IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 5

Appellate Division / Civil Appeal No 120 of 2023

Between

H P Construction & Engineering Pte Ltd

… *Appellant*

And

Mega Team Engineering Pte Ltd

… *Respondent*

In the matter of Originating Application No 867 of 2023

Between

H P Construction & Engineering Pte Ltd

… *Claimant*

And

Mega Team Engineering Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Building and Construction Law — Dispute resolution — Adjudication — Building and Construction Industry Security of Payment Act 2004 — Setting aside — Interpretation of s 13(3)(*a*)]
[Statutory Interpretation — Interpretation Act — Applicability to s 13(3)(*a*) of the Building and Construction Industry Security of Payment Act 2004]
[Statutory Interpretation — Statutes — Building and Construction Industry Security of Payment Act 2004]

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H P Construction & Engineering Pte Ltd
v
Mega Team Engineering Pte Ltd

[2024] SGHC(A) 5

Appellate Division of the High Court — Civil Appeal No 120 of 2023
Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD
1 February 2024

15 February 2024

Woo Bih Li JAD (delivering the grounds of decision of the court):

Introduction

1 This appeal solely concerned an issue of law: whether the Judge in the court below erred in deciding that the Adjudication Application No. SOP/AA 150 of 2023 was not lodged out of time. This, in turn, turned on the correct interpretation of the lodgement deadline provided under s 13(3)(*a*) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the "SOPA").

2 We held that the Judge was correct in deciding that the computation of the seven-day time limit (under s 13(3)(*a*) of the SOPA) to file an adjudication application, after the entitlement to do so arises, *excludes* the day the entitlement arises. This would mean, in effect, that an adjudication applicant has eight days in total to lodge an adjudication application. Therefore, Adjudication

Application No. SOP/AA 150 of 2023 was not lodged out of time. We thus dismissed the appeal.

Facts

3 The facts leading to the present appeal were undisputed.

4 The appellant, H P Construction & Engineering Pte Ltd ("HP"), engaged the respondent, Mega Team Engineering Pte Ltd ("MT"), to supply labour under a sub-contract in relation to a building and construction project.

5 MT submitted a payment claim to HP on 30 May 2023. Under paragraph 1 of Appendix C to the parties' sub-contract, read with s 11(1)(*a*) of the SOPA, HP was to provide a payment response by 20 June 2023 but failed to do so. Under s 12(6) of the SOPA, there is a seven-day dispute settlement period which was from 21 June to 27 June 2023. There was still no payment response from HP by 27 June 2023. MT lodged an adjudication application (Adjudication Application No. SOP/AA 150 of 2023) on 6 July 2023 under s 13 of the SOPA and the adjudicator issued his determination on 21 August 2023.

6 HP then filed an application in HC/OA 867/2023 on 28 August 2023 to set aside the adjudication determination on two grounds. HP's application was dismissed by Justice Philip Jeyaretnam (the "Judge") on 9 October 2023. The Judge's grounds of decision was issued on 23 October 2023 and published as *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2023] SGHC 298 ("*H P Construction (GD)*"). This appeal by HP focused on one ground only, *ie,* that the adjudication application should have been lodged by 5 July 2023 and the actual lodgement date of 6 July 2023 (see [5] above) was one day late.

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Decision below

7 The Judge held that the adjudication application was made within time (*H P Construction (GD)* at [19]).

8 The Judge held that under s 13(3)(*a*) of the SOPA, the entitlement to make an adjudication application arises on the *day*, and not at any particular time on that day, following the end of the dispute settlement period (*H P Construction (GD)* at [14]). As a matter of ordinary language, the seven-day period after the entitlement arises will commence on the day after (*H P Construction (GD)* at [14]). As a result, an adjudication applicant in effect gets a period of eight days after the expiry of the dispute settlement period, which equates to seven days after the day on which the entitlement arose, to lodge its adjudication application (*H P Construction (GD)* at [12]). In the Judge's view, this interpretation is consistent with the common law rule on calculation of dates, and consistent with s 50(*a*) of the Interpretation Act 1965 (2020 Rev Ed) (the "IA") (*H P Construction (GD)* at [16]). There is no contrary intention in the SOPA or in material evincing parliamentary intention to justify not applying s 50(*a*) of the IA to the interpretation of s 13(3)(*a*) of the SOPA (*H P Construction (GD)* at [16]).

