Neutral Citation Number: 2016 EWHC 1900 (Comm)

Claim No 2014 Folio 1028

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

IN THE MATTER OF THE ARBITRATION ACT 1996
AND IN AN ARBITRATION CLAIM

Court No 27
The Rolls Building
7 Rolls Building
Fetter Lane
London EC4A 1NL

Date: Monday, 18 July 2016

Before:

MR JUSTICE BURTON

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BETWEEN:

NATIONAL IRANIAN OIL COMPANY	Claimant/Arbitration Respondent
-v-	
(1) CRESCENT PETROLEUM COMPANY INTERNATIONAL LIMITED (2) CRESCENT GAS CORPORATION LIMITED	Defendants/Arbitration Claimants

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MR GORDON POLLOCK QC, MR SALIM MOOLLAN QC and **MS EMILY WOOD** (instructed by Hogan Lovells) appeared on behalf of the Defendants/Arbitration Claimants.

The Claimant/Arbitration Respondent did not attend and was not represented.

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JUDGMENT APPROVED

MR JUSTICE BURTON:

1. This has been the date fixed for the hearing of an arbitration appeal by the Claimants in the arbitration claim, National Iranian Oil Company (NIOC), against the Defendants, two Crescent companies, in respect of an arbitration Award which resulted in a declaration of liability in favour of the Defendants, who were Claimants in the arbitration, issued on 31 July 2014, by a majority of the tribunal, Dr Griffith as chairman and Dr Hossain, and those majority members found in favour of Crescent on all issues.

2. The minority member, Dr Noori, refused to sign the award and, on 26 August 2014, he issued a statement in which he made clear his fundamental disagreement with the conclusions of the majority.

3. The notice of appeal against that Award was very lengthy. There was a hearing before Teare J, when he directed the hearing of preliminary issues, leaving the balance of the issues to be dealt with subsequently, as they now were to be, as fixed for today.

4. I heard the appeal in respect of the preliminary issues and I delivered judgment on 4 March 2016, [2016] EWHC 510 (Comm), finding in favour of the Defendants in relation to all the issues before me, and consequently dismissing those grounds of appeal which were listed to be heard before me.

5. That left the balance of the grounds, save that there were two issues which were contained in the grounds of appeal, paragraphs 19 and 20, which were abandoned by the Claimant.

6. The issues which were listed to come on before me are those contained in paragraphs 18, 25 to 29 and 84 to 93 of the Claimant's grounds of appeal, settled

by counsel, Mr Swainston QC and Mr Blakeley, who did not appear at the arbitration hearing itself, when the Claimant was represented by three different and eminent QCs.

7. After the delivery of my judgment, I gave directions for the trial of the surviving grounds. They can be summarised as follows: first that successive NIOC-appointed arbitrators were excluded from the decision-making process by the majority and, in particular, Dr Noori, the final NIOC-appointed arbitrator, was excluded from the decision-making process which produced the Award. This is alleged to amount to an irregularity within s.68(2)(i) of the Arbitration Act 1996.

8. The second ground was that the majority failed sufficiently to police the arbitration to ensure maintenance of proper civility in submissions, so that the effect was that the appearance of justice was lost in the eyes of NIOC, and that it was, at any rate implicitly if not expressly, submitted that the majority of the Arbitrators was in some way overridden as a result of such actions by or on behalf of Crescent.

9. On 18 March 2016 I directed that those extant grounds of appeal be heard in the week commencing 18 July, and the hearing was duly listed for today, the 18 July, and tomorrow, 19 July. Meanwhile the arbitration has continued and a quantum hearing is fixed, as I understand it, for later in the year.

10. Pursuant to my directions, NIOC was to serve evidence in reply to Crescent's evidence by 4 pm on Friday 8 July. However, at 1.24 pm on that day, Eversheds, acting for NIOC, instead of such evidence, sent a letter to the solicitors Hogan Lovells, acting for Crescent, enclosing a Notice of Discontinuance. The letter of July 8 read in material part as follows:

> *"Our client is discontinuing the Remaining Grounds of its challenge. Our*

client continues to have serious concerns about the issues raised by the Remaining Grounds; nevertheless, they are being discontinued. To that end please find enclosed by way of service a signed Notice of Discontinuance, which we shall file at Court today.

