

Case Comment

**PROPER NOTICE AND THE IMPACT OF
NON-PARTICIPATION IN ARBITRATION
PROCEEDINGS**

DEM v DEL [2025] 1 SLR 29

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I. Introduction

1 Like the proverbial ostrich that buries its head in the sand, can an arbitral respondent wilfully ignore arbitration proceedings only to later challenge the enforcement of the award in court? In *DEM v DEL*,² the Singapore Court of Appeal (“CA”) addressed the critical issue of whether a party that did not participate in arbitration may subsequently challenge the award for failing to resolve an unrepresented issue. The court dismissed an appeal by

1 The authors were counsel for the respondent in *DEM v DEL* [2024] SGHC 80 and *DEM v DEL* [2025] 1 SLR 29. The views expressed herein are the authors’ own and are not representative of the views of their firm.

2 [2025] 1 SLR 29.

the appellant seeking to set aside an arbitral award on the grounds of *infra petita* and natural justice, following his non-engagement in the arbitration proceedings. Arising from a contractual dispute over a business sale, this decision reinforces for practitioners the principle that active participation is essential to preserve a party's rights within Singapore's arbitration framework, underscoring the jurisdiction's emphasis on procedural integrity and finality.

II. Background

2 In January 2019, W Co ("Respondent") acquired a franchised enrichment centre ("Franchise") from Z Co. Z Co was owned by Ms Y, and Mr X ("Appellant") and Ms Y had a profit-sharing arrangement in relation to the profits of Z Co.³

3 On 4 January 2019, the parties entered into a business purchase agreement ("BPA") for the Respondent's purchase of the Franchise from Z Co.⁴ The Appellant, Ms Y and Z Co were listed as sellers of the BPA ("Seller Group"). It was agreed under the BPA that the purchase price paid by the Appellant to Z Co would belong solely to Ms Y.⁵

4 In addition to the BPA, the Appellant entered into a shareholders agreement ("SHA") and an employment agreement ("EA") with the Respondent, whereby the Appellant received a 30% shareholding in the Respondent, and was employed as its head of operations.⁶

5 Under the "Notice" clauses of the agreements, the Appellant provided: (a) a residential address ("Tampines Address"); and (b) an e-mail address ("K E-mail Address").⁷

6 In the months following the acquisition of the Franchise, the Respondent realised that the Franchise was generating significantly less revenue than had been represented by the Seller

3 *DEM v DEL* [2024] SGHC 80 at [4].

4 *DEM v DEL* [2025] 1 SLR 29 at [5].

5 *DEM v DEL* [2024] SGHC 80 at [108].

6 *DEM v DEL* [2025] 1 SLR 29 at [5(c)].

7 *DEM v DEL* [2025] 1 SLR 29 at [6].

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Group in the negotiations prior to the BPA. Subsequently, some time on or around July 2019, the Appellant had diverted clients and staff to a new enrichment centre he had set up and had misappropriated teaching curriculum and student records from the Respondent.⁸

7 In October 2019, the Respondent commenced arbitration proceedings against the Seller Group in the Singapore International Arbitration Centre (“SIAC”) for breach of the BPA, EA, and SHA. Prior to the arbitration hearing, the Respondent reached a settlement with Ms Y and Z Co and proceeded with the arbitration against the Appellant for misrepresentation and breach of his confidentiality, non-compete, and non-solicit covenants in the BPA.

8 The Appellant, originally represented by a firm of solicitors, did not participate in the arbitration proceedings after they ceased acting for him.

9 After the arbitration hearing had concluded on 8 September 2021, the arbitrator received an e-mail from an unknown e-mail address (“J E-mail Address”). The sender of the e-mail claimed to be the Appellant.⁹ At the arbitrator’s direction, the Respondent’s solicitors attempted to engage the sender to verify his identity. However, the sender did not respond. As the sender claimed to be informed of the hearing by Ms Y, the arbitrator directed the Respondent’s solicitors to reach out to verify the sender’s claims.¹⁰ Ms Y stated that she did not alert the Appellant to his involvement in the arbitration hearing. The arbitrator then proceeded with the arbitration and no further communication was received from the J E-mail Address.

