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

[2024] SGHC 72

Originating Claim No 421 of 2023 (Registrar's Appeal No 9 of 2024)

Between

Crystal-Moveon Technologies Pte Ltd

… *Appellant*

And

Moveon Technologies Pte Ltd

… *Respondent*

JUDGMENT

[Arbitration — Stay of court proceedings — Grounds]
[Arbitration — Stay of court proceedings — Court's discretion under Arbitration Act]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

BACKGROUND 2

THE EQUIPMENT TRANSFER AGREEMENT 2

THE PARTIES' CASES **3**

THE PLEADINGS 3

SUM 2865 5

DECISION BELOW **8**

THE PARTIES' CASES ON APPEAL **9**

ISSUES TO BE DETERMINED **11**

WHETHER THE RELEVANT DISPUTE FALLS WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT **12**

THE CONSTRUCTION OF ARBITRATION AGREEMENTS 12

WHETHER THE AH EQUIPMENT CLAIMS FALL WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT 14

WHETHER THE EQUIPMENT CLAIMS FALL WITHIN THE SCOPE OF THE ARBITRATION AGREEMENT 15

WHETHER THERE IS "SUFFICIENT REASON" WHY THE RELEVANT DISPUTE SHOULD NOT BE REFERRED TO ARBITRATION **20**

WHETHER "SUFFICIENT REASON" HAS BEEN DEMONSTRATED IN THIS CASE 24

WHETHER THE AH EQUIPMENT CLAIMS ARE "UNDISPUTED" OR "INDISPUTABLE" 29

CONCLUSION 32

Crystal-Moveon Technologies Pte Ltd
v
Moveon Technologies Pte Ltd

[2024] SGHC 72

General Division of the High Court — Originating Claim No 421 of 2023
(Registrar's Appeal No 9 of 2024)
Lee Seiu Kin SJ
15 February 2024

14 March 2024 Judgment reserved.

Lee Seiu Kin SJ:

Introduction

1 This is an appeal by the defendant in HC/OC 421/2023 ("OC 421") against the learned Assistant Registrar's ("AR") decision refusing its application in HC/SUM 2865/2023 ("SUM 2865") for a stay of part of the claimant's action pursuant to s 6 of the Arbitration Act 2001 (2020 Rev Ed) ("the AA"), on the basis that the parties have agreed to refer those claims to arbitration. The defendant also appealed against the costs orders made.

2 On appeal, the submissions focused on the extent to which the claims in OC 421 fall within the arbitration agreement between the parties, and whether there was "sufficient reason" for the court to exercise its discretion to refuse a stay in favour of arbitration.

Facts

Background

3 The claimant and one Zhejiang Crystal-Optech Co Ltd ("COC"), a public listed company in China, agreed to participate in a joint venture sometime in 2021 and the defendant was incorporated in Singapore for this purpose.[1] The claimant is a minority shareholder holding 40% of the shares of the defendant while COC holds the remaining 60% of the shares.[2] According to the defendant, the defendant's operations were terminated in or around May 2022 as its purpose could not be fulfilled.[3]

The Equipment Transfer Agreement

4 Sometime on or around 1 June 2022, the parties entered into an Equipment Transfer Agreement ("ETA") for the transfer of some units of equipment from the claimant to the defendant.[4] Three features of the ETA should be highlighted, namely:

(a) The preamble to the numbered clauses of the ETA states that the parties have reach an agreement "on the equipment assets transfer involved in the equipment contract (see attached contract list for details". In turn, cl 1 of the ETA refers to the "attached equipment contract list" as the "[s]ubject [m]atter of the [t]ransfer".[5] A document

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1 Affidavit of Evidence-in-Chief ("AEIC") of Jin Lijian dated 13 September 2023 ("JLJ") at paras 5–8; AEIC of Chee Teck Lee dated 3 October 2023 ("CTL") at para 17.

2 CTL at para 17.

3 JLJ at para 9.

4 JLJ at para 12; CTL at para 25.

5 JLJ at p 48.

titled "Equipment Transfer List" ("ETL") was produced by the defendant and was purportedly annexed to the ETA.[6] The ETL includes two units of "Ares 1350" and one unit of "Hitachi Regulus 8100, FESEM with Hybrid Ion Miller, IM4000Plus and Oxford EDX".[7] I shall refer to these three units of equipment as the "AH Equipment". Based on the ETL, the total cost of the AH Equipment is US$2,214,900.[8]

(b) Clause 8.2 of the ETA, which is essentially an arbitration agreement, provides the following:[9]

> 8.2. In the process of implementing this contract, if there is any dispute, both parties shall negotiate to resolve it. If the negotiation fails, both parties agree to submit it to the Singapore International Arbitration Centre for settlement. The dispute resolution process does not affect the continued execution of the non-disputed clause.

(c) Clause 9.2 of the ETA states the following:[10]

> 9.2. Matters not involved in this contract shall be resolved by signing a written supplementary agreement between the two parties. The supplementary agreement has the same legal effect as this contract.

The Parties' Cases

The pleadings

5 The claimant's case is that, subsequent to its agreement with COC to participate in the joint venture, the process of incorporating the defendant and obtaining COC's funding for the operations of the defendant in Singapore would

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6 JLJ at paras 13–14.

7 JLJ at p 53.

8 JLJ at p 53.

9 JLJ at p 51.

10 JLJ at p 51.

take some time.[11] As such, it was agreed that the claimant would incur expenses for and on behalf of the defendant pending its incorporation and receipt of funds from COC, in order for critical timelines set by the defendant's client(s) to be met.[12] The claimant would then be reimbursed for these expenses by the defendant, once funds were made available to the defendant by COC.[13]

6 Through OC 421, the claimant seeks to recover from the defendant various expenses that it incurred for and on behalf of the defendant for its operations. These include:[14]

(a) Capital expenditure incurred in connection with the defendant's operations including costs involved in the procurement of equipment, software, materials, and service, facilities and fabrication costs.

