Claim No. CA 005/2021
ARB 005/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF APPEAL

BEFORE CHIEF JUSTICE ZAKI AZMI, JUSTICE SIR PETER GROSS AND H.E. JUSTICE ALI AL MADHANI

LACHESIS

Appellant/Claimant

and

LACROSSE

Respondent/Defendant

JUDGMENT WITH REASONS OF CHIEF JUSTICE ZAKI AZMI, JUSTICE SIR PETER GROSS AND H.E. JUSTICE ALI AL MADHANI

Hearing :	**28 September 2021**
Counsel :	Mohammed Nasser instructed by NALF International FZ LLC on behalf of the Appellant Vellayappan Balasubramanim instructed by KBH Kaanuun on behalf of the Respondent
Judgment :	**29 December 2021**

UPON the Claimant's claim issued on 30 March 2020 requesting the Court to set aside the final award issued by the Ladonna on 20 February 2020 (the **"Claim"**)

AND UPON the order of H.E. Shamlan Al Sawalehi dated 22 March 2021 dismissing the Claim

AND UPON the Claimant's Appeal Notice dated 11 April 2021 (the **"Appeal"**)

AND UPON hearing Counsel for the Claimant and the Defendant on 28 September 2021

AND UPON reading the Claimant and Defendant's respective skeleton arguments and reviewing the relevant documents on the Court file

IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed.

2. Costs in favour of the Respondent on the standard basis, to be assessed by the Registrar unless otherwise agreed.

Amna Al Owais
Chief Registrar
Date of Issue: 29 December 2021
At: 8:00am

REASONS FOR JUDGMENT

INTRODUCTION

1. This is the Judgment of the Court.

2. This is an Appeal by Lachesis, the Appellant/ Claimant (the **"Appellant"**), from the Judgment and Order of His Excellency Justice Shamlan Al Sawalehi, dated 22 March 2021 (the **"Judgment"**) in the DIFC Court of First Instance, dismissing the Appellant's claim to set aside the Arbitration Award in Ladonna (**"LADONNA"**) Case No. XXof 2018, dated 20 February 2020 (the **"Award"**).

3. The background, so far as relevant to this Appeal, may be very shortly outlined. The Appellant and Lacrosse, the Respondent/Defendant (the **"Respondent"**) entered into two charterparties (the **"Charterparties"**) for the purpose of work on a project within the Lacey (the **"Project"** and the **" Lacey"** respectively). The Appellant was a sub-contractor for Laert (**"Laert"**) under a sub-contract (the **"Laert Sub-Contract"**). Both a Laguna and a Lael (the **"Vessels"**) were required and the Appellant chartered each from the Respondent under separate charterparties (the **"Laguna Charterparty"** and the **"Lael Charterparty"** respectively). In due course, the Vessels proceeded to the Oilfield and were put into service.

4. Subsequently, disputes arose under the Charterparties, concerning non-payment of hire by the Appellant to the Respondent. Furthermore, the Appellant suspended work with **Laert** on account of **Laert** failing to make payments under the **Laert** Sub-Contract. Thereafter, **Laert** approached the Respondent proposing a new contract with the Respondent for completion of the balance of works under the Project and the

Respondent made the Vessels available to **Laert**.

5. On 9 August 2018, by its Notice of Arbitration, the Appellant referred disputes arising under the Laguna Charterparty to arbitration. Matters did not, however, rest there. In the event, the Notice of Arbitration was amended to cover disputes arising out of both the Laguna and Lael Charterparties. As explained in the Award:

> *"24. The Claimant's original Notice of Arbitration..referred only to the Laguna Charter. However, discussions took place between the Parties and on 4 September 2018 the Claimant's representatives advised **LADONNA** (with a copy to the Respondent's Representatives) that the Parties had agreed to consolidate all claims arising under the Laguna Charter and under the Lael Charter which consolidated arbitration was to be determined in accordance with the Arbitration Clause in the Laguna Charter.*
>
> *25. On the same date the Claimant served an Amended Notice of Arbitration..with copies of the Laguna Charter and the Lael Charter attached and referring, as agreed, to the Arbitration Clause (Clause 33) in the Laguna Charter as amended by the Parties which provides:*
>
> *`Any dispute, controversy or claim arising out of or relating to the contract or the breach, termination or invalidity of it, shall be settled by arbitration in accordance with the Rules of the Ladonna Centre (LADONNA). The seat of the arbitration shall be the Dubai International Financial Centre (DIFC) United Arab Emirates unless otherwise agreed by the parties..The governing law shall be laws of England and Wales.'"*

6. In summary: the governing law of the underlying Laguna Charterparty was English law; the seat of the Arbitration was the DIFC (United Arab Emirates); the arbitration was to be conducted in accordance with the **LADONNA** Rules. As agreed by the parties and reflected in the amended Notice of Arbitration, these provisions now applied to disputes under both the Lael and the Laguna Charterparties.

