JCPC/2025/0116

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL**

**ON APPEAL FROM THE SUPREME COURT OF MAURITIUS**

**BETWEEN**

**OGD SERVICES HOLDINGS LIMITED**
**("OGD")**

**Appellant**

**AND**

**NORSCOT RIG MANAGEMENT PVT LIMITED (MAURITIUS)**
**("Norscot")**

**Respondent**

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## PRECIS

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1. This appeal arises from a judgment of the Supreme Court of Mauritius that refused to set aside a provisional order recognising and enforcing a London-seated ICC arbitral award that awarded Norscot recovery of certain litigation funding costs incurred under a litigation funding agreement.

2. OGD contends that this recovery arose from an unenforceable damages-based agreement, such that the recognition and enforcement of the award insofar as it seeks to award the said litigation funding costs would be contrary to the public policy of Mauritius.

3. Norscot's position is that OGD has failed to identify any element of Mauritian public policy that would be violated by recognition and enforcement of the award, and that the appeal is nothing more than a collateral challenge to the award that has already attained finality both at the seat of the arbitration and in Mauritius.

## STATEMENT OF FACTS AND ISSUES

### I. INTRODUCTION

1. This appeal arises from a judgment of the Supreme Court of Mauritius, refusing to set aside a provisional order recognising and enforcing a London-seated ICC arbitral award that awarded Norscot recovery of certain litigation funding costs incurred under a litigation funding agreement (the "**Litigation Funding Costs**").

2. Section II summarises the relevant facts and procedural history. Section III sets out the issues in dispute between the parties and which require determination by the Privy Council. Annex 1 contains a chronology of key events.

3. References to the Reproduced Record are in the format **[RR/tab number/page number/paragraph number]**.

### II. RELEVANT FACTS

### A. THE PARTIES AND THE BACKGROUND TO THE DISPUTE

4. OGD is a company incorporated in Mauritius that provided offshore and onshore drilling and oilfield services. It was previously registered as Essar Oilfields Services Limited (Mauritius). **[RR/2/29/30]** [MHB/19/168/30]

5. Norscot is a company incorporated in Mauritius that provided specialised services in the operational and technical management of offshore oil platforms, including the provision of crew and specialist technicians for such operations. **[RR/2/28/29]** [MHB/19/167/29]

6. On 14 August 2007, OGD and Norscot entered into an Operations and Management Agreement ("**OMA**"), through which OGD engaged Norscot for the operations and management of its semi-submersible rig, the Essar WildCat. **[RR/2/6/4]** [MHB/15/145/4]

## B. THE SOLE ARBITRATOR'S AWARD OF LITIGATION FUNDING COSTS

7. Disputes subsequently arose between the Parties, including in relation to payments due to Norscot under the OMA. **[Information About the Appeal, p. 2, para. 6]**

8. On 15 August 2008, Norscot commenced ICC arbitration proceedings against OGD (the "**Arbitration**"). The Arbitration was seated in London, England. The Right Honourable Sir Philip Otton was appointed as the sole arbitrator (the "**Sole Arbitrator**"). **[RR/3/457/138]** **[MHB/25/596/138]**

9. While the Arbitration was underway, Norscot and Woodsford Litigation Funding Limited ("**Woodsford**") entered into a litigation funding deed of agreement dated 5 May 2011 (the "**Litigation Funding Agreement**"). The Sole Arbitrator noted the date of the agreement as 22 June 2011 in the Fifth Partial Award. **[RR/2/145]** and **[RR/3/442/93]** **[MHB/20/284]** **[MHB/25/581/93]**