The decision to discontinue was taken by our client after very careful consideration and is without prejudice to all of the positions it adopted in relation to the Remaining Grounds. Further, our client's decision was made primarily to enable it to focus on the ongoing arbitral proceedings between the parties and, in particular, in order to focus on preparations for the upcoming written submissions, and hearing before the Tribunal. Our client's decision to discontinue should not, therefore, be deemed or interpreted in any way as an admission, concession of, or acquiescence to your clients' position and arguments with regard to the Remaining Grounds."

11. It is apparent that that letter, although enclosing a Notice of Discontinuance, sought to preserve NIOC's right to make all the same allegations as are pursued in this appeal, or the balance of this appeal, in some other forum. This, however, is the supervisory court, where such allegations should be addressed, and they have been addressed in the appeal which was fixed for today.

12. On receipt of that Notice of Discontinuance, Crescent applied to seek to set aside such notice. They also sought to challenge the fact that there was no satisfactory order for costs incorporated therein. But the main attack on the Notice of Discontinuance was that it was a way -- impermissibly as they submitted -- of avoiding the consequences of no longer asking the supervisory court to deal with

the allegations made, and seeking to preserve them to be heard elsewhere in a less appropriate court.

13. In their response to the letter of 8 July, Crescent relied upon the very helpful decision of Aikens J in the Commercial Court, **Sheltam Rail Company (Proprietary) Limited v (1) Mirambo Holdings Limited (2) Primefuels (Kenya) Limited** [2008] EWHC 829 (Comm), dated 21 April 2008, in which a similar attempt was made, by appellants in the Commercial Court against an arbitration award, to discontinue. That was a case somewhat different, where it seems, as set out in paragraph 28 of his judgment, that **Sheltam**, the appellant, had intended to pursue its challenges, but had run out of funds to instruct counsel to argue the case. That was why the decision was made to discontinue the arbitration claim forthwith.

14. Aikens J recited in his judgment as follows:

> *"26. Mr Mildon* [that is counsel for the defendants to the arbitration claim] *submitted that in the light of Sheltam's failures to comply with the orders made in the arbitrators' previous awards, then it was likely that Mirambo and Primefuels would have to enforce the award in either South Africa or Kenya or Mauritius (all New York Convention countries) in the future. He submitted that where a party has started an arbitration claim in order to challenge an award under section 67 of the Act, it should not be open to that party to subvert the supervisory jurisdiction of the English court at the last moment by entering a Notice of Discontinuance. To do so would enable the discontinuing party to keep the option of using the same jurisdictional objections to delay or resist enforcement in another New York Convention state."*

15. He set out his reasoning as follows:

> *"34 ... However, I agree with the note at 38.4.1 of the 2007 Edition of Civil Procedure (volume 1) that a court may set aside a Notice of Discontinuance if it concludes that it is an abuse of the process of the court."*

He continued that even if he concluded that it was an abuse of process, the court must still have a discretion.

16. At paragraph 36 he said this:

> *"In this case the Notice of Discontinuance was issued in respect of an arbitration claim in which the claimant challenged the validity of the Third Partial Final Award. In doing so, the claimant had invoked the supervisory jurisdiction of the court over an LCIA arbitration which has its seat in England and Wales and which is continuing. I have no doubt that if the Rules of the CPR had provided that a Notice of Discontinuance of an arbitration claim challenging the validity of an Award required the permission of the court before the arbitration claim could be discontinued, then, in the circumstances of this case, unconditional permission would not have been granted ...*
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> *37. It is quite clear from paragraph 5 of the Outline Argument of Mr Hales that Sheltam still regards its challenges under both sections 67 and 68 as being - at the least - arguable. It is, I think, striking that Sheltam did not take the course (which it could have done) of agreeing to the dismissal of the arbitration claim. I infer from this that Sheltam was attempting to achieve a position where it preserved its ability to challenge*

the validity of a Third Partial Final Award if Mirambo and Primefuels moved to enforce it in another New York Convention State."

17. In that case, Aikens J accepted an undertaking which was proffered by Sheltam (see paragraph 37), *"... not to challenge recognition and enforcement (by Mirambo and Primefuels) by using arguments raised in its section 67 application"*.