7. The **LADONNA** arbitration tribunal (the **"Tribunal"** or the **"Arbitrators"**, as appropriate) conducted an evidentiary hearing between 4-8 December 2018. The Tribunal produced the Award on 20 February 2019, dismissing the Appellant's claims. The Tribunal's conclusions were, across the board, in the Respondent's favour. The detail does not matter for the purposes of this Appeal; the following summary will suffice:

i. Hire under the charterparties continued to accrue until 26 June 2018; hire was outstanding from the Appellant to the Respondent up to that date in the amount of US$727,828.26, plus contractual interest in the amount set out in the Award.

ii. The Respondent had given the Appellant adequate notice to justify suspending performance under the Charterparties.

iii. The Respondent withdrew the Vessels from the Appellant's service on 26 June 2018 and was entitled to do so by reason of the Appellant's non-payment of hire.

iv. The Tribunal dismissed the Appellant's claim that the Respondent had unlawfully procured or induced any breach of contract by **Laert** of the **Laert** Sub-Contract.

v. The Appellant had failed to prove its claim that the Respondent's alleged breaches of the Charterparties or its alleged torts of interference had caused the Appellant to become liable under a further sub-contract.

vi. The Tribunal dismissed the Appellant's claim that the Respondent had converted or trespassed on the Appellant's "Specialist Equipment" (with which the Appellant had equipped the Laguna).

vii. The Tribunal made consequential orders, including for costs, expenses, **LADONNA**'s administrative charges and the Tribunal's fees and expenses in the arbitration.

8. Before turning to the Judgment (in the DIFC Court of First Instance), it is convenient to look ahead to the principal Issues (the **"Issues"**) before this Court on appeal. Three Issues have been pursued before us, namely:

i. Issue I: Signature;

ii. Issue II: Incapacity;

iii. Issue III: Unfair Treatment.

9. As to *Issue I: Signature*, the Appellant complains that the Award was not signed on every page by the Arbitrators, contrary to a mandatory provision of the **LADONNA** Rules. Moreover, the Appellant contends that the signature page did not show any connection with the operative part of the Award. The Award was accordingly invalid and was to be set aside. The Respondent submits that the Award was sufficiently signed. In any event, the DIFC Courts have a discretion under *DIFC Law No. 1* of 2008 (the **"Arbitration Law"**) whether to set aside the Award and there was an overwhelming case for not doing so. Further and in any event, any complaint in this regard was waived by the Appellant.

10. As to *Issue II: Incapacity*, the Appellant's case is that its former solicitors did not have the capacity to change the applicable law of the Lael Charterparty from UAE to English law. This purported change impacted on the law governing a tort committed within the UAE jurisdiction. The Award was to be set aside on this ground as well. The Respondent retorts that these submissions on the Appellant's part are misconceived and do not disclose a ground for setting aside the Award.

11. As to *Issue III: Unfair Treatment*, the Appellant complains of unfair and unequal treatment of its witnesses and legal representative during the course of the arbitration hearing. It was unable to present its case before the Tribunal, so that the Award was also to be set aside on this ground. For its part, the Respondent submits that there is nothing in this point, constituting no more than an attempt by the Appellant to drag the Court into the merits of the dispute. Further, the Respondent denies that there was any unfair treatment during the hearing. Still further and in any event, the Respondent submits that none of the incidents highlighted by the Appellant were sufficiently serious to warrant setting aside the Award.

THE JUDGMENT OF THE DIFC COURT OF FIRST INSTANCE

12. Before the DIFC Court of First Instance, the Appellant sought to set aside the Award on a variety of grounds. All were dismissed in, with respect, a concise and clear Judgment. We focus on those of continued relevance to this Appeal.

13. *Issue I: Signature:* The kernel of the Appellant's case was Art. 37(4) of the **LADONNA** Rules, which is in these terms:

> *"Article 37 - Form and Effect of the Award*
>
> *4. An award shall be signed on every page by the arbitrators and it shall contain the date on which the award was made and indicate the seat of the arbitration.."*
>
> It was common ground that the Award had not been signed on each page.

