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

[2024] SGHC 273

Admiralty in Personam No 50 of 2022 (Summons No 2712 of 2024)

Between

COSCO Shipping Specialized Carriers Co, Ltd

… *Claimant*

And

(1) PT OKI Pulp & Paper Mills
(2) COSCO Shipping Specialized Carriers (Europe) BV
(3) All other persons claiming or being entitled to claim damage, loss, expense, indemnity arising out of contact between "LE LI" (IMO No 9192674) and jetty/structure at Tanjung Tapa Pier on or about 31.05.2022

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Jurisdiction — Whether General Division of the High Court having jurisdiction to stay execution of order made by the Court of Appeal]
[Civil Procedure — Judgments and orders]

[Civil Procedure — Stay of proceedings — Stay of execution — Interim stay of execution]

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COSCO Shipping Specialized Carriers Co, Ltd
v
PT OKI Pulp & Paper Mills and others

[2024] SGHC 273

General Division of the High Court — Admiralty in Personam No 50 of 2022 (Summons 2712 of 2024)
S Mohan J
17 October 2024

25 October 2024

S Mohan J:

1 These are my written grounds expanding on oral remarks I gave in my decision to grant an application by the applicant and the first defendant in this action, PT OKI Pulp & Paper Mills ("OKI"), for an interim stay of execution of an anti-suit injunction granted by the Court of Appeal pending the hearing and final determination of OKI's main application for a stay of execution. As there appears to be a dearth of authority on a point of principle that arose in this application, I consider it useful to publish these written grounds.

2 In these grounds, I focus on an important point of principle that centres around the question of the jurisdiction of the General Division of the High Court ("General Division") to grant such an interim stay of an order made by the Court of Appeal. This question arises as a result of a jurisdictional objection raised by the respondent to the application and the claimant in this action, COSCO

Shipping Specialized Carriers Co, Ltd ("CSSC"). CSSC argued that the General Division had no jurisdiction to entertain this application which should instead have been made to and heard by the Court of Appeal.

Background facts and procedural history

3 It is unnecessary to set out the background facts at any length. A more complete overview may be found in my earlier decision declining CSSC's application for an anti-suit injunction against OKI: see *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others* [2024] SGHC 92 ("*COSCO (ASI)*") at [4]–[25]. I refer only to those facts that are relevant as context for the interim stay application.

4 Broadly, these proceedings arise out of a vessel owned by CSSC, the "LE LI" (the "Vessel"), making contact with a trestle bridge connecting a jetty in Indonesia that OKI claims to be the owner and operator of (the "Incident"). The Incident occurred on 31 May 2022, shortly after the Vessel had completed loading a cargo of bleached hardwood kraft pulp acacia PEFC and had cast off from the jetty. Nine bills of lading were issued by or on behalf of CSSC naming OKI as the shipper of the cargo.

5 On or about 26 October 2022, OKI commenced proceedings, as the owner or operator of the jetty and/or trestle bridge, against CSSC in the Kayu Agung District Court, Indonesia, seeking to claim for losses it allegedly suffered in consequence of the Incident (the "Indonesian Proceedings").

6 Prior to the commencement of the Indonesian Proceedings, on 4 August 2022, CSSC had commenced the present action, HC/ADM 50/2022, seeking *inter alia* to limit its liability arising out of the Incident, pursuant to Part 8 of

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the Merchant Shipping Act 1995 (2020 Rev Ed). After CSSC became aware of the Indonesian Proceedings, it applied by way of HC/SUM 2676/2023 ("SUM 2676") for an anti-suit injunction to restrain OKI from pursuing the Indonesian Proceedings.

7 After hearing the parties and a subsequent application for further arguments, I dismissed SUM 2676: see *COSCO (ASI)*. Pursuant to permission granted to it by the Court of Appeal in CA/OA 7/2024, COSCO appealed against my decision to the Court of Appeal in CA/CA 29/2024 ("CA 29"). On 5 September 2024, the Court of Appeal heard CA 29 and allowed the appeal. As a result, the Court of Appeal granted an anti-suit injunction against OKI by CA/ORC 34/2024 ("ORC 34").