10. Throughout the course of the Arbitration, the Sole Arbitrator issued six partial awards (and four addenda thereto), and one final award followed by an addendum. These included:

    a. The First Partial Award dated 26 May 2009;

    b. The Second Partial Award dated 15 November 2012 (with two addenda dated 12 July 2013 and 6 November 2013);

    c. The Third Partial Award dated 15 April 2014 (with an addendum dated 4 August 2014);

    d. The Fourth Partial Award dated 11 September 2014;

    e. The Fifth Partial Award dated 17 December 2015, and the Addendum to the Fifth Partial Award dated 3 March 2016;

    f. The Sixth Partial Award dated 8 April 2016; and

    g. The Final Award dated 30 November 2016, and the Addendum to the Final Award dated 2 February 2017. **[Information About the Appeal, pp. 2-3, para. 9]**

11. The Sole Arbitrator ruled in favour of Norscot. The First through Fourth Partial Awards determined payments that were due to Norscot under the OMA. **[Information About the**

**Appeal, p. 3, para. 10]** The Sole Arbitrator also made the following findings in relation to Norscot's entitlement to costs and interest:

a. In the Fifth Partial Award, the Sole Arbitrator accepted that the Litigation Funding Agreement operated in such a way that Norscot was to pay Woodsford the higher of three times the action costs actually advanced by the funder, or 35% of the total sum recovered by Norscot. **[RR/3/441/92] and [RR/2/158]** The Sole Arbitrator set out that arguments based on maintenance and champerty were "*out-dated*" and "*can be safely ignored*". **[RR/3/439/86]** **[MHB/25/580/92]** **[MHB/20/297]** **[MHB/25/578/86]**

b. The Sole Arbitrator determined that, under Sections 59(1) and 63(3) of the Arbitration Act 1996, he had "*a wide discretion as to what costs it can award to the winning party*" and further held that Norscot's Litigation Funding Costs fell within "other costs" and were thus recoverable. The Sole Arbitrator held that Norscot was entitled to its funding costs on an indemnity basis, and deferred the quantification of such costs for a later award. **[RR/3/439/86, 440/89, 442/96(4) and 460/148]** **[MHB/25/578/86], [MHB/25/579/89], [MHB/25/581/96(4)] and [MHB/25/599/148]**

c. In the Final Award, the Sole Arbitrator determined that Norscot was entitled to its cost of litigation funding in the sum of US$ 3,565,814, equating to 35% of the total recovery quantified at US$10,188,039, and ordered OGD to pay the same. **[RR/2/116/281 and 124/14]** **[MHB/19/255/281] and [MHB/19/263/14]**

d. The Sole Arbitrator also ordered OGD to pay interest on the sums paid by Norscot to Woodsford as its cost of litigation funding, at a rate of 5% p.a. calculated at quarterly rests on the following amounts:

   (i) US $1,666,350, being the first instalment of Norscot's cost of litigation funding paid to Woodsford, from 25 January 2013 until the date of payment in full;

   (ii) US $1,414,429, being the second instalment of Norscot's cost of litigation funding paid to Woodsford, from 14 September 2013 until the date of payment in full; and

(iii) US $485,035, being the third instalment of Norscot's cost of litigation funding paid to Woodsford, from 17 March 2016 until the date of payment in full. **[RR/2/124/15]** **[MHB/19/263/15]**

e. The Sole Arbitrator further ordered OGD to pay Norscot's legal costs for pursuing recovery of Norscot's costs of litigation funding. Such legal costs amounted to £10,750, as quantified and agreed by the parties. The Sole Arbitrator further awarded interest on the said amount at a rate of 5% p.a. calculated at quarterly rests from 20 April 2016 until payment in full. **[RR/2/116/281 and 124/16-17]** **[MHB/19/255/281] and [MHB/19/263/16-17]**

12. In March 2016, OGD filed an application in the English High Court (Commercial Court) under s.68 of the Arbitration Act 1996 to set aside the Fifth Partial Award insofar as it awarded the litigation-funding costs. The challenge, at that stage, was raised on the ground that the Sole Arbitrator had committed a serious procedural irregularity in holding that he was entitled to award the Litigation Funding Costs under Sections 59(1) and 63(3) of the Arbitration Act 1996. In September 2016, the English High Court (HHJ Waksman QC) dismissed OGD's application and upheld the Fifth Partial Award ([2016] EWHC 2361 (Comm)), finding that the Sole Arbitrator did not exceed his powers in his construction of "*other costs*". OGD subsequently sought permission to appeal, which was refused. **[RR/7/524/2 and 530/15]** **[MHB/7/101/2] and [MHB/7/107/15]**

