DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

PRINCETON

Claimant/Applicant in ARB-015-2026
Defendant/Respondent in ARB-027-2026

and

PERSEPHONE

Defendant/Respondent in ARB-015-2026
Claimant/Applicant in ARB-027-2026

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON a final majority arbitral award dated 19 January 2026 ("Final Award") being issued in a Dubai International Arbitration Centre ("DIAC") arbitration between the parties (the "Arbitration")

AND UPON the Claimant's arbitration Claim No. ARB-015-2026 dated 2 March 2026 under Article 41 of DIFC Law No.1 of 2008 (the "Arbitration Law") to set aside the Final Award (the "Set-Aside Claim")

AND UPON the without-notice arbitration Claim No. ARB-027-2026 dated 20 April 2026 filed by the Defendant under Article 42(1) of the Arbitration Law and RDC 43.62 for recognition and enforcement of the Final Award (the "Recognition Claim")

AND UPON the Order of H.E. Justice Mark Pelling dated 14 August 2026 (a) setting aside the Final award and (b) dismissing the Recognition Claim (the Set Aside Order")

AND UPON the Defendant's Appeal Notice dated 4 September 2026 seeking permission to appeal from the Set Aside Order (the "PTA Application")

AND PURSUANT TO the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The PTA Application is refused

2. Any application by the Claimant for an Order that the Defendant pay its costs of and occasioned by the PTA Application is to be determined in accordance with the following directions:

(a) By no later than **4pm seven (7) days** from the date of service of this Order on the parties, the Claimant is to file and serve a schedule of the costs it claims and written submissions in support of its application no longer than 5 A4 pages containing text spaced no less than 1.5 lines apart and set in a font no smaller than 12

(b) By no later than **4pm seven (7) days** thereafter, the Defendant is to file and serve its submissions in answer of no longer than 5 A4 pages containing text spaced no less than 1.5 lines apart and set in a font no smaller than 12

(c) By no later than **4pm three (3) working days** thereafter, the Claimant is to file and serve its submissions in reply of no longer than 3 A4 pages containing text spaced no less than 1.5 lines apart and set in a font no smaller than 12

(d) The Court will determine the application by an order with reasons to be issued as soon as practical thereafter.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 3 November 2026
At: 10am

SCHEDULE OF REASONS

Introduction

1. The Defendant applies for permission to appeal from the Set Aside Order. Notwithstanding the length of the Grounds and skeleton argument in support, the PTA Application relies on 4 broad grounds being those set out in Paragraph 4 of the skeleton argument in support of the PTA Application. The Claimant submits that the PTA Application should be refused because the proposed appeal has no more than a fanciful chance of

success and there is no other compelling reason to hear the appeal.

2. In these reasons, I do not propose to set out anything that appears already in the reasons set out in the Set Aside Order. It is assumed that anyone reading these reasons will first have read the Set Aside Order and the schedule of reasons attached to it.

The Test

3. The test to be applied is that set out in RDC 44.19, which requires that permission be given only where a) the proposed appeal would have a real (meaning a more than fanciful) prospect of success; or there is some other compelling reason why the appeal should be heard.

The Grounds

4. The Defendant relies on 4 grounds being those set out in Paragraph 4 of the Defendant's skeleton in these terms:

> "(a) Ground 1: The Judge misapplied the "in play" / scope-of-submission test under Articles 41(2)(a)(ii) and (iii), adopting an unduly formalistic approach that required each step of the Majority's reasoning to have been separately pleaded.
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> (b) Ground 2: The Judge failed to distinguish between a tribunal permissibly drawing evaluative conclusions from pleaded materials and a tribunal impermissibly deciding a genuinely new issue and mischaracterised each of the three findings summarised in Table 1 below (the "Three Findings").
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> (c) Ground 3: The Judge's finding that Princeton was denied a fair opportunity to present its case is unsustainable on the procedural record, which shows that the Tribunal put formal written Questions to the parties, Princeton answered without objection, and the proceedings closed without complaint.
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> (d) Ground 4: Even if any irregularity were established (which is denied), the Judge erred in principle by rejecting severance or remission, ordering the wholesale set-aside of the Award."

Grounds 1 and 2 cannot succeed unless Ground 3 succeeds - see *Oheo Bank v Parker* [2025] DIFC CA 006, at [73] - [97] *passim*.

