HCCT 113/2025 and 114/2025
(Heard together)
[2026] HKCFI 373
HCCT 113/2025

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS
NO 113 OF 2025

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

and

IN THE MATTER OF an Arbitration between A LIMITED and SJ and EL

BETWEEN

SJ	1st Applicant
EL	2nd Applicant
and	
A LIMITED	Respondent

Redacted version for publication

AND

HCCT 114/2025

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS

NO 114 OF 2025

IN THE MATTER OF enforcement of an arbitral award made on 20 June 2025 in an arbitration under case reference number HKIAC/A21129

BETWEEN

A LIMITED	Applicant/ Creditor
and	
SJ	1st Respondent/ 1st Debtor
EL	2nd Respondent/ 2nd Debtor

Before: Madam Recorder Rachel Lam, SC in Chambers (Not open to Public)

Date of Hearing: 27 November 2025

Date of Judgment: 23 January 2026

JUDGMENT

A. *Introduction*

1. This was the hearing of:-

(1) The Summons filed by A Limited on 25 August 2025 in HCCT 114/2025, seeking leave to enforce the arbitral award rendered in HKIAC/A21129 on 20 June 2025 ("Award") as a judgment of the Court; and

(2) The Originating Summons ("OS") filed by SJ and EL in HCCT 113/2025 on 11 August 2025 in HCCT 113 seeking an order to set aside the Award.

2. A Limited had filed evidence in support of its application in HCCT 114. SJ and EL did not file evidence in opposition to HCCT 114, but their answer lies in their setting aside application. The parties are agreed that if the setting aside succeeds, then the enforcement application falls away. If it does not, then it follows that the Award will be enforced.

3. SJ and EL were represented by Counsel Mike Lui SC leading John Leung. A Limited was represented by Counsel Mr Patrick Siu.

B. Background

4. The following background is agreed or largely indisputable.

5. The arbitration arose from an IPO which eventually did not come to fruition.

6. SJ and EL were two founders of several corporate entities in the A Group. A Limited was an investor. The dispute related to A Limited's exercise of its contractual right to request SJ/EL to purchase all its shares in the (intended) listing vehicle following the failed IPO.

7. In December 2015, an agreement was entered into by, inter alios, A Limited, B Limited, SJ and EL about A Limited and B Limited's pre-IPO investments in a listing vehicle C Limited.

8. In mid-2017, EL proposed to apply for listing on the HKEx in December 2017. After restructuring transactions to prepare for such IPO, the listing vehicle was changed from C Limited to D Limited ("Company").

9. In September 2018, a shareholders' agreement ("SHA") was entered into by, inter alios, A Limited, B Limited, SJ and EL concerning again A Limited and B Limited's pre-IPO investment in the Company. As stated in the SHA:

(1) The shares in the Company were at the relevant times held by E Limited (which SJ/EL indirectly owned) ([redacted]), A Limited([redacted]) and B Limited([redacted]).

(2) There should be 6 directors constituting the Company's Board prior to the completion of the IPO, with 4 to be nominated by E Limited, 1 by A Limited and 1 by B Limited.

10. The SHA set out an exit option for A Limited and B Limited as investors (by way of repurchase of all or part of their shares in the Company), and also had an exit option for SJ / EL(Clause 5):

(1) Clause 5.1 (on exit option for A Limited/B Limited) provides, *inter alia*:

> "(i) if the Company fails to complete the IPO prior to the Long Stop Date… then unless (1)… or (2)… each Investor, as a repurchase right holder (the 'Repurchase Right Holder') shall be entitled to require the Founders to purchase (the 'Repurchase Right') part or all of the Equity Securities in the Company held by such Investor (the 'Repurchase Shares') using the higher of the price (the 'Repurchase Price') determined by the two calculation mechanisms below…".

(2) Clause 5.3 (concerning the exit option for A Limited/B Limited) states:

> "<u>Exercise of Repurchase Right</u>. The Repurchase Right shall be exercisable by the Repurchase Right Holder delivering written notice to the Founders at the time the Repurchase Right Holder exercises its Repurchase Right. The Founders shall complete such repurchase within three (3) months after the date on which relevant written notice is delivered by any Investor or such other period as agreed by the Founders and the relevant lnvestor(s)."

