Hua Xin Innovation Incubator Pte Ltd *v* IPCO International Ltd
[2012] SGHCR 18

Case Number : Suit No 729 of 2012 (Summons 4865 of 2012)

Decision Date : 14 November 2012

Tribunal/Court : High Court

Coram : Keith Han AR

Counsel Name(s) : Low Chai Chong, Loh Kia Meng, Diyanah Baharudin and Patrick Wong (Rodyk & Davidson LLP) for the plaintiff; Imran Hamid Khwaja, Moiz Haider Sithawalla, Derek Low and Michelle Ong (Tan Rajah and Cheah) for the defendant.

Parties : Hua Xin Innovation Incubator Pte Ltd — IPCO International Ltd

Arbitration – stay of court proceedings – court's discretion under Arbitration Act

Civil Procedure – Consolidation

14 November 2012

Keith Han AR:

1 This was an application by IPCO International Limited ("the defendant") to stay the proceedings commenced by Hua Xin Innovation Incubator Pte Ltd ("the plaintiff") in Suit No 729 of 2012 in favour of arbitration.

The facts

2 The plaintiff is a limited exempt private company involved in incubator marketing and consultant services, as well as investment and business consultancy [note: 1]. The defendant is a public company limited by shares and listed on the Singapore Stock Exchange [note: 2].

3 On 12 March 2012, the plaintiff and the defendant (collectively referred to as "the parties") entered into an agreement to record their principles of agreement and certain commitments ("the Agreement"), which would form the basis for the negotiation of the Joint Development Agreement in relation to the Falling Water Land project ("the project"). [note: 3] The project relates to the development of certain parcels of land in Washington, United States of America. It was envisaged under the Agreement that the parties would subsequently enter into the Joint Development Agreement with certain other relevant parties for the purposes of implementing the project. [note: 4]

The advance amount

4 Under Clause 3.1 of the Agreement, the plaintiff made an advance payment of S$1,350,000.00 ("the advance amount") to the defendant in exchange for the defendant granting the plaintiff the right to participate in the joint development of the project. Clause 3.2 of the Agreement further provided that if the Agreement were to lapse or terminate, the advance amount would be repaid by the defendant to the plaintiff immediately without interests. Specifically, Clause 6.1 stipulated that if the Joint Development Agreement was not executed within 2 months from the date of the Agreement, the Agreement would lapse and cease to have further effect. As a result of that, the defendant

would come under an obligation to return the advance amount to the plaintiff within five (5) working days (see Clause 6.2 of the Agreement).

The arbitration agreement

5 Clause 7, the dispute resolution clause, read as follows:

> **Dispute resolution**
>
> Any dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore according to the Arbitration rules of the Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference into this Clause. The Tribunal shall consist of one (1) arbitrator. All arbitration proceedings shall be in the English language. The decision of the arbitrator shall be final and binding on all the Parties.

6 As it turned out, on or about 12 May 2012, the Agreement lapsed and ceased to have further effect as the Joint Development Agreement was not executed. On 31 August 2012, the plaintiff filed Suit 729 of 2012 ("the proceedings") against the defendant to claim the advance amount. The defendant has not filed any defence or taken any step in the proceedings, save that it has filed the present application for a stay in favour of arbitration.

Suit 630 of 2012/P ("Suit 630") and the global settlement agreement

7 Earlier, on 29 July 2012, several plaintiffs commenced proceedings against a company, Sunmax Global Capital Fund 1 Pte Ltd ("Sunmax") and one Li Hua in Suit 630. The plaintiff and the defendant were not parties to Suit 630. However, Ms Quah Su-Ling ("Ms Quah"), a director and CEO of the defendant who filed the affidavits in support of the present stay application, is one of the plaintiffs in Suit 630. At the same time, the 2nd defendant in Suit 630, Li Hua, is the deponent of the only affidavit made on behalf of the plaintiff in the present stay application. It is the defendant's case that Li Hua is a shadow or de facto director of the plaintiff, as he is the husband of one of the plaintiff's director, with the other director being his relative.

