan Al-Abdulla & Partners (Doha, Qatar).

The Defendant/Respondent was represented by Dr Thani Bin Ali Al Thani and Tarek Labban of the Thani Bin Ali Al-Thani Law Firm (Doha, Qatar), and Virginie Colaiuta, Basil Thevignot and Renato Nazzini of LMS Legal LLP (London, United Kingdom).