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

[2024] SGHCR 2

Originating Claim No 421 of 2023 (Summons No 2865 of 2023)

Between

Moveon Technologies Pte Ltd

… *Claimant*

And

Crystal-Moveon Technologies Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Moveon Technologies Pte Ltd
v
Crystal-Moveon Technologies Pte Ltd

[2024] SGHCR 2

General Division of the High Court — Originating Claim No 421 of 2023
(Summons No 2865 of 2023)
AR Perry Peh
9 November 2023, 4 January 2024

16 January 2024

AR Perry Peh:

Introduction

1 HC/SUM 2865/2023 ("SUM 2865") was an application by the defendant in HC/OC 421/2023 ("OC 421") to stay a part of the claimant's claims in OC 421 pursuant to s 6 of the Arbitration Act 2001 (2020 Rev Ed) ("the AA"), on the basis that the parties have agreed to refer these claims to arbitration. The parties were not in disagreement that this part of the claimant's claims indeed fall within the scope of an arbitration agreement between them. However, they were divided on whether it was sufficient for the defendant, in seeking a stay under s 6 of the AA, to establish the existence of a "dispute" referable to arbitration by merely asserting that it disputes or denies those claims, or whether the defendant was required to back up its assertion of a dispute by credible evidence. Having considered the authorities, I came down

in favour of the former, though I found that there was "sufficient reason" in this case for the claims to not be referred to arbitration, and I therefore dismissed SUM 2865. These are my grounds of decision.

Background

2 The defendant, Crystal-Moveon Technologies Pte Ltd ("CMT") was incorporated for a joint venture between one Zhejiang Crystal Optech Co Ltd ("COC"), a PRC-incorporated company and the claimant, Moveon Technologies Pte Ltd ("MTPL"), a Singapore-incorporated company. CMT was also a Singapore-incorporated company. The joint venture between COC and MTPL was entered into sometime in October 2021. According to CMT, the parties had decided to terminate the joint venture sometime in May 2022,[1] though I note it was not stated in MTPL's Statement of Claim ("the SOC") or in its reply affidavit for SUM 2865 that the joint venture has been terminated.

3 In OC 421, MTPL seeks to recover from CMT (the joint venture vehicle) various costs that it had incurred in connection with the joint venture, namely: (a) capital expenditure incurred in connection with CMT's operations, such as costs involved in the procurement of equipment, software and materials; (b) salaries and overhead costs in connection with CMT's employees; and (c) outstanding sums due as a result of MTPL's use of commercial premises under tenancy agreements between CMT and MTPL.[2]

4 One part of the claims for capital expenditure related to expenses which MTPL had incurred in purchasing various items of equipment for CMT's use as part of the joint venture ("the Equipment Costs"), which amount to some

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1 1st Affidavit of Jin Lijian ("JL1") at para 9.

2 1st Affidavit of Chee Teck Lee ("CTL1") at para 6.

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US$5,910,246.45 and S$959,308.93.[3] According to MTPL, it exchanged various e-mails with CMT between January 2022 and May 2022 in which CMT had agreed to pay MTPL for the various expenses underlying the claims for capital expenditure, including the Equipment Costs.[4] MTPL has particularised its claims for the Equipment Costs at Annexure A of the SOC. In particular, items 2 and 5 of Annexure A of the SOC identify three pieces of equipment – two units of "Ares 1350" and one unit of "Hitachi Regulus 8100 FESEM with Hybrid Ion Miller, IM4000Plus and Oxford EDX", which I will refer to collectively as "the AH Equipment", where appropriate. The claim amount in respect of the Ares 1350 is US$1.5836m while the claim amount in respect of the Hitachi Regulus is US$631,300.

5 In SUM 2865, CMT sought a stay of MTPL's claims relating to the AH Equipment ("the AH Equipment Claims") pursuant to s 6 of the AA. CMT's case was that the AH Equipment is the subject of an Equipment Transfer Agreement ("the ETA") that MTPL and CMT had entered into sometime in June 2022. The ETA provided for the transfer of equipment identified in an Equipment Transfer List ("the ETL") that is annexed to the ETA. The ETL, in turn, identified the AH Equipment as the items to be transferred, and the price of each of those items also corresponds with what MTPL has sought to recover in OC 421 for the Ares 1350 and the Hitachi Regulus.[5] Further, the consideration specified in the ETA corresponds with the sum claimed by MTPL in respect of the AH Equipment.[6] Clause 8.2 of the ETA provides that any

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3 Statement of Claim ("SOC") at para 5; CTL1 at para 8.

4 SOC at para 6.

5 JL1 at pp 48–53.

6 JL1 at paras 12–16 and 21–22.

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disputes arising from the implementation of the ETA are to be submitted to the Singapore International Arbitration Centre for resolution.

6 Other than the AH Equipment Claims, CMT also sought a stay of MTPL's remaining claims for the Equipment Costs in OC 421. For this, CMT relied on cl 9.2 of the ETA, which provided that equipment transfers not involved in the ETA were to be resolved by the parties signing a "written supplementary agreement", which is to "[have] the same legal effect" as the ETA.[7] CMT argued that the effect of cl 9.2 of the ETA Is to cover the transfer of all the other equipment listed by MTPL in Annexure A of the SOC, and therefore the entirety of MTPL's claim for the Equipment Costs ought to be stayed on account of the arbitration agreement in the ETA. It was however undisputed that no such "written supplementary agreement" affecting the other items of equipment in Annexure A of the SOC had been entered into between the parties.

The applicable principles

7 The relevant parts of s 6 of the AA, pursuant to which the stay in SUM 2865 was sought, provide as follows:

> 6.—(1) Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after filing and serving a notice of intention to contest or not contest and before delivering any pleading (other than a pleading asserting that the court does not have jurisdiction in the proceedings) or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

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7 JL1 at paras 17–18.

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

8 Under s 6 of the AA, the requirements for the court to grant a stay of proceedings in favour of domestic arbitration are as follows: (a) there is a valid arbitration agreement between the parties to the court proceedings; (b) the dispute in the court proceedings (or any part thereof) falls within the scope of the arbitration agreement; (c) the stay applicant has filed and served a notice of intention to contest or not contest, but has not yet taken any other step in the proceedings; (d) the stay applicant remains ready and willing to arbitrate the dispute; and (e) there is 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) at para 20.031).

9 Where a stay of court proceedings in favour of international arbitration is sought under s 6 of the International Arbitration Act 1994 (2020 Rev Ed) ("the IAA"), a stay is *mandatory* if the requirements of ss 6(1) and (2) of the IAA are satisfied (see *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*") at [63]–[64]). On the other hand, where a stay of court proceedings in favour of domestic arbitration is sought under s 6 of the AA, the court enjoys a discretion, as provided for by s 6(2) of the AA, to *refuse* a stay and allow all claims, including those governed by the arbitration agreement, to proceed in the courts (see *CSY v CSZ* [2022]

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2 SLR 622 ("*CSY*") at [23]–[24]). The court exercises its discretion in favour of allowing all the claims to proceed in court only where it is satisfied of "sufficient reason" why the matter should not be referred to arbitration (see *CSY* at [24]). The burden of demonstrating that such "sufficient reason" exists falls on the party seeking to persuade the court to exercise its discretion to refuse a stay and allow its claims to proceed in court (see *CSY* at [24]; *Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431 ("*Maybank*") at [23]).

10 As mentioned earlier, one of the requirements of s 6(1) of the AA is that the dispute in the court proceedings (or any part thereof) falls within the scope of the arbitration agreement. This stems from the language of s 6(1) of the AA, which provides that a stay applicant must show that the court proceedings involve "a matter which is the subject of the [arbitration agreement]". In this vein, what the applicant must do is to show that the court proceedings in question fall within the terms of the arbitration agreement (see *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*") at [22]). Where an arbitration agreement provides for the arbitration of "disputes" or "differences" or "controversies", the subject matter of the court proceedings would fall outside the terms of the arbitration agreement if: (a) there is *no* "dispute", "difference" or "controversy" as the case may be; or (b) where the alleged "dispute" is *unrelated* to the contract which contains the arbitration agreement (see *Tjong Very Sumito* at [22]). I note that *Tjong Very Sumito* was a decision of the Court of Appeal in a matter under the IAA, but what I have cited are points pertaining to areas that do not turn on the distinctions between the domestic and international arbitration regimes. I will return to this point again later (see [29] below).