Parties' cases on appeal

The Appellant's case

9 HP's overarching position was that there is a seven-day period for making an adjudication application under s 13(3)(*a*) of the SOPA after the entitlement to apply for adjudication arises, which *includes* the day on which such entitlement first arises (*ie,* 28 June 2023 in the present case). After excluding a public holiday, the seven-day period ended on 5 July 2023.

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10 HP argued that:

(a) its proposed interpretation promotes the purpose of the SOPA which is to create a fast and low-cost adjudication system for parties in dispute;

(b) its proposed interpretation is harmonious with other provisions of the SOPA; and

(c) its proposed interpretation is supported by decided cases and industry practice.

The Respondent's case

11 MT's overarching position was that the entitlement to lodge an adjudication application first arose on 28 June 2023, which is the day after the last day of the dispute settlement period, and an adjudication application should be filed within seven days *after* 28 June 2023, which would be 6 July 2023 (excluding the public holiday on 29 June 2023).

12 MT argued that:

(a) s 50(*a*) of the IA applies in interpreting s 13(3)(*a*) of the SOPA, such that the computation of a period of days is to be calculated from the happening of an event, excluding the day on which the event happened;

(b) the ordinary meaning of s 13(3)(*a*) of the SOPA is that the entitlement first arises on the *day* after the last day of the dispute settlement period, instead of any specific hour, minute or second on that day;

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(c) MT's proposed interpretation is consistent with reported cases and does not fail to promote the purpose or object underlying the SOPA;

(d) the SOPA does not specifically limit the period of entitlement for lodging an adjudication application to only seven days; and

(e) while it is true that some SOPA provisions require a claimant to act within seven days or multiples thereof, there is no logic to requiring time periods prescribed in different provisions in a statute to be similar.

Issue before this court

13 The sole issue before this court was whether when calculating timelines for the lodging of an adjudication application under s 13(3)(*a*) of the SOPA, the day the entitlement of the payment claimant to make an adjudication application first arises is *included* or *excluded* in calculating the seven-day longstop deadline.

Various interpretations of the adjudication application lodgement timeline

14 Under s 12(2) of the SOPA, a payment claimant like MT is entitled to make an adjudication application under s 13 in relation to the relevant payment claim if, by the end of the dispute settlement period (defined in s 12(6) of the SOPA), the payment respondent (HP in this case) does not provide the payment response or the dispute is not settled, as the case may be. The appeal concerned the former scenario as no payment response was filed by HP. Here, the parties agreed that the dispute settlement period ended on 27 June 2023. The issue in contention is *from which date* the "7 days" timeline under s 13(3)(*a*) of the SOPA to determine the lodgement deadline for the adjudication application is

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to be calculated. HP argued that it was to be calculated from (and inclusive of) 28 June 2023 while MT argued that it was to be calculated from 29 June 2023 because the day the entitlement to lodge the adjudication application arose, *ie,* 28 June 2023, was *not* included in the computation. We also add that there was a public holiday on 29 June 2023 which was to be excluded from the computation of the seven-day period. Under s 2 of the SOPA, "day" means "any day other than a public holiday". That explains why the parties' arguments were that the adjudication application lodgement period ended either on 5 or 6 July 2023.

15 HP provided a taxonomy of the various interpretations of the adjudication application lodgement timeline in their submissions for this appeal. There is, firstly, their preferred interpretation that the computation started from, and was inclusive of, 28 June 2023 ("HP's Interpretation"). HP then pointed to MT's interpretation that 28 June 2023 was *excluded* from the computation ("MT's Interpretation"). HP also noted that there was a third possible interpretation, *ie,* that a payment claimant is entitled to lodge the adjudication application one day after the expiry of the dispute settlement period. In other words, MT was entitled to lodge the adjudication application *not* on 28 June but only from 29 June 2023 (had there not been a public holiday on this date). HP referred to this as the "Third Interpretation".