(3) Clause 5.6 (on exit option or protection mechanism for SJ/EL) states:

> "Maximum exposure. The Founders shall not be subject to any liability to the Investors in connection with their obligations under this Section 5 (Repurchase Right) if they have transferred, at nil consideration, to the Investors (or such other Persons designated by the Investors, on a pro rata basis according to the Investors' then respective shareholding percentage in the Company) all of their direct or indirect Equity Securities in the Company, within three (3) months following any Investor's exercise of the Repurchase Right." (emphasis added)

11. In October 2018, A Limited, SJ and EL and others entered into a supplementary agreement, which provided that the "repurchase right" provided for under Clause 5 of the SHA shall not be exercised if a formal IPO application was submitted to the HKEx before [redacted] May 2019 and if it was formally accepted for processing and still in the review process.

12. In January 2019, the Company submitted a "Form A1" to the HKEx applying for its IPO. However, the application lapsed in August 2019.

13. The Company later sought to re-submit a "Form A1" and aimed to do so in June 2020, and its board also duly passed the resolution in April 2020 for such purpose. However, the Company did not eventually submit an updated Form A1.

14. In July 2020, about 1 year after the lapse of the IPO application, A Limited issued a written notice seeking to exercise its repurchase right pursuant to Clause 5 of the SHA, requesting SJ/EL to repurchase all its [redacted] shares in the Company, on the basis that the Company had failed to achieve a qualified IPO on or before the Long Stop Date ([redacted] May 2019) ("Written Notice").

15. On 7 July 2021, A Limited commenced arbitration proceedings against SJ and EL. Following a hearing on 2 to 5 and 16 September 2024, the Tribunal issued the Award in favour of A Limited, dismissing SJ and EL's counterclaim and ordering them to pay A Limited US$481,603,937.80 plus interest.

16. On 16 August 2025, A Limited applied ex parte and was granted a Mareva injunction against SJ and EL, restraining them from disposing of assets up to US$481,603,937.80. The continuation thereof was not opposed on the return date on 22 August 2025.

C. Discussion

Grounds for setting aside

17. As indicated in paragraph 2 above, the crux of this matter turns on the setting aside application.

18. SJ and EL have cited two grounds for setting aside. They say that:

1.1 <u>Ground 1</u>: The Tribunal failed to deal fairly or at all with key issues raised and fully argued in the arbitration, specifically the core components of an estoppel defence regarding the scope and basis of A Limited's representation. In turn this led to the Tribunal's failure to consider the remainder of SJ/EL's estoppel defence.

1.2 <u>Ground 2:</u> The Tribunal failed to provide sufficient reasons in the Award for the parties to understand the basis on which the Tribunal ruled against SJ/EL on their estoppel defence.

19. At the hearing before me, issue was taken by A Limited that Ground 2 had not been spelt out in SJ and EL's originating process. In answer, Mr Lui SC referred me to the evidence, which did lightly touch upon Ground 2. At the same time, he confirmed that Ground 2 essentially rises and falls with Ground 1. And indeed, in their written submissions, the ground was only lightly touched upon. The complaint, therefore, is somewhat of an academic point. The balance of this decision focuses on analysing Ground 1.

Relevant Legal Principles

20. The parties are agreed as to the general principles in relation to setting aside applications.

21. Section 81(1) of the Arbitration Ordinance (Cap 609) gives effect to Article 34 of the UNCITRAL Model Law as to the grounds for setting aside an arbitral award.

22. In respect of the failure to deal with key issues, the leading case is *LY v HW* [2022] 6 HKC 129, the primary holdings of which are as follows:

(1) Infra petita is a valid ground of challenge as an arbitral procedure in contravention of principles of natural justice and basic standards of fairness would not be a procedure to which parties to an arbitration

agreement would have agreed. An infra petita claim falls within the ground of public policy under Article 34.