18. And he said at 38:

> *"As Sheltam has now given such an undertaking to the court, it seems to me that the Notice of Discontinuance should be allowed to stand. If Mirambo and Primefuels do have to enforce the Third Partial Final Award in a New York Convention State and if Sheltam attempts to resist such recognition and enforcement by raising issues that it might otherwise be entitled to do under Article V.1(c) of the Convention, then Mirambo and Primefuels can apply to this court. It will then be able to reconsider their applications to have the Notice of Discontinuance set aside and for a further order dealing with the substance of the sections 67 and 68 challenges to the Award."*

19. It would appear that that undertaking was accepted by the Court in that case, and was acceptable to the respondents in that case.

20. The Claimant in this case -- NIOC -- then belatedly, after the issue of the application in these proceedings by Crescent to set aside the Notice of Discontinuance, wrote to say that they would proffer, by reference to **Sheltam**, an undertaking in the terms which I shall read out in a moment, on which basis they suggested that the Notice of Discontinuance should stand with liberty to apply, but they further proffered that the Claimant would pay the Defendants' costs of the

remaining grounds and the application, on an indemnity basis to be assessed, if not agreed.

21. The undertaking which the solicitors proffered on their client's behalf as being acceptable to their clients, and suggested to be acceptable to the Court reads as follows:

> *"Following the filing of the Claimant's Notice of Discontinuance dated 8 July 2016 ... the Claimant undertakes to the Court that it shall not resist the recognition or enforcement of the Tribunal Award dated 31 July 2014 by raising any argument based upon Grounds II(D), III(C) or III(D) of the Grounds of Appeal dated 28 August 2014, being the Remaining Grounds of Appeal identified at paragraph 4 of the Order of the Honourable Mr Justice Burton dated 18 March 2016."*

22. It is not NIOC's fault that they referred to those numbers of the grounds of appeal, because those numbers were recited in my order. But, in fact, it is noteworthy that the remaining grounds of appeal plainly include, and should have been made clear to have included, as they obviously are, section IIIF of the grounds of appeal headed, "Failure to maintain decorum and civility".

23. Nevertheless, the purport of that undertaking is clear, namely that the remaining grounds before me otherwise to be heard today are intended to be covered by the undertaking. But the undertaking that they give is that they will not resist the recognition or enforcement of the tribunal Award dated 31 July 2014, by raising any argument based upon the remaining grounds.

24. The response by Crescent to this offer made on Thursday, effectively the day before this hearing, has been not to accept the undertaking, notwithstanding that

a similar undertaking may have been found acceptable to the Court in **Sheltam**.

25. The reasons that they put forward are, in my judgment, entirely persuasive, in particular the first of those reasons. That is that the undertaking is very carefully drafted, and it expressly is limited to NIOC not resisting the recognition or the enforcement of the Award dated 31 July 2014 by reference to the remaining grounds. The Award dated 31 July 2014, as I indicated earlier in this judgment, was simply a declaration of liability and did not deal at all with quantum, which is to be dealt with later in the year, and hence cannot itself be the subject of enforcement proceedings.

26. Perhaps because this offer was made very much at the last minute and the Claimant has not attended today in any way to clarify the position, or to put any arguments before me in order to resist Crescent's application to set aside the Notice of Discontinuance, that ambiguity may not have been intended, and could perhaps have been clarified, but it has not been clarified. They have not attended, and this is the only undertaking which is before me and I am entirely satisfied that it is an insufficient undertaking, and it offers Crescent no protection at all, if and when it comes to enforce an enforceable Award.

27. What might have been capable of consideration was an undertaking in no circumstances whatever to rely on these remaining grounds in any forum. Subject to the second ground of objection by Mr Pollock QC, who has appeared today with Mr Moollan QC and Ms Wood for Crescent, that might have been acceptable and similar to the **Sheltam** undertaking. But it plainly is not what has been offered, and I am entirely satisfied that this undertaking is no answer, and that in reality what should have been done, and what I propose to do is, instead of the Notice of

Discontinuance, there should have been and can be dismissal of the remaining grounds, in order to put into effect what, if it was intended, must have been the purpose behind the undertaking; namely not to rely on these grounds in any forum, if in fact that is what they intended.

