



**Badan Peguam Malaysia
Malaysian Bar**

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To Members of the Malaysian Bar

Arbitration & Construction Law Case Spotlight (May 2026)

The Bar Council Arbitration and Construction Law Committee is pleased to issue the May 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) *Boilermaster Sdn Bhd v Tandex Chemicals Sdn Bhd* [2026] MLJU 822 (High Court)

Keywords: *Quia timet* injunction – Section 28 of CIPAA – Winding up
Written by: Haemarubini d/o Pushpa Rajah

(2) *Hari Lumayan Sdn Bhd v Eng Han Engineering Sdn Bhd and Another Summon* [2026] MLJU 311 (High Court)

Keywords: CIPAA – Setting aside – Enforcement – Jurisdiction – Settlement agreement – Natural justice
Written by: Deepak Mahadevan

(3) *KEG Sdn Bhd (Dalam Likuidasi) v Ikano Johor Jaya Sdn Bhd* [2026] MLJU 790 (High Court)

Keywords: Section 10(1) of Arbitration Act 2005 – Stay of proceedings – Valid and binding arbitration agreement – Arbitration agreement null and void, inoperative or incapable of being performed – Party wound up
Written by: Faeza Suraya Roselan

The case highlights may be accessed [here](#) (see page 2 onwards).

Thank you.

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Case

Boilermaster Sdn Bhd v Tandex Chemicals Sdn Bhd [2026] MLJU 822

Jurisdiction

Malaysia

Court

High Court

Keywords

Quia timet injunction – Section 28 of CIPAA – Winding up

Introduction

This case concerns an application for a *quia timet* injunction seeking to restrain the defendant from:-

- (i) enforcing an Enforcement Order obtained pursuant to section 28 of the Construction Industry Payment and Adjudication Act 2012 (“CIPAA”); and
- (ii) initiating winding up proceedings against the plaintiff.

Background

Following the adjudication decision in favour of the defendant, the defendant applied to the High Court to enforce the said decision. The High Court allowed the defendant’s application (“**Enforcement Order**”). Subsequently, the plaintiff filed an appeal to the Court of Appeal against the Enforcement Order obtained.

Concurrently, the defendant issued a statutory notice to the plaintiff under section 466(1)(a) of the Companies Act 2016 as the plaintiff neglected, failed and/or refused to make any payment due and owing to the defendant pursuant to the Enforcement Order obtained.

Instead of making payment in respect of the sum due and owing under the Enforcement Order, the plaintiff filed for a *quia timet* injunction to prevent the defendant from initiating winding up petition against the plaintiff. It should be noted that the plaintiff’s application for stay of execution of the Enforcement Order was dismissed and thereafter no appeal was filed at the Court of Appeal. Rather, the plaintiff filed a *quia timet* injunction to preserve the status quo.

Key Issue

The main issue before the Court was whether the plaintiff’s application for a *quia timet* injunction should be allowed?

Findings of the High Court

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

1. A *quia timet* injunction is characterised as a precautionary or anticipatory injunction.
2. In reliance on **University of Brighton v Persons Unknown Occupying Land (being those occupying the 8th floor and roof of Cockcroft Building, Moulsecoomb Campus, University of Brighton, Lewes Road, Bn2 4Gj)** [2023] EWHC 1485 (KB), the Court held that the plaintiff must show that there is **an actionable wrong** by the defendant for the plaintiff to be entitled to a *quia timet* injunction.
3. In the present case, there is no actionable wrong on the part of the defendant. On the contrary, the defendant is perfectly entitled to commence winding up proceedings, having obtained an adjudication decision against the plaintiff where enforcement was allowed by the High Court. Notably, the plaintiff’s application for a stay of execution of the Enforcement Order was dismissed.
4. Further, a party in whose favour an adjudication decision is made under the CIPAA is entitled to present a winding-up petition based on the said decision. In fact, there is no requirement to register the adjudication decision in court prior to presenting the petition [See **Likas Bay Precinct Sdn Bhd v Bina Puri Sdn Bhd** [2019] 3 CLJ 499, CA, per Abang Iskandar JCA, followed in **Sime Darby Energy Solution Sdn Bhd v RZH Setia Jaya Sdn Bhd** [2021] 6 MLRA 485, CA, per Gunalan JCA, and in **Bludream City Development Sdn Bhd v Pembinaan Bina Bumi Sdn Bhd** [2024] 3 MLRA 909 CA, per Lim Chong Fong JCA].

Written by
Haemarubini d/o Pushpa Rajah

Case

Hari Lumayan Sdn Bhd v Eng Han Engineering Sdn Bhd and Another Sumon [2026] MLJU 311

Jurisdiction

Malaysia

Court

High Court

Keywords

CIPAA – Setting aside – Enforcement – Jurisdiction – Settlement agreement – Natural justice

Background

Eng Han Engineering Sdn Bhd (“**EHE**”) was appointed by Hari Lumayan Sdn Bhd (“**HL**”) as the main contractor for the Mesahill Project under PAM Contract 2006 (With Quantities). Due to payment issues, the parties later entered into a settlement arrangement known as the “May Agreement”. Under that agreement:

- HL acknowledged certain outstanding certified sums owed to EHE;
- payment was to be made through the project’s Housing Development Account (“HD Account”); and
- future progress claims remained subject to the original construction contract.

EHE later commenced a third adjudication under CIPAA claiming approximately RM31 million in unpaid sums. The adjudicator allowed EHE’s claim and rejected HL’s set-off/counter claim.

HL applied to set aside the adjudication decision under s 15 CIPAA, while EHE applied to enforce it under s 28 CIPAA.