14. Building on this foundation, the Appellant argued that the arbitral procedure was not in accordance with the agreement of the parties and that the Award should accordingly be set aside under Art. 41(2)(a)(iv) of the Arbitration Law, which provides as follows:

> *"(2)..An arbitral award may be set aside by the DIFC Court only if:*
>
> *(a) the party making the application furnishes proof that:*
>
> ..
>
> *(iv) .the arbitration procedure was not in accordance with the agreement of the parties.."*

15. On the assumption that the arbitral procedure was not in accordance with the agreement of the parties, the Judge held that it went no further than going to the Court's discretion to set aside the Award. That discretion was to be found in Art. 41(2) of the Arbitration Law, which (as appears above) provides that an ".arbitral award may be set aside.." [italics added]. Here the Appellant had failed to address the Court's discretion and why it should be exercised in favour of setting the Award aside. The Judge said this:

> *"13. As the Defendant has stated, courts will generally inquire into the materiality of the procedural requirements not complied with and will not set aside an award if only formalities or technical provisions were not met. Thus, departures from the parties' arbitral procedure will generally be condoned unless they are prejudicial. In other words, an arbitral award will not be set aside if only formal or technical objections to the award are made. In my view, this is all the Claimant has done."*

16. Further, the Judge concluded that the Appellant had waived its right to make an objection to the Award on the basis that the Tribunal did not sign each page. Art. 40(1)(a) of the Arbitration Law provided as follows:

> *"(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:*
>
> *(a) a party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors or any error of a similar nature;"*

The Signature point here constituted a type of error within the words *".any errors in computation, any clerical or typographical errors or any error of a similar nature"* but the Appellant had not availed itself of the opportunity to have it corrected. Having missed that opportunity, the Appellant had waived its right to make an objection to the Award on that ground, by reason of Art. 9 of the Arbitration Law:

> "A party who knows that any provision of this Law, including one from which the parties may derogate, or any requirement under the Arbitration Agreement has not been complied with and yet proceeds with the Arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object."

17. *Issue II: Incapacity:* In the Judge's view, the Appellant's submissions on this point did relate to incapacity - but not the relevant incapacity for the purposes of Art. 41(2)(a)(ii) of the Arbitration Law, which provided that an arbitral award may be set aside by the DIFC Court only if *"(i) a party to the Arbitration Agreement was under some incapacity."*. Art. 41(2)(a)(ii) concerned the capacity to conclude a binding agreement to arbitrate. By contrast, the incapacity to which the Appellant's submission related was the capacity to amend one of the *underlying agreements* (the Lael Charterparty) - not the agreement to arbitrate. Accordingly, the Appellant's challenge on this ground was misconceived.

18. *Issue III: Unfair Treatment:* Two provisions of the Arbitration Law were relevant to the arguments under this heading in the Court of First Instance. The first was Art. 41(2)(a)(ii), which permitted the DIFC Court to set aside an award if a party was *"..unable to present his case"*. The second was Art. 41(2)(b)(iii), which permitted an award to be set aside if the DIFC Court found that *"the award is in conflict with the public policy of the UAE"*.

19. The Judge dealt robustly and summarily with the Appellant's complaints under this Heading (described as Grounds 3 and 4 in the Judgment). As to the Appellant being unable to present its case, within the meaning of Art. 41(2)(a)(ii) of the Arbitration Law, the complaint had not been made good and, in any event, the Appellant had not explained how the Award would have been different had it been allowed to take the steps it was (allegedly) stopped from taking. As to the treatment of its witnesses and representatives at the hearing of the Arbitration, the Appellant had not sufficiently particularised its complaint. Moreover (at [40]), the Judge observed that Ground 4, which comprised over 40 alleged errors of law and fact in the Award, was *"..an attempt by the Claimant to have the merits of the Award reviewed, by way of the UAE public-policy gateway of Art. 41(2)(b)(iii) of the Arbitration Law.."*. The Judge dealt more generally with public policy in his Judgment, a matter to which we return - as public policy featured elsewhere in the arguments before us.

20. As already indicated, the Appellant advanced various other arguments before the DIFC Court of First Instance. The Judge considered and dismissed them. They do not arise before us, and it is unnecessary to say more of them.

