IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 145

Suit No 8 of 2017
(Summons Nos 1510 of 2017 and 1940 of 2017)

Between

SUNRISE INDUSTRIES (INDIA) LTD

… *Plaintiff*

And

(1) PT OKI PULP & PAPER MILLS

(2) DENA BANK LIMITED

… *Defendants*

JUDGMENT

[Credit and security] — [Performance bond] — [Fraud exception]

[Credit and security] — [Performance bond] — [Unconscionability exception]

Sunrise Industries (India) Ltd
v
PT OKI Pulp & Paper Mills and another

[2018] SGHC 145

High Court — Suit No 8 of 2017 (Summons Nos 1510 of 2017 and 1940 of 2017)
Tan Lee Meng SJ
13 October 2017; 12 December 2017

21 June 2018 Judgment reserved.

Tan Lee Meng SJ:

1 The plaintiff, Sunrise Industries (India) Ltd ("Sunrise"), a company incorporated in India, is in the business of manufacturing thermosets, thermoplastic-lined equipment, pipes and fittings. The first defendant, PT OKI Pulp & Paper Mills ("PT OKI"), an Indonesian company, is a manufacturer of pulp, paper and tissue paper. The present dispute between Sunrise and PT OKI relates to the making of a call on a performance guarantee (the "Bank Guarantee") issued by the second defendant, Dena Bank Limited ("the Bank"), to PT OKI. The Bank Guarantee was intended to secure the performance by Sunrise of a contract to supply PT OKI with a complete set of FRP-Piping for the construction of a pulp mill in Ogan Komering Llir in South Sumatra, Indonesia (the "Project"). After PT OKI called on the Bank Guarantee on 10 October 2016, Sunrise applied for and obtained interim injunctions on 6 January 2017 to prevent PT OKI from making the said call and the Bank from

paying any money under the Bank Guarantee to PT OKI ("the Injunctions"). Subsequently, Sunrise applied for fresh injunctions on the same terms in Summons No 1510 of 2017 ("SUM 1510") and PT OKI applied to set aside the Injunctions in Summons No 1940 of 2017 ("SUM 1940"). In this judgment, I address both these summonses.

Background

2 In the latter part of 2014, PT OKI expressed an interest in procuring from Sunrise a complete set of FRP-Piping for the Project and in engaging Sunrise for the installation of the said piping. After extensive negotiations, Sunrise and PT OKI entered into two separate contracts dated 10 July 2015. Both contracts provided for Singapore law to be the governing law and further provided that the parties "irrevocably submit to the jurisdiction of the courts of Singapore, which shall have exclusive jurisdiction over such disputes" and that the parties agree to waive any objections to proceedings in Singapore on the ground that they were brought in an inconvenient forum.

3 The first contract ("the Supply Contract") was signed on or around 12 August 2015 although it was dated 10 July 2015. It required Sunrise to supply a complete set of FRP-Piping for the Project. The initial contract price, which was subsequently revised, was US$6,647,625. The Supply Contract required Sunrise to furnish a Bank Guarantee to PT OKI with respect to the performance of its obligations under the said contract.

4 The second contract (the "Installation Contract") required Sunrise to supervise and install the FRP-Piping for the Project for US$1,291,935. Unlike the Supply Contract, the Installation Contract did not require the provision of a Bank Guarantee by Sunrise.

5 On 14 September 2015, the Supply Contract was amended to exclude some items from and to include a number of other items in the list of goods to be supplied. As a result of the changes, the contract price for the goods to be supplied under the said contract was raised to US$6,925,839.

6 The required Bank Guarantee under the Supply Contract was issued by the Bank on 21 September 2015 for 10% of the total contract price under the said contract, as amended on 14 September 2015, which amounted to US$692,583.90. The Bank Guarantee was an unconditional on-demand guarantee that was intended to serve as security for the fulfilment of Sunrise's obligations under the Supply Contract, including the delivery of goods to PT OKI within the prescribed time. Under the Bank Guarantee, the Bank irrevocably and unconditionally undertook to pay to PT OKI any amount up to US$692,583.90 immediately and within five banking days from receipt of PT OKI's written demand calling on the said Guarantee "notwithstanding any challenge whatsoever or howsoever made by [Sunrise] or any other Party".

7 On 10 November 2015, the parties amended the Supply Contract to include some further items (the "additional goods") to be supplied by Sunrise. The amendments resulted in the raising of the contract price by a further US$1,398,293.

8 The Supply Contract required the goods and additional goods to be delivered to PT OKI in Indonesia by 25 November 2015 and 15 January 2016 respectively (the "original delivery deadlines"). The Supply Contract provided for liquidated damages for delayed delivery, which were capped at 10% of the total contract price. The maximum amount payable as liquidated damages for

delayed delivery would be reached once there had been a delay of six full weeks.

9 According to PT OKI, the delivery deadlines were not met. It is PT OKI's case that this resulted in Sunrise being liable for the maximum liquidated damages for delayed delivery. However, Sunrise claimed that it was not in breach because the delayed delivery of the goods and additional goods was due to PT OKI's failure to put the required Letters of Credit ("L/Cs") in place on time as well as the latter's delay in making the required initial payments for the goods and additional goods. In contrast, PT OKI blamed Sunrise for these delays and alleged that the latter failed to furnish the required documentation timeously to enable it to put the L/Cs in place and make the initial payments for the goods.

10 In view of the delays in shipment of the goods and additional goods to Indonesia, the L/Cs for these goods were amended on 23 December 2015 to reflect the changed position and the latest date for shipment of the goods was changed to 29 February 2016 in the L/Cs. The parties held different views on whether or not the amendment of the latest date for shipment of the goods extended the original deadlines for the arrival of the goods in Indonesia and released Sunrise from any alleged breach of the delivery deadlines.

11 On 7 January 2016, the security under the Bank Guarantee was increased to US$832,413.20, which is the sum claimed by PT OKI from the Bank under the Bank Guarantee.

12 Apart from complaining about the delayed shipment of the goods and additional goods, PT OKI asserted that Sunrise failed to perform some of its

other obligations under the Supply Contract. It pointed out that Sunrise failed to deliver to it a cargo of "Special Tools" required for the installation of the FRP-Piping in the Project and that some of the goods supplied by Sunrise under the Supply Contract did not comply with the specifications stated in the said contract.