8 In its present application in HC/SUM 2712/2024, OKI seeks to stay the execution of ORC 34 pending its application to discharge and/or vary the anti-suit injunction granted pursuant to ORC 34. I say nothing about the merits of the main application for a stay of execution, which has yet to be heard, and confine myself in these written grounds to OKI's application for an *interim* stay pending the hearing and determination of the former.

The parties' arguments

9 As mentioned above, the main point of difference between the parties was whether the General Division had jurisdiction to grant a stay of execution of the anti-suit injunction despite ORC 34 being an order issued by the Court of Appeal.

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10 OKI, represented by its counsel Mr Abraham Vergis SC, answered this in the affirmative.[1] The fundamental premise of OKI's argument was that the Court of Appeal has no original civil jurisdiction, and therefore the application was properly brought before the General Division as the court with such jurisdiction.[2] Although OKI accepted that the Court of Appeal could have the jurisdiction to grant a stay of execution of an order, it submitted that this was confined to cases where the stay is "incidental to the hearing and determination of an appeal".[3] For this proposition, OKI relied on the Court of Appeal's decisions in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") and *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another and another matter* [2022] 2 SLR 340 ("*Pradeepto*").[4] OKI argued, in this connection, that since CA 29 had been heard and fully determined, there was no pending appeal before the Court of Appeal capable of enlivening the Court of Appeal's limited jurisdiction to grant a stay of execution.[5]

11 On the other hand, CSSC represented by its counsel Mr Dedi Affandi Ahmad, contended that the General Division has no jurisdiction to stay the execution of an order made by the Court of Appeal.[6] The crucial bases of CSSC's position were as follows. First, a proper construction of O 22 r 13 of the Rules of Court 2021 ("ROC 2021") indicated that only the Court of Appeal could stay the execution of an anti-suit injunction that it had granted.[7] Second,

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1 Defendant's Written Submissions dated 20 September 2024 ("DWS") at para 3.

2 DWS at para 14.

3 DWS at para 14.

4 DWS at paras 13 and 15.

5 DWS at para 15.

6 Claimant's Written Submissions dated 16 October 2024 ("CWS") at para 2(b).

7 CWS at para 9.

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the appellate jurisdiction of the Court of Appeal had been invoked by CA 29, and the Court of Appeal retained jurisdiction to hear an application for a stay of execution of its orders even after the appeal. In support of this, CSSC pointed to s 49(2) and para 4(*d*) of the Seventh Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA").[8] Third, the authorities relied on by OKI did not support its contention that the General Division, and not the Court of Appeal, was the court seised of jurisdiction to hear OKI's application for a stay of execution.[9]

My decision: the General Division was the proper court to hear this application

12 In my judgment, CSSC's jurisdictional objection was misconceived. I broadly accepted the arguments made by OKI and agreed that the General Division was the proper court for OKI's application for a stay of execution to be brought.

13 The starting point for my analysis is the statutory fount of the jurisdiction of the General Division and Court of Appeal. This is because the Singapore courts are creatures of statute, and the jurisdiction of a court must be statutorily conferred upon that court by the statute constituting it: see *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [14]–[20]; *Lee Wee Ching v Wang Piao* [2024] 1 SLR 350 at [21].

14 In this regard, it seemed to me indisputably clear that the Court of Appeal only exercises appellate civil jurisdiction: see *Au Wai Pang v Attorney-*

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8 CWS at para 13.

9 CWS at paras 10–12.

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General and another matter [2014] 3 SLR 357 ("*Au Wai Pang*") at [59]. This is apparent from the statutory scheme of the SCJA. Section 49 of the SCJA first provides that:

> **Jurisdiction — general**
>
> **49.**—(1) The Court of Appeal has the civil jurisdiction mentioned in section 53, the criminal jurisdiction mentioned in section 60D and the jurisdiction to deal with any application or action that is to be dealt with by the Court of Appeal as is provided in Division 4 of this Part.
>
> (2) The Court of Appeal has, in an appeal and for any purpose related to an appeal, all the jurisdiction and powers of the court or tribunal from which the appeal was brought.
>
> …

