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To Members of the Malaysian Bar

Arbitration & Construction Law Case Spotlight (September 2026)

The Bar Council Arbitration and Construction Law Committee is pleased to issue the September edition of *Case Spotlight*, which features key decisions on arbitration or construction, drawn from both Malaysian and foreign jurisdictions. The objective is to keep Members updated on emerging jurisprudence and procedural developments that may be of interest to arbitration or construction law practitioners.

The cases covered in this edition are as follows:

(1) *DSS v DST [2026] SGHC 145 (Singapore High Court)*

Keywords: International Arbitration Act 1994 – Section 24(b) – Setting aside of arbitral award – Natural justice – Rule against bias – Apparent bias – Fair hearing rule – Whether the test of reasonable suspicion applies to the fair hearing rule in arbitration – Concurrent arbitrations – Copying or reproduction from a related award – Requirement of prejudice – Waiver – *DJP v DJO – Public Prosecutor v Pek Lian Guan*

Written by: Norliza bt Rasool Khan

(2) *DWJ v DWK [2026] SGHC(I) 10 (Singapore International Commercial Court)*

Keywords: Arbitration – Award – Recourse against award – Setting aside – Civil procedure – Costs – Security – Claimant ordinarily resident outside jurisdiction – Absence of assets within jurisdiction

Written by: Stephanie Lim Shu Juin

(3) *Emrail Sdn Bhd v Trackwork & Supplies Sdn Bhd [2026] MLJU 3710 (High Court)*

Keywords: Arbitration – Award – Moratorium - Companies Act 2016 - Judicial Management

Written by: Haemarubini d/o Pushpa Rajah

(4) *Hindustan Petroleum Corporation Ltd & Anor v M3Nergy Sdn Bhd [2026] MLJU 3511 (High Court)*

Keywords: Arbitration Act 2005 – Section 39(1)(a)(ii) – Recognition and enforcement of foreign arbitral award – Whether ground extends to challenges to the existence (not merely validity) of an arbitration agreement – Proper standard of review – Hearing *de novo* – Transnational issue estoppel – Section 39(1)(a)(iv) – Award beyond scope of submission to arbitration – Breach of natural justice – Section 39(1)(b)(ii) – Public policy

Written by: Loshini Ramarmuty

(5) *Syarikat Pembinaan Kent Lik Sdn Bhd v Kenji Ling Properties Sdn Bhd [2026] MLJU 3369 (High Court)*

Keywords: CIPAA adjudication – Winding up – Adjudicated debt – Disputed debt – Registration of adjudication decision – Commercial insolvency

Written by: Dinesh Nandrajog

(6) *ASTEEL (Sarawak) Sdn Bhd v Dynaciate Engineering Sdn Bhd [2026] CLJU 2865 (High Court)*

Keywords: CIPAA adjudication – Setting aside – Excess of jurisdiction – Denial of natural justice – Sarawak Advocates Ordinance – Legal representation – Jurisdictional objection

Written by: Ooi Wei Qian

(7) *Puncak Gali Harmoni Sdn Bhd v Emrail Sdn Bhd [2026] MLJU 3648 (High Court)*

Keywords: Section 11 of the Arbitration Act 2005 - Injunction in aid of arbitration - Interim specific performance - Balance of convenience - Public interest

Written by: Sin Chen Yeong and Hong Ling Ji

The case highlights may be accessed [here](#) (see page 3 onwards).

Thank you.

Nimalan Devaraja and Abang Iwawan

Co-Chairpersons

Bar Council Arbitration and Construction Law Committee

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Case

DSS v DST [2026] SGHC 145

Jurisdiction

Singapore

Court

General Division of the High Court

Keywords:

International Arbitration Act 1994 – Section 24(b) – Setting aside of arbitral award – Natural justice – Rule against bias – Apparent bias – Fair hearing rule – Whether the test of reasonable suspicion applies to the fair hearing rule in arbitration – Concurrent arbitrations – Copying or reproduction from a related award – Requirement of prejudice – Waiver – *DJP v DJO* – *Public Prosecutor v Pek Lian Guan*

Background

The dispute arose out of a chain of time charterparties in respect of a vessel (“**the Vessel**”). The owner of the Vessel (“**the Owner**”) chartered the Vessel to DST (“**the Defendant**”) under a head charter. The Defendant in turn chartered the Vessel to DSS (“**the Claimant**”) under a sub charter on materially identical terms. The Vessel was to serve as an offshore support vessel and was fitted with a specialist gangway which allowed workers to walk between the Vessel and a floating production storage and offloading vessel (“**the FPSO**”).

The gangway collided with the FPSO and was rendered inoperable (“**the Incident**”). The Incident gave rise to disputes between the Owner, the Defendant and the Claimant over, among other things, the hire payable under the two charterparties and damages for late redelivery of the Vessel.

Two arbitrations followed. The first arbitration (“**the Head Reference**”) was between the Owner and the Defendant and was heard by a sole arbitrator. The second arbitration (“**the Sub-Reference**”) was between the Defendant and the Claimant and was heard by a tribunal of three arbitrators (“**the Tribunal**”). Both references were seated in Singapore and conducted under the Arbitration Rules of the Singapore Chamber of Maritime Arbitration. Both charterparties were governed by English law.

The Defendant applied for the two references to be heard concurrently. The Claimant objected at first but eventually agreed, and the parties agreed to the terms of a concurrency order (“**the Concurrency Order**”). Under the Concurrency Order, all pleadings, applications and evidence in one reference were made available in the other. The tribunals sat together and heard the same evidence and the same arguments. Each party was entitled to challenge the evidence given in the reference to which it was not a party but was not permitted to make submissions in that reference. Discussions between the two tribunals took place throughout the proceedings and the Claimant raised no objection to them.

The award in the Head Reference (“**the Head Award**”) was issued in June 2025 substantially in favour of the Owner. Nine days later, the Tribunal issued its award in the Sub-Reference (“**the Award**”) substantially in favour of the Defendant. The Tribunal recorded in the Award that it had had the advantage of reading the final draft of the Head Award, that each of the arbitrators had exercised

“separate and independent judgment” on the issues common to both references, and that both tribunals had reached the same conclusions largely for the same reasons.