13 By May 2016, the parties were exchanging rather rude emails. On 18 May 2016, PT OKI's Mr Tjandra Sujanto ("Sujanto") emailed Sunrise's managing director, Mr Joy Kunjukutty ("Kunjukutty"), as follows:

> *After all your tricks which has caused us severe delay and losses, we have no interest to continue business with you anymore.*
>
> All our rights under the contract shall be claimed from you to the fullest extent possible.
>
> [emphasis added]

14 Faced with PT OKI's position that it had no interest in doing business with Sunrise anymore, Kunjukutty replied with a hard-hitting email on the same day, in which he pointed out that he would be arranging for his Project Manager to collect the machinery and tools supplied for the installation of the FRP-Piping in the Project. He stated as follows:

> [W]e will be deputing our Project manager to collect all the plant, machineries, special tools supplied for the installation against your installation contract…
>
> In the meantime you are requested to kindly release the balance payment against your supply contract immediately and discharge us from the performance liabilities to enable us to allow you to install the piping through any other contractor.
>
> As informed in our earlier mail we will not be responsible for the performance of the systems, if the same is installed by any other contractor. *We are sure that you are not only going to delay the project beyond your imaginations but also going to screw up the plant operation during the years to come.*

[emphasis added]

15 Sujanto's rather terse reply to Kunjukutty on 19 May 2016 was also in rather impolite terms as he stated as follows:

> There is nothing to return to you. You are a literate man so **read your contracts carefully**!! All the tools are part of the Goods contract and belong to us as we have paid for them. You sent your Site Manager to work on site without giving him the purchase contract for reference! Only after we showed him the contract did he realize that all the way you have misled him with wrong information and instructions!
>
> ….
>
> You have no good intention to fulfill your contractual obligations since the beginning.
>
> All your key staffs have left you one by one … You are as bad to your own staffs as to your customer.
>
> *The normal and only way to settle such situation is to meet your customers face to face and discuss solution, however bad the situation is, like a good businessman but you choose to hide behind your laptop.*
>
> *You don't have the guts to show up but pathetically have the face to try to claim the payment that you are not entitled to!*
>
> *You are a hopeless person Joy*!
>
> [words in bold in original; emphasis added in italics]

16 Kunjukutty's email on the same day to Sujanto included the following remarks, which showed that the relationship between the parties had totally broken down:

> *We are not responsible for your unprofessional and unethical behaviour*, it is your problems and we understood it from the beginning and we are sure that you have grown with that culture. *Please note that we can't write or behave like you being a professional and highly ethical leading multinational company.*

> We have understood your culture from your first letter you have sent to us after the award of the contract. Hence, we were very careful in dealing with you to avoid such situations.
>
> ….
>
> We fail to understand the meaning of your mail and if we have no intention to complete the project, why we have done all these things in advance without getting the payment. …
>
> There can be dispute in the business due to various reasons but it is very important to behave professionally and that we have learned and practice in our day to day life.
>
> [emphasis added]

17 Nearly five months later, on 10 October 2016, PT OKI called on the Bank Guarantee and instructed the Bank in writing to pay to it the guaranteed sum of US$832,413.20 immediately. On 13 October 2016, the Bank acknowledged PT OKI's written demand by way of a SWIFT transmission. On 20 October 2016, the Bank informed PT OKI that it would be paying the guaranteed amount on or before 28 October 2016.

18 On 14 October 2016, PT OKI's solicitors, M/s Drew & Napier LLC, informed Sunrise in a 13-page letter that PT OKI intended to take all necessary steps to protect its interests and had called on the Bank Guarantee to satisfy in part the losses suffered by it as a result of alleged breaches by Sunrise.

19 On 19 October 2016, Sunrise commenced proceedings in the Indian Commercial Court of Vadodora (the "Indian proceedings") to prevent the Bank from paying the guaranteed amount to PT OKI. The Indian proceedings were limited to the Bank Guarantee. It may be recalled that both the Supply Contract and the Installation Contract provided that disputes were to be settled in Singapore courts in accordance with Singapore law. Sunrise sought to excuse its failure to comply with the exclusive jurisdiction clause in the said contracts

as follows in an affidavit dated 6 January 2017 filed by Kunjukutty in the Indian proceedings:

> … [N]otwithstanding the presence of the jurisdiction clauses in favour of the Courts of Singapore in the Supply Contract and Installation Contract, the Plaintiff commenced Commercial Civil Suit No. 288 of 2016 in the Commercial Court of Vadodara on 19 October 2016 ("Indian Proceedings"), believing that it was entitled to, and it would be procedurally correct to do so, as the [Bank] was not a party to the Supply Contract or the Installation Contract, and because the [Bank] only had a presence in India, and critically because [PT OKI] had demanded the [Bank] to release the sum under the Bank Guarantee to [it] by 28 October 2016, and time was of the essence. Also, the Indian Proceedings were limited to the Bank Guarantee.

20 Sunrise's application was initially dismissed by the Commercial Court of Vadodara for want of jurisdiction. The twists and turns in the Indian proceedings need not be discussed. What is relevant here is that on appeal, the decision of the Commercial Court that it had no jurisdiction to deal with Sunrise's application was overruled by the High Court of Gujarat at Ahmedabad. An injunction was subsequently issued in favour of Sunrise on 9 January 2017. The injunction in the Indian proceedings is now of academic interest because it expired on 29 June 2017.

21 A few days before the injunction in the Indian proceedings was granted, Sunrise commenced Suit No 8 of 2017 in Singapore against PT OKI on 6 January 2017. In its suit, Sunrise contended that PT OKI breached the terms of the Supply Contract and Installation Contract. With respect to the Supply Contract, Sunrise pleaded that PT OKI breached it in the following ways:

(a) changing the description of the FRP-Piping to be supplied under the Supply Contract;

(b) failing to make advance payments as specified in the time schedules under the Supply Contract;

(c) failing to procure and furnish the L/C in accordance with the time schedules contained in the Supply Contract;

(d) delaying the payments due under the Supply Contract; and

(e) failing to release to it the remaining 10% of the contract price, which amounts to US$832,413.20.

22 In its suit, Sunrise sought a number of reliefs, including an injunction to restrain PT OKI from calling on and/or receiving any money pursuant to the Bank Guarantee as well as a declaration that the Bank Guarantee stands discharged. Sunrise also claimed damages from PT OKI.