8 Central to the dispute in Suit 630 is a purported global settlement agreement ("the global settlement agreement") reached by the parties at a meeting held on 24 July 2012. [note: 5] Under the global settlement agreement, the plaintiffs in Suit 630 were to repay various debts owed to Sunmax. In exchange, Sunmax would return certain shares which it held as security for the debts.

9 What is material for present purposes is that the defendant claims that the advance amount was included as part of the global settlement agreement. [note: 6] The plaintiff, however, disputes this. [note: 7]

The parties' submissions

The defendant's arguments

10 In support of its application for a stay of the proceedings in favour of arbitration, the defendant relied on the following grounds [note: 8]:

(a) The dispute between the parties ought to be determined by way of arbitration pursuant to the arbitration agreement found in Clause 7 of the Agreement;

(b) The International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") is applicable and thus, it is mandatory to stay the present proceedings;

(c) Alternatively, if the IAA does not apply, there are sufficient grounds warranting the court's exercise of discretion to stay the present action under the Arbitration Act (Cap 10, 2002 Rev Ed) ("the AA").

The plaintiff's arguments

11 On the other hand, the plaintiff argued that the stay application should be dismissed for the following reasons. First, there was no dispute referable to arbitration as the defendant had admitted unequivocally that it owes the plaintiff the advance amount. The only dispute relied upon by the defendant *vis-a-vis* the advance amount relates to the global settlement agreement, which according to the plaintiff, is separate and unrelated to the Agreement. Accordingly, there is no dispute within the scope of the arbitration agreement between the parties. [note: 9]

12 Second, the plaintiff submitted that a stay of the present proceedings in favour of arbitration would result in a multiplicity of proceedings as the existence of the global settlement agreement is the subject matter of Suit 630. Furthermore, the court has discretion to refuse to grant a stay of proceedings under s 6(2) of the AA, which the plaintiff argued applied instead of the IAA.

Issues before the court

13 In light of the foregoing, the following issues arose for my determination:

(a) Whether the IAA or the AA governs;

(b) Whether a valid dispute existed between the parties;

(c) If the answer to (b) is in the affirmative, whether the present proceedings should be stayed in favour of arbitration;

Whether the IAA or the AA governs

The choice of the SIAC Rules in the arbitration agreement

14 In *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25 ("*Navigator*"), the arbitrator clause provided that any dispute was to be resolved "in accordance with the Arbitration Rules of the [SIAC] for the time being in force". It was undisputed that this was a reference to the SIAC Rules 2007. Rule 32 of the SIAC Rules 2007 provided that:

> Where the seat of arbitration is Singapore, the law of the arbitration under these Rules [ie, the SIAC Rules 2007] shall be the International Arbitration Act (Chapter 143A, 2002 Ed, Statutes of the Republic of Singapore) [ie, the IAA] or its modification or re-enactment thereof.

15 The Court of Appeal in *Navigator* was thus faced with the issue of whether the reference to, as well as the incorporation of, the SIAC Rules 2007 was sufficient to bring an arbitration commenced pursuant to the Arbitration Clause within the purview of the IAA (see [34] of *Navigator*). Drawing support from the cases of *NCC International AB v Alliance Concrete Pte Ltd* [2008] 2 SLR(R) 565 and *Smebawang Engineers and Constructors Pte Ltd v Covec (Singapore) Pte Ltd* [2008] SGHC 229, and in light of the fact that Rule 32 of the SIAC Rules 2007 provided for the *lex arbitri* to be the IAA, the court found at [35] that:

> In our view, if the parties have agreed that the *lex arbitri* is the IAA, it is difficult to see how the parties can be said not to have agreed that the IAA was to apply within the meaning of s 5(1) of the IAA.

16 In the present case, however, the reference to the "to the Arbitration rules of the Singapore International Arbitration Centre for the time being in force" is to the SIAC Rules 2010. Under the SIAC Rules 2010, the previous Rule 32 from the SIAC Rules 2007 has been deleted and under the new Rule 18, it is no longer provided that the IAA will automatically apply to the conduct of the arbitration proceedings where the seat of arbitration is Singapore (See Richard Tan, Daniel Lim & Mervyn Cheong, "*The New Arbitration Rules of the Singapore International Arbitration Centre*" (Sep 2010) 59 IPBA Journal 16). Absent the express choice of the parties, the governing legislation will depend on whether the arbitration is international or domestic. In other words, the default position is reinstated under the SIAC Rules 2010: the IAA will apply only if one of the requirements of s 5(2) is satisfied.

