IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 32

Court of Appeal / Civil Appeal No 71 of 2024

Between

Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership)

… *Appellant*

And

European Topsoho S.àr.l.

… *Respondent*

In the matter of Originating Application No 222 of 2023

Between

Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership)

… *Applicant*

And

(1) Shandong Ruyi Technology Group Co., Ltd
(2) European Topsoho S.àr.l.

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure — Production of documents — Breach of "unless orders" — Whether "unless order" for production of documents breached]
[Arbitration — Enforcement — Foreign award — Breach of "unless order" made by the applicant in proceedings to enforce foreign award]

CONTENTS

Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership)
v
European Topsoho Sàrl

[2025] SGCA 32

Court of Appeal — Civil Appeal No 71 of 2024
Sundaresh Menon CJ, Steven Chong JCA and Judith Prakash SJ
27 May 2025

4 July 2025

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 An unless order is the court's ultimate procedural tool to secure compliance with its directions: fail to comply, and face the specified consequences. These consequences are not controversial. After all, they are typically spelt out in the unless order itself. But what happens when those consequences would have the practical effect of denying the enforcement of a foreign arbitral award?

2 This appeal raises two interesting questions in this context:

(a) Should the court undertake a proportionality assessment in deciding whether the consequence of non-compliance with the unless order should take its course?

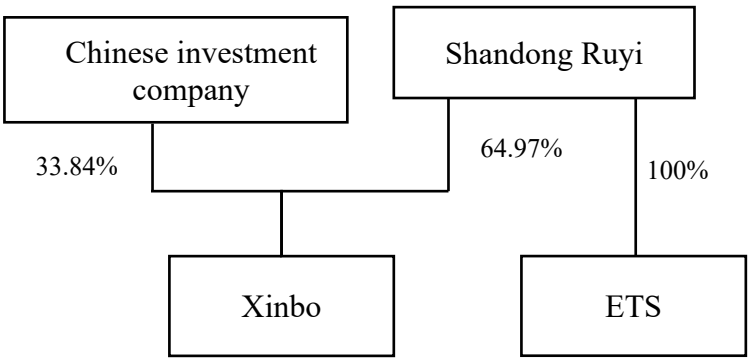
(b) Would the enforcement of such an unless order be tantamount to fashioning a new ground for refusing the enforcement of a foreign arbitral award in contravention of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) 330 UNTS 38 (entered into force 7 June 1959, accession by Singapore 21 August 1986) (the "NYC")?

3 We answered both questions in the negative when we heard and dismissed the appeal on 27 May 2025. These are our detailed grounds.

Facts

The parties

4 This appeal arose out of an application for the enforcement of an arbitral award, *viz*. HC/OA 222/2023 ("OA 222"), the three parties to that application being related companies. The second respondent in the proceedings below, Shandong Ruyi Technology Group Co Ltd ("Shandong Ruyi"), is the ultimate parent company of the respondent in this appeal, European Topsoho S.àr.l. ("ETS"). The appellant in this appeal, Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) ("Xinbo"), is a joint venture between Shandong Ruyi (with a 64.97% share) and a Chinese state-owned investment company (with a 33.84% share). For ease of reference, we set out below a diagram of the corporate structure:



The underlying dispute

5 The dispute underlying the arbitration was centred around the parties' rights to shares held by ETS in a Luxembourg company ("SMCP"). Sometime in July 2018, ETS purportedly pledged some 40m shares in SMCP to Xinbo as security for Shandong Ruyi's debt under a guarantee (the "Guarantee"). Unbeknownst to Xinbo, ETS later proceeded to create another pledge over 28m of the 40m aforementioned shares (the "Pledged Shares") as security for bonds it had issued (the "Bonds").

6 ETS defaulted on the Bonds in October 2021, and so the trustee for the bondholders took possession of the Pledged Shares. Xinbo then sought a transfer of ETS' remaining 12m SMCP shares (the "Remaining Shares"). These Remaining Shares were thus transferred into a JP Morgan NA Singapore account held by Xinbo's nominee on 27 October 2021. Around this time, a bankruptcy petition was also served on ETS.

The Arbitration

7 In what appeared to be an attempt to regularise ETS' transfer of the Remaining Shares to Xinbo's nominee, Xinbo commenced an arbitration (the "Arbitration") against its sister company, ETS, in the Beihai Court of

International Arbitration (the "BCIA") on 21 March 2022, seeking a declaration that Xinbo was entitled to the Remaining Shares. At that time, all three companies (*viz*. Shandong Ruyi, ETS and Xinbo) were apparently under the control of one Mr Qiu Yafu.