Division 4 of Part 5 of the SCJA relates to post-appeal applications in capital punishment cases and is therefore not relevant for present purposes. Section 53 of the SCJA, on the other hand, is squarely relevant:

> **Civil jurisdiction**
>
> **53.**—(1) This Division applies to the Court of Appeal in the exercise of its civil jurisdiction.
>
> (2) The civil jurisdiction of the Court of Appeal consists of the following matters, subject to the provisions of this Act or any other written law regulating the terms and conditions upon which those matters may be brought:
>
> (*a*) any appeal against any decision made by the General Division in any civil cause or matter in the exercise of its original or appellate civil jurisdiction;
>
> (*b*) any appeal from the Appellate Division;
>
> (*c*) any appeal or other process that any written law provides is to lie, or that is transferred in accordance with any written law, to the Court of Appeal;
>
> (*d*) any application (whether made to the General Division, the Appellate Division or the Court of Appeal) to which either or both of the following apply:

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> (i) a common question of law or fact arises in both the application and a matter falling within the criminal jurisdiction of the Court of Appeal;
>
> (ii) any relief claimed in the application —
>
> > (A) may affect any matter falling within the criminal jurisdiction of the Court of Appeal; or
> >
> > (B) may affect the outcome of any matter falling within the criminal jurisdiction of the Court of Appeal.

15 One finds a conspicuous absence of any mention of an original civil jurisdiction in either ss 49 or 53 of the SCJA. Indeed, the Court of Appeal confirmed this limit on its jurisdiction in *Pradeepto* (at [26]):

> It is trite that this court has no original civil jurisdiction (see *Singapore Civil Procedure 2021* vol 2) (Cavinder Bull gen ed) (Sweet & Maxwell, 2020) ("*Civil Procedure*")) at para A/29A/1, citing the decision of this court in *Au Wai Pang v Attorney-General* [2014] 3 SLR 357 ("*Au Wai Pang*")). Consequently, this court cannot and will not hear *de novo* applications. Instead, in granting relief to litigants, this court only exercises *appellate jurisdiction* (in the context of civil appeals; see s 53 of the SCJA), or *incidental appellate jurisdiction* (in certain applications where the Court of Appeal possesses all the jurisdiction and powers of the puisne court to determine matters which are *incidental* to the hearing and determination *of an appeal*; see the High Court decision of *Naseer Ahmad Akhtar v Suresh Agarwal and another* [2015] 5 SLR 1032 at [108], citing *Au Wai Pang* at [70]).
>
> [emphasis in original]

16 The question, then, was whether OKI's application for an interim stay was, to use the Court of Appeal's language in the extract above, a "*de novo* application" (which relates to original jurisdiction) or an application calling for the exercise of "appellate jurisdiction" or "incidental appellate jurisdiction".

17 Seen in this light, there was little doubt in my mind that the present application for an interim stay of execution was not a matter falling within the

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Court of Appeal's appellate jurisdiction or incidental appellate jurisdiction. The fact of the matter is that CA 29 has been determined and finally resolved – thus, CA 29 is spent and no longer "live". That being so, on the basis of the holding in *Pradeepto* (see [15] above), I found it difficult to see how CSSC could maintain that "the Court of Appeal has jurisdiction to hear an application for a stay of execution of its orders even after the appeal".[10]

18 In my view, CSSC's reliance on the language of O 22 r 13 of the ROC 2021, as well as s 49(2) and para 4(*d*) of the Seventh Schedule of the SCJA, was misplaced, for the following reasons. I turn first to O 22 r 13.

19 Contrary to CSSC's submission, there is nothing in the language of O 22 r 13 of the ROC 2021 that requires the application for a stay of execution to be brought in a court at the same level of judicial hierarchy as the court that made the order. I set out the material part of O 22 r 13:

> **Application for stay of enforcement (O. 22, r. 13)**
>
> **13.**—(1) The party who is liable under any Court order may apply for stay of enforcement or stay of any enforcement order or any part of the order if there is a special case making it inappropriate to enforce the Court order immediately.
>
> (2) The Court may order a stay of enforcement or stay of an enforcement order, for a specified period or until the occurrence of a specified event.
>
> …

20 It will be seen at once that O 22 r 13 is silent on the issue of which court the application for a stay should be made to. The definitional provision of O 22 similarly does not shed any light, and the general definition of "Court" in O 1 r 3 of the ROC 2021 refers to: (a) the General Division or a judge sitting in the

[10] CWS at para 13.