The Claimant applied to set aside the Award under section 24(b) of the International Arbitration Act 1994 (“**the IAA**”). The Claimant alleged that 108 of the 211 paragraphs of the Award consisted of wholesale or substantial reproductions of the Head Award and that the reproduced material was not confined to procedural recitals but consisted of findings of fact, legal analysis and reasoning on the contested issues. The central plank of the Claimant’s case is that the process by which the Award was prepared showed that the Tribunal had prejudged the issues and that this amounted to apparent bias. The Claimant argues that the extent, nature and effect of the similarities between the Award and the Head Award would cause a fair-minded and informed observer to reasonably suspect that the Tribunal had approached the matter with a closed mind

Notably, the Claimant clarified at the hearing that it only took issue with the process by which the Award was prepared. It was not taking issue with the conduct of the arbitrations and whether it was in accordance with the terms of the Concurrency Order or as envisaged by the parties.

The Claimant also submitted that the fair hearing rule was breached. By relying on the Head Award and using it as a template for the Award, the Tribunal had decided the Sub-Reference on a basis that was not contemplated by the parties, and upon which they did not have the opportunity to address or make submissions. The Claimant also submits that there was no waiver of its right to object to any breach of natural justice on the ground of apparent bias. Even if it did not object to the inter-tribunal discussions that took place throughout the hearings, the Claimant did not contemplate that the Tribunal would simply reproduce the analysis in the Head Award and put it forward as its own

After the hearing, the General Division released its decision in *Public Prosecutor v Pek Lian Guan* [2026] 3 SLR 1109 (“**Pek Lian Guan**”). Menon CJ addressed the conceptual distinction between the rule against bias and the fair hearing rule, and the test which applies to the fair hearing rule in the judicial context. The Court invited further submissions on the aspect of the fair hearing rule which concerns whether an adjudicator has properly applied his mind to the matters before him, and on the implications of *Pek Lian Guan* in the arbitral context.

Decision of the High Court

The High Court (Aidan Xu J) held that the Award was not rendered in breach of natural justice and declined to set aside the Award and dismissed the application in its entirety (at [179]).

Key Findings

(1) The alleged copying engaged three distinct complaints

The Court began by characterising the complaint and placing it within the rules of natural justice. There were three ways in which natural justice was said to have been breached (at [51]).

- (a) Whether the alleged copying showed that the Tribunal had prejudged the issues in the Sub-Reference, which engaged the rule against apparent bias (at[48]);
- (b) whether the alleged copying showed that the Tribunal had not properly applied its mind to the issues, arguments and evidence in the Sub-Reference, which relates to the first aspect of the fair hearing rule (at[49]);
- (see [49])
- (c) whether the Tribunal had decided the Sub-Reference on a basis that was not contemplated by the parties (*ie*, by relying on the Head Award) without giving them the opportunity to make submissions on it, which relates to the second aspect of the fair hearing rule (at [50]).

(2) The test of reasonable suspicion applies to the fair hearing rule in arbitration

Apparent bias is assessed through the eyes of a fair-minded and informed observer. The court need not find a real danger of actual bias or a closed mind; the reasonable suspicion threshold sits below the balance of probabilities and is satisfied where the hypothetical observer would consider bias possible on the facts (at [53]). In *Pek Lian Guan*, Menon CJ applied that same test to fair hearing rule challenges in the judicial context, on the basis that the maxim that justice must be seen to be done bears equally on both limbs of natural justice (at [54]).

The Court extended this to arbitration, holding that reasonable suspicion governs alleged breaches of the fair hearing rule in the arbitral context (at [58]). Its reasoning: the absence of public accountability in arbitration does not license dispensing with the appearance of justice; the bias rule and the fair hearing rule are co-equal pillars of procedural justice, so there is no principled basis for applying different tests to each. Fears of opening the door to unmeritorious challenges were treated as overstated, since the prejudice requirement continues to operate as the primary filter on natural justice complaints in arbitration.

(3) The Claimant was not barred from relying on the first aspect of the fair hearing rule

The Defendant argued the Claimant could not rely on the first aspect of the fair hearing rule, having raised it only in further submissions rather than in the supporting affidavit. The Court disagreed (at [75]): the affidavit already set out the necessary factual basis, which was identical to that relied on for apparent bias. As *Pek Lian Guan* recognises, the two rules are not mutually exclusive and the same facts may be found in either complaint. No new factual allegation arose, so a further affidavit was unnecessary.

The Court nonetheless stressed that a natural justice complaint must be particularised as specifically as possible, so that the source of the alleged unfairness and the relevant considerations can be precisely identified. Here the complaint was sufficiently clear to the Defendant, which had been able to respond in its further submissions, and any prejudice was compensable in costs (at [77]).

(4) There was no apparent bias in the copying of descriptive and undisputed material

The Court was satisfied that there was no breach of natural justice under either rule (at [80]).

Much of the impugned material sat under a heading of the Tribunal's findings of fact. Most of those paragraphs contained no findings or assessment of evidence, dealing instead with undisputed background (at [88]). They were descriptions of events before, during and after the Incident, detailed given the technical subject matter and drawn from documentary and agreed expert evidence. Disputed details had been readily resolved and were not crucial to the outcome (at [90]). Being descriptive and largely free of judgment, the similarities raised no apparent bias or closed mind (at [91]).

Other passages were likewise not evaluative findings but descriptive recitations of the evidence, falling within the category of copied material, causing little concern. Language borrowed from the Head Award added unnecessary colour but did not affect the reasoning or key findings (at [103]). The question was whether a fair-minded and informed observer would reasonably suspect the Tribunal had not kept an open mind and was predisposed to replicate the Head Award's findings. Taken as a whole, it would not (at [104]).

The Court also stressed the overlap between the references: the same factual matrix, materially the same clauses, and the same evidence and arguments heard concurrently. Extensive similarity in the factual narrative was therefore expected. More telling would have been Sub-Reference-specific issues left unaddressed, and the Claimant identified none (at [106]).

(5) Only reproduced errors of substance carry real weight

The Claimant relied on a terminological error carried over from the Head Award, where the Tribunal referred to a weather watch being conducted on the Owner when it had intended to refer to the Vessel (at [107]). The Court held that little weight could be placed on that error. The Claimant had not identified any error in the copied material which affected the Tribunal's reasoning on the material issues between the parties. Had there been such errors, they would have been a strong indicator of apparent bias, as was the case in *DJP v DJO* [2025] 1 SLR 576 ("**DJP**"), where the errors related to substantive matters such as the law applicable to certain issues (at [109]). Viewing the section as a whole, the extent and nature of the copying would not cause a fair-minded and informed observer to suspect that there had been prejudgment (at [110]).

(6) In the analysis of the contested issues, the differences between the awards were decisive

On the reduced hire rate under clause 44.1 of the sub charter, the Court found the similarities within reasonable limits. Both tribunals faced essentially the same issue and arguments, the language differed sufficiently, the Award dealt with the issue more fully, and the identical wording was mostly factual description or the contractual terms themselves (at [116]).