13. OGD did not challenge the Final Award before the English High Court.

## C. RECOGNITION AND ENFORCEMENT PROCEEDINGS IN MAURITIUS

14. On 18 March 2022, Norscot made an *ex parte* application for the recognition and enforcement of the Final Award and the addendum thereto by the Supreme Court of Mauritius. **[RR/3/204]** **[MHB/24/343]**

15. On 22 March 2022, the Honourable N. Devat, Acting Chief Justice of the Supreme Court of Mauritius (the "**Supreme Court**"), issued a provisional order granting the recognition and enforcement of the Final Award and the addendum thereto in the same manner as a judgment of said Court (the "**Provisional Order**"). **[RR/3/199-201]** **[MHB/8/112-113]**

16. On 5 April 2022, OGD applied to the Supreme Court to set aside the Provisional Order under Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral

Awards (as implemented as part of the law of Mauritius under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act of 2001) and section 39(2)(b)(ii) and (iv) of the International Arbitration Act 2008 (the "**Set-Aside Application**"). **[RR/2/10/25]** [MHB/15/149/25]

17. OGD's main arguments in its Set-Aside Application can be summarised as follows:

a. The original enforcement application was procedurally defective because the authority relied upon by Norscot had not been deposited in accordance with the Deposit of Powers of Attorney Act and because Norscot's constitution had not been produced. **[RR/4/489-493/14-24]** [MHB/28/628-632/14-24]

b. The existence of parallel enforcement proceedings in India gave rise to forum shopping, *connexité* and international litispendence. **[RR/4/493-494/25-28]** [MHB/28/632-633/25-28]

c. The Sole Arbitrator erroneously enlarged his jurisdiction by hearing Norscot's claims for costs of litigation funding. The nature of such funding should have been considered at greater length. **[RR/2/12-14/30 and 40-42]** [MHB/15/151-153/30 and 40-42]

d. The Sole Arbitrator's finding was in breach of natural justice and the rule of law because the Litigation Funding Agreement was only in relation to the success of Norscot and excluded costs payable by Norscot to OGD, had Norscot been the losing party. **[RR/2/12/33-35]** [MHB/15/151/33-35]

e. The Sole Arbitrator did not consider whether the claimed costs were reasonable and represented the actual costs incurred by Norscot, a position which substantially prejudiced OGD. **[RR/2/12/33-35]** [MHB/15/151/33-35]

f. The size of the success fee under the Litigation Funding Agreement is champertous in nature. The Agreement itself is either a loan agreement, a gamble or constitutes "*retrait litigieux*", and is extortionate and abusive. **[RR/2/13/38]** [MHB/15/152/38]

g. The award of the Litigation Funding Costs to Norscot would amount to enforcing the Litigation Funding Agreement against OGD (which is not a party to the Litigation Funding Agreement), and would thus be against the basic tenets of contract law and the public order of Mauritius. **[RR/2/13/39]** [MHB/15/152/39]

18. OGD sought declarations to the effect that the Sole Arbitrator erred in upholding jurisdiction to hear the claims for costs of litigation funding, setting aside the costs award made against OGD (Prayers A and B of OGD's Motion Paper), and setting aside the Provisional Order (Prayer C of OGD's Motion Paper). **[RR/2/14/44A-44D]** **[MHB/15/153/44A-44D]**