23 On 6 January 2017, Sunrise filed an urgent *ex parte* application, namely, Summons No 72 of 2017, for the following orders:

(a) an interim injunction to restrain the Bank (whether by itself, its officers, agents, employees and/or in way) from calling on, and/or receiving any money pursuant to the Bank Guarantee to restrain it from calling on, receiving any money under the Bank Guarantee from the time the order was made until the determination of the action or until further orders;

(b) an injunction to restrain the Bank (whether by itself, its officers, agents, employees and/or in any way) from making payment of any money under the Bank Guarantee from the time the order was made until the determination of the action or until further orders; and

(c) as an alternative to (a) and (b) above, for the sum of US$832,413.20 in respect of the Bank Guarantee to be paid by the Bank into Court within 14 days from the date that the order was made, until the determination of the action or until further orders.

24 The Injunctions against PT OKI and the Bank were ordered on 6 January 2017.

25 On 1 February 2017, PT OKI entered an appearance in Sunrise's action against it. Subsequently, Sunrise filed SUM 1510 for fresh Injunctions on the same terms and PT OKI filed SUM 1940 to discharge the Injunctions.

26 On 24 May 2017, PT OKI formally terminated both the Supply Contract and the Installation Contract.

27 In its Defence and Counterclaim filed on 24 May 2017, PT OKI sought the following in relation to the Supply Contract against Sunrise:

(a) a declaration that Sunrise breached the Supply Contract;

(b) a declaration that the purported extension of the delivery deadline for the last consignment of the goods from 25 November 2015 to 29 February 2016 by way of the L/C was invalid;

(c) a declaration that the Supply Contract was terminated on or about 24 May 2017; and

(d) alternatively, a declaration that Sunrise's repudiation of the Supply Contract was accepted by it on or about 24 May 2017.

The law on performance bonds

28 The nature and effect of performance bonds has been considered by the courts on numerous occasions. In *Arab Banking Corp (BSC) v Boustead Singapore Ltd* [2016] 3 SLR 557 ("*Arab Banking*"), Sundaresh Menon CJ explained the purpose of such bonds as follows (at [101]):

> … Performance bonds are meant to secure the account party's secondary obligation to pay the beneficiary damages if it breaches its primary contractual obligations. … In general, the beneficiary requests a performance bond to be opened in its favour so that any payment it claims is due is paid initially to it, despite the existence of any dispute over its actual entitlement and over any alleged contractual breaches on the account party's part. The financial position of the parties is left to be resolved subsequently either by agreement or upon the conclusion of proceedings to resolve the underlying disputes. …

29 A call on a performance bond may be set aside on the ground of fraud or unconscionability. Fraud involves dishonesty and preventing a call on a performance bond on the ground of fraud on the part of the party making the call is an application of the maxim "fraud unravels all". It is intended to shield the party who arranged for the guarantee from dishonest demands by the beneficiary of the bond. A party seeking to restrain a call on a performance bond on the ground of fraud has to show that the beneficiary knew at the time the call was made that it is false or that the call was made recklessly, that is to say, indifferent to whether or not it is a valid demand.

30 Unconscionability on the part of the party who calls on a performance bond is a separate ground for granting injunctive relief under Singapore law. In *JBE Properties Pte Ltd v Gammon Pte Ltd* [2011] 2 SLR 47, Chan Sek Keong CJ explained (at [11]) that there is no reason why fraud should be the sole ground for restraining the beneficiary from receiving payment

because if it is, this results in the application of a standard of proof which virtually assures the beneficiary of immediate payment. More recently, in *Arab Banking*, the Court of Appeal explained (at [104]) that the Singapore courts have developed unconscionability as a distinct ground for injunctive relief against calls on performance bonds to strike the appropriate balance between the competing interests at stake and that this ground exists because it is recognised that there are certain circumstances where it would be unfair for the beneficiary to realise his security pending resolution of the substantive dispute even if the account party cannot show that the beneficiary had been fraudulent in calling on the bond.

31 In *BS Mount Sophia Pte Ltd v Join-Aim Pte Ltd* [2012] 3 SLR 352 ("*BS Mount Sophia*"), the Court of Appeal pointed out (at [19]) that the elements of unconscionability are fairly uncontroversial and have been variously stated to include elements of abuse, unfairness and dishonesty. In *Raymond Construction Pte Ltd v Low Yang Tong and another* [1996] SGHC 136 ("*Raymond Construction*"), Lai Kew Chai J explained (at [5]) in the following oft-cited words what unconscionability entails:

> … The concept of "unconscionability" to me involves unfairness, as distinct from dishonesty or fraud, or c*onduct of a kind so reprehensible or lacking in good faith* that a court of conscience would either restrain the party or refuse to assist the party. *Mere breaches of contract by the party in question … would not by themselves be unconscionable…*
>
> [emphasis added]

32 In *Dauphin Offshore Engineering & Trading Pte Ltd v The Private Office of HRH Sheikh Sultan bin Khalifa bin Zayed Al Nahyan* [2000] 1 SLR(R) 117 where Lai Kew Chai J's elucidation of unconscionability in *Raymond*

Construction was endorsed by the Court of Appeal, Chao Hick Tin JA, who delivered the judgment of the court, stated (at [42]) as follows:

> We do not think it possible to define "unconscionability" other than to give some very broad indications such as lack of *bona fides*. What kind of situation would constitute unconscionability would have to depend on the facts of each case. This is a question which the court has to consider on each occasion where its jurisdiction is invoked. There is no pre-determined categorisation.

33 The threshold for proving fraud or unconscionability is rather high. In *Chartered Electronics Industries Pte Ltd v Development Bank of Singapore* [1992] 2 SLR(R) 20, Chan Sek Keong J, as he then was, held that the standard of proof required to restrain a call on a performance bond on grounds of fraud is that of a strong *prima facie* case (at [40]). As for unconscionability, in *BS Mount Sophia*, the Court of Appeal reiterated (at [20]) that a party applying for an injunction against a call on a performance bond has to demonstrate a strong *prima facie* case of unconscionability and stressed that if calls on a performance bond "are too liberally subject to injunctive relief from the courts, this security loses its efficacy and the *raison d'être* of performance bonds would be eroded or even wholly undermined" (at [24]). It was thus pointed out that the court's discretion to grant such an injunction must be sparingly exercised and it should not be an easy thing for an applicant to establish a strong *prima facie* case. In view of this, it may be rather difficult to set aside a call on a performance bond but that is the nature of the contractual terms agreed upon between the parties. In *Edward Owen Engineering Ltd v Barclays Bank International Ltd* [1978] QB 159, Lord Denning MR wryly observed that "the English supplier, if he is wise, will take [the performance guarantee] into account when quoting his price for the contract" (at 170).