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The submissions

11 MTPL accepted that the ETA contains an arbitration clause, and that the AH Equipment Claims, being the subject matter of the ETA, come within the arbitration agreement in the ETA. MTPL however disagreed with CMT's reading of cl 9.2 of the ETA and argued it cannot be read as having the effect of extending to the transfer of all other items of equipment listed in Annexure A to the SOC, apart from the AH Equipment. To reiterate, it was undisputed that the parties never entered into any supplementary written agreement relating to the transfer of other items of equipment, and it was also undisputed that there was only *one* ETL, which is that annexed to the ETA, and which identified only the AH Equipment.[8]

12 MTPL argued that a stay under s 6 of the AA was unwarranted because there was no dispute referable to arbitration.[9] For a defendant to obtain a stay under s 6 of the AA, it must first demonstrate the existence of a *prima facie* case of a dispute, before the burden can shift to the claimant to satisfy the court that there is sufficient reason why the matter should not be referred to arbitration and be allowed to proceed in court. Citing the decision of the High Court Registry in *Yau Lee Construction (Singapore) Pte Ltd v Far East Square Pte Ltd and another* [2018] SGHCR 11 ("*Yau Lee Construction*), MTPL argued that for a defendant to demonstrate a *prima facie* case of dispute, it is insufficient to merely assert a dispute or deny the claim, and he must back up his allegations of a dispute by credible evidence. Further, in determining if a *prima facie* case of dispute has been shown, the operative question for the court is whether the claim in question is "undisputed" or "indisputable", and this necessarily

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8 Notes of Evidence ("NE"), 9 Nov 2023, p 13 lines 18–21.

9 Claimant's Written Submissions ("CWS") at paras 36–37; NE, 9 Nov 2023, p 9 lines 9–14.

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involved some inquiry into the merits of the claim where the quality of the parties' cases is put in issue.[10]

13 MTPL argued that the AH Equipment Claims are "undisputed" or "indisputable" because it has adduced evidence showing that CMT had not disputed MTPL's claim for costs relating to the AH Equipment at the material time, and CMT has also not adduced any evidence in rebuttal.[11] In any case, even if the court were of the view that there exists a dispute referable to arbitration, MTPL argued that there is sufficient reason to refuse a stay because the AH Equipment Claims overlap with its remaining claims for the Equipment Costs, as the entire claim for the Equipment Costs constitutes a "singular dispute".[12] Further, the evidence that would be given in connection with the claim for the Equipment Costs also overlap with the rest of MTPL's claims in OC 421.[13] The overlap means that, if a stay were granted, there would be a risk of inconsistent findings reached by the court and an arbitral tribunal.

14 CMT argued that, for a defendant to obtain a stay of proceedings under s 6 of the AA, it sufficed for him to simply assert a dispute or deny the claim; he is not required to back up his allegation of a dispute by credible evidence. Whether the dispute so asserted has merits or is genuine is irrelevant to the question of whether the defendant can obtain a stay under s 6 of the AA.[14] Accordingly, CMT was not required to show that it had a *bona fide* defence to the AH Equipment Claims. The fact that CMT never admitted to the AH

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10 Claimant's Reply Submissions ("CRS") at paras 9–10.

11 CWS at para 37; CRS at paras 13–16.

12 CRS at para 22(a).

13 CRS at paras 22(c)–22(d).

14 Defendant's Written Submissions ("DWS") at paras 17–18 and 19(d); Defendant's Reply Submissions ("DRS") at paras 21–22.

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Equipment Claims (and indeed to any of the remaining claims for the Equipment Costs) sufficed to establish a *prima facie* case of dispute that is referable to arbitration.[15] CMT further pointed out that MTPL had not, in its pleadings, taken the position that its claims are "undisputed" or "indisputable"; MTPL's position in the pleadings was simply that the course of conduct between CMT and MTPL evinced an agreement by CMT to pay for the Equipment Costs.[16]

15 Finally, CMT also argued that there was in any event no sufficient reason for a stay because MTPL's various claims in OC 421 effectively cover distinct types of costs and do not canvass a *singular* dispute, and so there are no overlapping factual issues between the claim for the Equipment Costs and the remaining of MTPL's claims in OC 421.[17]

The issues

16 In an application for a stay of court proceedings in favour of arbitration (whether under s 6 of the AA or under s 6 of the IAA), one of the issues that the court must consider in determining if the defendant/stay applicant is entitled to a stay is whether the court proceedings or part thereof constitute a "dispute" that the parties had agreed to refer to arbitration (see *Tjong Very Sumito* ([10] above) at [22]). As the parties' submissions show, they were divided about *what* a defendant/stay applicant had to show, to demonstrate the existence a "dispute" referable to arbitration for the purposes of a stay application under s 6 of the AA – in particular, whether it sufficed for the defendant/stay applicant to simply assert a dispute or deny the claim, or whether the defendant/stay applicant had

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15 DWS at para 19; DRS at paras 8 and 28.

16 DRS at para 10; NE, 9 Nov 2023, p 14 lines 3–6.

17 DWS at para 40; DRS at paras 30–33.

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to back up his allegations of a dispute with credible evidence. However, apart from this, as well as the question of whether there is "sufficient reason" for the relevant dispute in OC 421 to *not* be referred to arbitration, it appeared that the parties were in common ground that all the other requirements under s 6(1) and s 6(2) of the AA for the grant of a stay in favour of domestic arbitration have been met.

17 Accordingly, SUM 2865 raised the following issues for determination:

(a) How should cl 9.2 of the ETA be interpreted, and in view of that, whether only the AH Equipment Claims or the entirety of MTPL's claim for the Equipment Costs, fall within the scope of the arbitration agreement in the ETA?

(b) To obtain a stay under s 6 of the AA, what must a defendant/stay applicant show to demonstrate that there exists a "dispute" referable to arbitration, and in view of that, whether CMT had shown the existence of such a "dispute" in this case?

(c) Whether MTPL had shown "sufficient reason" why the relevant dispute in OC 421 should not be referred to arbitration in accordance with the arbitration agreement in the ETA?

Whether only the AH Equipment Claims or the entirety of MTPL's claim for the Equipment Costs fall within the scope of the arbitration agreement in the ETA?

18 CMT's position was that the entirety of MTPL's claim for the Equipment Costs fall within the scope of the arbitration clause in the ETA, because cl 9.2 of the ETA extended the effect of the ETA to the transfers of all

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the remaining items of equipment listed in Annexure A to the SOC, in addition to the AH Equipment. Clause 9.2 of the ETA states as follows:[18]

> 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.

19 CMT argued that the purpose of cl 9.2 of the ETA is to provide a mechanism for the transfers of all other items of equipment without the need for the parties to enter into fresh contracts or agreements. This was needed because there had been some urgency associated with the transfer of equipment, following the termination of the parties' joint venture, and so the AH Equipment was transferred first, with the rest to follow later.[19] It was however common ground that the parties had *not* entered into any "written supplementary agreement" in connection with the transfer of the remaining items of equipment,[20] and apart from the ETL, there was no other equipment transfer lists identifying other items of equipment that were to be transferred pursuant to the ETA.[21]

20 In my view, this argument of CMT was a complete non-starter. The language of cl 9.2 was plain and unambiguous – MTPL and CMT agreed to enter into further written agreements in connection with the matters not dealt with by the ETA, and these agreements are to have the same effect as the ETA. Clause 1 of the ETA, on the other hand, specifies that the subject matter of the ETA was limited to the ETL, which in turn identified only the AH Equipment.

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18 JL1 at p 51.

19 DWS at para 29.

20 NE, 9 Nov 2023, p 4 lines 18–19.

21 NE, 9 Nov 2023, p 4 lines 21–24.

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Reading these clauses of the ETA together, it is clear that: (a) the subject matter of the ETA is limited to what has been listed in the ETL, which in turn is limited to the AH Equipment; and (b) *if* such further written agreements were subsequently entered into, they would be subject to the terms provided for in the ETA, including the arbitration clause in cl 8.2 of the ETA, without the parties having to go through the formalities of drafting up an agreement similar to the ETA in connection with the subject matter of those further written agreements. There is nothing in the language of cl 9.2 of the ETA (or indeed, 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.