8 Xinbo's commencement of the Arbitration before the BCIA was a deviation from the parties' initial agreement in the Guarantee to refer disputes to the Jining Arbitration Commission (the "JAC"). When explaining this deviation in the proceedings below, Xinbo advanced two conflicting accounts:

(a) In its affidavit filed in support of OA 222 for permission to enforce the award, Xinbo stated that the three parties to the Guarantee (*viz*. Xinbo, Shandong Ruyi and ETS) had agreed to change the arbitral institution from JAC to BCIA pursuant to a memorandum signed in or around *June 2019* (the "Memorandum") due to apparent concerns over the JAC's ability to administer foreign-related arbitrations.

(b) In an affidavit subsequently filed by Xinbo in compliance with an unless order – which we shall address shortly – Xinbo stated that the parties had agreed to change the arbitral institution from JAC to BCIA at an in-person meeting on *9 April 2022* (the "9 April Meeting").

For present purposes, it suffices to note that the curious circumstances surrounding the change in the arbitral institution formed part of ETS' case below where it sought the production of communications from Xinbo to substantiate the alleged agreed variation of the arbitral institution.

9 The Arbitration was conducted at a private hearing on 30 December 2022. Notably, during the Arbitration, ETS' counsel at the time ("Mr He

Hanchu") had no objection to the evidence submitted by Xinbo, or to the reliefs claimed by Xinbo. Just a few days later, on 10 January 2023, the tribunal issued the award (the "Award") in which the tribunal confirmed that Xinbo had a "priority right of compensation" out of the proceeds of sale of the Remaining Shares. The Arbitration was, in effect, a walkover.

10 After the Award was issued, a bankruptcy order was made against ETS, and a bankruptcy curator (the "Curator") was appointed to take control of ETS in February 2023. Since then, the Curator has controlled all of ETS' actions – including the proceedings before the Singapore courts.

The procedural history

Xinbo's enforcement proceedings in Singapore

11 On 13 March 2023, Xinbo commenced OA 222 seeking permission to enforce the Award in Singapore. The application was heard on an *ex parte* basis and permission to enforce the Award was granted in HC/ORC 1189/2023 ("ORC 1189").

12 Subsequently, ETS (under the control of the Curator) applied to set aside ORC 1189. It relied on numerous grounds of challenge, including:

(a) the arbitration agreement (set out in Art V of the Guarantee) was invalid and unenforceable as it was signed without authority;

(b) the Award was invalid as there was no dispute between the parties that the tribunal had jurisdiction to adjudicate upon;

(c) Mr He Hanchu had no authority to act on ETS's behalf in the Arbitration;

(d) the Award was procured by fraud, as evidenced *inter alia* by the BCIA being (allegedly) a fictitious and non-existent arbitral institution; and

(e) the enforcement of the Award would be contrary to the public policy of Singapore.

13 In essence, ETS' case was that the Arbitration was a sham devised to give Xinbo priority over the Remaining Shares ahead of ETS' other creditors. In resisting the enforcement of the Award, ETS applied by HC/SUM 2987/2023 ("SUM 2987") for Xinbo to produce eight categories of documents. SUM 2987 was heard by an Assistant Registrar (the "AR"), who substantially allowed the application and ordered Xinbo to produce seven categories of documents requested by ETS (the "Production Order"). Of those seven categories, two are relevant for present purposes:

(a) *Category 1*: Communications between Xinbo (which includes its representatives and lawyers) and ETS and/or any of its representatives regarding the need for and negotiation and execution of the Memorandum, including communications relating to the purported deficiency of the JAC and the circumstances which necessitated a variation of the agreed arbitral institution to the BCIA.

(b) *Category 2*: Communications from Xinbo (which includes its representatives and lawyers) to ETS and/or any of its representatives (including Mr Qiu Yafu, Mr He Hanchu or any other person from Mr He Hanchu's law firm) in respect of each of the following time periods and subject matter:

(i) *Category 2(a)*: prior to the commencement of the Arbitration, alleging a dispute and demanding reliefs from ETS and/or its representatives, whether in the form of a demand letter or otherwise.

(ii) *Category 2(b)*: after the commencement of the Arbitration, notifying ETS and/or its purported representatives of the commencement of the Arbitration; and

(iii) *Category 2(c)*: after the commencement of the Arbitration, in relation to any matter arising out of or in connection with the Arbitration, including but not limited to matters such as the terms of reference, list of issues, administrative matters and logistics of the hearing(s) for the Arbitration.

Xinbo's breach of the Production Order and the imposition and enforcement of the Unless Order

14 After the Production Order was made, Xinbo filed an initial list of documents on 11 December 2023 and a supplementary list of documents on 30 January 2024. ETS contended that they were incomplete. Thereafter, ETS applied by HC/SUM 346/2024 for an unless order to secure Xinbo's full compliance with the Production Order.