Whether the Injunctions should be discharged

34 The Bank Guarantee is an unconditional on-demand guarantee under which the Bank irrevocably and unconditionally undertook to pay the sum demanded to PT OKI immediately and within five banking days from the date of receipt of the latter's written demand notwithstanding any challenge to the call by Sunrise or any other party.

35 PT OKI's call on the Bank Guarantee complied with the formal requirements for making the call. In *Arab Banking*, the Court of Appeal pointed out (at [60]) that when a proper demand under a bank guarantee has been made, "it is well established that a guarantor bank is obliged to pay promptly upon a demand being made by the beneficiary, so long as the demand falls within the terms of the guarantee." This is so irrespective of any dispute between the account party and the beneficiary unless there is fraud or unconscionability on the part of the party who made the call on the said guarantee.

36 Sunrise contended that the Injunctions should not be discharged because of fraud and/or unconscionability on PT OKI's part. It submitted as follows:

(a) PT OKI's call on the Bank Guarantee was fundamentally flawed as it was made on the basis of alleged breaches of the Installation Contract which, unlike breaches of the Supply Contract, are outside the ambit of the said Guarantee;

(b) the call on the Bank Guarantee should not have been made as Sunrise had fulfilled all its obligations under the Supply Contract; and

(c) the call on the Bank Guarantee was made in bad faith because the amount demanded by PT OKI was, in any event, excessive.

37 In SUM 1510, Sunrise also applied for fresh injunctions on the same terms as the Injunctions.

Whether the call was based on breaches of the Installation Contract

38 It is common ground that the Bank Guarantee covers Sunrise's performance of the Supply Contract and not breaches of the Installation Contract.

39 While Sunrise claimed that PT OKI relied on alleged breaches of the Installation Contract called on the Bank Guarantee, this was vehemently denied by PT OKI, who insisted that its call was based on Sunrise's breaches of the Supply Contract. This was its pleaded position in paragraph 44(a) of its Defence and Counterclaim. Furthermore, in his affidavit affirmed on 14 June 2017, PT OKI's Mills Procurement Co-ordinator, Mr Djung Wi Kuang ("Djung"), reiterated his company's position at paragraphs 8 and 9 as follows:

> 8 [PT OKI] has never sought to justify its call on the Bank Guarantee by relying on [Sunrise's] breaches of the Installation Contract ….
>
> 9 In fact, [Sunrise] itself admits that [PT OKI's] call on the Bank Guarantee was in respect of [Sunrise's] breaches of the [Supply] Contract (as amended). Paragraph 43 of [Sunrise's managing director, Kunjukutty's] 1st affidavit states:
>
> > In its letter of 10 October 2016 to [the Bank], [PT OKI] intentionally falsely alleged, amongst other things, that [Sunrise] had breached the [Supply Contract] … by allegedly failing to fulfil its contractual obligations as stipulated in the [Supply Contract] and that by such reason, [PRI OKI] was allegedly entitled to exercise its rights under the Bank Guarantee.

> [emphasis omitted]

40 As there is no dispute that the Installation Contract is outside the ambit of the Bank Guarantee, only the alleged breaches of the Supply Contract by Sunrise will be considered for the purpose of determining whether or not the Injunctions should be discharged.

Whether there are disputes relating to the Supply Contract

41 What matters at this stage of the proceedings is whether or not there are genuine disputes between the parties regarding Sunrise's performance of its obligations under the Supply Contract. That a party may call on a bank guarantee issued to it to secure the performance of contractual obligations if he has a genuine dispute with the party required by the contract to arrange for the issuance of the said guarantee has been made clear on many occasions by the courts. In *BS Mount Sophia*, the Court of Appeal explained (at [52]) as follows:

> There is one point of clarification that we should make here. The Appellant called on the Bond because it took the position that the Respondent was in breach of its obligations under the Contract. Even if the Appellant was mistaken in adopting this position, the call could still be legitimate if this position was genuinely adopted and the Appellant honestly believed that the Respondent was in breach. Had there been a genuine dispute *apropos* the issue of the Respondent's breach, then a call under those circumstances may not have amounted to a lack of *bona fides* on the part of the Appellant. … It is not the court's role in such proceedings to appraise the merits of the parties' decisions; but, rather, *it is the court's role to be alive to the lack of* bona fides *in those decisions.*
>
> [emphasis in original]

42 If there are genuine disputes between the parties, these disputes should, without more, be considered at the trial, where counsel for both parties will have the opportunity to cross-examine the witnesses.

43 Sunrise asserted that PT OKI's call on the Bank Guarantee was fraudulent and/or unconscionable because there is no room for any genuine dispute between the parties in relation to the Supply Contract as the goods and additional goods were delivered on time and complied with the contractual specifications. Sunrise's position was strenuously challenged by PT OKI who outlined its case that its call on the Bank Guarantee was perfectly in order in its written submissions filed on 20 June 2017, as follows (at paragraph 18(c)):

> (i) [PT OKI] had valid grounds for calling on the Bank Guarantee.
>
> (ii) [Sunrise] had breached and remains in breach of the delivery deadlines under the [Supply Contract]. In addition, to date, the Special Tools (valued by [Sunrise] itself at [US$] 576,633.60) have not been delivered. Further, [Sunrise] also delivered non-compliant Goods and over-charged for the same;
>
> (iii) As a result of [Sunrise's] breaches, in particular [its] breaches of the delivery deadlines, [Sunrise] is liable to pay [PT OKI] the maximum amount of liquidated damages due under the [Supply Contract], *i.e.* 10% of the contract price. This amounts to [US$] 832,413.20 and is equal to the value of the Bank Guarantee;
>
> (iv) In the circumstances, there was nothing unfair or dishonest about [PT OKI's] call on the Bank Guarantee; and
>
> (v) At the minimum, the contemporaneous documents show that there was a genuine dispute between parties in the present case, and it was not fraudulent or unconscionable for [it] to call on the Bank Guarantee where there were genuine disputes between parties on liability. There is nothing to suggest that [its] position was not genuine.