More importantly, the differences between the awards had to be weighed against the similarities. In *DJP*, the failure to address arguments raised only in the impugned arbitration weighed heavily towards apparent bias. Here the Tribunal was plainly alive to the differences between the two references and tailored its analysis accordingly. It omitted a point argued in the Head Reference but not relied on in the Sub-Reference, and noted other arguments it did not need to decide (at [120]). That showed an open mind rather than blind adoption of the Head Award (at [121]), and the overall impression on a fair-minded and informed observer would raise no reasonable suspicion of prejudgment (at [122]).

The same followed on the standby rate issue. Despite a detailed comparison of the impugned paragraphs, the similarities did not cross the threshold (at [124]). The Tribunal disposed of that issue mainly on prejudice to the Defendant, and separately resolved an evidential dispute specific to the Sub-Reference in the Claimant's favour, showing active engagement with the issues (at [129]). The Court held likewise on late redelivery (at [136]).

(7) The assessment is cumulative and is made on the award as a whole

The Court held that the allegations of copying in each section of the Award could not be taken in isolation. Even if the copied material in each section did not by itself amount to apparent bias, the cumulative effect of the similarities could still give rise to a suspicion of bias (at [137]).

Taking the Award as a whole, the Court found that the overall effect of the similarities would not give rise to a reasonable suspicion that the Tribunal had approached the Sub-Reference with a closed mind. A significant portion of the impugned paragraphs dealt with undisputed background facts, and many of the remaining similarities related to descriptions of the evidence or to points which were not ultimately decisive, so that the extent, nature and effect of the copying had been somewhat overstated. There was, on the other hand, ample evidence that the Tribunal was alive to the differences between the two references and had considered the arguments specific to the Sub-Reference separately and independently, and the Court gave that significant weight. Although the threshold for apparent bias is not a high one, it was not met on these facts (at [138]). The Award was accordingly not set aside on the ground of apparent bias (at [139]).

(8) The Tribunal properly applied its mind to the Sub-Reference

For largely the same reasons, a fair-minded observer would not reasonably suspect the Tribunal of failing to apply its mind to the Sub-Reference (at [147]). It had engaged with both sides' arguments and exercised independent judgment. Its conclusions differed from the Head Award on some issues, which mattered particularly where those differences affected the outcome. It was alive to the differing arguments and addressed points raised only in the Sub-Reference (at [149]).

The Court cautioned that overlap cannot be taken too far (at [150]). Some similarity is expected and cannot alone found a reasonable suspicion. But neither the Concurrency Order permitting discussions between tribunals nor the shared issues entitles a tribunal simply to adopt a related award's findings. Natural justice requires every tribunal to weigh both sides independently, and extensive similarities may support an inference that it did not, whatever the overlap or the manner in which the proceedings were run. That is fact-specific. Here the threshold was not crossed and the first aspect of the fair hearing rule was not breached (at [151]).

(9) Reference to a related award is not wholesale adoption

Unthinking, wholesale adoption of the Head Award would be impermissible, since the Tribunal could not abdicate its adjudicative function. But referring to and considering the Head Award's findings was permissible, provided the Tribunal still exercised its own judgment. Copying alone is not the vice. The concern is that adopting another's analysis may show a failure to decide independently. The question is whether the award as a whole demonstrates independent judgment. If it does, agreeing with and adopting parts of the related reasoning is not itself a breach (at [155]).

DJP was distinguished. There, the tribunal drew on material from parallel arbitrations heard separately by a differently constituted tribunal, inaccessible to the parties. Here both references were heard concurrently, all evidence and argument were equally accessible, the parties had at times adopted their

counterparts' arguments, and no objection was taken to the discussions between tribunals. The Head Award was therefore not extraneous material, and the parties must be taken to have accepted some reference to it. The question was whether reliance went so far that no separate judgment was exercised. That would have been outside the parties' contemplation, and if so, the Tribunal would have had to let them address the Head Award (at [158]). On the evidence, the Tribunal considered the issues independently, was aware of the differing arguments, and did not reproduce analysis irrelevant to the Sub-Reference. The impression was of a tribunal that referred to the Head Award and consciously reached the same conclusion on its own judgment (at [159]).

(10) Prejudice may be inferred where the breach is serious

Though not strictly necessary, the Court addressed prejudice. Drawing on *RAV Bahamas Ltd v Therapy Beach Club Inc* [2021] AC 907, some irregularities are so serious that substantial injustice is inherently likely, so prejudice may be inferred from the irregularity itself, with the burden then shifting to the opposing party to show the outcome would have been the same (at [168]).

That reasoning applies equally under the IAA. Where the breach is sufficiently serious, actual prejudice is plain, may be readily inferred, and the evidential burden lies on the opposing party to rebut it. A finding of apparent bias tainting the whole decision-making process falls within that limited category. This does not dispense with the prejudice requirement but recognises, practically, that it may be inferred. *DJP* and *DJO* are explicable on that basis, with nothing to rebut the inference (at [169]). On rebuttal, the Court referred to *Aiteo*, noting that a point not reasonably arguable may suffice, while cautioning against being drawn into assessing an impugned arbitrator's influence on the rest of the tribunal (at [170]).

(11) No waiver of the right to object

The Court rejected the waiver argument based on the Claimant's failure to object to the discussions between tribunals during the arbitrations (at [173]). The Claimant did not challenge the conduct of the arbitrations or those discussions. Its complaint concerned only how the Award was drafted. Even if it impliedly consented to the discussions, it did not consent to the Tribunal adopting and reproducing the Head Award's analysis as its own. The Tribunal remained obliged to decide the Sub-Reference afresh. The objection crystallised only when the Award issued and could be reviewed, so there was no earlier opportunity to raise it.

Comment

This is the first substantial application of *Pek Lian Guan* in arbitration, settling that reasonable suspicion governs both limbs of natural justice in a setting aside application under section 24(b) of the IAA. In practice, a claimant need not prove on a balance of probabilities that the tribunal actually failed to apply its mind or decided on an uncanvassed basis. It is

enough that a fair-minded and informed observer would think it possible.

The decision also refines *DJP*. Where arbitrations are heard concurrently under a concurrency order, the related award is not extraneous material, the parties must be taken to have contemplated some reference to it, and a degree of similarity is expected. What matters is whether the tribunal addressed points specific to its own reference, whether its conclusions diverged where the arguments diverged, and whether any reproduced errors went to substance. The Court also makes explicit what was implicit in *DJP* and *DJO*, that a finding of apparent bias carries an inference of prejudice and shifts the evidential burden to the party resisting setting aside. On waiver, it draws a clear line between a complaint about the conduct of the arbitration, which must be raised at the time, and one about the drafting of the award, which can only crystallise on release.