(b) Salaries and other related costs arising out of the claimant's secondment of its employees to the defendant.

(c) Sums due from the defendant under two written tenancy agreements between the parties for the use of two commercial premises sub-leased from the claimant by the defendant.

7 In relation to the claimant's claim for equipment costs (which is included within the broader claim for capital expenditure in [6(a)] above), the claimant seeks the amounts of US$5,910,246.45 and S$959,308.93.[15] The claimant alleges that the defendant had agreed to pay these expenses and this agreement

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11 CTL at para 20.

12 CTL at para 21.

13 CTL at para 21.

14 Statement of Claim dated 30 June 2023 ("SOC") at para 4.

15 SOC at para 5.

is reflected in e-mail correspondence between the parties throughout the period of January to May 2022.[16] Crucially, the claim for equipment costs is *not* based on the ETA, the significance of which I will return to later. The claimant has particularised its claims for equipment costs in a table found at Annexure A of its Statement of Claim dated 30 June 2023 ("SOC"). Items numbered 2 and 5 of the table in Annexure A of the SOC refers to "Ares 1350" and "Package price for Hitachi Regulus 8100 FESEM with Hybrid Ion Miller IM4000Plus and Oxford EDX" respectively.[17] I pause to note that these are the same items as the AH Equipment found in the ETL. For convenience, I will thus refer to the claims in OC 421 for the costs of the AH Equipment as the "AH Equipment Claims" and the claims for the costs of all the equipment listed in Annexure A of the SOC, which include the AH Equipment, as the "Equipment Claims".

8 The defendant contends that the Court has no jurisdiction over the Equipment Claims as they fall within the scope of the arbitration agreement in cl 8.2 of the ETA.[18] In relation to the other claims in OC 421, the defendant denies any agreement or general liability to pay the claimant for the expenses claimed.[19]

SUM 2865

9 In SUM 2865, the defendant sought to stay the part of the claimant's action relating to (a) the Equipment Claims, or in the alternative, (b) at least the AH Equipment Claims. With regard to (a), the defendant relied on cl 9.2 of the ETA, which provides that the equipment transfers not involved in the ETA are

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16 SOC at para 6.

17 SOC at p 17.

18 Defence dated 31 July 2023 ("DD") at para 3.

19 DD at paras 12(b), 14–19, 21, 27–31, 34, 38–43, 46.

to be resolved by a written supplementary agreement which would have the same legal effect as the ETA (see above at [4(c)]). The defendant argued that cl 9.2 of the ETA operates to cover *all other* equipment, in addition to and aside from the AH Equipment, that the claimant is seeking costs for.[20] Accordingly, the dispute over the Equipment Claims would be subject to the parties' arbitration agreement in cl 8.2 of the ETA as it would constitute a dispute in the course of implementing the ETA.[21] With regard to (b), the defendant pointed out that the AH Equipment and their respective prices correspond with the items and their respective amounts payable at S/N 2 and 5 of Annexure A of the SOC, and thus the AH Equipment are the same items claimed by the claimant in OC 421.[22] As such, there exists a dispute over the transfer of the AH Equipment which falls within the ambit of the arbitration agreement in cl 8.2 of the ETA.[23]

10 The defendant submitted that a dispute over the Equipment Claims exists as the defendant had not, at any point, made an admission of liability to pay for the equipment costs.[24] In the same vein, it suffices for the defendant to simply assert that it disputes or denies the claim in order to obtain a stay of proceedings in favour of arbitration,[25] and that the *merits* of the dispute are irrelevant to the *existence* of a dispute.[26] Additionally, the defendant argued that there is no sufficient reason for the refusal of a stay because the claims in OC 421 are for distinct types of costs and so there are no overlapping disputed

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20 Defendant's Written Submissions for HC/SUM 2865/2023 dated 9 October 2023 ("D's SUM 2865 Subs") at paras 26–29, 31.

21 D's SUM 2865 Subs at para 32.

22 D's SUM 2865 Subs at para 14.

23 D's SUM 2865 Subs at para 17.

24 D's SUM 2865 Subs at para 19.

25 D's SUM 2865 Subs at para 19(b).

26 D's SUM 2865 Subs at para 19(d).

factual issues between the Equipment Claims and the rest of the claims in OC 421 that could give rise to a risk of inconsistent findings across two different fora, *ie*, the proceedings in OC 421 and the putative arbitration.[27]

11 The claimant does not dispute that the ETA contains an arbitration agreement. However, it disagreed with the defendant that the arbitration agreement extended to the transfer of all items of equipment between the parties, apart from simply the AH Equipment.[28] As such, the claimant submitted that there was no basis for the defendant to claim that the arbitration agreement covered any of the Equipment Claims other than those for the AH Equipment.[29]

12 Further, the claimant argued that there was no dispute referable to arbitration and, therefore, no sufficient reason for a stay pursuant to s 6 of the AA.[30] According to the claimant, the contemporaneous documentary evidence shows that the defendant's liability to pay is not in dispute and/or indisputable.[31] In any case, even if there was a dispute referrable to arbitration, there is sufficient reason to refuse a stay because there is an overlap of the facts surrounding the claim for the AH Equipment costs and the remaining claims for the equipment costs as the entire claim for equipment costs, *ie*, the Equipment Claims, constitute a "singular dispute".[32] Further, the evidence given in

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27 D's SUM 2865 Subs at para 40.

28 Claimant's Written Submissions for HC/SUM 2865/2023 dated 9 October 2023 ("C's SUM 2865 Subs") at paras 11–16.

29 C's SUM 2865 Subs at para 16.

30 C's SUM 2865 Subs at paras 36–37.

31 Claimant's Reply Submissions for HC/SUM 2865/2023 dated 1 November 2023 ("C's SUM 2865 Reply Subs") at paras 13–15.

32 C's SUM 2865 Subs at para 40.

connection with the Equipment Claims will also overlap with that of the other claims in OC 421, giving rise to a risk of inconsistent findings in different fora.[33]

Decision Below

13 The learned AR dismissed the defendant's application for a stay in SUM 2865, detailing his reasons in *Moveon Tehcnologies Pte Ltd v Crystal-Moveon Technologies Pte Ltd* [2024] SGHCR 2 ("*Moveon Technologies*"). First, the learned AR found that the subject matter of the ETA is limited only to the AH Equipment, and as such, only the AH Equipment Claims come within the scope of the arbitration agreement in the ETA: *Moveon Technologies* at [22].