10 The arbitrator found in favour of the Respondent on all of its claims and published her award on 27 April 2023 (“Award”). The Respondent then sought to enforce the Award in the Singapore

8 *DEM v DEL* [2025] 1 SLR 29 at [7].

9 *DEM v DEL* [2025] 1 SLR 29 at [12].

10 *DEM v DEL* [2025] 1 SLR 29 at [12]–[13].

courts and obtained a judgment entered in terms of the Award on 12 June 2023.¹¹

11 On 21 July 2023, the Appellant suddenly made a re-appearance after almost two years of silence. He sent an e-mail from the J E-mail Address to the SIAC and to the process server for the Respondent’s lawyers, (a) alleging that he was only recently made aware of the Award; (b) alleging that he was not given proper notice of the arbitration; and (c) asking for all documents in the arbitration and for the Award to be served at a different residential address.¹²

12 The Appellant then sought to set aside the award in the General Division of the High Court on four grounds: (a) lack of proper notice; (b) failure to consider an essential issue; (c) breach of natural justice; and (d) breach of public policy.

III. Procedural history

13 In *DEM v DEL*,¹³ the Singapore General Division of the High Court (“HC”) dismissed all four grounds of the Appellant’s setting-aside application for the following reasons:¹⁴

(a) First, the HC held that proper notice was given to the Appellant by way of delivery of the arbitration documents to the Tampines Address and K E-mail Address. In any event, the HC found that the Appellant was not prejudiced because he deliberately chose not to participate in the arbitration and proper service would not have made a difference to the outcome.

(b) Second, the HC accepted that the arbitrator ostensibly did not address the essential issue of whether the BPA was enforceable against the Appellant for lack of consideration (“Essential Issue”). However, the HC found

11 *DEM v DEL* [2025] 1 SLR 29 at [14].

12 *DEM v DEL* [2025] 1 SLR 29 at [15].

13 [2024] SGHC 80.

14 *DEM v DEL* [2025] 1 SLR 29 at [17].

that on a proper reading of the Award, the arbitrator had implicitly dealt with the Essential Issue.

(c) Third, the HC noted that the claims on the breach of natural justice were parasitic on the first two grounds and thus dismissed the claims.

(d) Fourth, the HC held that the allegations raised by the Appellant on breach of public policy failed to meet the high threshold required to invoke the public policy ground.

IV. Issues on appeal to CA

14 On appeal, the Appellant dropped his appeal on public policy grounds, and continued to rely on the following grounds:¹⁵

(a) **The lack of proper notice ground:** The Appellant claimed the HC was wrong to conclude that he had proper notice of the arbitration and the arbitrator's appointment. He argued that the "Notice" clause of the BPA did not allow service by e-mail and contended that the service of documents to the K E-mail Address was not proper service. He did not dispute that the documents were served at the Tampines Address, but claimed he did not have access to them.

(b) ***Infra petita* ground:** The Appellant argued that the HC incorrectly determined that the arbitrator had implicitly concluded that the BPA was supported by consideration.

(c) **Breach of natural justice ground:** The Appellant argued that there was a breach of the fair hearing rule on three bases:

- (i) he was not given proper notice of the arbitration and the appointment of the arbitrator;
- (ii) the arbitrator failed to ensure proper service of, *inter alia*, the amended notice of arbitration and

¹⁵ *DEM v DEL* [2025] 1 SLR 29 at [18]–[21].

quickly dismissed his late attempt to participate in the proceedings in September 2021; and

(iii) the arbitrator did not fully consider whether the BPA was unenforceable due to lack of consideration.

(d) The CA identified three principal issues to be determined:¹⁶

(i) whether the Appellant had proper notice of the arbitration;

(ii) whether the Appellant could challenge the Award on the ground that the arbitrator had failed to consider an important issue notwithstanding his non-participation; and

(iii) whether there was any breach of natural justice.

V. CA's analysis and decision

A. *Issue 1: whether Appellant was given proper notice of arbitration*

15 The CA held that the lack of proper notice ground of challenge was a manifestation of an infringement on the right to present one's case.¹⁷ The legal burden of establishing this under s 48(1)(a)(ii) of the Arbitration Act 2001¹⁸ was on the Appellant.¹⁹

16 In this context, the CA reaffirmed that proper notice could be actual or deemed.²⁰

17 The CA added that even if proper notice was not given, the challenging party would still need to prove that the absence

16 *DEM v DEL* [2025] 1 SLR 29 at [23].