21 CMT argued that cl 9.2 should be interpreted in the light of the context in which the ETA had been entered into and the urgency that had been associated with the transfer of equipment. In my view, the purported context identified by CMT, even if true, did not assist CMT in its case on how cl 9.2 should be interpreted. First, the context in which a contract had been made cannot be utilised as an excuse by the court concerned to rewrite the terms of the contract according to the court's subjective view of what it thinks the result ought to be in the case at hand (see *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]). The language of cl 9.2 is plain and unambiguous – only where further written agreements are entered into by the parties would they have the same legal effect as the ETA; it does not state that the effect of the ETA is to extend to the transfer of all other items of equipment not yet identified in the ETL. Any argument about context cannot be used to interpret cl 9.2 in a way that is inconsistent with its plain language. Secondly, the purported context identified by CMT is in any case consistent with the plain and

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unambiguous meaning of cl 9.2 that I have described above. It stands to reason that, if there had been some urgency associated with the transfer of equipment, the parties would want to avoid the formalities of negotiation and entering into a full agreement like the ETA each time they agreed on the transfers of other items of equipment, and that whatever terms that had been agreed in connection with the AH Equipment by virtue of the ETA similarly extend to other items of equipment that the parties subsequently come to agree to be transferred.

22 For the reasons above, I disagreed with CMT's interpretation of cl 9.2 of the ETA. In my view, the subject matter of the ETA is limited only to the AH Equipment. Therefore, only the AH Equipment Claims come within the scope of the arbitration agreement in the ETA. I proceeded on this basis in arriving at my decision in SUM 2865.

Whether CMT had shown the existence of a "dispute" coming within the scope of the arbitration agreement in the ETA

23 I now turn to the second issue, the key to which was whether CMT, as the applicant for a stay under s 6 of the AA, had demonstrated a "dispute" pertaining to the AH Equipment Claims coming within the scope of the arbitration agreement in the ETA.

What does a defendant/stay applicant have to show in order to demonstrate the existence of a "dispute" that is referable to arbitration?

24 As stated earlier, one of the requirements for the court to grant a stay of proceedings in favour of arbitration under s 6 of the AA is that the "dispute" in the court proceedings come within the scope of the arbitration agreement (see [10] above). Anterior to this is whether there even exists a "dispute" capable of referable to arbitration because, in the absence of the same, there will be nothing to refer to arbitration (see *Tjong Very Sumito* ([10] above) at [22]; *Multiplex*

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Construction Pty Ltd v Sintal Enterprise Pte Ltd [2005] 2 SLR(R) 530 ("*Multiplex Construction*") at [5]).

25 In *Tjong Very Sumito*, the Court of Appeal held, in the context of the IAA, that a defendant/stay applicant can establish a "dispute" and obtain a stay of proceedings in favour of arbitration by simply asserting that he disputes or denies the claim (see *Tjong Very Sumito* at [49]). The only instance in which the court will find that there exists no dispute referable to arbitration is where there has been a clear and unequivocal admission by the defendant to liability and quantum (see *Tjong Very Sumito* at [59]). It follows from the Court of Appeal's decision in *Tjong Very Sumito* that, under the IAA, the question of whether a "dispute" exists is independent of whether the "dispute" asserted by the defendant/stay applicant is valid or sustainable, and because it suffices for the defendant to merely *assert* that he disputes or denies the claim, the defendant/stay applicant is not required to back up any such claim of a "dispute" by credible evidence.

26 The material question before me in SUM 2865 was whether this standard at which a defendant/stay applicant is required to establish a "dispute", that applies in the context of the IAA, ought also to apply in the context of the AA, and if so, how it is to be applied. In my view, this must be answered in the affirmative, for the reasons that follow.

It is sufficient for the defendant/stay applicant to assert that he disputes or denies the claim

27 I begin by considering s 6 of the AA in greater detail. The key distinction between s 6 of the AA and its equivalent provision in the IAA, is that the court's power to grant a stay in favour of domestic arbitration is *discretionary* (see *Maybank* ([9] above) at [22]). It is important to note that our courts have viewed

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this discretion as empowering the court to "refuse" a stay (see *CSY* ([9] above) at [24]; *Maybank* at [23]). Logically, the question of whether a stay is to be *refused* can only arise where the court is in the first place satisfied that the grounds for granting a stay have been made out. In other words, the court's discretion under s 6 of the AA to *refuse* a stay is only enlivened *after* court is satisfied that grounds exist for a stay in the first place. Taken together, this suggests that there are two operative questions in a stay application under s 6 of the AA: (a) first, whether the defendant/stay applicant is *prima facie* entitled to a stay; and (b) second, whether the court should *refuse* a stay by exercising its discretion under s 6 of the AA. The defendant/stay applicant bears the burden in respect of the first operative question, and he must show that all the requirements for obtaining a stay under s 6 of the AA (see [8] above) are satisfied, save for that relating to the absence of "sufficient reason" as to why the matter should not be referred to arbitration. The burden is *not* on the defendant/stay applicant to demonstrate the absence of "sufficient reason"; it is for the claimant who seeks to proceed with its claims in court to demonstrate that such "sufficient reason" exists for the court to exercise its discretion and refuse the stay sought (see *CSY* at [24]).

28 This brings me to the first reason why the standard at which a "dispute" must be shown under the AA should be aligned with that under the IAA. The need to show the existence of a "dispute" referable to arbitration forms part of the requirements which the court must be satisfied of before it can conclude that the defendant/stay applicant is *prima facie* entitled to a stay of the court proceedings. Put another way, in the context of a stay under the AA, whether there exists a "dispute" is considered under the first of the two operative questions that I have identified above, as part of the inquiry into whether the requirements for a stay under s 6 of the AA, for which the burden lies on the

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defendant/stay applicant, are met. This question is not dissimilar to the same question arising under s 6 of the IAA, save that under the AA, the conclusion that a defendant/stay applicant is entitled to a stay is only a *prima facie* one in that it is liable to be displaced by the court's exercise of its discretion under s 6 of the AA to refuse a stay. If under both the AA and the IAA the question of whether a "dispute" exists goes ultimately to the issue of whether the defendant/stay applicant has *shown* that he is entitled to a stay, it follows that the analytical approach taken by the court to this question should be aligned in both the AA and the IAA.

29 The standard at which a defendant/stay applicant must show that the relevant requirements for a stay have been met in order to persuade the court that it is entitled to a stay speaks of the court's attitude and readiness towards the enforcement of an arbitration agreement. Our courts have given equal weight to the priority of respecting party autonomy and holding parties to their agreements to arbitrate in the context of the AA (see *CSY* at [24]) and it would be quite incongruous with that for different standards to be applied under the AA and the IAA, in so far the *prima facie* entitlement of the defendant/stay applicant to a stay under s 6 of the AA is concerned. The discretion enjoyed by the court under s 6 of the AA does not in any way justify a different approach to the question of the defendant/stay applicant's *prima facie* entitlement to a stay because these discretionary powers pertain only to the court's management of its processes to ensure the efficient and fair resolution of the entire dispute when confronted with overlapping court and domestic arbitration proceedings, and they come to be exercised *only* after the court concludes that the defendant/stay applicant is *prima facie* entitled to a stay. Indeed, our courts have emphasised that the judicial approach to the AA and the IAA should not diverge too widely, and that Parliament had intended that the AA should largely mirror

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the IAA and international practices reflected in the UNCITRAL Model Law on International Commercial Arbitration, save that the court enjoys more supervisory powers in the case of domestic arbitrations (see *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [61]; *Ling Kong Henry v Tanglin Club* [2018] 5 SLR 871 ("*Ling Kong Henry*") at [38]). For these reasons, the standard at which the existence of a "dispute" referable to arbitration must be shown in the context of the AA should be aligned with that under the IAA.

30 Secondly, that the existence of a "dispute" referable to arbitration can be shown by a defendant/stay applicant under s 6 of the AA by merely asserting that he disputes or denies the claim in the court proceeding is also consistent with principle. Whether there exists a "dispute" referable to arbitration forms part of the requirements that a defendant/stay applicant must satisfy the court of, in order to show that he is *prima facie* entitled to a stay. In seeking the stay, the defendant/stay applicant is effectively seeking to hold the claimant to the arbitration agreement. In determining the defendant/stay applicant's *entitlement* to a stay – which in substance is a question of whether he is entitled to hold the claimant to the parties' agreement to arbitrate – the court should not be assessing the merits or validity of his defence that he intends to put up to the claimant's claims, because that is something which the parties had agreed ought to be decided by the arbitral tribunal, pursuant to their agreement to arbitrate (see generally, *Hayter v Nelson Home Insurance Co* [1990] 2 Lloyd's Rep 265 at 269, referred to in *Tjong Very Sumito* ([10] above) at [44]). Requiring the defendant/stay applicant to go beyond a mere assertion in establishing the existence of a "dispute", such as by showing the merits of his dispute or by making good his assertions with evidence, and thereby requiring the court to engage in an assessment of the same at the stage of determining the

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defendant/stay applicant's *prima facie* entitlement to a stay, would undercut the parties' agreement to arbitrate and run contrary to the notion of party autonomy.