14 Second, it suffices for the defendant to merely assert a dispute for the purposes of establishing a "dispute" under s 6 of the AA: *Moveon Technologies* at [26]. Accordingly, the account which the defendant has put forward in relation to the AH Equipment Claims is clearly an assertion of a dispute or a denial of that claim in OC 421: *Moveon Technologies* at [46].

15 Third, since the defendant had established the existence of a dispute, the burden shifted to the claimant to demonstrate a sufficient reason why a stay should be refused: *Moveon Technologies* at [47]. In this regard, the learned AR found that the AH Equipment Claims on one hand, and the remaining claims for the equipment costs as well as the other claims in OC 421 for capital expenditure on the other hand, share a singular factual matrix that implies a real risk of inconsistent findings in court proceedings and a putative arbitration: *Moveon Technologies* at [61], [63]. Accordingly, the learned AR was satisfied that the court ought to exercise its discretion under s 6 of the AA to refuse a stay of proceedings: *Moveon Technologies* at [65].

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33 C's SUM 2865 Reply Subs at para 22.

16 Lastly, for completeness, the learned AR opined that the claimant had not made out its case that the AH Equipment Claims are "undisputed" or "indisputable": *Moveon Technologies* at [69].

The Parties' Cases on Appeal

17 The defendant, as the appellant, seeks to reverse the learned AR's decision to refuse the grant of a stay and submits the following on appeal:

(a) The learned AR was correct in finding that the defendant had demonstrated a dispute pertaining to the AH Equipment Claims merely by asserting that it disputes or denies those claims.[34]

(b) The learned AR was correct in finding that the AH Equipment Claims were not "undisputed" or "indisputable" and would not have found sufficient reason to refuse a stay on such grounds.[35]

(c) The learned AR erred in finding that there was a sufficient reason to refuse a stay of proceedings.[36] A singular/common theme amongst the related claims (that being the AH Equipment Claims on one hand, and the remaining claims for the equipment costs or the other claims in OC 421 on the other hand) is not a sufficient reason and there are no exceptional circumstances in the present case to warrant a stay.[37] Similarly, a mere multiplicity of proceedings and the existence of related

34 Defendant's Written Submissions dated 7 February 2024 ("DWS") at paras 16–18.

35 DWS at paras 58, 60.

36 DWS at para 19.

37 DWS at paras 26, 31, 51–57.

actions do not, in itself, amount to sufficient reason, given there is no real risk of inconsistent findings.[38]

(d) The learned AR was wrong to conclude that the arbitration agreement did not cover *the entirety* of the claims related to equipment costs, *ie*, the Equipment Claims.[39] As such, the proceedings related to the Equipment Claims should be stayed.[40]

18 The claimant, as the respondent, submits that the learned AR's decision to dismiss the stay application should be upheld and submits the following:

(a) The learned AR was correct in finding that the arbitration agreement in the ETA only covers the AH Equipment Claims and not the Equipment Claims.[41]

(b) In respect of the court's assessment of a sufficient reason to refuse the stay, the defendant must demonstrate that the dispute is valid or sustainable.[42] In the present case, there is no dispute referrable to arbitration as the defendant had clearly and unequivocally admitted its liability to pay for the AH Equipment.[43]

(c) There is sufficient reason to refuse a stay as there is a likelihood of inconsistent findings since the Equipment Claims, that include the

38 DWS at paras 32–41.

39 DWS at paras 61–67.

40 DWS at paras 68–71.

41 Claimant's Written Submissions dated 7 February 2024 ("CWS") at paras 22(a), 25–34.

42 CWS at paras 37–44.

43 CWS at paras 22(b)–(c), 46–56.

AH Equipment Claims, form a singular dispute and the evidence for the Equipment Claims will overlap with the evidence for the other claims in OC 421.[44]

Issues to be determined

19 The learned AR set out the applicable principles in relation to a stay application under s 6 of the AA in his grounds of decision at [7]–[10]. It bears repeating the following two points only, which I find to be most relevant to this appeal: first, the dispute in the court proceedings (or any part thereof) must fall within the scope of the arbitration agreement, and second, there must be no "sufficient reason" why the matter should not be referred to arbitration in accordance with the arbitration agreement: see also *Halsbury's Laws of Singapore* vol 1(2) (LexisNexis, 2023 Reissue) at para 20.031.

20 The issues raised in this appeal can be scoped by these requirements and are thus as follows:

(a) Does the relevant dispute (over either the Equipment Claims, or in the alternative, the AH Equipment Claims) fall within the scope of the arbitration agreement in cl 8.2 of the ETA?

(b) If so, is there "sufficient reason" why the relevant dispute should not be referred to arbitration in accordance with the arbitration agreement?

21 At first instance, the claimant raised the issue of whether the defendant's mere denial of its claim is sufficient to demonstrate a *prima facie* case of a

[44] CWS at paras 22(c), 58–64.

dispute.[45] However, on appeal, the claimant's submission as to the lack of a dispute over the AH Equipment Claims are confined to the separate issue of whether there is "sufficient reason" to refuse the stay.[46] I therefore will address the claimant's argument in that context only.