19. Norscot opposed the Set-Aside Application. It contended *inter alia* that:

    a. the application was limited to the grounds for refusal under Article V of the New York Convention, which did not include the declaratory relief sought under Prayers A and B of the Motion Paper; **[RR/5/517/20-21]** **[MHB/29/656/20-21]**

    b. the Arbitrator's jurisdiction to award Litigation Funding Costs had already been unsuccessfully challenged before the English High Court, the supervisory court of the seat and there were no exceptional circumstances justifying reconsideration by the Supreme Court of Mauritius; **[RR/5/518/23.2]** **[MHB/29/657/23.2]**

    c. OGD's challenge sought impermissibly to reopen the merits of the Arbitrator's determination; **[RR/5/519/23.4]** and **[MHB/29/658/23.4]**

    d. OGD had not identified any Mauritian public policy which would be contravened by recognition and enforcement of the Final Award. **[RR/5/519-520/24.1-24.3]** **[MHB/29/658-659/24.1-24.3]**

20. On 30 June 2023, the Set-Aside Application was heard before the Honourable Judge R. Teelock, the Honourable Judge V. Kwok Yin Siong Yen and the Honourable Judge R. D. Dabee in the Supreme Court. **[RR/6/522]** **[MHB/30/661]**

21. On 26 July 2023, the UK Supreme Court handed down judgment in the case of *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28, which determined that a litigation funding agreement pursuant to which a funder is entitled to recover a percentage of any damages recovered is a "damages-based agreement", and that such an agreement is therefore unenforceable unless it complies with the relevant statutory scheme of regulation.

22. On 6 November 2023, the Supreme Court delivered judgment ("**Judgment under Appeal**" – [2023 SCJ 455]). The Supreme Court rejected OGD's preliminary objections **[RR/7/526-530/6-14]** and held that: **[MHB/7/103-107/6-14]**

a. The Sole Arbitrator's decision that he was entitled to award litigation funding costs had already been unsuccessfully challenged before the English courts, with leave to appeal refused. OGD could not seek to re-litigate this issue before the Mauritian courts by characterising the concept of litigation funding costs as being contrary to Mauritian law. **[RR/7/530/15]** [MHB/7/107/15]

b. Section 39 of the International Arbitration Act 2008 provides for the setting aside of an arbitral award under limited circumstances and was not applicable in the present matter as the juridical seat of arbitration is not in Mauritius. Further, declaratory relief sought under prayers A and B of the Motion Paper were unavailable under Article V of the New York Convention. **[RR/7/531/20-22]** [MHB/7/108/20-22]

c. The Sole Arbitrator's determination of his jurisdiction to award litigation funding costs had already been verified by the supervisory court of the seat of the arbitration, and there were no exceptional circumstances justifying the Supreme Court's re-verification of that jurisdictional objection. **[RR/7/532/24]** [MHB/7/109/24]

d. OGD did not state with precision any Mauritian public policy infringed by the Award. References to the Moneylenders Act, high interest rates, damages-based agreements and the Truck Cartel litigation did not establish a public policy ground under Article V(2)(b). The applicable law was English law and the Mauritian courts could not review that under the guise of it being against public order in Mauritius. **[RR/7/532/25]** [MHB/7/109/25]

23. Consequently, OGD's Set-Aside Application was dismissed with costs. **[RR/7/534/26]** [MHB/7/111/26]

## D. APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

24. On 22 November 2023, OGD applied to the Supreme Court for leave to appeal the Judgment under Appeal to the Privy Council pursuant to section 42(2) of the International Arbitration Act 2008 and section 81(1)(b) and 81(2)(a) of the Constitution of Mauritius 1968. **[RR/8/535]** [MHB/32/674]

25. OGD further sought, amongst other prayers for relief, an order that execution of the said Judgment be stayed and suspended pending determination of the appeal. **[RR/8/537]** [MHB/32/676]