31 However, that is not to say that the question of whether the "dispute" asserted is valid or sustainable is entirely irrelevant to an application under s 6 of the AA – they are relevant, but only in connection with the question of whether the court ought to exercise its discretion under s 6 of the AA to refuse a stay, which I will come to later (see [37]–[38] and [67] below).

32 Finally, that a defendant/stay applicant can demonstrate the existence of a "dispute" for the purposes of s 6 of the AA by merely asserting that he disputes or denies the claim in the court proceeding, is also consistent with the authority of the Court of Appeal and the High Court relating to s 6 of the AA. As the High Court held in *Uni-Navigation Pte Ltd v Wei Loong Shipping Pte Ltd* [1992] 3 SLR(R) 595 ("*Uni-Navigation*") (at [16]–[17]), and which was endorsed by the Court of Appeal in *Mulitplex Construction* ([24] above) (at [6]):

> … the court should, save in obvious cases, adopt a holistic and commonsense approach to see if there is a dispute. The justification for this approach is that it is important to hold a party to his agreement and avoid double and split hearing of matters. …
>
> If the defendant, therefore, makes out a *prima facie* case of disputes the courts should not embark on an examination of the validity of the dispute, as though it were an application for summary judgment.

33 Although it was not explained in either *Uni-Navigation* or *Multiplex Construction* as to what is meant by a "*prima facie*" case of dispute, in my view, a *prima facie* dispute is consistent with the defendant/stay applicant only having to *assert* that he disputes or denies the claim in order to establish the existence of a "dispute" referable to arbitration. The words "*prima facie*" are what they mean, and it simply means that the defendant needs to only establish a dispute

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on a *prima facie* standard, and in doing so, he is not required to show that the dispute he has raised is valid or show that his assertion of a dispute is credible by reference to evidence (see, in a different context, *Tomolugen* ([9] above) at [63]; *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2020] 1 SLR 1158 at [56]). The caution in *Uni-Navigation* that the courts should not "embark on an examination of the validity of the dispute, as though it were an application for summary judgment" makes it clear that the court need not examine whether the dispute asserted has been made out by the evidence or in terms of its substantive merits. This, in turn, must mean that a defendant/stay applicant can demonstrate the existence of a dispute by merely asserting the same or denying the claim, without having to back up his assertions by any credible evidence. In concluding, I note that this approach is consistent with the views of the learned editors of *Halsbury's Laws of Singapore* ([8] above) (at para 20.031):

> … the right to apply for a stay exists only if: (a) the applicant is a party to the arbitration agreement; (2) the agreement covers the matter in dispute before the court; (3) the applicant enters an appearance to the court proceedings; (4) the applicant has not delivered pleadings or taken any steps in the proceedings; and (5) the applicant remains ready and willing to arbitrate.
>
> The power to grant a stay under [the AA] is discretionary. The burden initially lies with the applicant to show the existence of the above. *The burden is discharged upon the court being satisfied that there is a* prima facie *case that there is a valid arbitration agreement between the parties which covers the subject matter in dispute before the court.* The burden then shifts on to the party who has commenced the action to 'show sufficient reason why the matter should not be referred to arbitration'.
>
> [emphasis added]

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Whether the defendant's defence is valid or sustainable goes towards the issue of whether there is "sufficient reason" for a stay to be refused

34 I now address the authorities that MTPL had cited in support of the proposition that it is insufficient for a defendant/stay applicant to demonstrate a *prima facie* case of dispute by merely asserting that he disputes or denies the claim, and that he has to do so by backing up his allegations of a dispute with credible evidence, and further, that the operative question of whether a *prima facie* case of dispute has been shown is whether the claim in question is "undisputed" or "indisputable". For this submission, the claimant relied heavily on the following portion of *Yau Lee Construction* ([12] above) (at [53]):

> … In determining whether there is a dispute to be referred to arbitration in the context of a stay application under s 6 of the AA, the operative question is whether the claim can be said to be *undisputed or indisputable*. …
>
> [emphasis in original]

35 In arriving at that view, the court in *Yau Lee Construction* had cited *Uni-Navigation* (at [15]) and *Multiplex Construction* (at [6]), in which the High Court and the Court of Appeal both held that, even where there exists an arbitration agreement, the court nevertheless had jurisdiction to hear a matter instead of referring it to arbitration, if the claims in question were "undisputed" or "indisputable". In an earlier part of its judgment, the court in *Yau Lee Construction* also stated that (at [36]):

> … the reasoning that eschews any curial consideration of the quality of the claim and defence when determining whether proceedings should be stayed in favour of arbitration does not appear to have been extended to stay applications under the AA, as it has under the IAA.

36 For this, the court in *Yau Lee Construction* cited the decision of the High Court in *Dalian Hualiang Enterprise Group Co Ltd and another v Louis*

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Dreyfus Asia Pte Ltd [2005] 4 SLR(R) 646 ("*Dalian Hualiang*") (at [74]), where it held that, in the context of a stay application under s 6 of the AA:

> … the court may determine if there is in fact a dispute before deciding to order a stay, although the court should not examine the validity of the dispute as though the stay application is an application for summary judgment.

37 In my view, the decisions in *Uni-Navigation*, *Multiplex Construction* and *Dalian Hualiang* do not suggest that the standard at which a defendant/stay applicant must show that a "dispute" exists under s 6 of the AA is any higher than that of a *prima facie* standard, that is, by merely asserting that he disputes or denies the claim. It is clear that the legal context which *Uni-Navigation*, *Multiplex Construction* and *Dalian Hualiang* had in mind is what I have described earlier as the second of the two operative questions confronting the court in a stay application under s 6 of the AA – that is, whether the court should exercise its discretion to *refuse* a stay, despite the applicant being *prima facie* entitled to a stay (see [27] above). The question of whether the claim in question is "undisputed" or "indisputable" relates to the issue of whether the defendant/stay applicant has a valid or sustainable defence to the claim. If the defendant/stay applicant has no valid or sustainable defence, then this constitutes one of those circumstances in which the court might be persuaded that there is "sufficient reason" to refuse a stay (see *Fasi Paul Frank v Specialty Laboratories Asia Pte Ltd* [1999] 1 SLR(R) 1138 ("*Fasi Paul Frank*") at [18]), because ordering a stay in such circumstances may delay the satisfaction of just debts and would thus be inappropriate (*Halsbury's Laws of Singapore* ([8] above) at para 20.036). Again, since the question of whether the claims are "undisputed" or "indisputable" goes towards whether there is "sufficient reason" for a stay to be refused, the burden is on the claimant who seeks to pursue his claims in court to show that the defendant/stay applicant has no good or valid defence to the claim, as our courts have previously held (see *Mutliplex*

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Construction at [6]; *Kwan Im Tong Chinese Temple and another v Fong Choon Hung Construction Pte Ltd* [1998] 1 SLR(R) 401 ("*Kwan Im Tong*") at [15]).

38 Therefore, in the cases where our courts have considered if the claims in question were "undisputed" or "indisputable" in the context of a stay application under s 6 of the AA (see, for example, *Fasi Paul Frank* at [18]; *JDC Corp and another v Lightweight Concrete Pte Ltd* [1999] 1 SLR(R) 96 at [10]–[11] and [19]; *Anwar Siraj and another v Teo Hee Lai Building Construction Pte Ltd* [2007] 2 SLR(R) 500 at [19]), in my respectful view, that issue had been regarded as relevant in connection with the question of whether a stay ought to be refused, and not the question of whether the defendant/stay applicant is *prima facie* entitled to a stay. The court, in deciding if the defendant/stay applicant is *prima facie* entitled to a stay, does not have to concern itself with whether the claim in question can be said to be "undisputed" or "indisputable". That issue only comes into play *after* the court is satisfied that the defendant/stay applicant is *prima facie* entitled to a stay, following which the court has to decide whether the stay is to be refused.