THE APPEAL TO THIS COURT

Issue I: Signature:

21. (1) The rival cases: The rival cases broadly followed the same lines as those advanced before the DIFC Court of First Instance, save as follows. First, the Appellant submitted that the signature page did not demonstrate any connection with the operative part of the Award, an argument which it sought to buttress by reference to photographs and the facts surrounding its receipt of the Award. Secondly, the Appellant contended that the breach of the **LADONNA** Rules in respect of signature gave rise to a conflict with the public policy of the UAE so that the Award should be set aside under Art. 41(2)(b)(iii) of the Arbitration Law (set out above) as well. Thirdly, essentially in response, the Respondent broadened its arguments by way of the "Additional Grounds" raised pursuant to its Respondent's Notice. It is unnecessary to list those "Additional Grounds" here; they were essentially incremental to the grounds on which the Judgment was based.

22. (2) The relationship between the Arbitration Law and the **LADONNA** Rules: By Decree No. 14 of 2016 (the **"2016 Decree"**), the Ruler of Dubai, His Highness Sheik Mohammad Bin Rashid Al Maktoum, established **LADONNA**. Art. 2 of the 2016 Decree provided that **LADONNA** *"shall be regulated and managed in accordance with the statute annexed to this Decree"*.

23. The relevant statute is the Statute of Ladonna (the **"LADONNA Statute"**). Art. 4 of the **LADONNA** Statute is in these terms:

> *"The Centre's Rules and Regulations*
>
> *Article (4)*
>
> *A. The rules of arbitration..in the Centre shall be governed by the regulations adopted by the Centre in this regard.*
>
> *B. All matters not explicitly addressed in the Centre's arbitration rules shall be subject to the arbitration law adopted by Dubai International Financial Centre."*

24. As is apparent, the **LADONNA** Rules govern the procedure for the conduct of **LADONNA** arbitrations. The **LADONNA** Rules do not, however, say anything about the setting aside of awards. It follows that the setting aside of awards is a matter governed by the Arbitration Law and is found in Art. 41(2) of that Law. Consistently with international practice, the Arbitration Law, based on the UNCITRAL Model Law (the **"Model Law"**), is restrictive as to the grounds for setting aside an award.

25. Thus, Art 10 of the Arbitration Law provides that:

> *"In matters governed by this Law, no DIFC Court shall intervene except to the extent so provided in this Law."*

It is further worth reiterating the opening words of Art. 41(2): *".An arbitral award may be set aside by the DIFC Court only if.."*. In our judgment, taken together, Arts. 10 and 41(2) mean: first, the DIFC Court has no power to set aside an award unless it comes within one of the specified grounds set out in Art. 41(2). This follows from Art. 10 precluding intervention save to the extent provided for in the Arbitration Law itself, coupled with the use of the word *"only"* in Art. 41(2). Secondly, even if one of the specified grounds in Art. 41(2) is made good, the Court *"may"* set the impugned award aside; i.e., the Court has a discretion whether or not to set the award aside.

26. It follows that the mere failure to comply with the **LADONNA** Rules where those govern an arbitration does not mean, without more, that the DIFC Court must set the award aside. It *may* do so but it has a discretion not to do so.

27. *(3) Discretion*: In our judgment, the short answer to the Appellant's case on this Issue lies in the DIFC Court's discretion. The factors relevant to the Court's discretion point overwhelmingly against setting the Award aside. We agree with the Judge. Our reasons follow.

28. *First*, we begin with the rationale for Art. 37(4) of the **LADONNA** Rules. It is a simple and straightforward rule, designed to provide a quick check that an award was indeed made (and approved) by the tribunal in question. Where this Rule is followed, there can be no room for dispute that an award was so made. Its attraction in the field of international arbitration is obvious, where parties and arbitrators may be in a variety of different locations. Nothing we say should be read as belittling the importance of following procedural rules as to signature of an international arbitration award.

29. However, though Art. 37(4) is a mandatory Rule, and one supportive of good practice as explained, the consequences of breach of the Rule are far from obvious. The factual circumstances may vary greatly. There may be no explanation for the breach of the Rule; there may be a simple question of omission; there may a real doubt as to whether each member of the tribunal has participated in the award; there may no such doubt at all. The consequences of a breach of such a Rule may give rise to significant, some or no prejudice. An inflexible conclusion that an award must be set aside regardless of the fact that there is no sensible doubt that each member of the tribunal participated in making the award and approved it, strikes us as disproportionate and unnecessary to upholding a proper system of international arbitration. It would also sit uncomfortably with our earlier conclusion on the governing legal framework in the UAE, that a mere breach of an **LADONNA** Rule did not, without more, mean that the DIFC Court must set an award aside under the Arbitration Law.