Whether the relevant dispute falls within the scope of the arbitration agreement

The construction of arbitration agreements

22 It is settled that the court is to undertake a generous approach in the construction of the scope of arbitration agreements: see *Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414 ("*Larsen*") at [19]. As set out by the Court of Appeal in *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 ("*Rals*"):

> 30 … The decision of this court in [*Larsen*] represents the law as it currently stands in Singapore. In *Larsen*, the court followed the decision of the House of Lords in *Fiona Trust & Holding Corporation v Privalov* [2007] 2 All ER (Comm) 1053 ("*Fiona Trust*"), holding that arbitration clauses should be generously construed such that all manner of claims, whether common law or statutory, should be regarded as falling within their scope unless there is good reason to conclude otherwise (*Larsen* at [19]). This was a marked departure from the traditional approach of the English courts, which was based on precise words used in the arbitration clause (*Larsen* at [12]). The court in *Larsen* quoted from the judgment of Lord Hoffmann at [13] of *Fiona Trust*, in which he said:
>
> > … [T]he construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance

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45 C's SUM 2865 Subs at paras 36–37; C's SUM 2865 Reply Subs at paras 9–12.

46 CWS at paras 37, 44–45, 55–57.

> with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction.
>
> …
>
> 32 *Essentially, the rule of construction is that all disputes between parties are assumed to fall within the scope of the arbitration clause unless shown otherwise*. As Lord Hoffmann also states in *Fiona Trust* at [5], this is not borne out of policy considerations but of the context in which arbitration agreements are entered into; ultimately, it all depends on the intention of the parties, objectively ascertained:
>
> > … Arbitration is consensual. It depends upon the intention of the parties as expressed in their agreement. Only the agreement can tell you what kind of disputes they intended to submit to arbitration. But the meaning which parties intended to express by the words which they used will be affected by the commercial background and the reader's understanding of the purpose for which the agreement was made. Businessmen in particular are assumed to have entered into agreements to achieve some rational commercial purpose and an understanding of this purpose will influence the way in which one interprets their language.
>
> [emphasis added]

23 Notwithstanding this, there are limits to this generous approach to interpretation and ultimately, where there are compelling reasons, commercial or otherwise, that may displace any assumed intention of the parties that claims of a particular kind are to fall within the scope of an arbitration clause, the court should be slow to conduct the exercise of contractual construction from that starting point: *Rals* at [34].

24 With these principles in mind, I move to consider whether the Equipment Claims or the AH Equipment Claims fall within the scope of the arbitration agreement. In particular, to use the words of the arbitration agreement in cl 8.2 of the ETA, the question is whether either of these sets of

claims can constitute "any dispute" that arises "[i]n the process of implementing [the ETA]".

Whether the AH Equipment Claims fall within the scope of the arbitration agreement

25 I first consider the issue in relation to the AH Equipment Claims, which form a subset of the Equipment Claims, that itself are a subset of the claims in OC 421. In this regard, it is crucial to note that the claimant's argument is *not* that the arbitration agreement does not apply to the AH Equipment Claims, but rather that there is no dispute over those claims that engages the arbitration agreement. Nevertheless, for the sake of completeness, I shall consider if the AH Equipment Claims are subject to the arbitration agreement.

26 As mentioned (see above at [4(a)]), the ETA reflects the agreement for the parties to transfer certain equipment assets that are detailed in the ETL, namely the AH Equipment. By the operation of cl 8.2 of the ETA, any dispute in the process of implementing the ETA, *ie*, in transferring the AH Equipment, would be referrable to arbitration.

27 The difficulty in the present case is that the claimant's AH Equipment Claims is *not* based on the ETA. To recapitulate, the claimant claims for equipment costs, which include costs for the AH Equipment, on the basis that the defendant had agreed to pay for those expenses. The claimant establishes this agreement by relying on e-mail correspondence between the parties throughout the period of January to May 2022 (see above at [7]).[47] As such, this claim is thus *not* based on the ETA. Rather, it is grounded in a different cause of action, that being what appears to be a separate contract between both parties

[47] SOC at para 6.

formed by their conduct that pre-dated the ETA, evinced by the e-mail correspondence that the claimants refer to.

28 Be that as it may, it is clear to me that the ETA was entered into by the parties to govern the transfer of the AH Equipment. The purpose of the ETA is evidently to regulate, through its terms, how the parties are to conduct themselves and what obligations they have in relation to the AH Equipment. Importantly, the claimant does not dispute the validity of the ETA, the fact that the ETA covers the AH Equipment[48] or the terms of the ETA, especially the arbitration agreement at cl 8.2 of the ETA.

29 Accordingly, taking the generous approach expounded in *Rals*, the arbitration agreement should be taken to apply to any dispute related to the transfer of the AH Equipment. The corollary of this is that even though the claimant does not base its AH Equipment Claims on the breach of the ETA, the arbitration agreement would still be engaged since the AH Equipment Claims are, in essence, a dispute over the transfer of the AH Equipment. This, in turn, should be understood as a dispute that goes towards the implementation of the ETA and therefore is covered by the arbitration agreement. Therefore, to answer the question succinctly, the AH Equipment Claims fall within the scope of the arbitration agreement.

Whether the Equipment Claims fall within the scope of the arbitration agreement

30 Having determined that the AH Equipment Claims are subject to the arbitration agreement, I now move to consider if the broader category of Equipment Claims fall within the scope of the arbitration agreement.

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[48] CWS at paras 18–19.

31 The defendant's argument in this respect is that cl 9.2 of the ETA (see above at [4(c)]), which (according to the defendant) is clear and unambiguous, provides a mechanism for transfers of all other equipment without the need for parties to enter into fresh agreements due to the urgency of the transfers.[49] According to the defendant, based on an objective interpretation of cl 9.2 of the ETA, cl 9.2 covers transfers relating to all other equipment besides the AH Equipment and so, the Equipment Claims are subject to the arbitration agreement in the ETA.[50]

32 The claimant submits that it is clear and unambiguous that the ETA only deals with the AH Equipment,[51] and there is nothing in the language of cl 9.2 of the ETA to suggest that the effect of the ETA is to be extended to any other item of equipment not already specified as the subject matter of the ETA by cl 1 of the ETA or identified in the ETL.[52] Additionally, it is undisputed that the parties had not entered into any "written supplementary agreement" in connection with the transfer of the remaining items of equipment coming under the Equipment Claims, and that there are no other equipment transfer lists identifying other items of equipment that were to be transferred pursuant to the ETA.[53]

33 Based on the above submissions, the parties accept that, in order for the arbitration agreement to apply to the Equipment Claims, the broader contract, *ie*, the ETA, must cover transfer of the equipment other than the AH Equipment. I agree with this, especially in view of the inclusion in the arbitration agreement,

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49 DWS at para 62.