39 It might well be said that the distinction I have attempted to draw above is redundant, because ultimately, the validity or sustainability of the dispute asserted by the defendant/stay applicant is ultimately relevant to whether a stay is to be granted under s 6 of the AA. To this, I make two observations. First, it is important to delineate the precise stage at which the validity or sustainability of the dispute asserted by the defendant/stay applicant comes to be assessed – namely, whether as part of the first or second operative questions arising in a stay application under s 6 of the AA (see [27] above). It is inconsistent with principle for the validity or sustainability of the asserted dispute to be assessed by the court when determining if the defendant/stay applicant is *prima facie* entitled to a stay. This is because, the right of the defendant/stay applicant to

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enforce the arbitration agreement – and thereby be *prima facie* entitled to a stay of the court proceedings – should not be contingent on the court's assessment of the merits of his dispute, something which the parties have agreed is to be left to the arbitral tribunal for determination (see [30] above). So long as the defendant/stay applicant has shown the *existence* of a dispute coming within the scope of the arbitration agreement, he ought to be entitled to hold the claimant to the arbitration agreement and have the court proceedings stayed, subject of course to the claimant demonstrating "sufficient reason" otherwise. Secondly, it is implicit in the decided authorities that questions about the validity or sustainability of the defence have been considered by the court at the stage where they decide if a stay, to which a defendant/stay applicant is found to be *prima facie* entitled, is to be refused (see [37] above). The question of whether a stay is to be refused can be enlivened only *after* the defendant/stay applicant discharges his burden of proving that the requirements for a stay have been met (including the existence of a dispute referable to arbitration) and the court is satisfied that the defendant/stay applicant is *prima facie* entitled to a stay. The burden of satisfying the court that the dispute is valid or sustainable is not one falling the defendant/stay applicant. Instead, the burden is on the claimant to establish the contrary, and that this constitutes a "sufficient reason" for the parties not to be held to their arbitration agreement.

40 In my view, therefore, what the court in *Yau Lee Construction* had in mind was similarly the second of the two operative questions confronting a court in a stay application under s 6 of the AA – whether a stay ought to be refused. It was also in connection with that question that the court in *Yau Lee Construction* held that, whether a dispute should be referred to arbitration (which I understood as meaning whether a stay is to be refused) raised the question of whether the claim can be said to be "undisputed" or "indisputable".

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I do not think the court in *Yau Lee Construction* had meant to say that the question of whether a "dispute" referable to arbitration exists, and in turn whether a defendant/stay applicant is *prima facie* entitled to a stay, in and of themselves involved a consideration of whether the claims in question were "undisputed" or "indisputable".

The other authorities cited by MTPL

41 In support of its submissions, MTPL also cited the following extract from LexisNexis, *Annotated Laws of Singapore – Arbitration Act 2001* (at para 6.05):

> … The defendant cannot succeed in establishing a prima facie case of dispute by raising mere allegations; he must back this up by credible evidence: *Chin Ivan v H P Construction & Engineering Pte Ltd* [2015] 3 SLR 124 (CA) at [24]. Cf the position under s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed), where it is 'sufficient for a defendant to simply assert that he disputes or denies the claim in order to obtain a stay of proceedings in favour of arbitration: see *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 … at [48]–[49].

42 I make two observations in connection with the extract above. First, following from my view above (at [26]), that it suffices for a defendant/stay applicant seeking a stay under s 6 of the AA to establish the existence of a "dispute" referable to arbitration by merely asserting that he disputes or denies the claim, I respectfully disagree with the latter half of this extract, where it is opined that this position does not apply in the context of the AA. Secondly, the part of the extract stating that a defendant/stay applicant can only establish a *prima facie* case of a dispute by backing up his allegations of a dispute with credible evidence is, in my respectful view, an incorrect reading of the Court of Appeal's decision in *Chin Ivan v H P Construction & Engineering Pte Ltd* [2015] 3 SLR 124 ("*Chin Ivan*").

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43 In *Chin Ivan*, the respondent, who was employed by the appellant as the main contractor of a building project, mounted a claim on two architect's certificates against the appellant. The parties' contract incorporated a set of standard terms of the Singapore Institute of Architects. Under those terms, "in the absence of fraud or improper pressure or interference by either party", the respondent was entitled to enforce its right of payment of the sums certified in any valid architect's certificates by way of summary judgment (see *Chin Ivan* at [8]). As the Court of Appeal explained, the certification by an architect in a construction project is concerned with the mechanism and process by which a contractor's work will be valued and paid for, and these enforcement proceedings that are brought to uphold the architect's certificates by way of summary judgment are concerned with only the question of whether the architect's certificates had been validly issued in accordance with the terms of the contract, and not the substantive question of whether the certificates are correct as to the matters which they purport to deal with (see *Chin Ivan* at [21]). The appellant in *Chin Ivan* resisted payment on the certificates and alleged that they had been procured by fraud on the part of the respondent and it sought a stay of proceedings for the matter to be referred to arbitration in accordance with the parties' agreement. The Court of Appeal, agreeing with the observations of the learned judge in the High Court, held that a party can only establish a *prima facie* case of irregularity in connection with an architect's certificate, including a *prima facie* case of fraud, by backing up its allegations with evidence (see *Chin Ivan* at [24]–[25]). On the facts, the Court of Appeal held that a *prima facie* case of fraud had been made out, and that the facts before it were rather exceptional and went further than establishing a *prima facie* case of fraud (see *Chin Ivan* at [25]).

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44 As the Court of Appeal made clear in its judgment, the judge's finding of a *prima facie* case of fraud was not disputed on appeal, and the only issue before the Court of Appeal was whether the judge ought to have ordered a full rather than a partial stay which he had ordered (see *Chin Ivan* at [3]). The Court of Appeal in *Chin Ivan* therefore did not hold that a party can only establish a *prima facie* case of dispute by backing up his allegations of a dispute with credible evidence; that issue was not before the court for the purposes of the appeal.

45 The learned judge in the High Court did indeed hold that a party applying for a stay of the enforcement proceedings on the ground that the architect's certificates were affected by fraud had to establish that "there was a *bona fide* dispute on a *prima facie* basis", which must be backed up by credible evidence and mere allegations were insufficient, and with which the Court of Appeal agreed (see *Chin Ivan* at [24]; *H P Construction & Engineering Pte Ltd v Chin Ivan* [2014] 3 SLR 1318 ("*Chin Ivan (HC)* at [26] and [41]–[42]). However, the learned judge in *Chin Ivan (HC)* did not state, as a *general proposition*, that all allegations of a "dispute" in whatever context must be backed up by credible evidence. The learned judge had specifically observed that allegations of *fraud* had to be backed up by "some credible evidence" and mere allegations were insufficient (see *Chin Ivan (HC)* at [42]). Although the learned judge did use the language of a "*bona fide* dispute", it does not appear that the judge intended to say that any such dispute asserted by the defendant/stay applicant had to be valid or must have merit. Indeed, the judge had pegged this standard at which a "*bona fide* dispute" had to be shown as a "*prima facie* case" and also referred to the observations of the High Court in *Uni-Navigation* ([32] above) that once such a *prima facie* case of dispute was made out, the court should not embark on an examination of the validity of the

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dispute (see *Chin Ivan (HC)* at [41]–[42]), the significance of which I have explained earlier (at [33]).

Whether CMT had demonstrated the existence of a "dispute" in this case

46 Accordingly, to reiterate, for a defendant/stay applicant to establish that a "dispute" exists and so that he is *prima facie* entitled to a stay under s 6 of the AA, it suffices for him to simply *assert* that he disputes or denies the claim. Based on MTPL's pleaded case in the SOC, the AH Equipment Claims, as part of MTPL's broader claims for the Equipment Costs and other capital expenditure, are premised on an agreement between the parties arising from an exchange of e-mails between MTPL and CMT between January and May 2022 (see [4] above).[22] In CMT's supporting affidavit for SUM 2865, it made no reference to these e-mail exchanges alleged by MTPL, but stated that the parties had agreed on the transfer of the AH Equipment and that the agreement had been reduced in writing in the ETA. The account which CMT has put forward in connection with the AH Equipment Claims – which is diametrically opposed to that relied on by MTPL in OC 471 – is clearly an assertion of a dispute or a denial of the claim as put forward by MTPL in OC 471.

47 I therefore found that CMT has established the existence of a "dispute" referable to arbitration, and so the burden shifted to MTPL to explain whether and/or why there is sufficient reason why a stay should be refused and the matter not be referred to arbitration in accordance with the arbitration agreement in the ETA. As I have explained earlier, in my view, the question of whether MTPL's claims are "undisputed" or "indisputable" went towards the question of whether there is sufficient reason for a stay to be refused (see [31] above). Accordingly,

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22 SOC at para 6.

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I will deal with the evidence that MTPL had cited in support of its arguments that its claims against CMT for the AH Equipment are "undisputed" or "indisputable" only at that juncture.

Whether MTPL had shown "sufficient reason" for a stay of proceedings to be refused

48 I now turn to the third issue, the key to which was whether MTPL had discharged its burden of showing that there is "sufficient reason" why the AH Equipment Claims should not be referred to arbitration, in accordance with the arbitration agreement in the ETA.