44 PT OKI pointed out that its complaints regarding Sunrise's breaches of the Supply Contract were made clear to the latter in contemporaneous emails and letters exchanged between the parties from March to October 2016. In fact, as early as 3 May 2016, several months before calling on the Bank Guarantee, PT OKI emailed Sunrise to complain that the goods had not been delivered on time and that the latter had wrongfully marked up the value of the goods that

were shipped so as to draw more money from the L/C. This rather stinging email was as follows:

> *We repeat that Sunrise is in default … for the failures of fulfilling the obligations in the Contract.*
>
> Both advance payment and L/C have already been issued and paid to Sunrise. Sunrise has knowingly and wrongly marked up the value of the shipped Goods to claim the entire money under L/C and Installation Contracts despite the repeated reminder from [PT OKI] that Goods haven't been shipped totally … [Sunrise's] failure to deliver the Goods on time, marking up the value of Goods with a clear negative intention, as well as not performing the installation work has caused a damage to our project.
>
> *Should Sunrise fail to rectify the defaults, [PT OKI] may and is entitle [sic] to exercise its right under the Contracts, as [PT OKI] deems appropriate. All losses, costs, and liquidated damages incurred by [PT OKI] due to Sunrise failures will be calculated and claimed to Sunrise …*
>
> [emphasis added]

45 PT OKI submitted that there is nothing to suggest that its concerns, as set out in the contemporaneous emails, were not genuine and that Sunrise had misrepresented to the court that all the supplier's obligations under the Supply Contract had been performed. Sunrise contended that these alleged disputes were not genuine because PT OKI had acknowledged that it had fulfilled all its obligations under the Supply Contract. As evidence of this, Sunrise referred to the following:

(a) an email from PT OKI dated 1 April 2016;

(b) the meetings between the parties' representatives from 4–7 April 2016; and

(c) the fact that PT OKI released the final payments under the L/Cs in respect of the Supply Contracts on 22 April 2016, some 15

days after the said meetings and 21 days after the email of 1 April 2016.

The email of 1 April 2016

46 The relevant part of the email from PT OKI on 1 April 2016 is as follows:

> Now we have the materials, all [tools] and installation materials arrived, civil contractor is ready standby.

47 PT OKI submitted that Sunrise had deliberately misrepresented the contents of the said email as it was expressly stated therein that five containers with manhole covers, tools, resin and other installation items had not cleared Indonesian customs and that while the "MTOs and Packing list were checked", the quantity of the materials had not been physically checked by its personnel. For this reason, it was specifically pointed out in the email that PT OKI could not confirm that all materials had been received. I accept that if the entire email is looked at, there was no concession by PT OKI that Sunrise had performed all its contractual obligations under the Supply Contract.

Meetings from 4–7 April 2016

48 Sunrise's claim that it was clear from the meetings between the parties' representatives from 4–7 April 2016 that PT OKI accepted that it had fulfilled all its obligations under the Supply Contract was robustly challenged by the latter. What transpired at these meetings is hotly contested and involves findings of fact that are best left to the trial judge after the relevant witnesses have been cross-examined.

Release of payments under the L/Cs

49 Sunrise also contended that PT OKI must be taken to have accepted that it has discharged all its obligations under the Supply Contract because the latter had made full payment of the sums owing to it save for the last 10% of the contract price and a small sum of US$3,885.91. It argued that had PT OKI not been satisfied with its performance of the said contract, such a large part of the purchase price of the goods and additional goods would not have been paid. This argument lacks foundation because the terms of payment for the goods and additional goods, as stipulated in the Supply Contract, are as follows:

(a) the first 10% of the contract price is to be paid after the signing of the contract;

(b) the next 80% of the contract price is to be paid by letter of credit; and

(c) the final 10% of the contract price is to be paid after PT OKI has issued the Certificate of Performance Test Acceptance ("CPTA") to Sunrise.

50 The first 10% of the contract price had to be paid by PT OKI because the parties signed the Supply Contract. The second payment of 80% of the contract price had to be paid in accordance with cl 3 of the Supply Contract, which provides that the L/Cs are to be drawn down *proportionally* up to 80% of the value of each shipped plant. As the goods and additional goods were shipped although two containers remained undelivered, PT OKI had no basis for withholding the payment of the next 80% of the purchase price of the goods that were shipped. That being the case, these said payments by PT OKI of the contract price for the goods and additional goods cannot, without more, indicate

that PT OKI was satisfied with the Sunrise's performance of the Supply Contract or that Sunrise had not breached the said contract.

51 I thus find that Sunrise's allegation that PT OKI had admitted that it had fulfilled all its obligations under the Supply Contract was not proven. As such, PT OKI's contention that there are genuine disputes between the parties regarding Sunrise's alleged breaches of the Supply Contract must be considered.

Contractual deadlines for arrival of goods in Indonesia

52 A major dispute between the parties concerns the late delivery of the goods and additional goods and whether or not the agreed deadlines for the arrival of the said goods in Indonesia were extended by agreement.

53 Under the Supply Contract, the goods were to arrive in Indonesia by 25 November 2015 while the additional goods were to arrive there by 15 January 2016. PT OKI stressed that Sunrise knew that these delivery deadlines were important to it because it was operating under concurrent timelines in relation to other contractors involved in the Project and that it would incur significant losses *vis-à-vis* the other parties if the goods and additional goods were not delivered on time.

54 If the original delivery deadlines were not extended, Sunrise would be liable in damages for delayed delivery of the goods and additional goods because these goods arrived after the said deadlines. The Supply Contract provided for damages for delayed delivery at the following rates:

(a) 1.5% of the total contract price for each full week of delay for the first four weeks; and

(b) 2.5% of the total contract price for each following full week of delayed delivery.

55 As mentioned earlier, the total amount of liquidated damages payable for delayed delivery was capped at 10% of the purchase price of the goods and additional goods and this cap would be reached as soon as there had been a delay of six weeks. PT OKI submitted that as the delayed delivery of the goods and additional goods exceeded six weeks, it was entitled to liquidated damages of US$832,413.20, which is the amount claimed under the Bank Guarantee. As such, it had no doubt that it had a right to call on the Bank Guarantee.

56 Sunrise contended that PT OKI was not entitled to rely on the original delivery deadlines because these deadlines were extended by agreement on 23 December 2015 when PT OKI amended the "latest date of shipment" in the L/Cs for the goods and additional goods to 29 February 2016, which was after the delivery deadlines had passed. Sunrise also took the position that by amending the L/Cs and taking delivery of the goods supplied in accordance with the amended latest date of shipment, PT OKI had waived its right to insist that the goods and additional goods were to be delivered before the expiry of the original delivery deadlines. It pointed out that as the relevant commercial invoices, packing lists and bills of lading showed that all the required goods were shipped by 29 February 2016, PT OKI was not entitled to call on the Bank Guarantee on the ground of delayed delivery of the goods and additional goods.