30. On the facts of this case there is and can be no sensible doubt that the Award was made and approved by the Tribunal as a whole and by each of the Arbitrators. Other than the Respondent's assertions, there is indeed nothing to support the notion that it was not. On page 1, the Award has the names of each member of the Tribunal. The Award is consecutively numbered, from page 1 to page 99. Each page bears the notation "**LADONNA** Case No. 1 of 2018: Final Award". Page 99 has the date of the Award and the signatures of each member of the Tribunal. It is simply fanciful to suppose that despite these indications there is any, let alone any real, doubt that each member of the Tribunal participated in and approved the Award.

31. Still further, in circumstances where, as the Judge held (at [13] in the Judgment, set out above), there has been no suggestion of prejudice to the Appellant flowing from the breach of Art. 37(4), no good reason has been shown for setting the Award aside; on the facts of the present case,

the Issue of Signature is formal and technical only.

32. *Secondly*, faced with this obvious difficulty, the Respondent sought to develop a further variant on the theme - but a variant requiring new facts. It was said by Mr. Nasser, in part with reference to a number of photographs, that the Appellant only received the additional award some 40 days after its publication. The signature page was, it was said, stapled separately, outside of the binder in which the remainder was contained and on a different quality paper. As could be seen, between the narrative of reasons and the operative part of the award on the one hand and the signature page on the other, there was a list of issues. On this footing, the Appellant contended that the signature page could have been attached to any other award and the Award could not be attributed to the Tribunal; nor could it be assumed that the whole Tribunal approved the Award.

33. Mr. Bala for the Respondent resisted the introduction of any new factual evidence to support this case, including the photographs to which the Appellant sought to refer. It was too late and fell foul of the rule in *Ladd v Marshall* [1954] 1 WLR 1489. In any event, the Respondent had received the Award, bundled immaculately, all of it - including the signature page - within a blue binder. The Respondent (or its representatives) had gone back to **LADONNA** for every page to be validated. If the Appellant had received its copy in the manner described by Mr. Nasser something had simply gone wrong in the packaging or subsequent handling, but it did not begin to suggest that the Award was not that of the Tribunal. In any event, the Tribunal had initially sent the Award in 4 email packages to the Parties; it was in identical form to the Award now before the Court.

34. We have no hesitation in rejecting this variant of the Appellant's argument too. First, it is simply too late to raise the new factual contentions as to the manner in which the original Award was received. There is no good reason why, at the latest, this evidence and these contentions could not have been developed before the Judge in the Court of First Instance. It follows that this Appellant's submission fails at outset. Secondly, on the material before us considered *de bene esse*, we are not persuaded that the original Award was packaged as the Appellant contended with the signature page separate. If driven to consider all this new material, we accept the Respondent's account of how the original Award was packaged. There is no reason why the Tribunal would have sent copies of the original Award to the Appellant, packaged in a different fashion. Assuming Mr. Nasser saw it in the condition described, then something unexplained must have gone wrong between the time the Tribunal sent the Award and the time he saw it.

35. Thirdly, if anything, we think that the reasoning in the Judgment of H.E. Justice Sir Anthony Evans in *P&T Architects And Engineers Ltd v Nakheel PJSC* in Case No. DWT/0022/2010 to which our attention was drawn by the Appellant, supports the view to which we are minded to come and does not assist the Appellant's case. Thus, at [38] of his Judgment, Sir Anthony Evans said this:

> *"It cannot be doubted that the arbitrator's signature on the last page of the original award was intended to relate to the whole of the document. That was made clear by the consecutive page numbering and by the fact that the page he signed was numbered `page 14 of 14' and began with paragraph no. 17 indicating that the previous pages indicating that the previous pages contained sixteen earlier paragraphs. Article 212(5) required him to sign the document (or documents) in question, but not every page of the document(s), and that he did."*

36. We accept that this decision in *P&T Architects* does not advance the argument on the question of the requirement in Art. 37(4) of the **LADONNA** Rules that *every* page of the Award be signed. However, although not identical on the facts, the reasoning in [38] of the *P&T Architects* judgment is strongly in favour of the Tribunal's signature on the final consecutively numbered page of the Award applying to the whole of the Award. That is so, even if the signature page and the rest of the Award are somehow treated as separate documents. The position is a *fortiori* if, as we are minded to think, the signature page and the other preceding pages are all properly viewed as a single document.