Written by Norliza bt Rasool Khan

Case

DWJ v DWK [2026] SGHC(I) 10

Jurisdiction

Singapore

Court

Singapore International Commercial Court

Keywords:

Arbitration – Award – Recourse against award – Setting aside – Civil procedure – Costs – Security – Claimant ordinarily resident outside jurisdiction – Absence of assets within jurisdiction

Background

The dispute between parties arose from an agreement dated 16.2.2022 (“**the Agreement**”) between DWJ (“**the Claimant**”), a Hong Kong-incorporated company, and the parent company of DWK (“**the Defendant**”), by which the Claimant agreed to provide financial advisory services. Following a novation on 1.9.2022, the Defendant assumed the parent company’s obligations under the Agreement. Pursuant to amendments under Addendum No. 2 dated 20.2.2023, the Defendant agreed to pay the Claimant a non-refundable monthly retainer fee of \$43,000 from July 2022 onwards, and a separate refundable monthly payment of \$194,000 from February 2023 onwards which were repayable to the Defendant if no transaction was successfully executed (“**Refundable Payments**”). The Agreement was terminated on 30.4.2024.

The Defendant commenced arbitration proceedings against the Claimant. However, the Claimant did not participate, did not file its statement of defence and did not appear for the scheduled remote hearing. Subsequently, the Tribunal found that the Claimant was contractually liable to repay certain of the Refundable Payments, by way of an award dated 16.12.2025 (“**Award**”).

The Claimant applied to set aside the Award (“**Setting Aside Application**”) before the Singapore General Division of the High Court (“**GDHC**”), and the Defendant applied for security for costs for defending against the Claimant’s Setting Aside Application (“**Security for Costs Application**”), before the matter was transferred to the Singapore International Commercial Court (“**SICC**”). In the Setting Aside Application, the Claimant contended that it had not participated in the arbitration because it lacked legal advice and believed the matter could be resolved amicably; that the former Chief Executive Officer of the Defendant’s parent company had given verbal assurances in 2023 that Addendum No. 2 would not be enforced and was signed “as a matter of formality”; and that the Defendant had breached a duty of full and frank disclosure by failing to disclose those assurances to the Tribunal, amounting to bad faith and fraud.

The present judgment concerns only the Defendant’s Security for Costs Application.

Decision of the Singapore International Commercial Court

The Singapore International Commercial Court (Sir Nigel Teare J delivering the judgment) allowed the Defendant’s Security for Costs Application and fixed security for costs at \$100,000, to be provided by payment into court or by a solicitor’s undertaking

within 28 days of the order, and unless such security is provided, the Claimant’s Setting Aside Application shall be struck out.

Key Findings

(1) Two-stage framework in considering whether security for costs should be ordered

Applying the two-stage framework in *Cova Group Holdings Ltd v Advanced Submarine Networks Pte Ltd* [2023] SGHC 178 (adopting *Siva Industries and Holdings Ltd v Foreguard Shipping I Singapore Pte Ltd* [2017] SGHCR 5), the Court first considered whether its discretion had been enlivened. As the Claimant was a company registered in Hong Kong and therefore ordinarily resident out of the jurisdiction, the jurisdiction to order security under O 9 r 12(1) was engaged.

Next, the Court considered whether it is just to order security for costs in all the circumstances of the case. The Court held that it was just to order security, principally because the Claimant had no assets within Singapore. The Defendant would therefore be required to enforce any costs order in Hong Kong, incurring expense and delay. Significantly, the Claimant did not deny that it was resisting enforcement of the Award in Hong Kong, which provided a basis to infer that it would likewise resist enforcement of any Singapore costs order there. In the absence of expert evidence on Hong Kong law, the Court proceeded on the probabilities, observing that enforcement of a costs order might raise different considerations from enforcement of an arbitral award and was likely to occasion further expense and possible delay.

(2) Merits of Setting Aside Application not to be pre-judged

Following *Ong Jane Rebecca v Pricewaterhousecoopers* [2009] 2 SLR(R) 796, the Court declined to assess, as part of the Security for Costs Application, the merits of the Setting Aside Application as the merits weigh in the analysis only where a high degree of probability of success or failure can be clearly demonstrated. The Defendant had raised substantial and plausible arguments for resisting the challenge – including that no duty of full and frank disclosure arose in an inter partes proceeding, and that it had been unaware of the alleged assurances until these proceedings – and the Claimant had not engaged with them. The Claimant could not show a high probability that its challenge would succeed. The Court likewise declined to draw conclusions from the Claimant’s non-participation and non-payment of arbitration costs requested by the governing arbitral institution, as the reasons for that conduct fell to be determined at the hearing of the Setting Aside Application.

(3) Cost quantum reflected the SICC costs regime following transfer

Following the transfer to the SICC, the more generous costs regime described in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 applied. The Defendant's estimate was increased from \$40,000 (under the GDHC regime) to \$120,000. The Court rejected the Claimant's objection that the increase required a formal amendment, since the revised estimate had been clearly set out in the Defendant's written submissions and the Claimant had ample opportunity to respond. As most of the work had already been done, the Court fixed quantum at \$100,000, to be provided by payment into court or by a solicitor's undertaking within 28 days of the order, and unless such security is provided, the Claimant's Setting Aside Application shall be struck out.

Comment

The decision provides useful guidance for the requisite elements in an application for security for costs –

- The absence of any assets within the jurisdiction is a weighty factor in favour of ordering security for costs, particularly where there is evidence that the claimant is already resisting enforcement of an award / judgment / order abroad, and is likely to do the same in respect of any costs order to be similarly enforced abroad;
- The court will not, at the security for costs stage, embark on a detailed assessment of the merits of the underlying setting aside application unless a high probability of success or failure can be clearly demonstrated; and
- A claimant's conduct in the arbitration, including non-participation and non-payment of costs as requested by the governing arbitral institution, will be viewed in the context of its explanation, which is properly a matter for the substantive hearing of the setting aside application.

Written by Stephanie Lim Shu Juin

Case

Emrail Sdn Bhd v Trackwork & Supplies Sdn Bhd [2026] MLJU 3710

Jurisdiction

Malaysia

Court

High Court

Keywords:

Arbitration – Award – Moratorium – Companies Act 2016 – Judicial Management

Introduction

This case considers whether an arbitral award can stand where the arbitration continued after the moratorium under the Companies Act 2016 ("**CA 2016**") had taken effect and no leave of Court had been obtained.