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General Division; (b) the District Court or a District Judge; (b) the Appellate Division of the High Court ("Appellate Division") or the Court of Appeal, or a judge sitting in either the Appellate Division or the Court of Appeal where appropriate; or (d) a Magistrate or Registrar in cases where he or she is empowered to act. None of this lent support for the limitation on the General Division's jurisdiction that CSSC contended for.

21 Second, CSSC's reliance on s 49(2) and para 4(*d*) of the Seventh Schedule was also erroneous. Although s 49(2) of the SCJA does state that the Court of Appeal has "all the jurisdiction and powers of the court or tribunal from which the appeal was brought", this is subject to the all-important qualifier that this is only so "*in an appeal* and for any purpose *related to an appeal*" [emphasis added]. The significance of this qualifier is that, where the Court of Appeal exercises the powers of the General Division, it is not exercising original civil jurisdiction but what the Court of Appeal in *Au Wei Pang* and *Pradeepto* referred to as "incidental appellate jurisdiction": see *Au Wei Pang* at [70]; *Pradeepto* at [26]. As a matter of logic, an appeal must be in existence and on foot for s 49(2) to apply. This much was made clear by the Court of Appeal in *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 2 SLR(R) 336 ("*Denko-HLB*") where, speaking in relation to s 29A(3) of the former Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), Chao Hick Tin JA said (at [28]):

> It seems to us clear that the civil jurisdiction of the Court of Appeal is to hear appeals from the High Court. It also seems to us that the effect of s 29A(3) [of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)] is that the Court of Appeal will only have the powers of the High Court, *where there is in existence an appeal*. It is only at the hearing of the appeal, or at the hearing of a matter incidental to the appeal, that the Court of Appeal would have the powers which are conferred upon the High Court. Denko's application for an extension of

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> time to apply for further arguments can, under no stretch of the imagination, be considered to be the "hearing of" of an appeal or a matter incidental to the hearing of an appeal. There was, as yet, no appeal.
>
> [emphasis added]

22 The issue before the Court of Appeal in *Denko-HLB* was whether the Court of Appeal had jurisdiction to extend the time for an application to be made to the High Court for the hearing of further arguments. As Chao JA's reasoning in the latter half of the above extract makes plain, the Court of Appeal had no jurisdiction because there was "no appeal". The applicant was asking the Court of Appeal to exercise original jurisdiction that it did not have: see *Denko-HLB* at [32]. In my judgment, the present case was in substance no different; the determination of CA 29 by the Court of Appeal meant that there was, likewise, no appeal (or none left, at any rate) to enliven its jurisdiction under s 49(2) of the SCJA.

23 It also appears to me that this conclusion is buttressed by s 58 of the SCJA, which makes clear that the Court of Appeal's powers relate to matters "*pending before it*":

> **Incidental directions and interim orders**
>
> **58.**—(1) The Court of Appeal may make one or more of the following directions and orders *in any appeal or application pending before it* (called in this section the pending matter):
>
> (*a*) any direction or order *incidental to the pending matter* not involving the decision of the pending matter;
>
> (*b*) any interim order to prevent prejudice to the claims of the parties *pending the determination of the pending matter*;
>
> (*c*) any order for security for costs, and for the dismissal of the pending matter for default in furnishing security so ordered.

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> (2) A direction or an order under subsection (1) may be made by the Court of Appeal on its own motion or on the application of a party.
>
> …
>
> [emphasis added]

In my view, logically, CA 29 cannot be said to be a "pending matter" before the Court of Appeal.