(2) Insofar as provision of reasons is concerned, the policy of minimal curial intervention apples. This means that (i) parties to arbitration generally have a right to be heard on every issue that may be relevant to the resolution of a dispute, yet (ii) a successful party should not be deprived of the fruits of arbitration by technical challenges or an attempt to re-agitate the merits of the dispute disguised as a setting-aside application. (iii) Minimal curial intervention is underpinned by the consideration of the need to recognize the autonomy of the arbitral process by encouraging finality, and parties who opt for arbitration acknowledge and accepted the attendant risk of having only a very limited right of recourse to the courts. (iv) It was not the function of the court to comb an award to assign blame or to find fault in the process, but rather to read an award generously so as to remedy only meaningful breaches of the rules of natural justice which actually cause prejudice.

(3) In considering whether a tribunal had dealt with an issue, the approach is to read the award in a reasonable and commercial way expecting that there would be no substantial fault that could be found. It suffices therefore that the tribunal should clearly state its determination on the essential questions in dispute and explain the reasons it came to the decision on the dispute. The reasons do not have to be elaborate or lengthy as the award must be read against the context as to how issues had been argued and an award is the result of a private consensual process. It is important to bear in mind the

object of the Arbitration Ordinance, which is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense and to reflect the policy of minimal judicial intervention into the arbitral process.

(4) Although a tribunal must demonstrably have at least attempted to comprehend the parties' arguments on the essential issues, the inability to ascertain the explanation for a tribunal's decision was only one of the relevant factors to be considered. The central inquiry was whether the award showed that the tribunal applied its mind to the critical issues and arguments. No party to an arbitration has a right to expect the tribunal to accept its arguments regardless of how strong and credible those arguments were perceived to be. There is a distinction between the tribunal's implicit or otherwise express decision to reject an argument and the tribunal's failure to consider the argument. Only the latter amounts to a breach of natural justice whilst the former is an error of law. It is usually a matter of inference, rather than explicit indication, that a tribunal has failed to consider an important issue.

(5) The Tribunal is not bound to structure its decision and its reasons in accordance with the issues put before it or the parties' submissions.

23. In addition thereto, reference may also be made to *A v B* [2024] 4 HKC 36, which similarly emphasises the following:

(1) Awards are to be read generously in a reasonable and commercial way expecting that there is no substantial fault that can be found with

them, bearing in mind the policy of minimal curial intervention. Any inference that a tribunal had failed to consider an important issue was to be made only if it was clear and virtually inescapable.

(2) Having said that, it is insufficient for an arbitral tribunal to deal with crucial issues in pectore, such that the parties are left to guess at whether a crucial issue had been dealt with or had been overlooked. The key was that a party reading the award should understand why a central issue in the arbitration was decided against him.

(3) Citing inter alia A v B (above), it is fundamental to concepts of fairness, due process and justice that key and material issues raised for determination should be considered and dealt with fairly. An award should be reasoned, to the extent of being reasonably sufficient and understandable by the parties.

24. See further *Z v R* [2021] HKCFI 2312 at §§18-21.

Analysis

25. The estoppel defence advanced by SJ and EL during the arbitration essentially argued that A Limited should be estopped from enforcing the repurchase by reason of its conduct and express representation.

26. The dispute was encapsulated within Issue 3 in the Award, which stated:

> "3. Is the Claimant estopped from relying on the written notice dated 21 July 2020 ('Written Notice') to exercise the Repurchase Right? In this connection:-
>
> (1) Did the Claimant represent by words or conduct that it did not intend to exercise the Repurchase Right at that time but preferred to continue to pursue exit options?
>
> (2) If so, was it reasonable for the Respondents to rely upon any such representations?
>
> (3) If so, did such reliance result in detriment or prejudice to the Respondents?"

27. SJ and EL's main complaint by their OS, as detailed in their written submissions and elaborated on in Mr Lui SC's oral submissions, was that the Tribunal had addressed the estoppel issue as if the representation within the estoppel was framed with a permanent effect rather than a suspensory one.