Background

Following the plaintiff's failure to pay in full for the materials supplied, the defendant presented a winding-up petition against the plaintiff. However, the petition was struck out. Subsequently, the defendant commenced arbitration proceedings against the plaintiff. The plaintiff objected that the contractual preconditions to arbitration had not been satisfied. The Tribunal dismissed these objections in an interim award, and on 20.3.2025, the High Court dismissed the plaintiff's challenge to the said award.

In parallel with the arbitration proceedings, a third party initiated judicial management proceedings ("**JM 14**") against the plaintiff. On 12.11.2024, the High Court struck out JM 14 ("**High Court's Order**"). However, following an appeal, on 21.3.2025, the Court of Appeal stayed the High Court's decision, reviving JM 14 ("**COA's Stay Order**").

On the same day, the plaintiff's solicitors informed the defendant and the Tribunal of the same and submitted that arbitration was prevented from continuing without leave of Court, pursuant to section 410 of the CA 2016. Notwithstanding such submissions, the plaintiff failed to promptly provide the relevant court orders and particulars of JM 14 when requested. Subsequently, the Tribunal proceeded to hear oral submissions on 24.4.2025. On 8.8.2025, the Asian International Arbitration Centre (AIAC) informed the parties that the Tribunal had sought more time to complete the award.

Before the Tribunal could render the final award, on 27.8.2025, the Court of Appeal delivered its final judgment, setting aside the High Court's Order and directed that JM 14 "*subsist and shall continue before a different Judge of the High Court of Malaya at Kuala Lumpur*" ("**COA's Order**").

Following the issuance of the final award on 29.10.2025, the plaintiff applied to set it aside pursuant to section 37 of the Arbitration Act 2005 ("**AA 2005**").

Parties' Submissions

- (1) The plaintiff contended that the moratorium under section 410 of the CA 2016 took effect by operation of law upon the revival of JM 14. The plaintiff's prior participation in the arbitration, its delay in producing the court orders, and the Tribunal's lack of the relevant documents could not replace the leave required by statute. On that basis, the Tribunal's continuation of the arbitration and the making of the final award conflicted with the public policy of Malaysia.
- (2) On the other hand, the defendant submitted that the arbitration was validly commenced and that the arbitration agreement entered into between the parties survived. Further, the plaintiff, having participated in the arbitration and failed to provide the documents requested by the Tribunal, was barred from seeking to set aside the award. In addition, the defendant also relied on, amongst others: -
 - (i) section 27(c) of the AA 2005;
 - (ii) the doctrine of separability;
 - (iii) the finality of the earlier decision under section 18 of the AA 2005; and
 - (iv) the distinction between an irregularity and a nullity.

Findings of the High Court

In allowing the plaintiff's application, the High Court held, amongst others, as follows: -

- (1) The legal effect of the COA's Stay Order and COA's Order did not depend on when the said orders were furnished to the Tribunal although the plaintiff should have provided them promptly.
- (2) An arbitration seeking binding monetary relief against a company is a "proceeding" within section 410(c) of the CA 2016, and the steps taken after 21.3.2025 (COA's Stay Order) formed part of a single continuing arbitral proceeding. As no leave was obtained, the proper course was to pause the arbitration or to apply to the Judicial Management Court for leave.
- (3) The statutory moratorium is not merely a private right which the plaintiff could waive; it supports a court-supervised rescue process for the benefit of creditors as a whole. It is therefore incapable of being displaced by waiver, acquiescence or estoppel.

- (4) Although section 27(c) of the AA 2005 does permit the Tribunal to proceed when a party fails to attend or produce evidence, this provision applies only where the arbitration may otherwise lawfully continue. Similarly, the doctrine of separability merely preserves the arbitration agreement; it does not in any manner confer a right to continue arbitration in disregard of section 410 of the CA 2016.
- (5) The High Court decision of 20.3.2025 did not determine the present issue, as it dealt principally with whether the contractual preconditions to arbitration had been met. The section 410 issue arose from the COA's Stay Order made the following day. Therefore, the finality under section 18(10) of the AA 2005 does not prevent section 410 of the CA 2016 from operating on that later event.
- (6) While the Court accepted the defendant's submission that not every statutory breach renders an award a nullity, the present case was distinguishable as it did not involve a minor procedural lapse. Section 410 of the CA 2016 imposed a direct prohibition which remained in force from 21.3.2025 (COA's Stay Order) until the final award.

The Court held that no distinction could be drawn between the final order and the steps taken to reach it, relying on ***Kumpulan Liziz Sdn Bhd (in liquidation) v Pembinaan Azam Jaya Sdn Bhd*** [2022] 1 AMR 365.

- (7) Therefore, the statutory breach affected the legality of the process by which the final award came into existence. The question is not whether the outcome would have been the same, but whether the award was produced through a process which the statute permitted, which it was not.
- (8) If the final award were upheld despite the absence of leave, it would substantially undermine the statutory protection afforded by section 410 of the CA 2016 and diminish the supervisory role entrusted to the Judicial Management Court. Accordingly, the final award was set aside under section 37(1)(b)(ii) of the AA 2005 on the ground that it was made after the arbitration had continued in conflict with the public policy under section 410 of the CA 2016.

Written by Haemarubini A/P Pushpa Rajah

Case

Hindustan Petroleum Corporation Ltd & Anor v M3Nergy Sdn Bhd [2026] MLJU 3511

Jurisdiction

Malaysia

Court

High Court

Keywords:

Arbitration Act 2005 – Section 39(1)(a)(ii) – Recognition and enforcement of foreign arbitral award – Whether ground extends to challenges to the existence (not merely validity) of an arbitration agreement – Proper standard of review – Hearing *de novo* – Transnational issue estoppel – Section 39(1)(a)(iv) – Award beyond scope of submission to arbitration – Breach of natural justice – Section 39(1)(b)(ii) – Public policy

Background

Hindustan Petroleum Corporation Limited and Prize Petroleum Company Limited (**“the Plaintiffs”**) and M3nergy Sdn Bhd (**“the Defendant”**) formed a consortium under a Memorandum of Understanding dated 29.6.2005 to bid for an offshore marginal field development project (**“the Project”**) tendered by Oil and Natural Gas Corporation (**“ONGC”**). The Plaintiffs are companies incorporated under the laws of the Republic of India whereas the Defendant is a Malaysian company. The bid was successful and a Service Contract dated 27.9.2006 was executed between ONGC and the consortium. The Service Contract required the parties to execute a Joint Executing Agreement to govern their inter se rights and obligations.