37. *Fourthly*, we do not think that the public policy of the UAE is engaged, still less that it tells against treating this question as a matter for our discretion and exercising that discretion in the Respondent's favour. Our reasons follow.

i. The public policy argument does not seem to have been advanced previously by the Appellant in the Signature context and appears to hinge on the new point that the signature page was physically separated from the remainder of the Award. We have already rejected that argument, in part on the ground that it required fresh evidence, for the introduction of which there was no justification. In any event, however, we did not find the Appellant's reliance on public policy to be at all persuasive.

ii. Particular caution is required before an international court such as the DIFC Court can pronounce on issues of UAE public policy. As observed by His Excellency the Deputy Chief Justice Omar Al Mheiri in *Case No. ARB-009-2019*, at [24], *".this commercial and civil Court will rarely be in a position to make findings related to the public policy of the UAE without the assistance of expert evidence.."*. No evidence whatsoever has been adduced by the Appellant; on one view therefore, the Appellant has failed at the first hurdle to make good its case that the Award is in conflict with the public policy of the UAE for the purposes of Art. 41(2)(b)(ii) of the Arbitration Law. We do not, however, leave matters there.

iii. Furthermore, it is difficult to see how the Issue of Signature here can give rise to a question going to the public policy of the UAE. The complaint is that the Award was not signed on each page (in contravention of Art. 37(4) of the **LADONNA** Rules). The Arbitration Law does not contain the same requirement, that an award be signed on each page. Instead, so far as signature is concerned, Art. 38(1) of the Arbitration Law requires no more than that the *"award shall be made in writing and shall be signed by the arbitrator or arbitrators"*. It would be curious if a requirement not itself found in the Arbitration Law was elevated into a question of public policy, merely because of the provisions of a procedural rule contained in the **LADONNA** Rules. We are of the clear view that it was not.

iv. Still further and standing back from all this, the context is that of international arbitration. In this context, much autonomy is ceded to the parties and national courts should be slow to intervene. National courts and national laws cannot, however, be overlooked; international arbitration depends on States for enforcement and States will not lend support to enforcement where (for instance) an award is in conflict with the State's most basic notions of morality and justice. But the general norm in international arbitration is that a statutory supervisory scheme should provide *"Maximum support. Minimum Interference"*: Lord Thomas CJ, *"Commercial Dispute Resolution: Courts and Arbitration"* (Beijing, 6 April 2017), cited in Sir Peter Gross, Courts and Arbitration, [2018] LMCLQ 497, at p.498. In Case No. ARB-009-2019 (supra), His Excellency the Deputy Chief Justice Omar Al Mheiri said this, at [23]:

"...the public policy exception is reserved for exceptional circumstances and the standard of proof required for it to be established is very high. Refusals under this exception are accordingly rare. I am unaware of an occasion when this Court refused to recognise or enforce an arbitral award for public policy reasons.."

We respectfully agree with and adopt the Deputy Chief Justice's approach. There are no exceptional circumstances. Whatever the position might have been had the Tribunal not signed the Award at all, that is not this case. The matter can safely be left to the Court's discretion, to be exercised appropriately on a fact-specific basis. In our judgment, no question of public policy arises.

v. *Fifthly*, no good reason has been demonstrated for this Court to exercise the discretion in Art. 41(2) of the Arbitration Law differently from the manner in which it was exercised by the Judge. To the contrary and for the somewhat expanded reasons set out above, this Court agrees with the Judge's conclusion as to the exercise of the Court's discretion. The Appellant's case on the Issue of Signature fails.

38. (4) *Waiver*: The Judge held against the Appellant on this ground too. We are sympathetic to the Judge's view, in that a party concerned by a signature failure, occasioning no substantive prejudice, might be expected to exhaust all avenues seeking to have the matter corrected by the Tribunal without the need for proceedings seeking to have the Award set aside. It is the failure to do just that which was central to the Judge's conclusion on Waiver. However, having formed so clear a conclusion on discretion, it is unnecessary to reach a concluded view on Waiver and we prefer not to do so. The true scope of the "slip rule" (i.e., Art. 40(1)(a) of the Arbitration Law) can give rise to questions of some nicety and we would prefer to leave those to a case where they were necessary for the decision.