28. SJ and EL's case as put forward was that the representation by words and conduct (both before and after issuing Written Notice) was that A Limited did not intend to exercise the repurchase remedy (i) at the time the Written Notice was issued, and (ii) for as long as there was a prospect of a mutually acceptable exit strategy, or at least until all the possibilities of an exit permitting A Limited to make a substantial cash distribution to its investors had been exhausted.

29. In support of this, the Court's attention was drawn to the pleadings and the various opening and closing submissions, where the issue was set out in the following terms:

1.1 Amended Rejoinder <u>§15A</u>:

> *"… (b) The estoppel arises from statements made by an authorized representative of, and conduct of, [A Limited] that led [SJ and EL] reasonably to believe that [A Limited] did not intend*

> ***for the time being*** *to exercise any rights it might have in the circumstances*
> *…*
> *(d) In consequence of the foregoing, and without prejudice to any of the defences asserted by the Respondents under the other heads, the Claimant is precluded by* ***a suspensory estoppel*** *from commencing arbitration unless and until it remedies the detriment suffered by the Respondents.*”.

1.2 Opening:

<u>§58</u>:

“*discussions between EL and the Claimant's representatives in both the 0811 Conversation and the 0818 Meeting, as well as their conduct and communications before and after the issuance of the Written Notice, clearly led the Respondents to believe that [A Limited] did not intend to exercise the Repurchase Right,* ***at least until all possibilities of an exit permitting [A Limited] to make a substantial cash distribution to its investors had been exhausted***”.

<u>§63</u>:

“*That [A Limited] indeed had no actual intention to exercise the Repurchase Right* ***at the time it [i.e. the Written Notice] was given*** *is further confirmed by its conduct after the issuance of the Written Notice*”.

<u>§67</u>:

“*[A Linited], through its representatives and by both word and conduct, has represented to [SJ and EL[that [A Limited] would not enforce its Repurchase Rights under Section 5.1 of the SHA* ***for so long as there was a prospect of a mutually acceptable exit strategy that would allow [A Limited] to liquidate its shareholdings in the Company and distribute the proceeds to its investors***”.

1.3 Closing:

> §113:
>
> "*[A Limited] had* ***no intention, at the time the Written Notice was given, to require… repurchase of [A Limited's] shares in the Company*** *...*";
>
> §116:
>
> "*In the present case, both the words and the conduct of [A Limited's] representatives, whether taken together or independently of one another, made it clear that [A Limited] had no desire or intent to force [SJ and EL] to make the choice between the remedies set out in Sections 5.1 and 5.6 of the SHA* ***at the time the Written Notice was issued***."

(emphasis added)

30. The temporally circumscribed and suspensory nature and understanding thereof is to be contrasted with a case where the repurchase remedy was said to be permanently given up – i.e. in the vein of waiver or abandonment of the right entirely.

31. It was SJ and EL's case that the basis of the representation was both by way of express words and conduct as well.

32. The conduct involved various instances which were highlighted including:

(1) The period delay between the original long stop date of 30 May 2019 to the issuance of the written notice on 21 July 2020.

(2) A Limited's efforts to re-submit the listing application in the second quarter of 2020 (including a directors' resolution to the effect of progressing such efforts).

(3) Discussions which took place in a meeting on 18 August 2020 wherein it was said that SJ and EL were encouraged to explore alternative options to an IPO in Hong Kong and had thoroughly discussed the merger option and post-merger company structure, without mentioning anything about the exercise of repurchase right by A Limited under the SHA.

(4) The continued support of A Limited for a merger option from August 2020 throughout most of 2021.

(5) Consideration of alternative listing on the Singapore stock exchange.

33. As to the words used, it was their case that:

(1) A Limited had made an express representation that it did not intend to pursue the repurchase right.

(2) Liu (on behalf of A Limited) expressly said (i) the issuance of the Written Notice had been instructed by A Limited's compliance department only, (ii) the Written Notice had been to "*exert pressure on the Company and [SJ and EL] to explore various possible options*", (iii) A Limited "*did not genuinely intend to request the repurchase of its shares in the Company*" and (iv) A Limited supported the Company's continued progress, and also suggested that if the IPO application in Hong Kong took too long, "*alternative*

options such as seeking merger and acquisition" could be considered.