A draft JEA was initialled by the parties at a meeting on 18.4.2007 (**“the Initialled Draft JEA or JEA”**). The Defendant’s position is that negotiations over its terms continued thereafter and that the Initialled Draft JEA was never finalised or executed. On the other hand, Plaintiffs contended that the Initialled Draft JEA was a concluded contract and that the Defendant had conducted itself accordingly.

Proceedings in India

On 15.5.2009, the Plaintiffs commenced arbitration in India against the Defendant under the Initialled Draft JEA, relying on the arbitration clause. The Defendant took the position that the Initialled Draft JEA which contains the arbitration agreement was *inter alia*, not concluded and therefore the arbitration clause is non-existent, invalid, null and void and inoperative. The Arbitral Tribunal issued three awards: a Partial Award dated 9.1.2014, finding that a valid arbitration agreement existed and that the Defendant had breached the JEA, a Further Partial Award II dated 27.9.2017 (**“the Second Award”**) awarding the Plaintiffs damages for loss of profit, and a Final Award as to Costs dated 15.6.2018 awarding costs to the Plaintiffs.

The Defendant filed petitions in the Bombay High Court (**“BHC”**) to set aside the Awards, which were pending at the time of the High Court application (save that the BHC had by 3.11.2025 dismissed the challenge to the First Award).

Proceedings in Malaysia

By an ex-parte order dated 22.8.2024, the High Court granted the Plaintiffs leave to enforce and register the Second Award in Malaysia (**“the Ex-Parte Enforcement Order”**). The Defendant applied under section 39 of the Arbitration Act 2005 (**“AA 2005”**) and/or Order 69 rule 8(7) of the Rules of Court 2012 to set aside the Ex-Parte Enforcement Order on four grounds: (i) the Second Award had been suspended by the BHC (subsequently this ground was abandoned); (ii) no arbitration agreement was concluded between the parties, such that enforcement should be refused under section 39(1)(a)(ii) of the AA 2005; (iii) the damages for loss of profit awarded were beyond the scope of the submission to arbitration, granted in breach of natural justice, and contrary to Malaysian public policy; and (iv) the Ex-Parte Enforcement Order impermissibly enforced a sum in USD where the Second Award’s dispositive part was in INR.

Decision of the High Court

The High Court (Leong Wai Hong J) dismissed the Defendant’s setting-aside application. Costs of RM50,000 were ordered against the Defendant. Further, the parties had by consent agreed that the Ex-Parte Enforcement Order should state the sum in INR rather than USD.

Key Findings

(1) Section 39(1)(a)(ii) of the AA 2005 extends to challenges to the existence of an arbitration agreement

The Defendant contended that because the arbitration agreement is alleged to have been concluded in 2007, thus Section 39(1)(a)(ii) of the AA 2005 pre-2011 amendment ought to apply and therefore Malaysian law ought to apply in determining whether the Initialled Draft JEA which contains the arbitration agreement is valid. The High Court noted that nothing turns on the 2011 amendment as the material words for consideration by the Court, i.e. *“where the arbitration agreement is not valid under the law to which the parties have subjected it...”* are the same in both versions of the AA 2005. The Court then went on to consider the applicable law and found that, on the wording of section 39(1)(a)(ii) of the AA 2005, the validity of the arbitration agreement is to be determined under the law to which the parties subjected it. In the instant case, it was the laws of the Republic of India pursuant to Article 21 of the Initialled Draft JEA. Article 21 *inter alia*, provided that the agreement shall be governed by the laws of the Republic of India.

The Court then determined whether the wording of Section 39(1)(a)(ii) should extend to challenges not just to the validity, but also the existence of an arbitration agreement. The Court examined the reasoning in the Singapore Court of Appeal case of *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2013] SGCA 57 and English Supreme Court case of *Dallah Real Estate and Tourism Co v Ministry of Religious Affairs of the Government of Pakistan* [2010] 3 WLR 1472 and found that the position taken in the said cases is the correct position in that the Defendant can seek to set aside an award by relying on section 39(1)(a)(ii) of the AA 2005 on the basis that there was no arbitration agreement concluded, as the language of the section is wide enough to cover that contention.

(2) The proper standard of review

The Court held that a Malaysian court conducting a review under section 39(1)(a)(ii) of the AA 2005 should undertake an independent, *de novo* assessment of the existence and validity of the arbitration agreement, and is not bound by the Arbitral Tribunal's findings. The Court however, qualified this by adding that where the Arbitral Tribunal's finding of a concluded agreement is based on an assessment of the parties' conduct after hearing witness testimony, the reviewing court lacking the advantage of having seen and heard those witnesses should not disturb that factual finding unless the Tribunal is shown to be "plainly wrong". In reaching this view, the Court drew on the settled principles governing appellate interference with a trial judge's findings of fact.

On the facts, the High Court found that a concluded arbitration agreement existed. The Court dismissed all nine grounds advanced by the Defendant to argue that the Initialled Draft JEA was not binding.

(3) The doctrine of transnational issue estoppel

The Court held that Malaysian courts should adopt the doctrine of transnational issue estoppel in the context of international commercial arbitration, drawing on among others, the cases of *Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 (Singapore Court of Appeal), *Hulley Enterprises Ltd & Ors v The Russian Federation* [2025] 3 WLR 251 (UK Court of Appeal), and *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP* [2022] 2 All ER (Comm) 841 (Privy Council). This doctrine applies to prevent the parties to a prior decision of the seat court, in certain circumstances, from re-litigating in the enforcement court, points that were previously raised and determined by the seat court.

On the facts, the Defendant contended that the transnational issue estoppel is not invoked as the test applied by BHC in dismissing the Defendant's challenge to the First Award is the narrow "plausibility/perversity" standard of review, rather than undertaking a *de novo* standard of review. The High Court disagreed and found that the doctrine did apply. The Court found that while the BHC recognised that the test under the laws of India is only a narrow "plausibility/perversity" standard of review, the BHC had, in substance applied a *de novo* standard of review and independently concluded that a concluded arbitration agreement existed. The Court held that this gave rise to an issue estoppel against the Defendant on the question of the existence of the arbitration agreement.

(4) No review of the merits of an arbitral tribunal's decision

The Defendant's contention that the Second Award improperly awarded loss of profits contrary to a contractual exclusion in Article 22.3 of the JEA, and improperly relied on the Service Contract rather than the JEA, was rejected. The Court held, following *The Government of India v Cairn Energy India Pty Ltd & Ors* [2014] 9 MLJ 149 and *Hindustan Oil Exploration Co Ltd v Hardy Exploration & Production (India) Inc* [2023] 4 MLJ 113, that Malaysian courts do not sit in an appellate capacity over an arbitral tribunal's findings on the merits. The Court noted that the two grounds relied on by the Defendant go into the merits of the Arbitral Tribunal's reasoning and that the Court did not have the right to review the merits or correctness of an arbitral tribunal's decision.