57 For good measure, Sunrise further submitted that PT OKI was not entitled to complain about delayed delivery because the amendment of the latest

date for shipment in the L/Cs was necessitated by the latter's delay in opening the L/Cs required under the Supply Contract.

58 PT OKI disagreed that the original delivery deadlines were extended by the amendment of the latest date of shipping in the L/Cs to 29 February 2016 and noted that there is nothing in the L/Cs or in any of the contemporaneous documents that suggested that it had waived Sunrise's breach of the Supply Contract by failing to meet the original delivery deadlines. PT OKI pointed out that by the time this amendment was made on 23 December 2015, Sunrise was already in breach because the original delivery deadlines had passed. It also claimed that it had to extend the deadline for the shipment of the goods in the L/Cs because if it did not, Sunrise would not have been able to draw on the L/Cs because of non-compliant documentation. In such a case, Sunrise would have refused to ship the goods and additional goods to it and the progress of the Project would have been delayed. PT OKI pointed out that had this occurred, it would have incurred heavy losses.

59 Clearly, there is a dispute as to whether the change of the shipment date in the L/Cs relieved Sunrise of its obligation to deliver the goods and additional goods before the expiry of the original delivery deadlines. There is no reason for me to find that this dispute is not genuine or that the dispute does not merit further investigation at the trial. As such, PT OKI is entitled to call on the Bank Guarantee on the basis of the delayed delivery of the goods and additional goods by more than six weeks.

Retention by PT OKI of final 10% of contract price

60 I now turn to Sunrise's argument that it is fraudulent and/or unconscionable for PT OKI to call on the Bank Guarantee for an amount

equivalent to 10% of the contract price under the Supply Contract because the latter is already holding on to the final 10% of the contract price for the goods supplied under the said contract.

61 PT OKI submitted that Sunrise's argument is erroneous because the latter is not yet entitled to payment of the final 10% of the contract price (the "final 10%") which, in any case, has nothing to do with delayed delivery of goods.

62 By virtue of cl 3.1 of the Supply Contract, the final 10% is payable only upon issuance of the CPTA. Clause 1 of Annex III of the Installation Contract defines the CPTA as a certificate issued by PT OKI upon confirmation that, among other things, the plant in the Project has operated in a trouble-free condition during the performance test periods and if there is no deficiency in the plant which could hinder the planned operations on the Project. PT OKI pointed out that the Supply Contract provided for the final 10% of the contract price to be paid only after the issuance of the CPTA in order to ensure that the goods and additional goods supplied to PT OKI operated properly. As such, the retention of the final 10% of the contract price has nothing to do with its claim for damages for the delayed delivery or non-delivery of the goods and additional goods.

63 It is common ground that the CPTA has not been issued. It cannot, without more, be said that PT OKI has acted fraudulently and/or unconscionably by retaining the final 10% of the purchase price of the goods and additional goods at this juncture while calling on the Bank Guarantee.

64 Sunrise contended that PT OKI's retention of the final 10% of the said purchase price must be viewed in the context of the latter's unreasonable and/or wilful refusal to issue the CPTA although the Project has been completed and the goods supplied by it under the Supply Contract have been utilised. Undoubtedly, PT OKI cannot deliberately refuse to issue the CPTA in order to deny Sunrise the final 10% of the purchase price. However, whether PT OKI has deliberately or wilfully refused to issue the CPTA cannot be determined on the basis of affidavit evidence without the benefit of testing the veracity of assertions made in the said affidavits through cross-examination of the witnesses. As such, there can be no finding at this stage that PT OKI's call on the Bank Guarantee is fraudulent and/or unconscionable merely because it was made when the final 10% of the purchase price under the said contract has not been paid to Sunrise.

Delivery of off-specification goods

65 PT OKI asserted that its right to call on the Bank Guarantee on the ground of delayed delivery of goods is buttressed by Sunrise's further breach of the Supply Contract by supplying some non-compliant goods to it. Its case is that Sunrise unilaterally changed the specifications of some of the goods and overcharged it for the non-compliant goods.

66 According to PT OKI, Sunrise contracted to supply manholes with heights ranging between 2,130mm and 4,810mm but the latter unilaterally changed the designs of the manholes and delivered manholes with heights ranging between 720mm and 4,140mm. PT OKI also complained that while the Supply Contract called for the delivery of 16 manholes with heights of 2,620mm, Sunrise's unilateral change of the designs of these manholes resulted in only 15 of them being required. Despite this, Sunrise charged the full contract

price for these non-compliant manholes and for the manhole that was not required.

67 Sunrise's response to the complaint about non-compliant goods was that the contractual specifications were altered by PT OKI and the contract did not require an adjustment of prices in such a situation. Sunrise asked the court to note that whether compliant or not, all the manholes supplied by it had been utilised by PT OKI. However, PT OKI retorted that it had to incur costs in rectifying the manholes that did not comply with specifications before they could be utilised. In fact, in its Counterclaim against Sunrise, PT OKI claimed the sum of IDR7,080,400 in respect of costs incurred to modify certain goods and additional goods so that they could be utilised for the Project.

68 There is nothing to suggest that PT OKI's concerns about non-compliant goods were fraudulent or unconscionable and the court is in no position to find on the basis of affidavit evidence that the allegation of non–compliant manholes does not merit further investigation at the trial. Admittedly, if it is proven at the trial that there were non-compliant goods, the damages to which PT OKI is entitled for this particular breach may not amount to 10% of the contract price, which is the amount claimed by it under the Bank Guarantee. However, this alleged breach may be taken into account with other alleged breaches and, in particular, the alleged delayed delivery of the goods and additional goods when assessing whether PT OKI's call on the said guarantee is fraudulent and/or unconscionable.

Non-delivery of Special Tools

69 Another dispute between Sunrise and PT OKI concerns the non-delivery of two containers, in which were packed "tools, special tools, consumables,

plant and machineries" (the "Special Tools") required for the installation of the FRP-Piping for the Project. The non-delivery of the Special Tools was relied on by PT OKI to show that Sunrise has not fully performed its obligations under the Supply Contract.