S 5(2)(b)(ii) of the IAA

17 S 5(1) and (2) of the IAA reads as follows:

> 5.
>
> —(1) This Part and the Model Law shall not apply to an arbitration which is not an international arbitration unless the parties agree in writing that this Part or the Model Law shall apply to that arbitration.
>
> (2) Notwithstanding Article 1(3) of the Model Law, an arbitration is international if —
>
> (*a*) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore; or
>
> (*b*) one of the following places is situated outside the State in which the parties have their places of business:
>
> (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
>
> (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
>
> (*c*) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

18 As it is undisputed that the parties both have their place of business in Singapore, and there is no express agreement that the subject-matter of the arbitration agreement relates to more than one

country, the parties focused their arguments on whether s 5(2)(b)(ii) of the IAA was satisfied. In other words, the crucial question was whether "a substantial part of the obligations of the commercial relationship" or "the place with which the subject-matter of the dispute is most closely connected with", can be said to be outside of Singapore.

19 The defendant contended that as the essence of the Agreement is to record the understanding between the parties in relation to the *project*, which involves the development of land in Washington State in the United States, the subject matter of the dispute is foreign and thus, the IAA ought to apply. On the plaintiff's part, it contended that the Agreement ought not to be confused with the Joint Development Agreement. Under the former, the main obligation is the payment of $1,350,000 from the plaintiff to the defendant. This obligation was performed in Singapore not elsewhere and thus, the IAA was not applicable.

20 In *Mitsui Engineering & Shipbuilding Co Ltd v PSA Corp Ltd and anor* [2003] 1 SLR(R) 446 ("*Mitsui*"), the High Court made clear at [27] that:

> ... s 5(2)(b)(ii) refers to "*any* place where a substantial part of the obligations of the commercial relationship is to be performed" [emphasis added] and not the place of substantial performance.

21 In the Hong Kong High Court case of *Fung Sang Trading Ltd v Kai Sun Sea Products & Food Co Ltd* [1992] 1 HKLR 40 (cited with approval in *Mitsui*), Kaplan J opined at 48 that in order to determine where a substantial part of the obligations of the commercial relationship is to be performed, "one has to take a much wider view and look at *the position as at the date the contract is entered* into and see what obligations each party has to perform under *that* contract" (emphasis added).

22 Likewise, in Leslie Chew, *Introduction to the Law and Practice of Arbitration in Singapore* (Singapore: LexisNexis, 2010) at 17, the learned author opined that:

> Thus, the analysis of the contractual obligations for the purposes of determining the internationality of the arbitral dispute under section 5 of the IAA, must include a detailed investigation of the contractual obligations under consideration...

23 In my view, the material question in the present case is: *what are the obligations under the Agreement* entered into by the parties on 12 March 2012. Framed in this light, the answer becomes evident once one considers Clause 2 of the Agreement (which shall be set out in full for the ease of reference):

> 2. **Objective of this Agreement**
>
> 2.1 The Parties have mutually agreed to enter into this Agreement to record their principles of agreement and certain commitments in relation to the Project. Such principles of agreement and commitments shall form the basis for the negotiation of the Joint Development Agreement and any other definitive agreements that implement the Project, but, *except for clauses 3 (Advance), 6 (Termination), 7 (Dispute Resolution) and 9 (Confidentiality)*,*this Agreement is not intended to be a binding legal commitment of either party with respect to the Project.*
>
> 2.2 IPCO agrees to procure the agreement and commitments of Brentwood, Asia Plan, Capri and any other relevant parties to this Agreement, the Joint Development Agreement and any other definitive agreement to implement the Project.
>
> [Emphasis added]

24 In contractual parlance, Clause 2 makes clear that in-so-far as the obligations of the parties in relation to the project are concerned, this is "subject to contract" and no binding legal obligations can be said to arise *vis-a-vis* the Project. I would further note, in light of the Court of Appeal decision in *Norwest Holdings Pte Ltd (in liquidation) v Newport Mining Ltd* [2011] 4 SLR 617, that there is nothing in the factual circumstances which suggests otherwise.