28. If it is not what they intended -- and, as I have indicated, it was a very carefully drafted undertaking -- then it was, in any event, unsatisfactory and unacceptable in a case where the supervising court is all ready to deal with the remaining grounds of appeal and, if it does not deal with them, then there would be uncertainty and all these lengthy grounds set out in an appeal before me would be at risk of being repeated before a court which is neither the supervisory court nor would have any real knowledge of the arbitration.

29. The second ground on which Mr Pollock relies is that, even if there were a satisfactory undertaking, unlike the case of **Sheltam**, the Defendants, Crescent, would not be willing to accept that undertaking because of the fact that there would still be the risk of attempts to resist enforcement in a New York Convention court. The only sanction which will be available to the Defendants, if that were to occur, would be contempt proceedings, which would clearly be unsatisfactory, or, as Aikens J suggested, a return to this Court for further hearing and potentially a setting aside of the Notice of Discontinuance at that stage.

30. Either would be an unnecessary scenario if it really were intended that these grounds should not be pursued by way of resistance to enforcement. I accept that it is a far better course than risking another court either misunderstanding, or feeling that it, despite the undertaking, should proceed with resistance to enforcement, simply to dismiss the appeal.

31. I therefore grant permission to Crescent to set aside the Notice of Discontinuance and I shall proceed to deal with the appeal because, of course, I will now hear it. This is not a question of my automatically dismissing the grounds, even though it is apparent that NIOC no longer wishes to pursue them.

32. I have indicated that they have said that they do not wish to pursue them in the supervisory court, but that in some way they wish still to regard them as arguable. In those circumstances I must, on this appeal which has now proceeded, consider the grounds.

33. Of course, I consider them with this handicap: that the Claimant has chosen not to attend, not to serve the evidence in reply, which it was permitted to serve by my order by 8 July, and not to serve a skeleton argument explaining the case that it would wish to make in support of the remaining grounds. But I have read the witness statement that it did serve, and the statement in response by Crescent and I have also read the documents to which I have been referred in bundle D2, being the series of exchanges by the arbitrators themselves in relation to the challenge by NIOC to the ICC facilitated by the dissenting arbitrator, Dr Noori, which was rejected by the ICC, but nevertheless recited a large amount of the complaint which has now formed the basis of the remaining grounds before me.

34. There are, as I indicated earlier in this judgment, two grounds which are summarised at some length in the lengthy paragraphs of the grounds of appeal to which I have referred. The first ground can be headed "Exclusion of NIOC arbitrators". There were successively two NIOC arbitrators, Dr Mouri and Professor Nikbakht, before the final third NIOC arbitrator, Dr Noori, who each resigned and facilitated complaints by NIOC to the ICC, based upon their alleged

grounds for resignation.

35. It seems to me, having read the evidence that was put in before me by NIOC, and without the benefit of any skeleton argument, as I have described, that the reference to the earlier history with regard to Dr Mouri and Professor Nikbakht was only intended to be by way of background. If that be wrong, in any event it seems to me that there is no basis for challenge now before me that can be capable of being relied on in that regard, and I shall explain why in a moment, and the main objection must relate to Dr Noori.

36. In order for NIOC to succeed under s.68, they need to show, as was most helpfully pointed out by Flaux J in **Primera Maritime (Hellas) Limited and others v Jiangsu Eastern Heavy Industry Co Limited and another,** [2014] 1 Lloyd's Law Reports 255, at paragraph 6, three things:

> *"First of all, a serious irregularity. Secondly, a serious irregularity which falls within the closed list of categories in section 68(2). Thirdly, that one or more of the irregularities identified caused or will cause the party substantial injustice.*
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> *As Hamblen J said in* Abuja International Hotels Limited v Meridian SAS *[2012] 1 Lloyd's Rep, 461, at paras 48 to 49, the focus of the enquiry under section 68 is due process, not the correctness of the tribunal's decision. As the DAC Report states, and numerous cases since have reiterated, the section is designed as a long-stop available only in extreme cases where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected."*

37. So far as Dr Mouri and Professor Nikbakht is concerned, after they resigned the

arbitration continued. Three Queen's Counsel appeared for NIOC, as I have described, and there were a number of directions which were unanimous -- or some of which, at least, were unanimous -- once the new Arbitrator Dr Noori joined the panel.