50 DWS at para 64.

51 CWS at para 33.

52 CWS at para 32.

53 CWS at para 30.

ie, cl 8.2, of the phrase "implementing this contract". I therefore turn my attention to ascertaining the scope of the ETA, particularly the effect of cl 9.2 of the ETA.

34 I pause to make a brief statement about the relevant principles to be applied in the construction of contracts. The Court of Appeal in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 ("*CIFG*") at [19] had set out the well-established principles from several decisions of that court, which are as follows:

> …
>
> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

35 It also bears noting that the contextual approach to contractual interpretation has its limits and the context cannot be utilised by the court to rewrite the contract. The Court of Appeal in *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 at [32] noted:

> … [T]here must be a *balance* between the text and the context. In other words, the context *cannot* be utilised as an excuse by the court concerned to *rewrite* the terms of the contract according to *its* (*subjective*) view of what it thinks the result ought to be in the case at hand. To this end, the court must always base its decision on *objective* evidence. … Admittedly, the line between interpreting the terms of a contract and rewriting it is a very fine one, and much will, in the final analysis, depend upon *the precise facts and context* before the court (as *manifested in the objective evidence* itself). Finally, it should also never be forgotten that, although the relevant context is also important, the ***text*** ought always to be ***the first port of call*** for the court … [emphasis in original]

36 With these principles in mind, I turn to the text of cl 9.2 of the ETA, which both parties submit are plain and unambiguous yet result in diametrically opposed interpretations by the parties. In my view, there can only be one meaning to cl 9.2 of the ETA: the parties had agreed to sign supplementary written agreements to resolve matters not covered within the ETA, and these said agreements will have the same legal effect as the ETA. The plain text of the clause does not suggest, contrary to the defendant's submissions, that cl 9.2 of the ETA operates to impose the terms of the ETA onto all transfers of equipment between the parties. Rather, it is obvious that a signed supplementary written agreement over transfers of equipment other than the AH Equipment is a prerequisite for the terms of the ETA to apply to those transfers. As recognised by the learned AR, there is nothing in the language of cl 9.2 of the ETA (or anywhere else in the ETA) which suggests that the effect of the ETA is to be extended to any other item of equipment not already specified as the subject matter of the ETA by cl 1 of the ETA or identified in the ETL: *Moveon Technologies* at [20].

37 This interpretation is consistent with the purported context behind the ETA, particularly the urgency of the transfers, as submitted by the defendant. According to the defendant, the transfer of equipment from the claimant was

"very urgent" and the AH Equipment was to be transferred first, with further transfers to follow.[54] Indeed, applying the interpretation above, cl 9.2 allows parties to transfer other items of equipment on the same terms that had already been agreed and expressed in the ETA, without the need to extensively negotiate the terms of the transfer or to undergo the formalities of drafting up another agreement similar to the ETA, simply by signing supplementary written agreements. In other words, cl 9.2 provides a convenient and accelerated process that would facilitate the transfers of equipment from the claimant to the defendant expeditiously and address any alleged urgency concerns.

38 In any case, this context would not assist the defendant in its argument that cl 9.2 of the ETA operates to extend the effect of the ETA to equipment other than the AH Equipment since the plain language of cl 9.2 is unable to support that meaning. As I noted (see above at [35]), the context cannot be utilized to *rewrite* the terms of a contract and so the context cannot be relied on to interpret cl 9.2 of the ETA in a way that is inconsistent with its plain language. Ascribing the defendant's suggested meaning to cl 9.2 would palpably amount to rewriting that clause.

39 Therefore, the subject matter of the ETA does not extend to equipment other than the AH Equipment. As such, the arbitration agreement in cl 8.2 of the ETA does not cover the Equipment Claims. Accordingly, only the AH Equipment Claims are engaged by the arbitration agreement and I thus affirm the learned AR's conclusion in this regard.

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[54] D's SUM 2865 Subs at para 29.

Whether there is "sufficient reason" why the relevant dispute should not be referred to arbitration

40 Turning to the second issue, the inquiry here is whether there is "sufficient reason" why the AH Equipment Claims, being the only claims that are subject to the arbitration agreement, should not be referred to arbitration.

41 The burden of demonstrating that there is a "sufficient reason why the matter should not be referred to arbitration" under s 6(2)(*a*) of the AA falls on the party seeking to persuade the court to exercise its discretion to override the arbitration agreement that that party has entered into and refuse a stay of court proceedings: see also *CSY v CSZ* [2022] 2 SLR 622 ("*CSY*") at [24]; *Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431 ("*Maybank*") at [23]. Accordingly, it is the plaintiff that is required to show that there is "sufficient reason".

42 Assuming the counterparty is ready and willing to arbitrate, the court should only refuse a stay in exceptional circumstances and thus should generally be slow to exercise its discretion in allowing the relevant claims to proceed in court: *CSY* at [24]; *Maybank* at [23]. In this regard, the Court of Appeal in *CSY* at [25] set out the following guidance to regulate the exercise of the court's discretion:

> 25 In each case, however, the court must scrutinise the myriad factual circumstances to determine how best to manage its processes and ensure the efficient and fair resolution of the entire dispute. The term "sufficient reason" captures a broad range of factors (*Fasi Paul Frank v Specialty Laboratories Asia Pte Ltd* [1999] 1 SLR(R) 1138 at [18]). Ultimately, the factors invoked will be weighed against and will have to be found to outweigh the significant consideration that the parties had voluntarily bound themselves to arbitrate and ought therefore to be held to their agreement (*Sim Chay Koon v NTUC Income Insurance Co-operative Ltd* [2016] 2 SLR 871 at [8]–[10]).