26. Norscot did not resist OGD's application for leave to appeal. It filed a Notice of Objection for the stay of execution. **[RR/10/765] and [RR/11/766]** Norscot also took the position that [MHB/38/863] [MHB/39/864]

the application for leave could and should be determined separately. The parties discussed with a view to resolve the issue of stay independently. **[RR/12/767], [RR/13/769-770], [RR/14/771-772] and [RR/15/773-774]** However, the Supreme Court refused to determine the issue of stay separately. **[RR/16/775]** [MHB/40/865] [MHB/41/867-868] [MHB/42/869-870] [MHB/43/871-872] [MHB/44/873]

27. On 25 April 2025, Norscot informed the Supreme Court that it would withdraw its objection to the application for a stay of execution so that the application can be determined on an early date. **[RR/17/778/4]** [MHB/45/876/4]

28. On 13 May 2025, following a joint motion by the parties in respect of leave, and a hearing in chambers before Hon. B R Mungly-Gulbul, Chief Justice, on 12 May 2025 **[RR/18/780]**, the Supreme Court granted OGD conditional leave to appeal to the Privy Council against the Judgment under Appeal, and further granted a stay of execution of the Judgment under Appeal pending determination of the matter by the Privy Council. **[RR/19/781]** [MHB/46/878] [MHB/47/879]

29. On 15 September 2025, having considered OGD's motion paper dated 6 August 2025 and its affidavit of the same date together with supporting documents, and Norscot having no objection to the application, the Supreme Court granted OGD final leave to appeal to the Privy Council. [MHB/10/115]

30. On 10 November 2025, OGD submitted its Notice of Appeal together with supporting documents to the Privy Council, which was issued by the Registry of the Privy Council on 17 November 2025. [MHB/1/10]

## III. ISSUES TO BE DETERMINED

**Appellant's list of issues**

1. Whether, following the UK Supreme Court's judgment in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28, the Litigation Funding Agreement is illegal and/or unenforceable as a matter of English law.

2. Whether the recognition and enforcement of an award of costs which stem from an agreement that is illegal and/or unenforceable would be contrary to the public policy of Mauritius.

3. If Issues 1 and 2 are answered in the affirmative, is the Appellant disentitled to rely on the illegality and/or unenforceability of the Litigation Funding Agreement under English law, having regard to the finality of the Fifth Partial Award and the Final Award.

**Respondent's list of issues**

1. Whether the Appellant is entitled, in support of this appeal against the enforcement of the Final Award, to rely on the alleged illegality or unenforceability of the Litigation Funding Agreement under English law, having regard to the finality of the Fifth Partial Award and the Final Award and the absence of expert evidence of English law before the Supreme Court of Mauritius.

2. If so, whether, following the UK Supreme Court's judgment in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28, the Litigation Funding Agreement is illegal and/or unenforceable as a matter of English law.

3. If so, whether the recognition and enforcement of the Final Award, insofar as it awards litigation funding costs under the Litigation Funding Agreement, would be contrary to the public policy of Mauritius.

## ANNEX 1: CHRONOLOGY

| Date | Event | |
|---|---|---|
| 14 August 2007 | OGD and Norscot entered into the Operations and Management Agreement. **[RR/2/6/4]** | [MHB/15/145/4] |
| 15 August 2008 | Norscot submitted a Request for Arbitration against OGD under the ICC Rules. **[RR/3/457/138]** | [MHB/25/596/138] |
| 26 May 2009 | The First Partial Award was issued. **[Information About the Appeal, pp. 2-3]** | |
| 5 May 2011 | Norscot and Woodsford entered into the Litigation Funding Agreement. **[RR/2/145]** | [MHB/20/284] |
| 15 November 2012 | The Second Partial Award was issued. Two addenda dated 12 July 2013 and 6 November 2013 were subsequently issued. **[Information About the Appeal, pp. 2-3]** | |
| 15 April 2014 | The Third Partial Award was issued. Addendum dated 4 August 2014 was subsequently issued. **[Information About the Appeal, pp. 2-3]** | |
| 11 September 2014 | The Fourth Partial Award was issued. **[Information About the Appeal, pp. 2-3]** | |
| 17 December 2015 | The Fifth Partial Award was issued. **[RR/3/467]** | [MHB/25/606] |
| 3 March 2016 | Addendum to Fifth Partial Award was issued. **[Information About the Appeal, pp. 2-3]** | |
| 31 March 2016 | OGD filed an application before the English High Court (Commercial Court) under s.68 of the Arbitration Act 1996 to set aside the Fifth Partial Award insofar as it awarded the Litigation Funding Costs on the ground that the Sole Arbitrator had committed a serious procedural irregularity in holding that he was entitled to award the Litigation Funding Costs under Sections 59(1) and 63(3) of the Arbitration Act 1996 . **[RR/3/470/7(1)]** | [MHB/26/609/7(1)] |
| 8 April 2016 | The Sixth Partial Award was issued. **[Information About the Appeal, pp. 2-3]** | |