Issue II: Incapacity

39. As already noted, the Judge viewed this argument as misconceived. It has nonetheless been pursued by the Appellant on appeal. Mr. Nasser, in the Appellant's Supplementary Skeleton Argument, introduced this Issue in these terms:

".the then lawyer had no capacity to agree to change the law of the Tort and apply the English Law on a tort that occurred on UAE soil.".

We struggle with this contention, at every step of the way.

40. The substance of the Appellant's complaint relates to amending the Notice of Arbitration (as explained earlier) with the upshot that the governing law of claims in tort became the law of England and Wales. Insofar as the Appellant has a complaint (and we have seen nothing to suggest that it does), it appears to us to relate to a matter between it and its then-lawyer as to his authority; any such complaint does not begin to found a claim to set the Award aside. As a matter of the autonomy of parties to international arbitration, we can see nothing offensive in the agreement struck with regard to the amended Notice of Arbitration. For reasons upon which we have already touched, there is nothing to indicate a conflict with UAE public policy. In entire agreement with the Judge, if any question of incapacity arose, it related to an underlying agreement (the Lael Charterparty) - not the agreement to arbitrate - and fell outside Art. 41(2)(a)(ii) of the Arbitration Law. These conclusions are accordingly sufficient to dispose of the Issue as to Incapacity: Art. 41(2)(a)(ii) was not engaged at all.

41. Had it been necessary to go further, then the starting point of the Appellant's complaint is that treating the governing law of the Lael Charterparty as English law (by way of the amended Notice of Arbitration) had a knock-on effect on the law governing the tortious claims it alleged arising out of or relating to the relationship between the Appellant and the Respondent. The gravamen of the Appellant's submission is that the Appellant's then lawyer lacked capacity to agree to the change in the governing law of the Lael Charterparty which, impermissibly, resulted in the disapplication of UAE law as governing its tortious claims. In our judgment, the Appellant fails at this hurdle too. First, before the Tribunal, the Appellant conceded that the governing law of the Lael Charterparty had been changed from UAE law to English law and that the contrary could no longer be argued: see, the Award, at [219] and the transcript extract set out at para. 50 of the Respondent's Initial Skeleton Argument on this Appeal. Secondly, the Tribunal did consider what the position would have been had UAE rather than English law governed the tortious claims - and concluded (Award, at [252]) that it would have made *"little or no difference"*. Thirdly, in the circumstances, even if Art. 41(2)(a)(ii) of the Arbitration Law had been engaged (contrary to our conclusion), the discretionary case for not setting aside the Award would have remained overwhelming.

42. No more need be said of Issue II. The Appellant's case based on Incapacity accordingly fails.

Issue III: Unfair Treatment

43. (A) Introduction: As already seen, this Issue was disposed of briskly by the Judge in his Judgment. At the hearing of this Appeal, the Appellant contended that the Award was to be set aside, relying on Art. 25 of the Arbitration Law (*"The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case."*) and Art. 41(2)(a)(ii) (already set out). Albeit including allegations of a lack of impartiality on the part of the Tribunal, a breach of natural justice, "harassment" of the Appellant's witness, interruptions or interventions hindering cross-examination of the Respondent's witness and unequal treatment, the Appellant's case remained vague. Moreover, the formulation of the Appellant's claims distinctly suggested an attempt to draw this Court into an examination of the facts, even extending to the submission that there had been a conspiracy to displace the Appellant from the project rather than the Charterparties being terminated for non-payment of hire by the Appellant; as the Court observed in argument, this Court could not revisit the facts on an Appeal of this nature.

44. In the event, this Court allowed the Appellant time after the Hearing to identify specific passages in the transcript on which it relied as evidencing unfair treatment and gave the Respondent time to answer those complaints. The upshot was that the Appellant produced a table comprising 59 of what it described as the most "obvious infringements" and the Respondent produced its answers in a marked-up version of the same table.

45. In approaching Issue III, we keep well in mind that the *only* grounds of challenge in this context are to be found in Art. 41(2), read with Art. 25, of the Arbitration Law. Neither errors of law nor errors of fact on the part of the Tribunal, if any there were, disclose a ground upon which the Award could be set aside; the Arbitration Law is based on the Model Law which does not permit such challenges. Importantly, this Court needs

to scrutinise challenges of this nature carefully - and guard against arguments on the merits being dressed up as legitimate complaints of unfairness demonstrating a failure of natural justice. It is also important to recognise that a mere trivial and inadvertent technical breach of the requirement of a fair hearing, without substantive consequences, will not, or not necessarily, suffice to set an award aside; this is not a game of procedural snakes and ladders.