The Third Interpretation

16 While the Third Interpretation appeared to be the same as MT's Interpretation, it was not. Under MT's Interpretation, MT was already entitled to lodge an adjudication application from 28 June 2023. However, for the purpose of computing the seven-day period under s 13(3)(*a*) of the SOPA, 28 June 2023 was excluded, and the computation of the deadline started only

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from 29 June 2023 (while bearing in mind that 29 June 2023 was a public holiday and hence an extra day should be added to the overall timeline). Under the Third Interpretation, MT was not entitled to lodge an adjudication application on 28 June 2023 and could do so only from 29 June 2023 (had 29 June 2023 not been a public holiday), the date from which the computation started.

17 We rejected the Third Interpretation. As HP itself pointed out, the Third Interpretation would mean that there was a gap between 27 and 29 June 2023, *ie,* 28 June 2023. We were of the view that there was no gap. Under s 12(2) of the SOPA, MT was entitled to make an adjudication application "if, by the end of the dispute settlement period, … the respondent does not provide the payment response …". It was not disputed that that period ended on 27 June 2023. Hence, MT was entitled to make the adjudication application from 28 June 2023 and the Third Interpretation would be inconsistent with s 12(2). That left only HP's Interpretation and MT's Interpretation.

HP's and MT's Interpretations

18 The Judge agreed with MT's Interpretation. We also agreed.

The text of s 13(3)(a) of the SOPA and s 50(a) of the IA

19 Leaving aside authorities for the time being, the actual words in s 13(3)(*a*) of the SOPA are important. Section s 13(3)(*a*) states:

> **Adjudication applications**
>
> **13.**—….
>
> (3) An adjudication application —

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> (*a*) must be made within 7 days after the entitlement of the claimant to make an adjudication application first arises under section 12;
>
> …

20 At the hearing of the appeal, HP placed much reliance on the speech of a Member of Parliament, Mdm Cynthia Phua, made on 16 November 2004 on the Building and Construction Industry Security of Payment Bill (Bill No 54/2004) (Singapore Parl Debates; Vol 78, Sitting No 7; Col 1127; [16 November 2004] (Cynthia Phua, Member of Parliament for Aljunied)). She said that, "This application is to be made within 7 days …". This was a reference to the adjudication application. In our view, this statement did not assist HP because it was not disputed that s 13(3)(*a*) mentions that the adjudication application must be made "within 7 days". The question was from when the 7 days begins to run. Since MT was entitled to make an adjudication application from 28 June 2023, did the 7 days run from 28 June 2023 or one day after, *ie*, from 29 June 2023 (leaving aside for the time being the fact that 29 June 2023 was a public holiday).

21 As MT argued at paragraph 3.3.7 of its written submissions, s 13(3)(*a*) does not state that the adjudication application must be made within seven days "*after the end of the dispute settlement period*" [emphasis in original]. Rather, s 13(3)(*a*) states that the adjudication application must be made within 7 days "after the entitlement of the claimant to make an adjudication application first arises under section 12". At first blush, the two may appear to mean the same thing and that may explain the views expressed in some cases. However, a closer analysis reveals that they are not the same. The dates in question are different – s 12(2) refers to the expiry of the dispute settlement period (*ie*, 27 June 2023) while s 13(3)(*a*) refers to the date when the entitlement to file the adjudication

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application first arose (*ie*, 28 June 2023). These dates are a day apart with obvious implications for the long-stop date in s 13(3)(*a*).