25 Thus, in my view, in determining the obligations of the parties under the Agreement for the purposes of s 5(2)(b)(ii) of the IAA, it is not open to the court to, as the defendant contends, take into account the obligations under the Joint Development Agreement which will implement the project. Put starkly, the Agreement and the Joint Development Agreement are separate contracts, with separate obligations. Furthermore, as the recital and Definition and Interpretation clause of the Agreement reveals, it is envisaged that other parties, on top of the plaintiff and defendant, would enter into the Joint Development Agreement in order to facilitate the implementation of the project.

26 What then were the obligations of the parties under the Agreement? As evinced by Clause 3.1 of the Agreement, it was simply that in consideration for the plaintiff paying the advance amount to the defendant, the defendant would grant the plaintiff the right to participate in the joint development of the project. Additionally, in the event the Agreement lapses, the advance amount was to be repaid within five (5) working days (Clause 3.2 of the Agreement). These were the only obligations of the parties under the Agreement.

27 In light of the above, given that both parties had their places of business in Singapore, the advance amount was denominated in Singapore dollars and payment was made in Singapore, I find that the obligations of the parties under the Agreement were performed in Singapore alone. Accordingly, s 5(2)(b)(ii) of the IAA is not satisfied and the governing legislation in the present case ought to be the AA.

Whether the court ought to stay the proceedings under the AA

28 S 6(2) of the AA states:

> 2) The court to which an application has been made in accordance with subsection (1) may, if the court is satisfied that —
>
> (a) there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement; and
>
> (b) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,
>
> make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.

29 In the case of *Dalian Hualiang Enterprise Group Co Ltd v Louis Dreyfus Asia Pte Ltd* [2005] 4 SLR(R) 646 ("*Dalian*"), the High Court held at [74] that under s 6(2) of the AA:

> ...the court may determine if there is *in fact a dispute* before deciding to order a stay, although the court should not examine the validity of the dispute as though the stay application is an application for summary judgment. Accordingly, as I have said, the position under Singapore domestic Arbitration Act is similar to the pre-1996 position in England.

[Emphasis added]

30 This is in contrast to the position under the IAA where once there is a dispute, a stay must be ordered unless the arbitration agreement is null and void, inoperative or incapable of being performed, and the court is not to consider if there is *in fact* a dispute or whether there is a genuine dispute (see [75] of *Dalian*).

Whether there is a dispute

31 In its submissions, the plaintiff contended that there is no dispute in the present case as there has been a clear and unequivocal admission by the defendant that it owed the advance amount and thus, the court ought to refuse to grant a stay as the subject matter of the present proceedings fell outside the terms of the arbitration agreement. In support of its contention that there has been a clear and unequivocal admission, the plaintiff pointed to Tan Rajah & Cheah's ("TRC") 2nd letter of 31 July 2012 [note: 10]. TRC are the defendant's solicitors in the present proceedings and the contents of the letter evinced that a cashier's order in the sum of S$1,350,000 was provided by the defendant to the plaintiff in an attempted repayment.

32 What the plaintiff failed to point out, however, was that the cashier's order was returned on 30 August 2012 under the cover of the Rodyk & Davidson's (defendant's solicitors) dated 30 August 2012 [note: 11].

33 During oral arguments, when asked to define the dispute as he saw it in the present proceedings, counsel for the defendants, Mr Sithawalla, framed the dispute as thus:

> Whether the S$1,350,000 is due under the Agreement as it is the subject matter of the global settlement agreement.

34 Indeed, during oral arguments, both parties did not dispute that the main issue in the present proceedings was whether the advance amount was part of the global settlement agreement ("the main issue"). The only question was whether the main issue constituted a dispute falling within the scope of the arbitration agreement.