> Amongst others, we consider the following factors instructive in the inquiry:
>
> (a) the existence of related actions and disputes, some of which are governed by an arbitration agreement and others which are not;
>
> (b) the overlap between the issues in dispute such that there is a real prospect of inconsistent findings;
>
> (c) the likely shape of the process for the resolution of the entire dispute;
>
> (d) the likelihood of injustice in having the same witnesses deal with the same factual issues before two different fora;
>
> (e) the likelihood of disrepute to the administration of justice ensuing from the fact that overlapping issues may be differently determined in different actions;
>
> (f) the relative prejudice to the parties; and
>
> (g) the possibility of an abuse of process.

43 Crucially, I also note that the fact that there are related actions, some governed by arbitration agreements and some not, is not in itself a sufficient reason to sanction a breach of an arbitration clause and depart from the policy in favour of arbitration: *CSY* at [29]; *Maybank* at [23].

44 The learned AR also comprehensively detailed the legal principles which are engaged in the exercise of the court's discretion to refuse a stay under s 6 of the AA: *Moveon Technologies* at [49]–[59]. The parties do not dispute that these principles apply, but rather differ only in *how* they should be applied to the present case. In any case, I agree with the learned AR's summary of the principles and the relevant authorities.

45 Applying these principles to the case at hand, the claimant advances two arguments. First, the claimant submits that the question of whether the dispute asserted by the defendant is valid or sustainable is relevant to whether

"sufficient reason" has been shown to refuse a stay.[55] According to the claimant, the AH Equipment Claims are indisputable[56] because the defendant had already signed the ETA on 1 June 2022, which imposed onto the defendant the obligation to pay for the AH Equipment,[57] and the payment for the same was unanimously agreed by all three directors of the defendant, as evidenced by a directors' resolution of the defendant dated 2 June 2022.[58] Additionally, the defendant's finance department had even proceeded to instruct its bank to make payment to the claimant for the AH Equipment, although the payment process was not completed.[59] The claimant argues that these facts demonstrate that there is no dispute over the AH Equipment Claims or that the same are indisputable.[60]

46 Second, the claimant submits that there is sufficient reason for a stay to be refused as there is a likelihood of inconsistent findings arising if the AH Equipment Claims are referred to arbitration while the remaining claims for the equipment costs and the other claims in OC 421 are determined by the court. This is because (a) the Equipment Claims, which include the AH Equipment Claims, are a singular dispute and will involve the same evidence and witnesses;[61] (b) it cannot be that the parties intended a dispute concerning the defendant's liability to pay for the equipment to be transferred, which involve the same issues and evidence as the AH Equipment Claims, be decided across

55 CWS at para 44.

56 CWS at paras 45–46.

57 CWS at paras 47–48.

58 CWS at paras 50–51.

59 CWS at para 53.

60 CWS a para 54.

61 CWS at para 63(a).

two different fora;[62] and (c) the evidence for the Equipment Claims will overlap with that of the other claims in OC 421 (such as claims for the costs of the secondment of the claimant's employees or under the tenancy agreements), because both sets of claims (equipment-related or otherwise) relate to expenses undertaken on behalf of the defendant.[63] In general, the parties' cases all involve intertwining issues,[64] and so the putative arbitral tribunal will be trawling through the same evidence as the court, and each forum could come to its own views which may differ.[65]

47 Conversely, the defendant submits that a "singular/common theme" amongst related claims in an action is not a sufficient reason to refuse a stay and that exceptional circumstances do not arise in the present case.[66] The defendant points out that the legal relationship between the parties, where the AH Equipment Claims are concerned, is governed by a contract, the ETA, unlike the remaining claims for the equipment costs or the other claims in OC 421, for which the claimant relies on an agreement by conduct.[67] In the same vein, the sums claimed under the AH Equipment Claims, the remaining Equipment Claims, and the sums claimed under the other claims in OC 421 are separable and are not the "same losses".[68] Additionally, the defendant argues that the multiplicity of proceedings in the present case does not impede the efficient and

62 CWS at para 63(b).

63 CWS at paras 63(c), (d).

64 CWS at para 63(e).

65 CWS at para 63(f).

66 DWS at para 26.

67 DWS at paras 31, 34.

68 DWS at para 35.

fair resolution of the dispute as a whole.[69] Further, the overlapping factual issues that arise with respect to the AH Equipment Claims and the other claims in OC 421 are undisputed,[70] and in any case, these factual issues cannot be said to be "nearly identical" or significantly overlapping.[71] Ultimately, the defendant submits that the present case is best analogised to the case of *Takenaka Corp v Tam Chee Chong and another* [2018] SGHC 51 ("*Takenaka*"), where the court did not find sufficient reason to refuse a stay.[72]

48 In addition, the defendant submits that the learned AR's observation that the AH Equipment Claims are *not* undisputed or indisputable is correct and should be affirmed.[73]

Whether "sufficient reason" has been demonstrated in this case

49 As recognised by the learned AR in his grounds of decision at [60], it is undisputed that the AH Equipment Claims and the broader Equipment Claims all arise in connection with the joint venture between the claimant and COC, in particular that all the equipment giving rise to the Equipment Claims had been purchased by the claimant for the defendant. Additionally, the other claims in OC 421, such as those for secondment costs of the claimant's employees or those under the tenancy agreements between the parties, also arise out of this joint venture: *Moveon Technologies* at [61]. Consequently, it is patently clear that the AH Equipment Claims and the Equipment Claims, and even the other claims in OC 421, share a singular factual matrix, that being the joint venture

69 DWS at para 32.

70 DWS at para 33.

71 DWS at para 41.

72 DWS at paras 42–55.

73 DWS at paras 59–60.

between the claimant and COC. The common thread running through all the claims in OC 421, including the AH Equipment Claims, is that they all arise in connection with the expenses incurred by the claimant in connection with the joint venture, and which the claimant now alleges the defendant had agreed to pay.[74]