22 It was not in dispute that the dispute settlement period ended on 27 June 2023. On 28 June 2023, MT was entitled to lodge an adjudication application, but MT's position was that 28 June 2023 was excluded from computation of the adjudication application lodgement deadline. MT argued that its interpretation was supported by s 50(*a*) of the IA. We set out s 50 of the IA:

> **Computation of time**
>
> **50.** In computing time for the purposes of any written law, unless the contrary intention appears —
>
> (*a*) a period of days from the happening of an event or the doing of any act or thing is deemed to be exclusive of the day on which the event happens or the act or thing is done;
>
> (*b*) if the last day of the period is a Sunday or a public holiday (which days are called in this section excluded days) the period includes the next following day not being an excluded day;
>
> (*c*) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding is considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
>
> (*d*) when any act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, excluded days must not be reckoned in the computation of the time.

23 It was telling that HP did not dispute that s 50(*a*) of the IA supported MT's Interpretation. Furthermore, as the Judge found, and we agreed, MT's Interpretation was consistent with the common law on the computation of time from a certain date which was to exclude the day of the event from the computation of a period within which a person must act upon that event. The

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common law was summarised in *Suresh s/o Suppiah v Jiang Guoliang* [2016] 4 SLR 645 ("*Suresh*"). HP also did not dispute the common law on the computation of time.

24 The court in *Suresh* discussed the historical development of s 50(*a*) of the IA and this provision's codification of the common law position. The provision which is now found in s 50(*a*) of the IA existed long before the enactment of the SOPA in 2004. As noted by the court at [82] of *Suresh*, s 50(*a*) can be traced back to the first legislative provision dealing with the computation of time in s 16 of the Interpretation Act 1867 passed by the Straits Settlements Legislative Council, which appears to codify the common principle then to exclude the first day in computing time. The drafters of the SOPA have drafted the SOPA against a statutory backdrop which includes the principles in the IA for the computation of time. Had the drafters of the SOPA intended to displace the time computation rules in s 50(*a*) of the IA, it would be reasonable to expect explicit language to have been included.

25 HP had cited *Suresh* in support of its interpretation of the adjudication application lodgement timelines, on the basis that the court in *Suresh* had "suggested that one way of viewing a cause of action which technically accrued at 0000 hours between two dates, would be to view the cause of action as not yet accruing at the last moment of the earlier date, and accruing at the first moment of the later date". However, a close reading of *Suresh* would show that it, in fact, supports MT's Interpretation.

26 *Suresh* was a case where the court had *applied* s 50(*a*) of the IA. In *Suresh*, the court had held that s 50(*a*) of the IA applied in construing the computation of time under s 24A(2)(*a*) of the Limitation Act (Cap 163, 1996

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Rev Ed) (the "Limitation Act") in the absence of provisions under the Limitation Act to explain the computation of time periods or to demonstrate a contrary intention: *Suresh* at [29]–[36]. Crucially, at [26]–[28] and [56] of *Suresh*, the court had also noted that there is a general principle of law that the law does not take into account fractions of a day, and thus, for the purpose of computing timelines under s 24A(2)(*a*) of the Limitation Act, the day of the date of accrual of the cause of action had to be *wholly* excluded. Transposing the *dicta* in *Suresh* to the present matter, it was our view that the interaction between s 50(*a*) of the IA and s 13(3)(*a*) of the SOPA would mirror the interaction between s 50(*a*) of the IA and s 24A(2)(*a*) of the Limitation Act: in calculating the deadline for making an adjudication application under s 13(3)(*a*) of the SOPA, the deadline calculation *excludes* the *entirety* of the day when the subject event happens, *ie,* the date when the entitlement to make the adjudication application under s 12 of the SOPA first arises.

27 In contrast, while the court in *Suresh* had, at [53]–[54], left open the possibility of a situation where a cause of action could be viewed as "not yet accruing at the last moment of the earlier date, and accruing at the first moment of the later date", the court stated that such a scenario "would arise only in rare technical situations" (at [53]), that such situations were "exceptional" (at [54]) and that the case which applied such a rule (*Gelmini v Moriggia* [1913] 2 KB 549) was not followed in the later case of *Marren v Dawson Bentley & Co* Ltd [1961] 2 QB 135.