17 *DEM v DEL* [2025] 1 SLR 29 at [29], citing *Zavod Ekran OAO v Magneco Metrel UK Ltd* [2017] EWHC 2208 (Comm) at [12].

18 2020 Rev Ed.

19 *DEM v DEL* [2025] 1 SLR 29 at [26].

20 *DEM v DEL* [2025] 1 SLR 29 at [27]. See also *DBX v DBZ* [2023] SGHC(1) 18 at [90]–[95].

of notice impacted its ability to present its case. For this reason, where a challenging party deliberately chooses not to participate in an arbitration despite being aware of the same and being given the opportunity to participate, that party may not rely on the absence of proper notice to challenge the award.²¹

(1) *Actual notice*

18 The CA held that actual notice requires proof that the arbitral respondent in fact knew about the arbitration and was in a position to fully present its case. In this regard, although the evidential burden under s 48(1)(a)(ii) lay with the arbitral respondent to prove he had not been given proper notice, in practice, the evidence for demonstrating that the arbitral respondent had actual notice of the arbitration would typically come from the arbitral claimant. In the absence of such evidence, the failure to serve the notice of arbitration would be fatal – not because of the non-service *per se*, but rather because the other party would not have notice of the arbitration and therefore would be denied the opportunity to present its case.²²

19 In this connection, the CA’s decision distinguishes between the concepts of “notice” and “service”. The CA held that although personal service of the arbitration documents typically demonstrated how actual notice was given, this mode of service was not strictly necessary. Ultimately the relevant inquiry is whether a party was adequately notified of the arbitration such that it was given a full opportunity to participate in the same. This was a question of the substance of the notice and not its form. Crucially, the CA held that if a party had been made aware of the arbitration in a manner that would allow it to fully present its case, the requirement of proper notice would be satisfied, notwithstanding the manner in which the notice was given.²³

20 Applying the principles above, the CA found that the Appellant had actual notice of the arbitration proceedings:²⁴

21 *DEM v DEL* [2025] 1 SLR 29 at [31].

22 *DEM v DEL* [2025] 1 SLR 29 at [28].

23 *DEM v DEL* [2025] 1 SLR 29 at [29].

24 *DEM v DEL* [2025] 1 SLR 29 at [32]–[38].

(a) The CA found that the Appellant had actual notice of the arbitration based on his own evidence. By the Appellant's own admission, he became aware of the arbitration by 8 September 2021. The CA held that the manner in which the Appellant became aware of the arbitration was beside the point.

(b) Given that the 8 September 2021 e-mail was sent from the J E-mail Address, it was entirely reasonable and prudent for the Respondent to verify the identity of the sender as the new e-mail address was neither listed as the Appellant's e-mail address in the BPA, nor did it bear any resemblance to the Appellant's name or the K E-mail address.

(c) The CA further rejected the Appellant's argument that the arbitrator ought to have done more, and stated that the relevant inquiry was whether the arbitrator had taken reasonable steps to ensure that the Appellant was informed, and not whether any additional steps could or should have been taken.

(d) Accordingly, given that the Appellant would have known that his interests were implicated in the arbitration, his subsequent failure to respond to the verification request, evinced a deliberate intention to remain silent in the face of the arbitration proceedings. In this regard, the CA further held that:²⁵

It was disingenuous for the appellant to assert that he did not access the very email address which he had himself provided. If such an argument were to be accepted, it would allow a party to challenge an arbitral award for lack of proper notice by alleging that he did not access his own email address. That is simply an untenable argument.

(2) *Deemed notice*

21 With regard to deemed notice, the CA held that where there was insufficient proof of actual notice, deemed notice

²⁵ *DEM v DEL* [2025] 1 SLR 29 at [35].

could be relied on by an arbitral claimant by virtue of r 2.1(iii) of the Arbitration Rules of the Singapore International Arbitration Centre.²⁶ In other words, notice effected in accordance with the contractually agreed manner of service would suffice as proper notice.²⁷ However, the CA noted that deemed notice could be rebutted by appropriate evidence of non-receipt.²⁸

22 Considering the above, the CA found that the Appellant had deemed notice of the arbitration proceedings.²⁹

(a) As the Tampines Address and the K E-mail Address were specifically provided under the “Notice” clause, which explicitly stated that notices were to be provided “to the addresses set out below,” the Appellant was deemed to have received all arbitration papers that were sent to these addresses. These included various procedural orders and directions, pleadings, and meeting details for the relevant hearings, which would have sufficiently provided the Appellant with proper notice of the arbitration.