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|---|---|---|
| 15 September 2016 | English High Court (HHJ Waksman QC) dismissed OGD's s.68 application and upheld the Fifth Partial Award ([2016] EWHC 2361 (Comm)). **[RR/3/468-482]**<br><br>Permission to appeal was later refused. **[RR/3/483-484]** | **[MHB/26/607-621]**<br><br>**[MHB/27/622-623]** |
| 30 November 2016 | The Final Award was issued. **[RR/2/132]** | **[MHB/19/271]** |
| 2 February 2017 | Addendum to the Final Award was issued. **[RR/2/139]** | **[MHB/19/278]** |
| 18 March 2022 | Norscot applied to the Supreme Court to recognise and enforce the Final Award. **[RR/3/204]** | **[MHB/24/343]** |
| 22 March 2022 | Provisional Order for recognition and enforcement of the Final Award granted by the Supreme Court. **[RR/3/199-201]** | **[MHB/8/112-113]** |
| 5 April 2022 | OGD filed the Set-Aside Application against the Provisional Order in the Supreme Court. **[RR/2/5]** | **[MHB/14/144]** |
| 30 June 2023 | Hearing before the Supreme Court. **[RR/6/522]** | **[MHB/30/661]** |
| 26 July 2023 | Judgment handed down in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28. | **[MHB/72/1194]** |
| 6 November 2023 | The Supreme Court delivered the Judgment under Appeal, which dismissed OGD's Set-Aside Application. **[RR/7/524]** | **[MHB/7/101]** |
| 22 November 2023 | OGD applied to the Supreme Court for leave to appeal the Judgment under Appeal to the Privy Council. **[RR/8/535]** | **[MHB/32/674]** |
| 13 May 2025 | The Supreme Court granted OGD conditional leave to appeal and further granted a stay on the execution of the Judgment under Appeal pending determination of this present appeal. **[RR/19/781]** | **[MHB/9/114]** |
| 15 September 2025 | The Supreme Court granted OGD final leave to appeal to the Privy Council. **[Final Order]** | **[MHB/10/115]** |
| 10 November 2025 | OGD submitted its Notice of Appeal and other supporting documents to the Privy Council. **[Notice of Appeal]** | **[MHB/1/10]** |
| 17 November 2025 | The Registry of the Privy Council issued this present appeal. **[Notice of Appeal]** | **[MHB/1/10]** |
| 21 November 2025 | Notice of Appeal was served on Norscot. | |

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|---|---|---|
| 12 December 2025 | Norscot filed its Notice of Objection / Acknowledgement with the Registry of the Privy Council. | [MHB/3/18] |

**Counsel for the Appellant**

**Nakul Dewan KC**

Twenty Essex

London

**Instructed by**

**Shivani Sanghi, Partner**

Bryan Cave Leighton Paisner LLP

London

**Counsel for the Respondent**

**Harish Salve KC**

Blackstone Chambers

London

**Rishab Gupta**

Twenty Essex

London

**Bilshan Nursimulu**

Orison Legal

Mauritius

**Instructed by**

**Rajeshwar Bucktowonsing SA**

Orison Legal

Mauritius