Decision

The High Court dismissed HL’s setting-aside application and allowed enforcement of the adjudication decision.

Key Findings

1. The May Agreement remained within CIPAA

HL argued that the May Agreement was a standalone settlement agreement and not a “construction contract” under CIPAA. The Court rejected this argument.

The Court held that the May Agreement merely changed the payment mechanism for sums already due under the original construction contract. It did not replace or supersede the construction contract.

Importantly, the May Agreement expressly preserved the certification and payment process under the original contract for future works. The adjudicator therefore had jurisdiction to hear the dispute.

2. HL could not take inconsistent positions

The Court noted that HL had previously argued in separate court proceedings that the May Agreement was supplemental to the construction contract in order to obtain a stay in favour of arbitration. HL was therefore not allowed to later argue that the agreement was standalone and outside CIPAA.

3. No excess of jurisdiction on mode of service

HL argued that the adjudicator exceeded his jurisdiction by directing parties to serve documents by email followed by hand or post. The Court rejected this argument.

The Court held that directing service by email as an additional mode of service fell within the adjudicator’s broad procedural powers under s 25 CIPAA to regulate the conduct of adjudication proceedings and issue necessary directions.

Importantly, email service was not directed as a replacement for the statutory modes of service under s 38 CIPAA, but only as a supplementary mode. All adjudication documents were ultimately served by hand or post in compliance with s 38.

The Court also noted that HL itself had served documents by email during the adjudication. HL had therefore either waived any objection to email service or was estopped from taking an inconsistent position. Further, the direction was applied uniformly and caused no procedural prejudice to either party.

4. No breach of natural justice or bias

HL complained that the adjudicator had requested EHE to identify documents supporting part of its claim.

The Court held that the adjudicator merely asked EHE to point out documents already in the adjudication record. There was no unfairness or bias.

The Court also rejected HL’s complaint regarding the adjudicator’s comments about HL proposing the payment arrangements under the settlement agreements.

Comment

This decision continues the Malaysian courts’ strict and interventionist-light approach towards CIPAA adjudications.

The case confirms that:

- a supplemental settlement or payment arrangement may still fall within CIPAA if it remains connected to the underlying construction contract; and
- courts will not readily interfere with adjudication decisions unless there is a clear jurisdictional error or serious procedural unfairness.

The judgment also reinforces the broad procedural discretion given to adjudicators in managing adjudication proceedings.

Written by
Deepak Mahadevan

Case

KEG Sdn Bhd (Dalam Likuidasi) v Ikano Johor Jaya Sdn Bhd [2026] MLJU 790

Jurisdiction

Malaysia

Court

High Court

Keywords

Section 10(1) of Arbitration Act 2005 – Stay of proceedings – Valid and binding arbitration agreement – Arbitration agreement null and void, inoperative or incapable of being performed – Party wound up

Background

Ikano Johor Jaya Sdn. Bhd. (“**Defendant**”) appointed KEG Sdn. Bhd. (“**Plaintiff**”) as a contractor for a particular project, where the contract between them comprises, *inter alia*, the FIDIC Conditions of Contract (“**FIDIC Conditions**”). Clause 20 of the FIDIC Conditions is the agreed dispute resolution clause, which provides steps to be taken before arbitration could be commenced.

Despite having engaged the requisite pre-arbitration steps, the Plaintiff ultimately commenced the legal suit against the Defendant. In turn, the Defendant filed an application to stay the proceedings under section 10(1) of the Arbitration Act 2005 (“**Act**”). The Defendant’s position is that there is a valid and binding arbitration agreement between parties vis-à-vis Clause 20 of the FIDIC Conditions.

On the other hand, the Plaintiff firstly argues that: the arbitration agreement is null and void, inoperative or incapable of being performed. Its reasons for this are: Clause 20.4 of the FIDIC Conditions requiring the referral of disputes to the Engineer denotes a conflict of interest since the Engineer was appointed by the Defendant; the lengthy period of 84 days allocated for the Engineer’s decision is unfair and impractical; and, being in liquidation, the Plaintiff lacked the financial means to fund the arbitration.

High Court’s Decision

In determining whether a stay should be granted, the High Court’s analysis is premised on the criteria set out by the Federal Court in *Press Metal Sarawak Sdn Bhd v Etiqa Takaful Bhd* [2016] 5 MLJ 417, i.e.: whether there is a binding arbitration agreement; whether the Defendant had taken any steps in the proceedings before applying for a stay; and whether the arbitration agreement is null and void, inoperative or incapable of being performed.

The High Court noted that there is a valid and binding arbitration agreement between parties vis-à-vis Clause 20.6 of the FIDIC Conditions. Further, the Defendant had applied for a stay promptly after entering appearance and before filing any pleadings and/or invoking the Court’s jurisdiction on merits.

Hence, the only remaining issue is whether the arbitration agreement is null and void, inoperative or incapable of being performed as alleged by the Plaintiff. The High Court rejected the Plaintiff’s arguments on Clause 20.4 of the FIDIC Conditions, as the Plaintiff is bound by the contract it had accepted and cannot now resile from it. In regard to the Plaintiff’s liquidation and/or impecuniosity, it does not fall within the ambit of “*inoperative*” or “*incapable of being performed*” in section 10(1) of the Act. Reference was made to authorities where the Courts have determined that liquidation or bankruptcy does not render an arbitration agreement inoperative or incapable of being performed.

Accordingly, the Defendant’s application for a stay was allowed with costs.

Comment

This case emphasises the importance of having a valid and binding agreement, where even fundamental events like liquidation or bankruptcy cannot defeat the arbitral mechanism agreed between parties.

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