35 In *Uni-Navigation Pte Ltd v Wei Loong Shipping Pte Ltd* 1992] 3 SLR(R) 595 ("*Uni-Navigation*"), in finding that there was dispute within the ambit of an arbitration clause governed by the AA, the High Court held at [16] and [17] that:

> 16 The common form arbitration agreement provides for disputes to be decided by arbitrators. In such a case the court should, save in obvious cases, adopt *a holistic and commonsense approach* to see if there is a dispute. The justification for this approach is that it is important to hold a party to his agreement and avoid double and split hearing of matters...
>
> 17 If the defendant, therefore, makes out a prima facie case of disputes the courts should not embark on an examination of the validity of the dispute as though it were an application for summary judgment.
>
> (Emphasis added)

36 The approach taken by the High Court in *Uni-Navigation* was subsequently accepted by the Court of Appeal in *Kwan Im Tong Chinese Temple and anor v Fong Choon Hung Construction Pte Ltd*

[1998] 1 SLR(R) 401 ("*Kwan Im Tong*"), where the court went on to clarify at [15] that it is the party resisting the stay of proceedings to show that there is no dispute.

37 In *Dalian*, the defendant ("LD") applying for a stay of the proceedings in favour of arbitration argued that even if there was an admission that it owed the claimed sum to the plaintiffs, it could nevertheless claim a set-off from a running account *vis-a-vis* a different company by the name of Guangdong Fuhong Edible Oil Co Ltd ("Fuhong"). According to LD, Fuhong was a close trading partner of the plaintiffs and was treated as part of the plaintiffs' group of companies at all material times in so far as the running account was concerned.

38 The court in *Dalian* found at [30] that on the facts, there was an admission by LD that it owed the claimed sum to the plaintiffs but for the set-off claim against Fuhong. However, it went on to find that the set-off issue was not a dispute falling within the arbitration agreement for the following reasons:

(a) The dispute under the contract with Fuhong ("the Fuhong contract") was separate and distinct from the dispute under the contract between the plaintiffs and LD;

(b) The plaintiffs were not party to the Fuhong contract;

(c) The issue of whether there was a running account was unrelated to the very transaction under the contract between the plaintiffs and LD.

39 In coming to its conclusion, the court in *Dalian* was influenced greatly by its view (evinced at [29]) that the dispute under the two contracts (the main contract and the Fuhong contract) were entirely unrelated.

40 In my view, however, the case of *Dalian* may be distinguished from the case before me. Unlike in *Dalian*, the terms of the purported global settlement agreement encompass *inter alia*, the settlement of the advance amount, albeit this is disputed. In that sense, there is at least a nexus between the dispute in Suit 630 involving the global settlement agreement and the subject matter of the present proceedings, *i.e.* the advance amount. That there is such a nexus is not based on the bald assertions of the defendant but is borne out to some extent by the evidence that was before me. For instance, the defendant referred me to Quah's 2nd affidavit, which contained at exhibit QSL-6 a table prepared by Li Hua [note: 12], setting out the salient terms and parties involved in the global settlement agreement. The defendant is listed in the table alongside the sum of $1,350,000.00.

41 Additionally, while the parties are not party to the global settlement agreement, the defendant pointed me to the relevant ACRA searches which revealed that Li Hua, the 2nd defendant in Suit 630 and one of the main protagonists in both proceedings, is the husband of one of the two directors of the plaintiff and a relative of the other director. Indeed, as pointed out by the defendant, it is interesting to note that Li Hua has filed an affidavit on behalf of the plaintiff when he is neither a director nor shareholder of the plaintiff.

42 In light of the foregoing, adopting a "holistic and commonsense approach", I am of the view that at the very least, it can be said that the disputes and the parties in Suit 630 involving the global settlement agreement, and the present proceedings, are closely intertwined. Bearing in mind that the cases have consistently held that the phrase "any dispute" should be given a wide interpretation (see

for example *Dalian* at [29]), I therefore find that there exists a dispute in the present proceedings falling within the ambit of the arbitration agreement.

Are there any other sufficient reasons why the matter should not be referred to arbitration?