70 According to PT OKI, the Special Tools were to be shipped together with the main equipment, failing which they were to be shipped on a "delivery duty paid" ("DDP") basis, which means that the seller has to pay for all costs associated with transporting of the goods until they are received by the buyer. Such costs include export and import duties as well as insurance. Although the Special Tools, which reached Indonesia on 24 March 2016, were not shipped together with the main equipment, the shipping documents indicated that the delivery terms were on a cost and freight basis and not on a DDP basis. Furthermore, according to PT OKI, the shipping documents did not accurately describe the Special Tools. PT OKI wanted Sunrise to amend the shipping documents to correct the alleged errors and to make it clear that the goods were shipped to Indonesia on a DDP basis. However, despite repeated requests for the amendments to be made, Sunrise did not amend the documents. On 17 May 2016, the Directorate General of Customs and Excise of South Sumatra informed PT OKI in writing that if the duties on the Special Tools were not promptly paid, the goods would be processed in accordance with prevailing Indonesian regulations. As neither party budged from their entrenched positions, the two containers of Special Tools were left with the Indonesian customs authorities and are apparently still being held by them.

71 The position in relation to the Special Tools is rather problematic. To begin with, it is not altogether clear from the affidavits and arguments advanced by the parties whether they fall within the ambit of the Supply Contract or

Installation Contract. PT OKI insisted that cl 3.1 of Annex III of the Supply Contract makes it clear that the Special Tools are within the ambit of the said contract as it provides:

> The delivery of the Plant *shall include*, within the delivery limits given in Annex IV, without any extra charge to [PT OKI], all goods which, even if not specifically mentioned in flow sheets or in other Annexes and Appendices in the Contract, *are necessary for the completion, function, operation and maintenance of the Plant to form a complete functional unit for the Project* in accordance with this Contract so that the specified products for the Plant can be produced in specified quantities and qualities.
>
> [emphasis added]

72 On the other hand, Sunrise pointed out that the Special Tools fell within the ambit of the Installation Contract because the scope of the Installation Contract is described as "LUMPSUM INSTALLATION & SUPERVISION (INCL HEAVY EQUIPMENTS, TOOLS, WITHHOLDING TAX, ACCOMMODATION & MEALS)". Furthermore, the word "goods" is defined in the Installation Contract to mean "all machinery and equipment with auxiliaries and materials for the project supplied by Purchaser to be installed and *maintenance tools required supplied by Purchaser* to set up a complete Plant as specified in the Contract" [emphasis added]. Sunrise insisted that the non-delivery of these tools could not be a reason for PT OKI to call on the Bank Guarantee, which only covers breaches of the Supply Contract.

73 Sunrise contended that whether or not the Special Tools are within the ambit of the Supply Contract need not be further considered because PT OKI had conceded that these tools are within the scope of the Installation Contract. To begin with, Sunrise relied on an affidavit dated 16 November 2016 filed by Mr Hendy Edi Sutikno ("Sutikno") on behalf of PT OKI in the Indian proceedings. However, when this affidavit is closely examined, it will be seen

that Sutikno insisted at paragraph 21 that the Special Tools had already been paid for by PT OKI according to the agreed terms of payment under the Supply Contract. As such, he did not concede that the Special Tools are not within the ambit of the Supply Contrast.

74 Sunrise also submitted that PT OKI admitted in email exchanges between the parties from 18 March 2016 to 2 May 2016 that the Special Tools are within the ambit of the Installation Contract because the heading for the emails was described as the Installation Contract. However, PT OKI, which pointed out that the chain of emails in question was started by Sunrise, who inserted the heading, contended that while its staff did not bother to change the heading for the emails, what was crucial was that they made it amply clear in the emails that PT OKI regarded the Special Tools as part of the equipment required under to Supply Contract. PT OKI referred to its emails on 18 and 23 March 2016, where it insisted that the shipment of the Special Tools should be made on a DDP basis and that all charges under the shipment, including "clearance, import duty, VAT [and] income tax" were to be borne by Sunrise. As only the Supply Contract made provision for delivery of goods on a DDP basis, it should have been clear to Sunrise that PT OKI did not accept that the Special Tools fell within the ambit of the Installation Contract.

75 As for Sunrise's argument that the Special Tools are within the ambit of the Installation Contract because they were included in its Commercial Invoices Nos E-52 and E-53, which were issued pursuant to the Installation Contracts, PT OKI pointed that it had consistently objected to the inclusion of the Special Tools in these two invoices. In any case, at the material time, Sunrise should not have issued any invoices under the Installation Contract because the first payment of 20% under this contract is due and payable "2 months after the

arrival of the Supplier's Supervisor(s) working continuously at the Mill Site". PT OKI noted that as Sunrise failed to send the required supervisors to supervise the Installation Works for the required period, no payment was due to the latter under the Installation Contract at the material time.

76 Sunrise submitted that even if the Special Tools were within the ambit of the Supply Contract and not the Installation Contract, the liquidated damages clause is likely to be unenforceable in relation to the non-delivery of these tools because it would be regarded as a penalty clause. The reason for this is that damage or loss resulting from the alleged non-delivery of the Special Tools is unlikely to amount to US$832,413.20, which is the sum called upon under the Bank Guarantee. However, PT OKI's complaints against Sunrise that led to its call on the said Guarantee were not limited to the non-delivery of the Special Tools. As explained earlier, PT OKI also claimed that it was entitled to the maximum liquidated damages provided for under the Supply Contract on the basis that Sunrise delivered other goods and additional goods late and supplied some non-compliant goods. As such, whether or not the liquidated damages clause is or is not to be struck down as a penalty clause cannot be determined solely on the basis of PT OKI's claim for damages for the non-delivery of the Special Tools.

77 There is clearly a dispute between the parties as to whether the Special Tools fall within the ambit of the Supply Contract or Installation Contract. There is also a dispute regarding the delivery of the Special Tools and responsibility for payment of the duty on the said Tools. These genuine disputes should be resolved at the trial and may, at this stage of proceedings, be relied on by PT OKI in combination with its other claims to make a call on the Bank Guarantee.

Whether the call on the Bank Guarantee was for an excessive amount

78 Sunrise contended that PT OKI's call on the Bank Guarantee was made in bad faith as the amount demanded under the Bank Guarantee was excessive. It pointed out that the crux of PT OKI's allegations against it concerns the alleged late delivery under the Supply Contract, in respect of which the maximum liquidated damages under the contract is only 10% of the contract price. In contrast, PT OKI contended that it did not claim an excessive amount under the Bank Guarantee and that Sunrise is fully aware that the quantum of its claims for breaches of the Supply Contract exceeded the value of the Bank Guarantee.