28 Therefore, *Suresh* did not support HP's Interpretation.

The statutory purpose of the SOPA

29 HP also relied on s 9A(1) of the IA which states:

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> **Purposive interpretation of written law and use of extrinsic materials**
>
> **9A.**—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) is to be preferred to an interpretation that would not promote that purpose or object.

30 HP argued that its interpretation would support the purpose of the SOPA which is to provide for an expeditious and low-cost adjudication system for parties in the construction industry to resolve disputes (although temporarily) while MT's Interpretation does not support that purpose. This was because under MT's Interpretation, an adjudication applicant had one additional day to lodge his adjudication application, *ie,* effectively eight days instead of seven days.

31 Even though MT's Interpretation means that a claimant has one additional day to lodge his adjudication application, we rejected the submission that this suggested that HP's Interpretation should therefore be preferred.

32 First, while s 9A(2) of the IA allows the consideration of extraneous material not forming part of the written law in the interpretation of that law, this is subject to the guidance mentioned in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [47] where the Court of Appeal said that a court may consider extraneous material in the three situations mentioned in *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [65]:

> (a) under s 9A(2)(*a*), to *confirm* that the ordinary meaning deduced is the correct and intended meaning having regard to

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> any extraneous material that further elucidates the purpose or object of the written law;
>
> (b) under s 9A(2)(*b*)(i), to *ascertain* the meaning of the text in question when the provision on its face is ambiguous or obscure; and
>
> (c) under s 9A(2)(*b*)(ii), to *ascertain* the meaning of the text in question where having deduced the ordinary meaning of the text as aforesaid, and considering the underlying object and purpose of the written law, such ordinary meaning is manifestly absurd or unreasonable.
>
> [emphasis in original]

33 HP did not argue that any part of the SOPA or the IA was ambiguous or obscure. Neither did it suggest that MT's Interpretation was manifestly absurd or unreasonable.

34 We add that while the purpose of the SOPA is to provide an expeditious adjudicative system to temporarily resolve disputes, it was a stretch to argue that the difference between the interpretations of HP and that of MT meant that HP's Interpretation met the purpose of the SOPA while MT's did not just because MT's Interpretation would mean an extra one day to file an adjudication application. We maintained that view even though HP argued that the attendant consequence of applying MT's Interpretation to another similarly-worded provision, *ie*, s 17(1)(*a*) of the SOPA, would then mean a two-day delay in the computation of certain timelines under the SOPA.

35 In so far as HP argued that its interpretation was in harmony with other timelines in the SOPA which adopt a time period of seven days or multiples of seven days, MT pointed out that there are other timelines in the SOPA which do not follow such a pattern, such as the timelines in ss 8(3), 8(4), 22(2)(*a*), 26(4) and 26(5) of the SOPA. In any event, s 13(3)(*a*) does use a seven-day

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timeline. The question was when the time starts to be computed. The fact that the adjudication applicant effectively gets eight days to lodge its adjudication application, while some of the other provisions effectively require a claimant to act within seven days or multiples thereof, was neither here nor there. HP had not identified any principled rationale for why the number "seven" holds any special significance in the context of the SOPA. It is the text of s 13(3)(*a*) that prevails and, as mentioned, MT's Interpretation was neither absurd nor unreasonable.

Case law and industry practice

36 HP argued that its interpretation was supported by published cases and also industry practice, in particular: (a) a quick guide on the timelines under the SOPA published by the Building and Construction Authority of Singapore ("BCA Guide"), and (b) a checklist issued by the Singapore Mediation Centre as part of the adjudication application form to be submitted when claimants make their adjudication applications ("SMC Checklist"). The latter mentioned that the "7-days Dispute Settlement Period has ended and the AA is lodged within 7 days after the expiry of the Dispute Settlement Period". It is obvious that the latter did not track the actual words used in s 13(3)(*a*) of the SOPA and had assumed that the seven days is computed from the end of the dispute settlement period. This is patently erroneous as the statutory language in s 13(3)(*a*) computes the seven days from the time "the entitlement of the claimant to make an adjudication application first arises under section 12". Likewise, the BCA Guide (which is in the form of an infographic) made the same assumption. In any event, HP acknowledged that both do not have the force of law but argued that weight

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should be given to them in the light of the text of s 13(3)(*a*) of the SOPA and s 50(*a*) of the IA.