(b) The CA further found that the Appellant did not provide any evidence to support his explanations of why he did not have access to the communications sent to the Tampines Address and the K E-mail Address. In this regard, the CA held that the Respondent could not be faulted for continuing to serve the arbitration documents on the addresses provided in the BPA, and that the Appellant must take the risk if they were served in his absence. Had the Appellant’s assertions been true, he ought to have informed parties of a change in his address. In this regard, the CA considered that the Appellant’s failure to respond to the Respondent’s verification request (which was sent to the J E-mail Address), “painted a clear picture of the appellant’s informed decision not to participate in the

26 6th Ed, 2016.

27 *DEM v DEL* [2025] 1 SLR 29 at [30].

28 *Re Shanghai Xinan Screenwall Building & Decoration Co, Ltd* [2022] 5 SLR 393 at [33].

29 *DEM v DEL* [2025] 1 SLR 29 at [39]–[50].

Arbitration. That was a risk he took and must therefore bear the consequences of his decision”.³⁰

B. Issue 2: whether Appellant’s non-participation precluded an *infra petita* challenge

23 The Appellant’s *infra petita* challenge was premised on the arbitrator’s failure to consider the Essential Issue, *ie*, that the BPA was not enforceable against him for lack of consideration because the entire purchase price for the Franchise under the BPA went to Z Co and Ms Y.

24 In this regard, the CA disagreed with the HC’s finding that the arbitrator had implicitly dealt with the Essential Issue and found that the arbitrator had omitted to specifically address it. However, the CA held that this did not constitute a breach of natural justice because the omission was a direct consequence of the Appellant’s failure to raise the issue by reason of his non-participation in the arbitration.³¹

25 The Appellant’s non-participation in the arbitration was fatal to his *infra petita* challenge. Crucially, the CA held that was is simply not open to a party to raise an *infra petita* challenge where:³²

- (a) he elected not to participate in the proceedings;
- (b) he did not file any pleadings; and
- (c) consequently, he failed to raise the key issues – especially the issue which was the subject of the *infra petita* challenge.

26 The CA added that to allow an issue which was not even brought before the arbitrator for her determination to be challenged at this late stage (and in such circumstances) “would be to permit hedging of the most egregious form”.³³ An aggrieved

30 *DEM v DEL* [2025] 1 SLR 29 at [50].

31 *DEM v DEL* [2025] 1 SLR 29 at [60]–[62].

32 *DEM v DEL* [2025] 1 SLR 29 at [63].

33 *DEM v DEL* [2025] 1 SLR 29 at [65].

party should not be allowed to complain about an issue which was not properly brought before the tribunal for its consideration.

27 Notwithstanding the CA's finding that the Appellant was precluded from raising an *infra petita* challenge due to his deliberate non-participation in the arbitration, it found that the Essential Issue based on a flawed understanding of the law of consideration. As such the Appellant suffered no prejudice in any case.³⁴

C Issue 3: whether there was a breach of natural justice

28 Finally, the CA held that this ground of challenge was parasitic on the other grounds, and similarly dismissed it.

VI. Key takeaways

29 The determination of whether a party has proper notice of an arbitration, is a question of substance and not form. If a party has been made aware of arbitration proceedings in a manner that would allow it to fully present its case, the requirement of proper notice would be satisfied, notwithstanding the manner in which it was done.

30 Feigning ignorance, or deliberate non-participation in an arbitration despite having proper notice, has far-reaching consequences. A non-participating party will be precluded from raising an *infra petita* challenge if the issue forming the basis of the challenge was not raised before the arbitral tribunal in the first place. This is even so if the *infra petita* challenge would otherwise have been legitimate had the party participated in the arbitration.

31 The CA's decision is significant because it upholds the integrity of the arbitration process and highlights the importance of engaging and taking an active approach in presenting one's case in arbitration proceedings.

34 *DEM v DEL* [2025] 1 SLR 29 at [67].