The risk of multiplicity of proceedings

43 The inquiry, however, does not end here. S 6(2)(a) of the AA empowers the court to examine whether there are any "sufficient reason" why the matter should not be referred in accordance with the arbitration agreement.

44 In *Cars & Cars Pte Ltd v Volkswagen AG and anor* [2010] 1 SLR 625 ("*Cars & Cars*") at [48], the High Court noted that while multiplicity of proceedings is not wholly decisive, it is a strong factor for refusing a stay. The court went on to make the following observations at [48]:

> The question then is, what grounds could justify granting or refusing a stay where there is risk of multiplicity of proceedings. I would venture to suggest that one such ground is that parties should normally be held to their contractual agreements (see also Taunton-Collins v Cromie [1964] 1 WLR 633 at 637). A risk of multiplicity of proceedings alone will not automatically mean that a stay must be granted or denied, especially when parties have by contractual agreement deliberately arranged their dispute resolution procedures in such a fashion that almost inevitably such risks would materialise. Another ground on which a stay could be granted or denied despite the presence of risk of multiplicity of proceedings is when the needs of justice outweigh the risk of multiplicity. Therefore, in Yee Hong Pte Ltd v Tan Chye Hee Andrew[2005] 4 SLR(R) 398 at [43], the learned judge stayed proceedings in favour of arbitration despite the risk of multiplicity of proceedings because the judge found that "justice would be best served if the three parties proceeded to determine their respective claims, defences and counterclaims if any".

45 In *Cars & Cars*, the appellant and the 1st respondent had entered into an Importer Agreement granting the appellant the right to import and distribute Volkswagen cars in Singapore. As the respondents later become desirous of importing the Volkswagen cars directly on their own, the parties entered into four written agreement to facilitate their parting of ways. All four agreements had significantly different dispute resolution clauses (see [44] and [50] of *Cars & Cars*).

46 In rejecting the appellant's argument that the refusal to grant a stay would lead to a risk of multiplicity of proceedings, the court had regard to the following material grounds:

> (a) The parties had expressly chosen to enter into four separate agreements with significantly different dispute resolution clauses, each worded differently. The court found that the parties could have foreseen that there would be a risk of multiplicity and inconsistent decisions should disputes arise out of these agreements and thus, ought to be held to their respective contractual bargains under the different agreements (see *Cars & Cars* at [50]);
>
> (b) It would be unjust if the appellant was released from the arbitration agreement that it freely entered into with the second respondent as the risk of multiplicity can be said to be induced by the way the appellant had chosen to bring its claims (see *Cars & Cars* at [52] and [53].

47 In my view, however, the considerations in *Cars & Cars* are not applicable to the present proceedings. First, unlike in *Cars & Cars* where the parties had contemporaneously entered into four separate written agreements providing for four different dispute resolution mechanisms, the parties in

the present proceedings had first entered into the Agreement, only for relations to subsequently unravel as a result of an unforeseen turn of events. A global settlement agreement was thus entered into, which purported to address a whole host of issues including, *inter alia*, the dispute over the advance amount under the Agreement. It certainly cannot be said that the parties could have foreseen what has transpired and thus, ought to be straitjacketed to their contractual bargain.

48 Second, and as pointed out at [34] above, in the present proceedings, the parties are in agreement that the main issue in the present proceedings was whether the advance amount was part of the global settlement agreement. The situation thus differs from that in *Cars & Cars* in that it cannot be said that the risk of multiplicity was self-servingly brought about by the party seeking to resist arbitration. Indeed, as pointed out by the plaintiff at [75] of its written submissions, it is the defendant itself, the stay applicant, which has on its own case attempted to tie the issues arising out of Suit 630 with the present proceedings.

49 Furthermore, as pointed out by the plaintiff at [76] of its written submissions, Quah, the defendant's CEO, is one of the plaintiffs who commenced Suit 630. Interestingly, the defendant's affidavits in the present proceedings were also deposed to by Quah. Thus it may at least be suggested that the risk of multiplicity was, in the present proceedings, brought about by the actions of the stay applicant itself. In light of the above, it certainly cannot be said that injustice would be caused to the defendant if the court refuses to grant a stay.