50 As detailed above at [47], the defendant challenges the assertion that the claims in OC 421 are a singular dispute because first, the AH Equipment is subject to a contract unlike the equipment underlying the Equipment Claims and second, the claims are separable and distinct. These same arguments were advanced before the learned AR and were dismissed. In his view, these submissions "focused on the *form* of the claims but *ignored* their substance"; the fact that the AH Equipment was subject to the ETA did not detract from the *singular* theme: *Moveon Technologies* at [62]. I agree with the learned AR in this regard. Indeed, the precedent authorities do not suggest that claims which give rise to distinct losses, or which have different characteristics, would lose their quality of being part of a singular dispute. Instead, what is key is whether, viewed holistically, the claims are in *substance* part of the same broader dispute and share a common theme. In my view, such is the case here. Notwithstanding that the AH Equipment claims are distinct and are subject to the ETA, the claims remain part of the expenses incurred by the claimant for the purposes of its joint venture with COC, and therefore share a common theme with the broader Equipment Claims and the other claims in OC 421.

51 Ultimately, whether the claims form part of a singular dispute must be viewed in the context of the court's objective to ensure the efficient and fair resolution of the entire dispute and in turn the factors identified in *CSY* ([41]

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74 SOC at para 4.

supra) at [25] (see above at [42]), such as whether there is a real prospect of inconsistent findings and its consequences: *CSY* at [25(b)]. In this respect, I find that, if the AH Equipment Claims are stayed in favour of arbitration while the other claims in OC 421 proceed for determination in the court, the factual issues put before a putative arbitral tribunal will overlap with those before the court. The factual issues, which will relate to the context of the joint venture, will almost certainly be very similar and, at least in some respects, the same questions will arise. These will likely include questions surrounding whether the defendant had agreed to reimburse the claimant for the expenses claimed (and how this was expressed) and whether this agreement still subsists. Thus, the evidence to be considered by the court and the putative tribunal will tend to be factually interconnected and duplicative, and the witnesses who are to give evidence will also likely be the same.

52 I pause to address the defendant's submission that the overlapping factual issues are undisputed, namely that the costs claimed for in OC 421 were incurred for the purposes of the joint venture and that the AH Equipment Claims are subject to the legal relationship contained in the ETA.[75] I agree that *these* specific issues appear to be undisputed. However, taking a step back, this submission is based on a reductive view of what the overlapping factual issues are. In my view, the defendant conveniently leaves out the most important of the overlapping factual issues: whether the parties had any understanding or agreement that the expenses claimed in OC 421 (including the AH Equipment Claims) would be paid by the defendant. As such, it would be incorrect to conclude that the overlapping factual issues in respect of the AH Equipment Claims and the other claims in OC 421 are undisputed.

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[75] DWS at para 33.

53 Given the shared factual matrix, there is a real risk of inconsistent findings. As recognised by the learned AR in his grounds of decision at [63], it would be difficult for a putative tribunal to limit the effects of its findings only to the AH Equipment Claims. The issues to be determined by the tribunal would likely also extend to the same issues before the court in respect of the other claims in OC 421 that are not stayed. This being the case, any such findings in one forum which either party finds unfavourable are likely to be challenged in the other forum, giving rise to a situation where factual issues are liable to be relitigated in a different proceeding. This points towards an obvious likelihood of disrepute to the administration of justice, potential abuse of process by the parties and overall prejudice to the parties in the resolution of their dispute. In this regard, I cannot accept the defendant's submission that the multiplicity of proceedings in the present case does not impede the efficient and fair resolution of the dispute. Instead, I find that refusing a stay and allowing the AH Equipment Claims to proceed in court will lead to the desired efficient and fair resolution of this dispute.

54 Finally, I address the defendant's submission that the present case is best analogised to the case of *Takenaka* ([47] *supra*), where the court did not find sufficient reason to refuse a stay. In that case, the plaintiff had sought to set aside the rejection by the judicial managers of a company of a proof of debt filed by the plaintiffs. The judicial managers sought a stay of that action on the basis of an arbitration agreement between the company and the plaintiff. The principal dispute there was whether there was "sufficient reason" to refuse the stay. The court there did not find sufficient reason to refuse the stay. In general, the court was not persuaded that there were any specific advantages to be gained by the court's oversight of the dispute: *Takenaka* at [23]–[26]. The court noted that while there may have been other claims by the company which may have

led to the rejection of the plaintiff's proof of debt, the scope of the action before the court was still limited to the question of such rejection only and there could not be any determination of the other claims: *Takenaka* at [24]. In other words, not all aspects of the dispute between the parties in that case would be canvassed before the court if litigation were to be pursued, while in contrast, the arbitration would cover the claim and counterclaim between the parties: *Takenaka* at [23], [26]. Moreover, the fact that there could be greater efficacy in allowing the action to proceed in court was not a sufficient reason: *Takenaka* at [24]–[25]. Similarly, the fact that the rejection of the proof of debt was tied to the counterclaims by the company against the plaintiff, which were arbitrable, does not itself require overview by the court and the displacement of arbitration: *Takenaka* at [25].

55 In my view, the defendant's reliance on *Takenaka* is misplaced. First, the relationship of the issue(s) before the court vis-à-vis those subject to arbitration in the present case is different to that of *Takenaka*. In *Takenaka*, the question before the court was the validity of the plaintiff's proof of debt, which was related to the company's counterclaims against the plaintiff. This formed *part of the **broader** dispute that was subject to arbitration*. In contrast, the AH Equipment Claims in the present case are the only claims subject to the arbitration agreement and *form part of the overall dispute that was before the court*. Put simply, the issue before the court in *Takenaka* was a component of the broader dispute (that was subject to arbitration) while the issues before the court here *form the broader dispute itself*. Second, the court's finding there – that the mere linkage of the issue before the court and the issue to be arbitrated *does not itself* require the displacement of arbitration – is unhelpful to the defendant's case. As I have acknowledged (see above at [43]), the existence of related actions is not itself a sufficient reason to refuse a stay. This is consistent

with the court's finding in *Takenaka*. As such, more is required, and the true question is whether refusing a stay would allow an efficient and fair resolution of the entire dispute. Taking into account the factors identified in *CSY* at [25], I have answered this question affirmatively (see above at [51], [53]).