Factors germane to showing "sufficient reason" for the refusal of a stay under s 6 of the AA

49 The term "sufficient reason" captures a broad range of factors which the court must eventually find to outweigh the significant consideration that the parties had voluntarily bound themselves to arbitrate and therefore ought to be held to their agreement, before it would exercise its discretion under s 6 of the AA in favour of refusing a stay (see *CSY* ([9] above) at [25]; *Sim Chay Koon and others v NTUC Income Insurance Co-operative Ltd* [2016] 2 SLR 871 ("*Sim Chay Koon*") at [9]). The Court of Appeal in *CSY* (at [25]) identified the following factors as instructive:

> (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 between two different fora;

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> (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.

50 In exercising its discretion under s 6 of the AA, the court is guided by the following three higher-order concerns that arise whenever it is confronted with overlapping court and arbitral proceedings, and which may pull in different considerations in each case: (a) first, a claimant's right to choose whom he wants to sue and where; (b) second, the court's desire to prevent a claimant from circumventing the operation of an arbitration clause; and (c) third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes (see *CSY* at [24]; *Tomolugen* ([9] above) at [188]). Where there is an applicable arbitration agreement that the parties freely entered into, the court will respect party autonomy and hold the parties to the agreement as a starting position, and so to this extent, the claimant's right to choose the forum in which he brings proceedings is curtailed by his own prior agreement to submit certain disputes to arbitration. The party seeking to persuade the court to exercise its discretion and override the arbitration agreement which the parties have entered into, is therefore required to show "sufficient reason" why the matter should not be referred to arbitration (see *CSY* at [24]).

51 As the factors identified by the Court of Appeal in *CSY* and the balance of the three higher-order concerns stated by the Court of Appeal in *Tomolugen* suggest, the foremost concern of the court in determining if it should exercise its discretion under s 6 of the AA and *refuse* a stay of court proceedings in favour of domestic arbitration, is whether the need to properly manage the court's processes and ensure the efficient and fair resolution of the entire dispute

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outweighs the need to hold parties to their agreement to arbitrate. This analysis is therefore objective in nature, and a party's *subjective* preference for his claim to be litigated in court, or a party's *subjective* view of how his claims can be more effectively litigated in court, as opposed to being adjudicated by arbitration, are irrelevant considerations (see *Sim Chay Koon* at [9]–[10]; see also *Ling Kong Henry* ([29] above) at [54] and [58]–[60]).

52 As the Court of Appeal stated in *CSY* (at [27]–[29]), while the fact of a multiplicity of proceedings arising from related actions (some of which are governed by arbitration agreements and others not) is significant, it is not in itself a sufficient reason to refuse a stay of court proceedings in favour of arbitration. There must be something more in the circumstances of the case. On this note, I turn to *CSY*, which was cited by MTPL in support of its case that there was "sufficient reason" for the court to refuse a stay of the AH Equipment Claim.

53 The facts of *CSY* are as follows. The appellant was a company under compulsory liquidation. The appellant commenced a suit in the High Court against the respondent, who was engaged as its external auditor since at least 2003 until September 2020. The appellant claimed that the respondent had failed to detect material misstatements in its audited financial statements for the appellant for financial year ("FY") 2014 to FY 2019, and that this was in breach of the respondent's contractual and/or tortious duties to the appellant. The respondent and the appellant's relationship as auditor-and-client were governed by engagement letters that were issued and executed at the beginning of the audit for each FY. The engagement letters for FY 2016 and FY 2017 contained an exclusive jurisdiction clause in favour of the Singapore courts, while the engagement letters for FY 2018 and FY 2019 contained a tiered dispute resolution procedure which culminates in arbitration in Singapore. I refer to this

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in short as "the arbitration agreement". For FY 2015 and earlier, the engagement letters did not contain any dispute resolution clause. It was not in dispute that: (a) the part of the appellant's claims relating to the audits for FY 2018 and FY 2019 came within the scope of the arbitration agreement contained in the engagement letters for those FYs, while that relating to audits for the earlier years did not; and (b) the arbitration agreement was one under the AA and not the IAA. The issue before the Court of Appeal was whether the judge in the High Court had been correct in ordering that the claims relating to the audits for FY 2018 and FY 2019 be stayed in favour of arbitration pursuant to s 6 of the AA, and that the dispute pertaining to the audits for FY 2017 and earlier be subject to a case management stay pending arbitration.

54 The Court of Appeal held that the judge ought to have *refused* a stay of the claims relating to the audits for FY 2018 and FY 2019, and consequently, there was also no ground on which a case management stay of the remaining claims may be imposed (see *CSY* at [39]–[40]). The Court of Appeal noted that the appellant's claims in the suit was, in essence, "a singular dispute concerning a continuing relationship between the parties" between FY 2014 and FY 2019, the entire period relating to which the claims had arisen (see *CSY* at [30]). Consequently, there was a significant overlap in factual issues between the dispute pertaining to the audits for FY 2018 and FY 2019, and the dispute pertaining to the audits for FY 2017 and earlier, which meant that an analysis of the respondent's conduct in each of the FYs would likely also require consideration of what had happened in the other FYs. This meant that: (a) an arbitral tribunal hearing the dispute pertaining to the audits for FY 2018 and FY 2019 would have to consider factual evidence relating to the audits for the previous FYs, despite not having jurisdiction to hear and determine the dispute pertaining to the audits for FY 2017 and earlier; and (b) a court hearing the

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dispute pertaining to the audits for FY 2017 and earlier would also have to consider evidence relating to the audits for the subsequent FYs and come to its own view on the evidence that could well be different from those of the tribunal (see *CSY* at [30]–[32]). In these circumstances, the multiplicity of proceedings in court and in arbitration gave rise to a clear risk of inconsistent findings that were liable to be reopened or were susceptible to a collateral attack in a different proceeding, after having been disposed of in one case (see *CSY* at [34]). The Court of Appeal therefore concluded that it was most consistent with the fair and efficient resolution of the *entire* dispute, for a stay of the dispute pertaining to the audits for FY 2018 and FY 2019 to be *refused* and for those claims to proceed in court (see *CSY* at [38]–[39]).

55 In finding that there was sufficient reason for the *refusal* of a stay, the Court of Appeal held that the intention of the parties in *CSY* was not a determinative consideration in the circumstances of the case (see *CSY* at [36]). The court noted, among other things, that it was only from FY 2018 onwards that the parties had decided to move towards arbitration as their preferred means of dispute resolution, and there was nothing to specifically suggest that the parties had intended this to apply in the context of a multi-year dispute across two different fora engaging substantially similar issues and the attendant inconveniences (see *CSY* at [36]). There was also no suggestion that the parties foresaw or could be taken to have reasonably foresaw the risk of multiplicity of proceedings arising and the attendant consequences of inconsistent decisions if the disputes were adjudicated in two fora (see *CSY* at [37]).

56 The Court of Appeal's decision in *CSY* is instructive as to what is the "something more" that must be present before a multiplicity of proceedings can constitute a "sufficient reason" for a stay of court proceedings in favour of arbitration to be refused. First, the multiplicity of proceedings in question should

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not be a consequence that was foreseen or could have been foreseen by the parties, by virtue of how they have structured their dispute resolution agreements. Where that is the case, a multiplicity of proceedings and any attendant inconvenience associated with having different parts of a dispute adjudicated in two fora would be consistent with what they had intended by the relevant dispute resolution agreements which they entered into. Any multiplicity of proceedings arising in these circumstances would provide a less persuasive ground for the court to exercise its discretion and override the arbitration agreement that the parties had entered into.

57 The High Court's decision in *Maybank* ([9] above) illustrates this. In that case, the appellant, a securities brokerage, entered into a series of contract for differences ("the CFD Transactions") with the first respondent. The CFD Transactions were governed by a set of standard terms and conditions which also provided for disputes to be resolved by domestic arbitration. For the CFD Transactions, the appellant also entered into an agreement with the second respondent, who was the first respondent's remisier for those transactions. The remisier agreement between the appellant and the second respondent also contained an indemnity in favour of the appellant, under which the second respondent was liable as sole principal debtor for losses incurred by the appellant in relation to transactions made through accounts under his watch, but it provided that disputes arising thereunder were subject to the non-exclusive jurisdiction of the Singapore courts, instead of arbitration. As a result of a market crash, the CFD Transactions traded using the first appellant's account, which was under the watch of the second respondent, resulted in substantial losses. The appellant commenced court proceedings, and as against the first respondent, it claimed a sum of about S$8m pursuant to the terms and conditions applicable to the CFD Transactions, and as against the second respondent, it

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claimed the same amount pursuant to the indemnity given by the second respondent in favour of the appellant. The appellant's claims against the first and second respondents, although independent from each other, engaged common issues that were central to the determination of the respective claims (see *Maybank* at [28]–[29] and [36]).