34. SJ and EL's case was that they had reasonably relied on A Limited's representation, and by reason thereof, had been:

(1) Induced to allow the expiration of the 3-month period after the issue of the Written Notice (thus not choosing to exercise their own "exit" option pursuant to Clause 5.6 of the SHA);

(2) Induced to expend substantial time, effort and money to pursue alternative solutions to meet the Company's liquidity needs; and

(3) Prevented from proceeding with the listing of the shares in the Company, thereby suffering a significant loss of opportunity for profits.

35. The essence of SJ and EL's complaint is that whilst the Tribunal might have posed the question accurately in framing Issue 3 (viz. the "for the time being" phrase as quoted therein), it had veered off course entirely in its reasoning, and addressed and made findings on what seemed to be a permanent estoppel rather than a suspensory one in the actual body of the Award. This, they say, shows that the reasoning of the Tribunal contained a fundamental misunderstanding of the point, such that the actual issue was not dealt with fairly or at all.

36. It is thus instructive to consider the reasoning in the Award. The following are salient points in so far as the Tribunal's consideration of the estoppel defence is concerned:

(1) By the Award, the Tribunal found in favour of A Limited, ordering SJ/EL to pay A Limited the "repurchase price" in respect of all the shares in the Company held by A Limited, together with interest.

(2) The Tribunal took the view that since the Written Notice had been validly issued in exercise of A Limited's repurchase right, Issue 3 should be rephrased as whether A Limited had represented that it did not intend to "enforce", rather than "exercise", that right after issuing the Written Notice.

(3) It further found that it had been lawful for A Limited to delay the enforcement of the repurchase right and seek alternative solutions without "losing its right" to commence arbitral proceedings to enforce that right.

(4) The Tribunal took into account the conflicting evidence on the communications between Liu and EL, it made *inter alia* the following findings of fact in paragraphs 160 to 163 of the Award:

(a) Liu would not have said at the time that A Limited did not want SJ and EL to repurchase its shares (§160); and he never said to SJ or EL that A Limited did not genuinely intend to exercise the repurchase right or any words to that effect; and likewise, A Limited did not at any time represent by words or conduct that it did not intend to exercise the repurchase right whether at the time of the Written Notice or at any time, but it preferred to continue to pursue exit options (§161).

(b) Liu made it clear to SJ and EL that if alternative exit options (such as new investor or merger) did not materialise, A Limited would exercise the repurchase right, which SJ and EL understood well. While its primary intention was to exit the investment, A Limited knew it was not easy for SJ and EL to put together a big sum to repurchase A Limited's shares in the Company, so it was patient to wait and see how SJ and EL could come up with a solution, and it was being pragmatic as Liu was facilitating SJ and EL in their search for alternative exits. It made sense for A Limited to proactively encourage and support exit strategies such as the merger option and other IPOs (§162).

(c) SJ and EL at the time must have understood A Limited would enforce its repurchase right if those attempts (to search for alternative exits) failed. It would not make commercial sense if it were otherwise, as there was no reason why A Limited would "*give up*" that right where there was no guarantee that an alternative exit could be achieved. If SJ and EL were of the view that A Limited had "*given up*" that right, then query why they would have failed to raise this after receiving given Messrs Hastings & Co's letter dated 11 May 2021 (§163).

(5) Concluding on this in paragraph 164, the Tribunal held that there was no clear and unequivocal representation made to SJ and EL (or anyone associated with them), that A Limited did not genuinely intend to request the repurchase of its shares, or that A Limited would not exercise its rights pursuant to the Written Notice. The Tribunal thus did not proceed to consider the rest of the issues under the estoppel defence in detail.