(5) The Award was not granted in breach of natural justice

The Defendant contended that there was a breach of natural justice because the Arbitral Tribunal relied on an argument on damages relating to Article 22.3 of the JEA that was not put to the parties to submit on. The Court disagreed. The Court applying the principles in *Kasugi Prima Sdn Bhd v Cobrain Holdings Sdn Bhd* [2025] 3 MLJ 960 and *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 (Singapore Court of Appeal), held that an arbitrator may draw on his own expertise to analyse the evidence and reach its own conclusion without first consulting the parties, and that a breach of natural justice arises only where the tribunal relies on extraneous evidence not tendered by the parties. On the facts, the Court found among others, that both parties were given the opportunity and did make extensive submissions on the interpretation of Article 22.3 of the JEA.

(6) The Second Award was not contrary to Malaysian public policy

The Defendant contended that the Second Award in awarding a substantial sum was exorbitant and capricious and contrary to Malaysian public policy and therefore recognition ought to be refused. The Court referred to the case of *Jan De Nul (Malaysia) Sdn Bhd v Vincent Tan Chee Yioun* [2019] 1 CLJ 1, and reiterated that the public policy ground under section 39(1)(b)(ii) of the AA 2005 must be construed narrowly and more restrictively and that the intervention should be sparingly used. The Court found that unlike in *Ketua Setiausaha Kementerian Dalam Negeri v Salconmas Sdn Bhd* (Federal Court, unreported), where the arbitrator had gone "on a frolic of his own" in assessing quantum, the Second Award reflected a fully reasoned decision by the majority arbitrators after considering competing expert evidence on the quantification of loss of profits.

Comment

This decision is significant as it addresses principles relating to enforcement of a foreign arbitral award and interpretation of section 39(1)(a) and (b) of the AA 2005. In short, the case addresses the following key points:

- the ground of "invalidity" of an arbitration agreement under section 39(1)(a)(ii) of the AA 2005 is wide enough to encompass a challenge to its existence, aligning the Malaysian position with the Singapore and UK positions.

- the standard of review under section 39(1)(a)(ii) of the AA 2005 is a hearing de novo, but this standard is qualified. The Court is entitled to consider the arbitral tribunal's findings of a concluded arbitration agreement where the findings are based on the parties' conduct and were made after hearing witnesses. The Court should not disturb such a factual finding unless the arbitral tribunal is shown to be plainly wrong.
- Malaysian courts recognise transnational issue estoppel in the international arbitration context. A party may be precluded from re-litigating in Malaysia, an issue already determined by the court of the seat, provided a similar standard of review was applied by the court of the seat.

Written by Loshini Ramarmuty

Case

Syarikat Pembinaan Kent Lik Sdn Bhd v Kenji Ling Properties Sdn Bhd [2026] MLJU 3369

Jurisdiction

Malaysia

Court

High Court

Keywords:

CIPAA adjudication – Winding up – Adjudicated debt – Disputed debt – Registration of adjudication decision – Commercial insolvency

Introduction

This case concerns a winding-up petition based on an adjudication decision obtained by the petitioner under the Construction Industry Payment and Adjudication Act 2012 ("CIPAA").

The respondent contended that the debt remained disputed as there was a pending Sessions Court action for the final determination of the underlying dispute. The respondent also argued that the adjudication decision ought first to be registered as a judgment before it could form the basis of winding-up proceedings.

The High Court rejected both arguments and allowed the winding-up petition.

Background

The petitioner obtained an adjudication decision in its favour under CIPAA, giving rise to a debt due and owing by the respondent.

The respondent contended that the debt remained disputed as the underlying dispute was still pending before the Sessions Court for final determination. The respondent further argued that the adjudication decision could not form the basis of winding-up proceedings unless it was first registered as a judgment pursuant to section 28 of CIPAA.

The petitioner proceeded with the winding-up petition under section 465 of the Companies Act 2016. At the time of the hearing, there was no stay of execution and no order setting aside the adjudication decision.

Key Issues

The main issues before the Court were:-

- Whether an adjudicated debt remains a "disputed debt" merely because the underlying dispute is pending before the Court for final determination; and
- Whether an adjudication decision must first be registered as a judgment under section 28 of CIPAA before it can form the basis of a winding-up petition.

Findings of the High Court

In allowing the winding-up petition, the High Court held as follows:-

- (1) An adjudicated debt is not rendered disputable merely because there are ongoing court proceedings for the final determination of the underlying dispute. The adjudication decision remains binding unless it is set aside or stayed.
- (2) Relying on *Bludream City Development Sdn Bhd v Pembinaan Bina Bumi Sdn Bhd* [2024] 3 MLRA 909; [2024] 6 CLJ 149; [2024] 4 MLJ 67, the Court held that once the dispute has been independently adjudicated and the adjudication decision remains operative, the debt ceases to be disputable for the purpose of winding-up proceedings. It is immaterial that the non-paying party has subsequently referred the underlying dispute to the Court or arbitration for final determination.
- (3) There is no requirement for an adjudication decision to be registered as a judgment under section 28 of CIPAA before a winding-up petition may be presented. The Court relied on *Likas Bay Precinct Sdn Bhd v Bina Puri Sdn Bhd* [2019] 3 CLJ 499; [2019] 3 MLJ 244; [2019] 2 SSLR 441.
- (4) An adjudication decision itself constitutes a proper basis for commencing winding-up proceedings where it establishes that an amount is due and owing.
- (5) As there was no stay and no setting aside of the adjudication decision, the adjudicated debt remained due and payable.
- (6) The respondent also failed to rebut the statutory presumption of insolvency. The relevant test is commercial solvency, namely whether the company has assets readily available to meet its debts as they fall due. It is insufficient merely to demonstrate that the company's total assets exceed its liabilities if those assets are not presently realisable.

Key Takeaway

An adjudication decision under CIPAA may provide a sufficient basis for winding-up proceedings even where the underlying dispute remains pending before the Court for final determination. Unless the adjudication decision has been stayed or set aside, the adjudicated sum remains due and payable and cannot simply be treated as a disputed debt in winding-up proceedings. Further, the adjudication decision

does not have to be registered as a judgment under section 28 of CIPAA before it can be relied upon as the basis for a winding-up petition.