79 A call on a performance bond should not be made for an excessive amount. Where an excessive amount is claimed, the court may, in the exercise of its equitable jurisdiction, reduce it. The court is not obliged to restrain the call on the bond altogether. In *Eltraco International Pte Ltd v CGH Development Pte Ltd* [2000] 3 SLR(R) 198 (*"Eltraco"*), where the respondent employer employed the appellant as the main contractor for super-structure works of a proposed service apartment building development, the Court of Appeal accepted that as there were genuine disputes between the parties with respect to liability for defects in the building works and the cost of rectification works, the respondent could not be faulted for calling on the performance bond furnished to them. However, as the amount demanded by them, namely S$2.43m, which was the entire amount of the bond, was more than what was required for the rectification works, the amount payable to the respondent was reduced by the court. Chao Hick Tin JA pointed out (at [36]) that in restraining a beneficiary from calling on a bond on the ground of unconscionability, the court is exercising an equitable jurisdiction and may limit the restraint to only that part

of the call which was clearly excessive and allow the other part, a call which is not unconscionable, to remain. He added that to restrain the entire call on a performance bond when part of it is clearly not unconscionable would be inconsistent with the object of exercising equitable jurisdiction in such a case, which is to achieve equity and justice and not to punish the beneficiary for making an excessive call.

80 PT OKI pointed out that Sunrise's breach of the delivery deadlines already entitled it to claim liquidated damages of 10% of price of the goods, which was the same amount claimed under the call on the Bank Guarantee. Furthermore, PT OKI also claimed damages from Sunrise for the non-delivery of the Special Tools as well as damages for the delivery of non-compliant goods, which necessitated the incurring of costs to modify them to fit the purposes for which they were purchased. PT OKI thus contended that if all the circumstances are taken into account, there was nothing unfair or dishonest about its call on the Bank Guarantee for 10% of the price of the goods as its different claims, if upheld, would exceed the amount claimed under the call on said Guarantee.

81 I find that it cannot be said at this juncture that the call on the entire amount of the Bank Guarantee is excessive or was made in bad faith. As such, there is no reason for the amount claimed under the said Guarantee to be trimmed.

Whether PT OKI is entitled to recover all monies paid to Sunrise

82 PT OKI also sought to justify its call on the Bank Guarantee on the basis that it is entitled under cl 16 of Annex III of the Supply Contract to terminate the said contract on account of Sunrise's breaches and recover all payments

which it has made to Sunrise under the Supply Contract, together with interest at 12% per annum. The relevant part of cl 16 provides as follows:

> 16.1 The Purchaser shall be entitled to unilaterally terminate this Contract …:
>
> ….
>
> c) if the delivery of the Plant has been delayed so much that the Purchaser is entitled to the maximum amount of liquidated damages as stated in the Contract Text …
>
> ….
>
> Should the Contract … be terminated for a reason due to the Supplier as stated in Clause 16.1 above, the Supplier shall return all paid payments received by him with 12% annual interest calculated from the date of each payment to the pay-back date of the respective payment and the Purchaser shall be entitled to recover all reasonable damages and additional reasonable expenses for any loss caused by the termination due to the Supplier or otherwise mutually agreed by the Parties. …

83 As I am satisfied that PT OKI is entitled to call on the Bank Guarantee for reasons stated earlier on in this judgment, I need not consider the effect of cl 16. While I will leave it to the trial judge to consider the effect of the said clause, I should add that I must not be taken to have accepted that PT OKI is entitled under the Supply Contract to a refund of all the money it has paid to Sunrise.

Whether the call on the Bank Guarantee affects Sunrise's reputation

84 Finally, Sunrise's point that PT OKI's call on the Bank Guarantee should be restrained on the ground that it damages its reputation may be briefly considered. In his affidavit affirmed on 6 January 2017, Kunjukutty stated at paragraph 59 as follows:

> If the Defendants are not restrained from respectively calling on, and paying on, the Bank Guarantee, they are threatening to do so. I they do so, the Plaintiff will suffer loss … including

> having its credit worthiness blacklisted, potentially facing legal actions from its creditors and a winding-up action being commenced against it. …

The same point was made in Sunrise's Statement of Claim at paragraph 32.

85 In *Bocotra Construction Pte Ltd and others v Attorney-General* [1995] 2 SLR(R) 262, the Court of Appeal pointed out (at [51]) that if damage to reputation is accepted generally as a form of irreparable damage, "[b]ank guarantees and performance bonds will become practically worthless since in every case, all that the plaintiffs have to show is that they have some valid interest in protecting their commercial reputation." This, the court added, negatives the purpose of performance bonds and, in effect, rewrites the underlying agreement between the parties because it precludes a call for payment if some vague notice of damage to reputation can be said to arise. It follows that the fear that the call on the Bank Guarantee will affect Sunrise's reputation and business is, by itself, not relevant to whether PT OKI's call on the Bank Guarantee was made fraudulently and/or unconscionably.

Conclusion and costs

86 There are genuine disputes between the parties on a number of issues relevant to PT OKI's call on the Bank Guarantee. Bearing in mind that the threshold for proving fraud or unconscionability in order to restrain a call on a performance bond is rather high and courts should not unnecessarily interfere with contractual arrangements freely entered into by Sunrise and PT OKI, I find that the former did not prove that there is a strong *prima facie* case that the latter's call on the Bank Guarantee was either fraudulent and/or unconscionable. Undoubtedly, Sunrise may feel that it is unfair that PT OKI should be allowed to call on the Bank Guarantee but as the Court of Appeal pointed out in *Eltraco*

(at [30]), while there would be an element of unfairness in every instance of unconscionability, the reverse is not necessarily true and it does not mean that whenever there is unfairness, there is unconscionability. It follows that PT OKI succeeds in SUM 1940 to set aside the Injunctions obtained by Sunrise on 6 January 2017 and Sunrise fails in SUM 1510 to obtain fresh Injunctions on the same terms.

87 PT OKI is entitled to costs to be taxed if not agreed.

Tan Lee Meng
Senior Judge

Christopher Anand Daniel, Ganga Avadiar and Eileen Yeo Yi Ling (Advocatus Law LLP) for the plaintiff;
Sushil Nair, Darius Bragassam and Teo Wei Ling (Drew & Napier LLC) for the first defendant.