37. On a careful reading of the Tribunal's reasoning, I find that it does seem to have addressed the estoppel as if the representation concerned a permanent waiver or giving up rather than a representation which was temporally circumscribed and suspensory in nature. I note in particular the following points:

(1) The reasoning tied the understanding of the estoppel to Clause 12.7 of the SHA, which stipulates that no delay in A Limited's exercise of its right shall operate as a 'waiver' thereof. SJ / EL's case, however, is that Clause 12.7 was irrelevant if one was concerned with a suspensory estoppel as this was materially different to a permanent waiver.

(2) The wording and findings in the core paragraphs of 160 to 165 all point towards the Tribunal considering a permanent rather than a suspensory estoppel as well. In paragraph 163, the Tribunal addressed whether A Limited had given up its repurchase right. The reasoning around this similarly was premised on this basis.

(3) In various later paragraphs, there are again references to and consideration of issues of waiver or abandonment or giving up rights (viz. paragraphs 173, 178 and 181).

(4) When considering the later SGX listing option, the Tribunal's understanding of the evidence seemed to be that the right was given up permanently rather than only up until the SGX listing failed.

38. As against the above, Mr Siu for A Limited makes the following key points.

39. First, he draws attention to a line of authorities saying that by definition estoppels are suspensory in nature rather than extinctive, suggesting that the plaintiff could always resile from its promise on giving reasonable notice, with the defendant being required to suggest what such reasonable period might be (*Great Pacific Investments Ltd v 张华荣* [2024] HKCA 1147 at §9(5)).

40. This, however, confuses the effect of any given estoppel with the original parameters of the representation and the case as actually put forward by SJ / EL. The case as put forward in the pleadings and the submissions throughout concerned a temporally circumscribed representation. A Limited's reliance on the question of extinctive as opposed to suspensory effect subsequently fails to address SJ / EL's point about the failure to consider the different nature of the representation itself which is explored above.

41. Second, and based upon the above, A Limited says that what SJ / EL were attempting to do now was an "ambush" in seeking to argue something new

(i.e. the temporally circumscribed suspensory scope and basis of the representation). Citing *Arjowiggins HKK2 Ltd v X Co* [2022] HKCFI 128 at §45, A Limited says that SJ / EL should not be allowed to "advance new legal consequences" by way of their arguments here.

42. However, when one considers that way in which the case was framed (paragraph 29 above), this complaint cannot hold. It would appear that the argument was made clear all along.

43. Third, it is said that the point was not essential to the resolution of the dispute. Relying on the reasoning in paragraphs 160 to 164 of the Award, what A Limited seems to be saying is that even if the finding had been about a representation with a permanent effect (i.e. waiver or giving up), the way in which findings were made means that the greater encompasses the lesser. In other words, if they found that there had been no such representation regarding a waiver or permanent giving up, it must follow there was also no temporally circumscribed representation either.

44. This, however, is a risky leap to make in the circumstances of this case. As Mr Lui pointed out in reply, the implications of a permanent giving up or waiver are far more severe than a representation with a lesser and suspensory effect. To say that a finding in respect of the former should necessarily encompass the latter misses the point. What it would seem to point to is a fundamental misunderstanding of the dispute that was before them, and a failure to consider the scope of the defence as actually put forward by SJ / EL.

45. Fourth, on parsing the various paragraphs of the Award, it is suggested that the Tribunal did in fact consider the point.

46. For the reasons already set out above (paragraphs 36 to 37), I do not consider that the point was addressed.

47. In the circumstances, SJ / EL's application to set aside the Award is allowed, and A Limited's summons is dismissed. I make *costs orders nisi* in each set of proceedings that costs of shall be to SJ / EL, to be summarily assessed. The parties are directed to endeavour to agree directions for such summary assessment within two weeks of the handing down of this decision.

48. I thank counsel for their assistance.

(Rachel Lam SC)
Recorder of High Court

Mr Mike Lui SC and Mr John Leung instructed by Messrs. Tan & Co. for the Applicants in HCCT 113 of 2025 and 1st and 2nd Respondents in HCCT 114 of 2025

Mr Patrick Siu, instructed by Messrs. Hastings & Co. for the Defendant