Determination of the PTA Application

Ground 3

5. Ground 3 is unarguable because:

> (a) The majority finding that the Claimant's post-contractual conduct rendered the undisputed contractual payment obligation "*moot*" was a case the Defendant had not run (because it was common ground that there was a contractually binding date by which payment was to be made - being either 1 February, or 7 February, assuming the Claimant's case as to the binding effect of the fixture recap was rejected) and which Princeton therefore did not have an opportunity to address. Had the Tribunal invited the Claimant to make submissions in respect of that point, then the Claimant would have been bound to submit to the Tribunal that the Defendant accepted that it had an existing contractual obligation to pay, that such an obligation could only not have effect if the Defendant was to rely on a waiver, variation or estoppel, none of which had been (i) pleaded, or for that reason (ii) supported by evidence, much less evidence that had been subjected to the usual rigours of cross examination or (iii) been the subject of disclosure and all of which were excluded in any event by the entire agreement provision within the contract between the parties. Each of these points were ones that were realistically arguable and could realistically have made a difference;
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> (b) The Majority's rejection of the Claimant's case on repudiation was on the basis that the Claimant had no reason to doubt the Defendant's ability to pay even though such a finding depended on it being concluded that the Defendant was ready willing and able to pay - an allegation that the Defendant did not make. Had the Claimant been given an opportunity to comment on that point, it would have been bound to point out that in consequence of this allegation having not been made by the Defendant the issue was one in respect of which there had been neither disclosure or evidence. Each of these points were again ones that were realistically arguable and could realistically have made a difference; and
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> (c) The Majority's conclusion that the Claimant was unable to deliver the cargo was not an allegation that the Defendant had ever made, and so again had not been explored in evidence or by disclosure, and in any event ignored the point that the contract was not for the delivery of a specific cargo so that it was open to the Claimant at any stage to pay what had to be delivered on the open market - another issue that had not been explored by discovery or evidence because it was not in issue between the parties and may well have required expert evidence to determine. As before each of these points were ones that were realistically arguable and could realistically have made a difference

6. Although the Defendant relies on the questions from the Tribunal and the parties' respective answers, that is misconceived. As explained above and in greater detail in the Judgment, It was common ground that payment was due in full from the Defendant by either 1 February, if the fixture recap governed that obligation, or no later than 7 February 2024 if it did not. The question the Tribunal asked was concerned with whether payment should have been by 7 February or the earlier date the Claimant had contended for- a point that turned on the effect of the entire agreement provision in the document to which the Tribunal referred. On no fair reading of the question could it be said that the issue that concerned the Tribunal was whether the obligation to pay on either the 1st or 7th February had become "*moot*". To contend otherwise is unarguable.

7. For those reasons, Ground 3 is unarguable and it follows that permission must be refused by reference to that Ground and in consequence also Grounds 1 and 2.

Ground 4

8. Ground 4, which is that it was wrong to set aside the Award and that I should have set aside part of the Award, is unarguable for the following reasons.

9. Firstly, there is express power to set aside in part only where a challenge is brought under Article 41(2)(a)(iii). It is not available (at any rate expressly) as a possible alternative to a set aside following a finding of breach of Article 41(2)(a)(ii), which is the provision relevant to Ground 3 and was the primary provision by reference to which I made the set aside order - see Paragraph 49 of the Judgment.

10. Secondly, as the Defendant correctly submits, I proceeded on the basis that such a power might be implicitly available. It follows that even if the power to set aside in part is also available where the challenge is under Article 41(2)(a)(ii), this ground is academic.

11. Thirdly, even if there is an implied power to make such an order, at no stage did the Defendant identify what parts of the Award could be set aside if a partial set aside was to be ordered. This is not surprising because the points under challenge were fundamental to the decision of the majority and could not be excised or if they could it would have left an Award that neither party had sought from the Tribunal and the Tribunal had not made and thus in itself would have been unfair. Given that the Award could not be set aside in part as a matter of fairness and practicality, the only choice left was to set aside the Award in its entirety. The Defendant accepts (correctly) that where a defect pervades the whole Award, there is no alternative but to set it aside - see para 70(d) of its skeleton. The alternative - to do nothing - would achieve the antithesis of fairness and justice because it would leave the Claimant liable to the Defendant in a sum of USD 18.4m odd by reference to a case that had not been argued against it, which it had not been given any opportunity to respond to and to which it would have had answers that were at least realistically capable of negativing that case. In those circumstances, there was no alternative but to set aside the Award. The contrary is not Arguable.

Article 41(4)

12. The Defendant places some reliance on Article 41(4) but that too is misconceived. There is no general power, much less a default power that enables the court to remit to the Tribunal as there is for example under s.68(3) of the Arbitration Act 1996, which applies in England and Wales. The only power to remit is that contained in Article 41(4). Article 41(4) applies only where a party requests the court to suspend proceedings in which an order setting aside an award has been sought. No such request was made by either party and the time to make such a request if it was to be made was not following hand down of a judgment setting aside the Award but no later than the conclusion of the substantive hearing of the set aside claim. There having been no request it is too late to attempt to seek such an Order by way of an appeal.

Other Compelling reason

13. There is no other compelling reason for giving permission to appeal. The relevant principles are those set out by the Court of Appeal in *Ohio* (ibid.). My judgment applies the material parts of the reasoning in that judgment. There is nothing else about this case that merits permission being given under the "compelling reason" ground in light of my conclusion concerning arguability.

Disposal

14. For the reasons et out above, I refuse the PTA Application. I have included directions concerning the determination of any costs application that arises from this Order.