24 For similar reasons, para 4(*d*) of the Seventh Schedule of the SCJA also did not assist CSSC. Paragraph 4(*d*) simply states that a Court of Appeal consisting of two judges may hear and decide "an application to the Court of Appeal for a stay of execution or enforcement (whether pending or after the appeal) or a stay of proceedings under the decision appealed from". CSSC emphasised that the phrase "after the appeal" must mean that the Court of Appeal retains jurisdiction over ORC 34 and the anti-suit injunction, and OKI's application must thus be to the Court of Appeal only and not the General Division.

25 This argument was creative but, in my view, it involved a *non sequitur*. First, although para 4(*d*) does appear to contemplate the Court of Appeal having jurisdiction to grant a stay of execution after an appeal, it is silent about the circumstances in which such jurisdiction would exist. Second, even if the Court of Appeal did have jurisdiction, it did not follow that it was *the only court* with jurisdiction. As I pointed out to counsel for CSSC at the hearing, s 57 of the SCJA expressly contemplates the possibility of the General Division and Court of Appeal having *concurrent* jurisdiction over certain matters. In fact, s 57 of the SCJA goes further to establish that where such concurrent jurisdiction exists, the application should be made in the first instance to the General Division rather than the Court of Appeal:

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> **Applications**
>
> **57.** Where an application may be made either to the Court of Appeal or to another court, it must first be made to the other court.

26 Indeed, the principle enshrined in s 57 of the SCJA is of a longstanding vintage. In *Au Wai Pang*, the Court of Appeal cited with approval (at [76]) the following statement from the English Court of Appeal decision of *Cropper v Smith* (1883) 24 Ch D 305, which concerned an application to stay an assessment of damages hearing pending an appeal, in relation to what appears to have been the English equivalent to ss 49(2) and 57 of the SCJA in force at the time (at 308–309):

> … it is assumed that the Court of Appeal has jurisdiction, and to my mind, according to the true reading of that rule, not a jurisdiction by way of appeal merely, but an independent jurisdiction, and if that rule had remained alone it would have been obvious to my mind that the application might have been made either to the Court appealed from or to the Court of Appeal. Then the 17th rule says that, "Wherever under these rules an application may be made either to the Court below or to the Court of Appeal" (which in terms assumes that but for what is going to be said immediately afterwards it might be made either to the Court below or to the Court of Appeal) "it shall be made in the first instance to the Court or Judge below." *That imposes a limitation on the action of the Court of Appeal, but a limitation not affecting its jurisdiction*, and does not at all shew that the motion in the Court of Appeal is an appeal. On the contrary, the 17th rule seems to me to first assume, as the 16th rule did, that it is not an appeal, that there is an alternative jurisdiction, and alternative jurisdiction is of course co-ordinate. Then in order that the Court of Appeal and the Court below may not incur the risk of deciding in different ways as to staying proceedings without either of them knowing of the application to the other, the rule imposes this limitation, that *although the jurisdiction is co-ordinate, and although it is alternative, yet the Court of Appeal will not exercise its jurisdiction until it knows whether the co-ordinate jurisdiction of the Divisional Court has been exercised and how.* …
>
> [emphasis added]

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The Court of Appeal clarified (at [77]) that the reference to the English Court of Appeal's "independent jurisdiction" (and, I gather, the reference to "alternative jurisdiction" as well) in this extract was the incidental appellate jurisdiction of an appeal court.

27 Hence, to the extent that CSSC relied on s 49(2) and para 4(*d*) of the Seventh Schedule of the SCJA to ground its argument that the Court of Appeal had *exclusive* jurisdiction over OKI's application to stay the execution of ORC 34, I considered that the legislative scheme of the SCJA as outlined above, when construed properly, put paid to that suggestion.

28 Finally, taking a stepping back, and as I highlighted to CSSC's counsel at the hearing, a glaring difficulty with its position that only the Court of Appeal could interfere with the enforcement of an order made by the Court of Appeal, however intuitive it might seem at first blush, was that it would lead to various peculiarities if taken to its logical conclusion that could not, in my view, be correct. For example, it would mean that, if the Court of Appeal had allowed an appeal from a decision declining to grant an *ex parte* injunction, a subsequent *inter partes* application for the injunction to be discharged would have to be heard at the first and last instance by the Court of Appeal. But it is clear as a matter of authority that that cannot be so: see *Ocean Software Ltd v Kay and others* [1992] 1 QB 583 at 588, affirmed in *Au Wai Pang* at [72].