50 Accordingly, I dismiss the defendant's application for a stay of the present proceedings in favour of arbitration.

Consolidation

51 Instead, I am minded to order that the present proceedings be consolidated with Suit 630. O 4 r 1(1) of the Rules of Court (Cap 332, R5, 2006 Rev Ed) ("the Rules of Court") provides:

> Where 2 or more causes of matters are pending, then, if it appears to the Court –
>
> (a) That some common question of law or fact arises in both or all of them;
>
> (b) That the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
>
> (c) That for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

52 The purpose of consolidation is to save time and expense which would otherwise be unnecessarily expended by the maintenance of separate suits. There are also practical considerations such as the possibility of inconsistent judgments if two differently constituted courts hear the actions separately. (See *Singapore Court Practice 2009* (Jeffrey Pinsler gen ed) (LexisNexis, 2009) at para 4/1/1).

53 As I pointed out at [42] above, at the very least, it may be said that the present proceedings and the proceedings in Suit 630 are closely intertwined. It can also be readily appreciated from the foregoing discussion that it can be said that either common questions of law or fact arise in both

suits, or that the reliefs claimed in both suits arise out of the same transaction or series of transactions. There also appears to me to be no barriers to an order for consolidation as the plaintiffs and defendants in both suits are different (see *Singapore Civil Procedure 2007* (Sweet & Maxwell Asia, 2007) ("the White Book") at 4/1/1). Furthermore, I note that the solicitors for the plaintiff in the present proceedings are in fact the solicitors for the defendants in Suit 630, while the solicitors for the defendant are the solicitors of the plaintiffs in Suit 630. I am thus minded to make a full consolidation order.

54 I am further reassured in my decision to order full consolidation by the fact that during oral arguments, I had asked counsel for the defendant, Mr Sithawalla, whether in light of the circumstances, consolidation of the present proceedings with Suit 630 might be preferable to a stay in favour of arbitration. Picking up on this, in his oral submissions, counsel for the plaintiff, Mr Low, after highlighting that a stay in favour of arbitration could lead to a multiplicity of proceedings, indicated that he was willing to undertake to apply to consolidate both disputes. Accordingly, I asked Mr Sithawalla during his reply for his response to Mr Low's willingness to consolidate. He indicated that he was amenable to consolidation, albeit he had to seek his client's instructions.

55 Finally, for completeness, I should also note that after the oral hearing, I had directed the defendant to write to the plaintiff's solicitors to update the plaintiff on the defendant's position *apropos* consolidation. I had further directed that the parties were to update the court on the progress of the matter by 12 November 2012 4pm. After reviewing the correspondence filed by the parties, it would appear that the defendant is now taking the position that there ought to be no consolidation but that the present proceedings should merely be stayed pending the determination of Suit 630. The plaintiff continues to take the position that the proceedings ought to be consolidated. In light of this, I shall proceed with my orders.

Conclusion

56 In light of the foregoing, the defendant's application is dismissed. It is ordered that the present Suit (Suit 729 of 2012/E) be consolidated with Suit 630 of 2012/P and do proceed as one action and it is further ordered that the title of Suit 630 of 2012/P be amended by adding to it the title of Suit 729 of 2012/E and that all subsequent documents be filed in Suit 630 of 2012/P.

57 I will hear the parties on costs.

[note: 1] See Plaintiff's Statement of Claim ("SOC") at [1]

[note: 2] See Plaintiff's Statement of Claim ("SOC") at [2]

[note: 3] See the Agreement at recital and at Clause 2.

[note: 4] *Ibid*.

[note: 5] See [9] of the 2nd Affidavit of Quah

[note: 6] See [10] of the 2nd Affidavit of Quah

[note: 7] See [11] of the Affidavit of Li Hua

[note: 8] See defendant's written submissions at pg 4

[note: 9] See Plaintiff's written submissions at [2]

[note: 10] See exhibit 7, pg 37, of 2nd affidavit of Quah

[note: 11] See 2nd affidavit of Quah at [17] and exhibit 9 at pg 60

[note: 12] See exhibit 6 of 2nd affidavit of Quah at pg 16