38. As a result of those procedural hearings, directions were given for the hearing and the hearing of the arbitration itself took place. Two of the procedural orders which were made by the panel were significantly detrimental to the interests of Crescent. First, the panel containing the new NIOC Arbitrator, Dr Noori, ruled out the evidence which was sought to be relied upon by Crescent in relation to calling witnesses with regard to the alleged unsuitability or unfairness of the Iranian judicial system. Then subsequently, in another procedural order, the same panel determined that NIOC was entitled to call its witness to give such evidence. That does not appear to show that at any rate, prior to the hearing, there was any favouritism towards Crescent. Far from it.

39. I am satisfied that there is, if indeed it was intended to put forward a case by reference to the departure of Dr Mouri and Professor Nikbakht, no case made out at all of any substantial injustice as a result of their departure and their replacement by Dr Noori to NIOC.

40. So far as Dr Noori is concerned, there are two complaints that are made in relation to his alleged treatment by his fellow Arbitrators. They fall into two separate periods. As has been helpfully explained by Steyn J in **Bank Mellat v GAA Development and Construction Co.**, [1988] 2 Lloyd's Law Reports 44, and is, in any event, well established, there are, after the closure of the hearings and the evidence taken, two procedures which are then followed. The first is what is often

called the 'conclave' and the second amounts to the drafting of the award.

41. So far as the conclave is concerned, it is essential that all three arbitrators, if three there be, meet and discuss the decision and participate in it. The second stage is the drafting of the award. Only if the arbitrators are unanimous is there a requirement for all three arbitrators to take part in the drafting of the award. If there is only, at that stage, a majority, then they write the majority award. This is made clear by Steyn J, as he then was, at page 50, right-hand column, where he says:

> *"Mr Hunt attempted to derive his concrete submissions from the general proposition that all members of an arbitral tribunal must participate jointly in all stages of the arbitral proceedings. That proposition can be accepted. On the other hand, in the terminology of Dworkin, it is clearly a principle rather than a rule. And it is too general to afford the answer to many concrete problems. This is illustrated by the express concession, which was rightly made on behalf of Bank Mellat, that the majority were not obliged, after the close of deliberations, to discuss the draft majority award with [the dissenting arbitrator]."*

42. So far as the conclave is concerned, that forms part of the first challenge by the Claimant, based on a case made by Dr Noori to the ICC and rejected by the ICC. I have read, as I said earlier, the communications between the Arbitrators which led up to that.

43. The complaint was made that there was private discussion or deliberation between Dr Griffith and Dr Hossain on 16 May 2014, when they allegedly met in conclave privately in The Hague, a conclave from which Dr Noori was absent. As is made clear in Dr Griffith's statement to the ICC, this complaint is factually unfounded.

Although Dr Griffith and Dr Hossain were in the Peace Palace on 16 May, they were working separately and did not meet to discuss the award. Dr Noori was therefore not excluded from any conclave and he fully participated in the deliberations which then did take place on 17 and 18 May and indeed subsequently.

44. The second ground of complaint relates to the meetings which then followed on 14, 15 and 16 June and thereafter. It is quite plain again, from Dr Griffith's and Dr Hossain's account in their reports to the ICC in this regard, which, save for the precise circumstances of his departure, are not challenged by Dr Noori, that on 15 June, at approximately 2.30 pm, Dr Noori withdrew from the conclave, leaving the other two Arbitrators to continue to prepare a majority decision, having made plain his dissent. Thereafter, from that time onwards, both on the rest of that day and the next day and thereafter, Dr Griffith and Dr Hossain worked jointly on the majority award.

45. From 17 July drafts of the majority award were, as a matter of courtesy, supplied to Dr Noori, and he was invited to make any comment he wished on those drafts, but he made none. By 24 July, Dr Noori says that he was prepared as a dissenting member to sign the majority award, although he did not do so at that stage, and the last meetings of 27 and 28 July then took place without him, when the final draft of the majority award was settled.

46. In my judgment it is clear that there was no exclusion of Dr Noori and indeed, as a matter of courtesy, he was supplied with the drafts of the majority award which he was no longer prepared to accept or, in the event, sign, and he was rightly treated thereafter as a dissenting member.