37 In so far as HP relied on some cases to support its interpretation, HP acknowledged that the cases did not address squarely the interpretation of s 13(3)(*a*) of the SOPA. For example, in *Taisei Corp v Doo Ree Engineering & Trading Pte Ltd* [2009] SGHC 156, the parties had adopted a computation which was the same as that based on HP's Interpretation. In *Tienrui Design & Construction Pte Ltd v G & Y Trading and Manufacturing Pte Ltd* [2015] 5 SLR 852, the court had also adopted the same computation. However, there was no argument on s 13(3)(*a*) of the SOPA which was not in issue in either case.

38 In so far as MT relied on *YTL Construction (S) Pte Ltd v Balanced Engineering & Construction Pte Ltd* [2014] SGHC 142 ("*YTL*") to support its interpretation, the Judge noted (see *H P Construction (GD)* at [10]), and we agreed, that the point was not argued there. In that case, the adjudication application was lodged approximately five weeks after the deadline for lodgement (*YTL* at [37]).

39 HP also relied on two cases to argue that MT was entitled to lodge an adjudication application at 0000 hours of 28 June 2023, which entitlement lasted till 2359 hours on 5 July 2023 (in view of a public holiday in between). They were *Mansource Interior Pte Ltd v Citiwall Safety Glass Pte Ltd* [2014] 3 SLR 264 ("*Mansource*") and *Suresh*. However, this splitting of a day assumed that the computation started on 28 June 2023 which we did not agree with. In any event, the two cases did not deal with s 13(3)(*a*) SOPA and the facts there were quite different. The attempt to split a day was a desperate argument which flew in the face of the point made by the court at [26]–[28] and [56] of *Suresh*

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that there is a general principle of law that the law does not take into account fractions of a day. HP's reliance on *Mansource* was also curious as the case lent better support to MT's Interpretation. In *Mansource*, the court had, when interpreting s 15(1) of the SOPA, noted that there was no provision under the SOPA to explain the computation of time, and thus s 50(*a*) of the IA would govern (*Mansource* at [13]–[14]). Logically, s 50(*a*) of the IA should similarly apply to the interpretation of the timeline under s 13(3)(*a*) of the SOPA.

Conclusion

40 In summary, the disposal of the present appeal turned on the plain application of s 50(*a*) of the IA to s 13(3)(*a*) of the SOPA. There was no material before this court evincing a contrary intention that s 50(*a*) of the IA should not be used to interpret s 13(3)(*a*) of the SOPA. There was no necessity to refer to extraneous material to decide the meaning of s 13(3)(*a*) of the SOPA – there is no ambiguity or obscurity in the statute after s 50(*a*) of the IA is applied to the SOPA, and it cannot be said that MT's Interpretation, which was adopted by the Judge as well, leads to a manifestly absurd or unreasonable result.

41 We were of the view that the present adjudication application was made within time on 6 July 2023 as the entitlement to lodge an adjudication application first arose on 28 June 2023, which was the day after the last day of the dispute settlement period, and an adjudication application should be filed within seven days *after* 28 June 2023, which would be 6 July 2023 (excluding the public holiday on 29 June 2023).

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42 We dismissed the appeal with costs fixed at $30,400 inclusive of disbursements. The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

John Lim Kwang Meng and Ng Kai Ling (LIMN Law Corporation) for the appellant;
Joseph Tay Weiwen, Swah Yeqin Shirin and Claire Tan Su Yin (Shook Lin & Bok LLP) for the respondent.

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