58 The respondents sought a stay of the proceedings against the first respondent pursuant to s 6 of the AA, and a case management stay of the proceedings against the second respondent. Both the stay under s 6 of the AA as well as the case management stay was granted at first instance by an assistant registrar ("the AR"). The appellant initially appealed against the entirety of the AR's decision, but it ultimately abandoned the appeal against the first respondent. The issue before the High Court was therefore limited to whether the AR had correctly ordered a case management stay of the claims against the second respondent. The High Court expressed its view that the appellant would have faced difficulties in demonstrating any sufficient reason for the court to refuse a stay under s 6 of the AA (see *Maybank* at [4]). A factor the court found significant was the fact the dispute resolution agreements that the appellant had put in place *necessarily* meant that there would be a multiplicity of proceedings if claims were brought by the appellant against both a client and its remisier in respect of the same losses. Any such multiplicity of proceedings was therefore also consistent with what the appellant had intended when it entered into the respective agreements with the first and second respondents, and in these circumstances, the multiplicity of proceedings and any consequences arising therefrom would not give rise to sufficient reason for the appellant to not be held to its arbitration agreement with the first respondent. As the court explained (see *Maybank* at [3]):

> … the appellant acknowledged that it has the burden to demonstrate sufficient reason why a stay of proceedings should

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> not be ordered under s 6 of the AA. In the court below, the main argument advanced by the appellant to discharge this burden was that, since the claim against the second respondent is not subject to arbitration, the stay in respect of the claim against the first respondent should be refused to avoid multiplicity of proceedings with the attendant risks of inconsistent findings. *It seems to me that any multiplicity of proceedings is the direct result of the appellant's own corporate policy to have different dispute resolution clauses to govern disputes under different contracts*. The effect of this submission, if accepted, is that on every occasion when trading losses are incurred and a remisier is involved (which is not uncommon), the court should invariably displace the arbitration clause in favour of court proceedings to avoid multiplicity of proceedings. …
>
> [emphasis added]

59 Secondly, for a multiplicity of proceedings to constitute a "sufficient reason" for a stay of court proceedings in favour of arbitration to be refused, it must have the effect of impeding the efficient and fair resolution of the dispute as a whole. This is apparent from the Court of Appeal's emphasis in *CSY* that the case before it went beyond a mere multiplicity of proceedings (see *CSY* at [29]). In *CSY*, the overlap in the dispute pertaining to the audits from FY 2014 to FY 2017 (which was not subject to an arbitration agreement) and the dispute pertaining to the audits for FY 2018 and FY 2019 (which was subject to an arbitration agreement) was of such a nature that if the latter was stayed and referred to arbitration, then effectively an *identical* dispute would come to be heard by *both* the court and the putative arbitral tribunal, where the exact same issues and evidence would be canvassed in both proceedings, and possibly with inconsistent findings made. This, surely, would impede the efficient and fair resolution of the dispute as a whole. Coupled with the fact that the parties did not, when they entered into the arbitration agreement set out in the engagement letters for FY 2018 and FY 2019, foresee that a multi-year dispute like the one which arose would come to be determined across two different fora as a result of the arbitration agreements (see *CSY* at [36]), the multiplicity of proceedings

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was *a fortiori* a sufficient reason for the refusal of a stay of proceedings in favour of arbitration.

Whether there is "sufficient reason" in this case

60 It was not in dispute that the AH Equipment Claims as well as the remainder of MTPL's claims for the Equipment Costs all arise in connection with the joint venture between MTPL and COC, and specifically, that all of the items of equipment listed in Annexure A to the SOC and which underlie MTPL's claim for the Equipment Costs had been purchased by MTPL for the purposes of the joint venture:

(a) According to MTPL, it had, in connection with the operations of the joint venture, purchased equipment for and on behalf of CMT even ahead of CMT's incorporation because lead time was needed to have these items equipment delivered from overseas suppliers, and CMT had agreed to reimburse MTPL for all the items of equipment that MTPL had purchased.[23] In this regard, the ETA was merely a document that had to be signed as part of CMT's internal finance procedures for the payment for the AH Equipment to be released to MTPL.[24]

(b) On the other hand, CMT, which takes the position that the joint venture between the parties has been terminated, stated in its affidavit for SUM 2865 that upon the termination of the joint venture, the parties were in discussions "in relation to the transfer of the equipment purchased by [MTPL] to [CMT]".[25] Although CMT did not specify in

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23 CTL1 at paras 23–24.

24 CTL1 at para 25.

25 CTL1 at para 10.

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> its affidavit that this "equipment" referred to and/or included also the various other items of equipment listed by MTPL in Annexure A to the SOC in addition to the AH Equipment, in my view, it would be hard-pressed for CMT to contend that those other items of equipment fall outside the scope of the "equipment" that it had referred to in its affidavit. Based on CMT's arguments about the scope of the ETA, and specifically that the ETA's effect extended to the entirety of MTPL's claim for the Equipment Costs (see [6] above), it must also be CMT's position that *all* the items of equipment listed in Annexure A to the SOC came within the scope of such "equipment" it had identified.

61 Because all of the equipment was undisputedly purchased by MTPL for the purposes of the joint venture, the AH Equipment Claims and the remaining claims for the Equipment Costs share a *singular* factual matrix. On the basis of MTPL's pleaded case, these claims (*ie*, the claims for the Equipment Costs) also share a *singular* factual matrix with all of MTPL's *other* claims in OC 421 for capital expenditure ("the Remaining Claims"), because they all arise in connection with the capital expenditure that MTPL had incurred in connection with the joint venture, and which MTPL says CMT agreed to pay.[26] I note, from CMT's Defence (Merits) filed in connection with the Remaining Claims that CMT does not deny that the underlying expenses had been incurred by MTPL for the purposes of the joint venture, but only that it did not agree to pay MTPL for those expenses, or that it was not liable to pay MTPL for those expenses.

62 CMT disputed the characterisation of MTPL's claims for the Equipment Costs as giving rise to a singular dispute, and it relied on two arguments in support: (a) first, that the Equipment Costs claimed in OC 421 represent

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[26] SOC at para 4.

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"distinct types of costs"; and (b) secondly, that the AH Equipment Claims and the remaining claims for the Equipment Costs are separately founded upon a written contract and a contract by conduct, respectively. In my view, CMT's submissions focused on the *form* of the claims but ignored their *substance*. Each of the claims coming within the scope of the Equipment Costs would obviously be separate and distinct in that they pertain to the various items of equipment that were purchased at different points in time, and with respect to the AH Equipment, it would appear that the parties had singled them for special treatment by virtue of their entry into the ETA. However, all of the other items of equipment would have been purchased by MTPL for the purposes of the parties' joint venture, just like all the other capital expenditure that it had incurred for the joint venture and which MTPL seeks to recover from CMT in OC 421. Any subsequent arrangement that the parties have might have entered into in connection for some of the items of equipment but not others does not detract from the *singular* theme that those claims form part of the capital expenditure that MTPL had incurred for the purposes of the joint venture and so share a common theme with the remaining claims for the Equipment Costs as well as with the Remaining Claims generally.

63 This *singular* factual matrix shared by the AH Equipment Claims and the Remaining Claims is significant because, if the AH Equipment Claims were stayed in favour of arbitration, any such factual issues that a putative arbitral tribunal has to determine in deciding those claims would overlap with those arising for determination by a court hearing the Remaining Claims. This overlap means that the evidence given in the putative arbitration and in the court proceedings would inevitably overlap and duplicate each other. There is a real risk of inconsistent findings because, given the singular factual matrix from which the AH Equipment Claims and the Remaining Claims arise, it would be

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difficult for a putative arbitral tribunal to limit the effect of its findings only to the AH Equipment Claims. Any issues that a putative tribunal comes to determine, in the course of deciding the AH Equipment Claims, would likely also extend to those that the court has to determine in deciding the Remaining Claims. Where any such findings are made by the putative arbitral tribunal, it surely would be challenged by whichever party that finds it unfavourable for the purposes of the court proceedings where the Remaining Claims are litigated. This results in a situation where a factual issue, despite having been disposed of in one proceeding, is now liable to be reopened or be susceptible to a collateral attack in a different proceeding, giving rise to an obvious risk of bringing disrepute to the administration of justice. Put simply, the multiplicity of proceedings arising from the AH Equipment Claims and the Remaining Claims being adjudicated in different fora would prevent the fair and efficient resolution of the entire dispute pertaining to MTPL's claim for the Equipment Costs, and indeed, the entirety MTPL's claims in OC 421 relating to the capital expenditure MTPL incurred for the joint venture.