47. In any event, I am entirely satisfied that there was no substantial injustice to NIOC

by virtue of his exclusion from that day onwards because the majority were, by then, agreed on their verdicts, subject only to final drafting. This is made clear in **Bank Mellat** by Steyn J as follows at 51:

> *"The sole purpose of a further meeting or consultation would have been to enable [the dissenting arbitrator] to discuss with the majority the redrafting of the reasons for their majority award. [The dissenting member] disagreed fundamentally and comprehensively with the majority award and its reasons, and it is difficult to conceive of the utility, at that late stage, of a discussion with him of a drafting exercise which was intended to strengthen those reasons. No doubt courtesy between colleagues required a further reference to him, but in my view, the governing principle, which I have stated, did not require it as a matter of law. On his ground alone the application must fail ...*
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> *Finally, if I had been persuaded that there was a procedural flaw in that further consultation with [the dissenting member] should have taken place as submitted by Bank Mellat, I would nevertheless in the particular circumstances of this case have declined to set aside the award on the ground of misconduct. My reason for this conclusion is that, on the stated hypothesis, the flaw was a technical one and the inference is irresistible that such further consultation would not have been productive of any material changes to the revised majority award. In other words, if there was a procedural flaw, I am satisfied beyond any reasonable doubt that no injustice resulted from it."*

48. In those circumstances, the first ground, namely exclusion of the NIOC-appointed

Arbitrators, fails.

49. The second ground is more elusive and more diffuse. It relates to effectively a breach of s.33 of the Arbitration Act 1996 by the failure by the panel to police or control alleged regular discourtesy towards the panel and witnesses by Mr Pollock QC on behalf of Crescent, and, it seems, alleged intimidation of the Arbitrators by such conduct.

50. It is plain on such reading of the transcripts as I have been caused to make by the cross-references to the transcripts in the witness evidence put in on behalf of NIOC and the various communications before the ICC by the respective Arbitrators that Mr Pollock did robustly defend his clients' interests, often in rude terms, in the way in which he expressed himself both to the Arbitrators and the witnesses on occasion.

51. However, it is also plain that Mr Pollock was doing so because he was under the duty to his clients of countering the conduct by Dr Noori, of which indeed the Defendants themselves complained by a letter dated 31 May 2013 to the Tribunal, namely a serious failing by Dr Noori, if the content of that letter and other complaints be right, by way of interrupting the cross-examination of the Claimant’s witnesses by Mr Pollock QC in deliberately unhelpful ways.

52. No suggestion has been made by NIOC that their three QCs, Mr Hodge Malek QC, Mr Jim Sturman QC and Mr Paul Key QC, were in any way prevented from or inhibited in doing their job properly by any alleged lack of civility or decorum, whether that job was in leading evidence, cross-examining, addressing the tribunal during the course of the hearing or in written closing submissions running to almost 1,000 pages.

53. It is equally very difficult for me to accept, even in argument, that however strongly Mr Pollock QC expressed himself -- and he is certainly wont to do so -- the Arbitrators were in any way inhibited or swayed from their duty. Dr Hossain, as I understand it, has had a long and distinguished career as a lawyer and as a minister in the government of Bangladesh. Dr Griffith was for many years the Solicitor General of Australia and has had years of experience as an international arbitrator, and both of them demonstrated an ability, it would appear to me, to look after themselves and to protect the interests, where appropriate, of the parties.

54. In relation to any suggestion that the majority and in particular the chairman allowed Mr Pollock QC to dictate the course of events, this is plainly countered by the rulings to which I referred earlier in this judgment; namely when, on the one hand, Crescent was prevented from calling witnesses to support their allegations about the unsatisfactory and unfair nature of Iranian legal proceedings, while shortly thereafter the panel permitted evidence to the contrary to be given by a witness to be called by NIOC.

55. I am satisfied, notwithstanding that I have been necessarily trammelled by the absence of argument today before me by counsel for NIOC, that nothing I have seen in the papers or the transcripts causes me to conclude that there was any substantial injustice done, or that there was any procedural irregularity such as to cause me to conclude that there was a breach of s.33 of the Act or, consequently, any basis for challenge under s.68. Consequently, having permitted the re-opening of this Notice of Discontinuance and considered the appeal on its merits, I dismiss the appeal and I conclude that, given that NIOC was prepared to pay the costs on an indemnity basis in respect of the Notice of Discontinuance, they should also pay on

the same basis in respect of the costs of the setting aside of the Notice of Discontinuance and the dismissal of the remaining grounds of appeal which I have ordered.