46. *(B) Discussion and conclusions:* Having carefully reviewed the Appellant's table, together with the Respondent's marked-up copy, we are not at all attracted to the Appellant's case on this Issue. Neither singly nor cumulatively do the 59 items persuade us that the Appellant was prevented from putting its claim, nor that there was any failure to treat the parties with equality, nor that there was any unfairness. In reality, with respect, the Appellant is indeed seeking a re-run of the merits.

47. We do not propose to comment on each of the 59 items; those observations set out below are illustrative only but convey in a representative fashion the flavour of the points raised under this heading.

48. *Item 1:* The complaint here was that, contrary to the Tribunal's own ruling, time was not shared equally. The reason, as convincingly explained by the Respondent, is that when the times were initially worked out, it was not known that the Appellant's witness was not proficient in English and would require an interpreter. That the Respondent was then allowed more time to cross-examine him is understandable and not evidence of any unfairness whatever.

49. *Item 3:* At a late stage, the Appellant proposed using the daughter of their expert witness as a translator. She does not appear to have been a professional translator. The Tribunal, rightly in our judgment, was unwilling to agree. Far from demonstrating unfairness, serious questions would have arisen had the Tribunal agreed to such a course. Additionally, we are told that the Appellant ultimately secured the services of a professional translator, so nothing turned on this point in any event.

50. *Items 5, 7, 18* and *22*: It is clear from the matters highlighted in the Appellant's table that these issues concern questions of fact. As already underlined, even assuming (without in any way deciding) that the Tribunal erred with regard to its view of these questions, they do not begin to disclose a ground of challenge under the Arbitration Law.

51. *Items 6* and *11*: Both these items involve interventions by the Tribunal, in part (especially in Item 6) to seek clarification and as a matter of case management (particularly so in Item 11). We fail to see how any objection can be taken. That the exchange between Mr. Nasser and the Tribunal (in Item 11) was forceful is neither here nor there.

52. *Item 8:* This Item appears to relate to an alleged error of law. Assuming (without in any way deciding) that it was, an error of law does not disclose a ground of challenge under the Arbitration Law.

53. *Items 17, 26* and *31*: These items too involve interventions by the Tribunal as a matter of case management and do not disclose any matters of legitimate complaint. Item 17 essentially went to clarification; Item 26, amidst some tension between the Tribunal and Mr. Nasser was designed to curtail repetition; Item 31 was a proper, if robust, example of case management with a view to encouraging the witness to focus on answering the questions put to him. For completeness, the allegation (under Item 31) that the Tribunal applied a different standard to the Respondent's witnesses is not established on the highlighted materials.

54. *Item 19*: This complaint is curious. As it appears to us, there was nothing whatever untoward in the Tribunal's intervention here, designed to ensure a break for the Transcriber. It is always a question of practical convenience as to when to order such a break, assuming the advocate himself has not prepared the ground. It would be remarkable if an intervention of such a nature gave rise to a proper complaint and it does not here.

55. *Item 50*: The Chairman's interjection, *"Please, shut up."* looks concerning and unfortunate if taken in isolation. The context has, however, been explained by the Respondent in its marked-up version of the table - and the exchanges highlighted by the Appellant look markedly different when considered in that context. While, with respect, it would undoubtedly have been preferable if the Chairman had framed his intervention differently, no unfairness is disclosed.

56. *Item 51*: We have difficulty seeing how this Item could be suggested to give rise to a complaint. There was obviously a misunderstanding between counsel, with the Appellant's counsel thinking he was being interrupted whereas the Respondent's counsel was seeking to assist him. That is all there is to it.

57. *Items 54* and *56*: There is likewise nothing in these points, both focusing on the Respondent's counsel interrupting the Appellant's counsel. Such matters are commonplace as part of the give and take of oral hearings; only rarely would they impact on the fairness of the proceedings. They do not do so here. The first interruption (Item 54) appears to have involved an effort to ensure that the witness could complete his answer. Even if the second interruption (Item 56) would have been best avoided, it was of no moment.

58. Accordingly, the Appellant's case on Issue III fails.

OVERALL CONCLUSION

59. For the reasons given, we dismiss the Appellant's appeal.

COSTS

60. The Appellant is to pay the Respondent's costs of and in connection with this appeal on the standard basis, to be assessed by the Registrar, unless agreed.