56 In sum, it is evident to me that the AH Equipment Claims share a singular factual matrix with the remaining claims for the equipment costs, and even the other claims in OC 421. The consequence of this is that the same factual issues will be before the court and a putative arbitral tribunal, giving rise to the likelihood of the same evidence being canvassed in different fora, and thereby a real risk of inconsistent findings and possibility of disrepute to the administration of justice if the findings in one forum are collaterally attacked in the other forum. This will impede the efficient and fair resolution of the dispute between the parties, and it is justifiable for the parties not to be held to their arbitration agreement with respect to the AH Equipment Claims. Therefore, I am satisfied that there is "sufficient reason" why the AH Equipment Claims should not be referred to arbitration under s 6 of the AA.

Whether the AH Equipment Claims are "undisputed" or "indisputable"

57 I now turn to the question of whether the AH Equipment Claims are "undisputed" or "indisputable". For the avoidance of doubt, given my finding above that there is "sufficient reason" to refuse the stay, the present issue is thus not dispositive.

58 In *Uni-Navigation Pte Ltd v Wei Loong Shipping Pte Ltd* [1992] 3 SLR(R) 595 ("*Uni-Navigation*") at [15], the High Court held that where the claim is undisputed or indisputable, the courts and not the arbitrators have the jurisdiction to decide upon the claim even though the arbitration

agreement stipulates for disputes to be referred to arbitration. Specifically, the court noted that "in a case where the defendant in the action has made a *clear and unqualified admission of the claim* the court cannot stay the action" [emphasis added]: *Uni-Navigation* at [15]. The court there justified this approach with reference to the views of the learned authors in M J Mustill & S C Boyd, *Commercial Arbitration* (2nd Ed, 1989) at p 123:

> Whatever might be the position as regards a defence which is manifestly put forward in bad faith, there are strong logical arguments for the view that a bona fide if unsubstantial defence ought to be ruled upon by the arbitrator, not the court. … Here the parties are entitled by contract and statute to insist that their rights are decided by the arbitrator and nobody else. *This entitlement plainly extends to cases where the defence is unsound in fact or law.* A dispute which, it can be seen in retrospect, the plaintiff was always going to win is none the less a dispute. *The practice whereby the court pre-empts the sole jurisdiction of the arbitrator can therefore be justified only if it is legitimate to treat a dispute arising from a bad defence as ceasing to be a dispute at all when the defence is very bad indeed.* [emphasis added]

59 Similarly, a claim that is undisputed or indisputable has also been described as one that has "no defence" or "no sustainable defence": see *Kwan Im Tong Chinese Temple and another v Fong Choon Hung Construction Pte Ltd* [1998] 1 SLR(R) 401 at [15] and *Fasi Paul Frank v Specialty Laboratories Asia Pte Ltd* [1999] 1 SLR(R) 1138 at [18].

60 The holdings of the above authorities are succinctly summarised in *Halsbury's Laws of Singapore* vol 1(2) (LexisNexis, 2023 Reissue) at para 20.036:

> *Where a claim in unequivocally admitted as to liability and quantum*, there can be no dispute and stay would be refused. There is a dispute until the defendant admits that the sum is due and payable. Where the court is of the view that the claim is indisputable, stay may also be refused and judgment entered instead. …

> The basis of an application for stay is that the parties had chosen arbitration as the proper forum for the resolution of their disputes; *to sanction a party's breach of the agreement to arbitrate, the court would do so only in the clearest of cases*. A court hearing such applications should however refrain from trying the merits of the case on affidavits. …
>
> [emphasis added]

61 In short, an undisputed or indisputable claim, at least for the purposes of the exercise of the court's discretion to refuse a stay in favour of arbitration under s 6 of the AA, requires a clear, unequivocal admission. A defence with poor merits or one that may expectedly (*but not certainly*) fail does not equate to an undisputed or indisputable claim.

62 Applying the above principles, I am not satisfied that the AH Equipment Claims are undisputed or indisputable. For one, there is no unequivocal admission as to liability and quantum from the defendant. The claimant primarily relies on the documentary evidence in the form of correspondences and the defendant's unanimous directors' resolution approving the payment for the AH Equipment to the claimant.[76] I am aligned with the learned AR in that this is not sufficient to amount to an unequivocal admission on the part of the defendant. Taking the claimant's case at its highest, it may be that the defendant *at one point* accepted that it was liable for those payments but this is certainly not the case *now* given that the defendant is contesting the AH Equipment Claims. Therefore, I am not prepared to find that the AH Equipment Claims are indisputable or undisputed simply by reference to the documentary evidence referred to by the claimants.

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[76] CWS at paras 22, 46–51.

Conclusion

63 For the foregoing reasons, I am satisfied that the AH Equipment Claims were subject to the arbitration agreement in the ETA. However, there is "sufficient reason" why the court should exercise its discretion under s 6 of the AA to refuse a stay of those claims in favour of arbitration. This is because the shared factual matrix of the AH Equipment Claims and the other claims in OC 421 means that there is a risk of inconsistent findings and the possibility of the findings in one forum being collaterally attacked in the other forum, which in turn would not achieve an efficient and fair resolution of the dispute between the parties. I therefore dismiss the appeal.

64 I shall hear the parties separately on the issue of costs and any consequential orders to be made.

Lee Seiu Kin
Senior Judge

Zheng Shengyang Harry and Yeo Qi Cheryl (Kelvin Chia Partnership) for the appellant;
Eusuff Ali s/o N B M Mohamed Kassim and Lee Yen Yin (Tan Rajah & Cheah) for the respondent.