64 Next, on the face of the ETA, it does not appear that the parties had foreseen or would have reasonably foreseen a multiplicity of proceedings in arbitration and in court, in connection with the AH Equipment Claims on the one hand and the Remaining Claims on the other. In this regard, I found cl 9.2 of the ETA significant. Clause 9.2 provides that matters falling outside the scope of the ETA (which contained a dispute resolution mechanism) would be resolved by way of a written supplementary agreement between the parties, which was to have the same legal effect as the ETA. In my view, cl 9.2 suggests that CMT and MTPL intended that a *single* dispute resolution mechanism be applied to any matters arising as between them, without them having to expressly stipulate the same in the supplementary written agreements

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subsequently entered into. I accept, of course, that the dispute resolution mechanism provided for in the ETA was arbitration, but the undisputed fact of the matter is that there are no such supplementary written agreements entered into between the parties, and so for that matter, the arbitration agreement remains confined only to the AH Equipment. Because the parties intended that a *single* dispute resolution mechanism be applied (putting aside for the moment the specific modality of that mechanism) they would not have foreseen that some of their claims would be adjudicated in arbitration and the others in court, where they all arise out of a singular factual matrix, which is the capital expenditure that MTPL had incurred for CMT as part of the joint venture.

65 For the reasons above, I was satisfied that this is a case where the court ought to exercise its discretion under s 6 of the AA to *refuse* a stay of proceedings and allow the AH Equipment Claims to proceed in court, notwithstanding that those claims come within the arbitration agreement in the ETA. If the AH Equipment Claims were referred to arbitration, the multiplicity of proceedings in court and in arbitration would impede the fair and efficient resolution of the dispute as a whole. Such a multiplicity of proceedings, in my view, was also not what MTPL and CMT had foreseen or could have reasonably foreseen when they entered into the ETA, and so to that extent, it is justifiable for the parties to not be held to their agreement to arbitrate in the ETA. MTPL had therefore shown "sufficient reason" why the AH Equipment Claims should not be referred to arbitration. On this basis, I dismissed SUM 2865.

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

66 Quite a big part of MTPL's arguments as to why the court's discretion under s 6 of the AA ought to be exercised in its favour centers around how the AH Equipment Claims are "undisputed" or "indisputable". MTPL pointed out

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that the contemporaneous documentary evidence showed that CMT had clearly and unequivocally admitted liability and quantum to pay MTPL for the AH Equipment. According to the evidence which MTPL adduced, after the ETA was signed, a Directors' resolution was circulated for CMT's Board to approve the payment to MTPL for the AH Equipment, which was approved shortly after. CMT then took steps for payment for the AH Equipment to be made to MTPL, but the payment could not go through because one of the two authorised signatories of CMT's bank account did not complete the authorisation process. In view of these facts, MTPL argued that it cannot be disputed that CMT did owe MTPL the sum claimed in connection with the AH Equipment.[27]

67 Since I have already concluded that the court's discretion under s 6 of the AA ought to be exercised to allow the AH Equipment Claims to proceed in court, the issue pertaining to whether the AH Equipment Claims are "undisputed" or "indisputable" did not arise for consideration. It suffices for me to state that I would not have been prepared to arrive at that conclusion on the basis of the evidence that MTPL had adduced. A claim that is undisputed or indisputable is one involving an to which the defendant has "no defence" or "no sustainable defence" (see *Kwan Im Tong* ([37] above) at [15] and *Fasi Paul Frank* ([37] above) at [18]). The court in *Uni-Navigation* ([32] above) (at [16]) described the circumstances in which a finding of the claimant's claim being "undisputed" or "indisputable" as being made only in "obvious cases". The rationale of refusing a stay on such grounds is, if the court proceedings were stayed in favour of arbitration, it would deprive the claimant of reliefs that it would otherwise be entitled to if its claims were allowed to proceed in court, such as summary judgment, and that in turn delay the just satisfaction of debts (see also *Halsbury's Laws of Singapore* ([8] above) at para 20.036). If a

[27] CWS at paras 25–33; NE, 9 Nov 2023, p 8 lines 20–22.

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defendant/stay applicant seeks a stay despite evidently having no sustainable defence to the claimant's claims, this might well be a case where the stay under s 6 of the AA is sought in an abuse of process, and the grant of such a stay surely would be contrary to the efficient and fair resolution of the dispute as a whole.

68 It goes without saying, of course, that the threshold for showing that the defendant has "no defence" or "no sustainable defence" is a high one, and for that conclusion to be drawn, it must be one which the court could arrive at on the face of the evidence itself without having to engage in any elaborate or detailed investigation of the same (see, in a different context, *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros Ashenafi Tesemma, third party)* [2023] SGHC 160 at [35]), for example, if there was a clear and unqualified admission of the claim by the defendant/stay applicant (see *Uni-Navigation* at [15]). The high threshold is also consistent with the burden on the claimant to demonstrate sufficiently weighty considerations in the circumstances of the case which are capable of outweighing the need to hold parties to their agreement to arbitrate (see *CSY* ([9] above) at [25]).

69 Returning to this case, this threshold was obviously not met. The documentary evidence relied on by MTPL evinced a course of conduct on CMT's part which showed that steps were taken to effect payment for the AH Equipment to MTPL, but whether this course of conduct amounted to an admission of liability and quantum on CMT's part for the AH Equipment Claims was not something that the court could determine on the basis of that documentary evidence alone; that evidence had to be supplemented by the testimony of the relevant persons that had been involved in that course of conduct, in order to appreciate the significance of those steps that MTPL says had taken by CMT. It was not in dispute that, apart from the documentary

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evidence showing how CMT had taken steps to process the payments for MTPL, there is no other evidence showing that CMT had admitted to liability and quantum for the AH Equipment Claims.[28] Importantly, on the basis of the documentary evidence relied on by MTPL, CMT ultimately did not go through with making payment to MTPL, and the only reasonable inference that could be drawn at this juncture is that CMT subsequently took the view that MTPL was not entitled to payment. Therefore, if the issue had arisen for decision, I would not have found that AH Equipment Claims are "undisputed" or "indisputable".

Conclusion

70 To summarise, while I was satisfied that the AH Equipment Claims fall within the scope of the arbitration agreement in the ETA, I found that there was "sufficient reason" for the court to exercise its discretion under s 6 of the AA to *refuse* a stay of these claims in favour of arbitration, because the common factual matrix between the AH Equipment Claims and the Remaining Claims mean that, if the AH Equipment Claims were referred to arbitration, there would likely be overlapping issues between the putative arbitration and court proceedings, which in turn would result in inconsistent findings made on common issues and consequently a situation where parties seek to relitigate issues decided by one proceeding in the other proceeding. A stay of the AH Equipment Claims runs contrary to a fair and efficient resolution of the dispute as a whole, and therefore was refused.

71 In terms of costs, I ordered CMT to pay MTPL costs of $12,000 plus disbursements of $500. I found that an appropriate starting point was somewhere slightly below the midpoint of the relevant costs range in the

[28] CWS at paras 26, 27 and 29.

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Guidelines for Party-and-Party Costs Awards in Appendix G of the Supreme Court Practice Directions 2021 ($5,000–$23,000). Although the facts dealt with in the application were relatively confined, two rounds of written submissions had been filed and quite a number of legal authorities were relied on by the parties in their arguments. I do not think any further uplift was warranted on account of CMT's pursuit of and subsequent failure in its arguments about cl 9.2 and for the effect of the ETA to be extended to the entirety of MTPL's claim for the Equipment Costs – that would already have been reflected in CMT's liability to pay costs as the outcome of these proceedings. Although I disagreed with MTPL's submission as to the requisite standard at which a "dispute" must be shown by a defendant/stay applicant for the purposes of a stay application under s 6 of the AA, that in my view did not warrant any discount in costs. That was merely one of the several issues arising in SUM 2865, and MTPL also did not pursue its submissions on that point unreasonably or in such a way that protracted the length of the hearing. MTPL's failure on that discrete point does not detract from the fact that overall, it did prevail as a whole, with the result that SUM 2865 was dismissed, and for which it ought to be paid costs.

Perry Peh
Assistant Registrar

M K Eusuff Ali and Lee Yen Yin (Tan Rajah & Cheah) for the claimant;
Harry Zheng and Cheryl Yeo (Kelvin Chia Partnership) for the defendant.

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