Written by Dinesh Nandrajog

Case

ASTEEL (Sarawak) Sdn Bhd v Dynaciate Engineering Sdn Bhd [2026] CLJU 2865

Jurisdiction

Malaysia

Court

High Court

Keywords:

CIPAA adjudication – Setting aside – Excess of jurisdiction – Denial of natural justice – Sarawak Advocates Ordinance – Legal representation – Jurisdictional objection

Introduction

This case concerns an application to set aside an adjudication decision under sections 15(b) and 15(d) of the Construction Industry Payment and Adjudication Act 2012 ("CIPAA").

The adjudicator had accepted the respondent's jurisdictional objection concerning the claimant's representation by solicitors from Peninsular Malaysia in an adjudication involving a project in

Sarawak and decided that she had no jurisdiction to proceed. The High Court dismissed the setting-aside application, holding that the plaintiff's complaints concerned the correctness of the adjudicator's legal conclusions rather than grounds for setting aside under section 15 of CIPAA.

Background

The plaintiff was appointed by the defendant as a subcontractor under a Subcontract Agreement dated 14 June 2022 for works relating to the Sarawak Methanol Project, with an original contract value of RM3,267,890.00.

Following a payment dispute, the plaintiff commenced adjudication under CIPAA. The defendant raised a preliminary objection that the adjudication documents had been prepared and served by the plaintiff's solicitors based in Kuala Lumpur, notwithstanding that the adjudication concerned a project in Sarawak and was subject to the Sarawak Advocates Ordinance.

After considering both parties' submissions, the adjudicator accepted the objection and decided that she had no jurisdiction to proceed. The plaintiff then applied to set aside the adjudication decision.

Key Issues

The main issues before the Court were:-

- (a) Whether the adjudicator had acted in excess of jurisdiction under section 15(d) of CIPAA; and
- (b) Whether there had been a denial of natural justice under section 15(b) of CIPAA.

Findings of the High Court

The High Court dismissed the application and held as follows:-

- (1) Section 15 of CIPAA is not an appeal on the merits. An error of fact or law is distinct from a decision made without jurisdiction and does not, without more, justify setting aside an adjudication decision.
- (2) The adjudicator did not exceed her jurisdiction. The objection concerning the plaintiff's legal representation had been expressly raised by the defendant and answered by the plaintiff. It therefore formed part of the matters before the adjudicator for determination. Whether her legal conclusion was correct was a separate question.
- (3) The Court did not determine whether the adjudicator's interpretation of the Sarawak Advocates Ordinance was correct. That question concerned the merits of the adjudicator's decision and was not for determination in an application under section 15 of CIPAA.
- (4) There was no denial of natural justice. The plaintiff had been given sufficient opportunity to address the jurisdictional objection and its submissions had been considered. The rejection of a party's submissions does not amount to a failure to consider them.

The Originating Summons was dismissed, the adjudication decision was maintained and costs of RM15,000.00 were awarded to the defendant.

Key Takeaway

A challenge to the correctness of an adjudicator's legal reasoning cannot be converted into a setting-aside application under section 15 of CIPAA. Where an issue was raised, argued by both parties and determined by the adjudicator, an alleged error in deciding that issue does not, without more, constitute excess of jurisdiction or denial of natural justice.

The High Court did **not** decide whether the adjudicator was correct in her interpretation or application of the Sarawak Advocates Ordinance.

Written by Ooi Wei Qian

Case

Puncak Gali Harmoni Sdn Bhd v Emrail Sdn Bhd [2026] MLJU 3648

Jurisdiction

Malaysia

Court

High Court

Keywords:

Section 11 of the Arbitration Act 2005 - Injunction in aid of arbitration - Interim specific performance - Balance of convenience - Public interest

Introduction

This case concerns an application for an interim injunction pursuant to Section 11 of the Arbitration Act 2005, Section 50 of the Specific Relief Act 1950, and the Rules of Court 2012. The plaintiff sought injunctive and preservative relief against the defendant pending mediation and arbitration arising from an alleged subcontract arrangement for a major railway rehabilitation project.

Background

The defendant was awarded a RM185.74 million main contract by the Ministry of Transport Malaysia ("MOT") for "Package C Restoration of Track and Slope Stabilisation Track Rehabilitation and Associated Works due to Major Flood between Gua Musang and Tumpat Railway Station, Kelantan".

The plaintiff alleged that the defendant issued a Letter of Award dated 29.5.2025 appointing the plaintiff as a subcontractor at a contract price of RM145.3 million, followed by a Letter of Undertaking dated 29.8.2025. The Plaintiff also advanced sums totalling RM630,000.00 to the defendant.

Later, the defendant indicated that it had obtained financial support elsewhere and intended to award the third-party subcontractors for the works.

The plaintiff filed Enclosure 1 seeking interim orders to restrain the defendant from giving effect to any alleged termination, compel the defendant to maintain the contract instruments, restrain the defendant from appointing third-party subcontractors, and preserve the RM630,000.00 advance payment pending arbitration.

Key Issues

The main issue before the Court was whether the plaintiff's application for an interim injunction should be allowed?

Findings of the High Court

In dismissing the plaintiff's application, the High Court held as follows:-

- (1) Section 11 of the Arbitration Act 2005 empowers the Court to grant interim measures in support of arbitration. However, **AV Asia Sdn Bhd v Measat Broadcast Network Systems Sdn Bhd** [2014] 1 CLJ 821 states the applications remain subject to ordinary equitable principles under **American Cyanamid Co v Ethicon Ltd** [1975] AC 396 and **Keet Gerald Francis Noel John v Mohd Noor @ Harun Abdullah & Ors** [1995] 1 CLJ 293.
- (2) Notably, the Court's supervisory role under Section 11 is to support, rather than frustrate the arbitral process. The Court must refrain from usurping the function of the arbitral tribunal by making premature findings on the substantive merits, validity, or breach of the underlying contract between the parties.
- (3) The Court will also look at the practical effect of the relief sought. Orders framed as "preservation" will not be granted if they effectively grant the applicant interim specific performance or a substantive advantage before the tribunal has ruled on the disputed rights. Restraining a contractor from appointing third parties on a live project exceeds a neutral status quo holding order.
- (4) Further, public interest is a material consideration when evaluating the balance of convenience. Where granting interim relief in aid of a private arbitration risks disrupting or delaying vital public infrastructure works as public interest weighs heavily against granting the injunction.
- (5) The dismissal of Enclosure 1 did not constitute a final determination on the merits of the parties' underlying issues. All contractual claims, allegations of unlawful termination, and remedies for damages or indemnity remain fully open for determination by the arbitral tribunal.

Written by Sin Chen Yeong in collaboration with Hong Ling Ji