29 Ultimately, the superficial attractiveness of CSSC's argument – that an order granted by an appellate court could not be interfered with by an inferior court in the judicial hierarchy – was based on a misconception as to the true nature of *stare decisis*. I accepted OKI's reliance on the Court of Appeal's

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decision in *Syed Suhail* on this point.[11] It was contended there by the Attorney-General that a High Court Judge did not have the power to stay the execution of a death sentence that had been affirmed by the Court of Appeal and which was to be carried out under a warrant of execution issued by the Court of Appeal pursuant to s 313(*g*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). Sundaresh Menon CJ found that there was no substance in this submission (see *Syed Suhail* at [83]):

> The concern expressed in the AG's submissions, that the High Court should not order relief which has the effect of suspending or superseding an order issued by the Court of Appeal, appeared to us essentially to be a misapplication of the doctrine of *stare decisis*. *Stare decisis* concerns the binding effect of a ruling on a *principle of law* by one court upon another court (or upon itself) (see, for example, *Mah Kah Yew v Public Prosecutor* [1968–1970] SLR(R) 851 at [6]). A decision or order cannot have the effect of *stare decisis* other than in respect of any principle of law that it embodies. As for the finality of a decision or order of a court, this is instead secured by the doctrine of *res judicata* (including the extended doctrine of *res judicata* which derives from abuse of process – see generally *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453). Where the doctrine of *res judicata* applies, the proceedings cannot be allowed to proceed *regardless* of the court in question. This is again illustrated by [*Kho Jabing v Attorney-General* [2016] 3 SLR 1273 ("*Kho Jabing (JR)*"], in which the applicant had filed a civil application in the High Court seeking to challenge the outcome of criminal applications heard by the Court of Appeal. This court's decision in *Kho Jabing (JR)* did not express any doubt on the High Court's jurisdiction to entertain the civil application on the basis that it was inferior in the judicial hierarchy to the Court of Appeal. Instead, it held that the civil application, being an attempt to relitigate the criminal applications on largely identical grounds, was an abuse of process (*Kho Jabing (JR)* at [2]).

30 It seems to me that, when the Court of Appeal makes an order for an anti-suit injunction in allowing an appeal from a decision of the court below –

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11 DWS at para 13.

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as it did in this case when making ORC 34 in CA 29 – it does so by exercising the General Division's powers pursuant to s 49(2) of the SCJA. That being so, there is, in my judgment, no inherent qualitative superiority in the Court of Appeal's order over one made by the General Division such that all forms of "interference" with the order lie outside of the General Division's jurisdiction. As Menon CJ explained in *Syed Suhail*, the General Division – or, for that matter, any court (including, in principle, the Court of Appeal itself) – cannot undermine the finality of ORC 34 insofar as it concerns relitigation of the reasons underpinning the Court of Appeal's decision in light of the doctrine of *res judicata*. But *res judicata* is a thing apart from contending, as CSSC did, that the General Division has no jurisdiction to make any orders impinging upon ORC 34 *simply because* it was an order made by the Court of Appeal.

Conclusion

31 For all the reasons above, I was satisfied that the General Division did possess jurisdiction to hear and grant the interim stay of execution of ORC 34 sought by OKI.

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32 As to whether the interim stay should be granted on its merits, I heard arguments from both sides. In order to hold the line pending the hearing and final determination of the main application for the stay of execution itself, I granted the interim stay sought by OKI subject to various conditions which I imposed at the conclusion of the hearing.

S Mohan
Judge of the High Court

Toh Kian Sing SC, Dedi Affandi bin Ahmad, Hazel Cheah Kam Ying and Wu Muyu (Rajah & Tann Singapore LLP) for the claimant; Abraham S Vergis SC, Ngo Wei Shing and Axl Rizqy (Providence Law Asia LLC) (instructed), Leong Lu Yuan, Chan Wai Yi Kevin, Dawn Tan Si Jie and Teo Wei Lin Elizabeth (Clasis LLC) for the first defendant.

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