15 The AR allowed SUM 346 and granted Xinbo the unless order it sought *vide* HC/ORC 1035/2024 (the "Unless Order"). By the Unless Order, Xinbo was given until 4 March 2024 to provide ETS with the documents it had previously been ordered to produce, failing which both the permission to enforce the Award

granted by ORC 1189 and ETS' underlying application (*ie*, OA 222) would be dismissed.

16 On 4 March 2024, Xinbo filed a second supplementary list of documents under cover of an affidavit in which Xinbo's representative sought to explain how the Unless Order had been fully complied with. ETS disputed Xinbo's alleged compliance with the Unless Order and this dispute persisted after the deadline of 4 March 2024 had lapsed. In the premises, ETS was directed by the AR to apply, if it so wished, for the enforcement of the Unless Order.

17 Pursuant to the AR's directions, ETS filed HC/SUM 643/2024 ("SUM 643") seeking enforcement of the consequences for Xinbo's breach of the Unless Order. The AR allowed SUM 643, and Xinbo appealed against that decision to the General Division of the High Court (the "High Court").

The decision below

18 Xinbo's appeal was dismissed by the judge below (the "Judge"), whose reasons were set out in *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308 (the "Judgment"). The Judge found that Xinbo had breached the Unless Order in three respects:

> (a) Xinbo breached the Production Order – and, accordingly, the Unless Order – in failing to adequately explain how it had lost possession of or control over WeChat messages between Xinbo's and ETS' representatives in response to Categories 1, 2(a) and 2(c) (Judgment at [93]–[118]).

(b) Xinbo breached the Production Order and the Unless Order in failing to disclose WeChat messages exchanged between Xinbo's and ETS's representatives in response to Category 2(c). In this connection, the Judge considered it "plain and obvious" that such messages were within Mr He Hanchu's possession. Although Mr He Hanchu was ETS' lawyer in the Arbitration, the unusual circumstances in this case led to the inference that Xinbo had the practical ability to access, and thus had "control" over, the WeChat messages in Mr He Hanchu's possession (Judgment at [119]–[132]).

(c) Xinbo breached the Production Order in failing to allow ETS to inspect the originals of the documents it had produced (Judgment at [133]–[141]).

19 Next, in upholding the AR's decision to enforce the Unless Order, the Judge questioned Xinbo's reliance on *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") as authority for a "proportionality" assessment in enforcing the consequences flowing from a breach of an unless order. The Judge observed that proportionality should play only a "limited role" in enforcement proceedings, reasoning that there should be a "strong *prima facie* assumption" of proportionality where a party had breached two successive obligations to perform the same act. Given Xinbo's intentional and contumelious breaches of the Unless Order, the Judge held that its enforcement was appropriate in the circumstances.

20 Finally, the Judge rejected Xinbo's argument that the NYC's "pro-enforcement" policy militated against the enforcement of the Unless

Order. The Judge provided three reasons why the NYC does not prevent the court from enforcing an unless order (Judgment at [186]–[197]):

(a) It would be normatively objectionable for any party who invokes the jurisdiction of the Singapore courts to claim to stand outside or enjoy immunity from the courts' procedural rules.

(b) Article III of the NYC expressly subjects the enforcement of awards to "the procedural rules of each Contracting State". It followed from this that the "pro-enforcement policy of the NYC bends to the domestic procedural rules of an individual Contracting State rather than the other way around".

(c) The exhaustive grounds of challenge in the NYC did not prohibit the Singapore courts from invoking well-established domestic procedural rules notwithstanding that doing so had the practical effect of disrupting the enforcement of an award.

The parties' cases on appeal

21 Xinbo's appeal rested on two alternative grounds:

(a) It first argued that it did not breach the Unless Order.

(b) Alternatively, even if it did breach the Unless Order, Xinbo argued that the specified consequences should not be strictly enforced. In doing so, Xinbo challenged the Judge's adoption of a "strong *prima facie* assumption" that enforcing an unless order would not be disproportionate. Instead, Xinbo contended that where the sanction of an unless order would result in the refusal of the enforcement of a

foreign arbitral award, "the proportionality analysis should generally lie in favour of applying other sanctions". Given the less extensive nature of the breaches in this case, Xinbo argued that enforcing the Unless Order strictly would be disproportionate.

22 On appeal, ETS effectively adopted the analysis of the Judge.

The issues to be determined

23 The two broad issues to be determined were:

(a) whether Xinbo breached the Unless Order; and

(b) if so, whether the Unless Order should be enforced such that Xinbo's application to enforce the Award be struck out.

Xinbo breached the Unless Order

24 We agreed with the Judge's finding that Xinbo breached the Unless Order in the three material aspects set out above at [18], namely:

(a) by failing to give an adequate explanation of how it had lost possession or control of the WeChat messages between representatives of Xinbo and ETS;

(b) by failing to disclose WeChat messages in Mr He Hanchu's possession; and

(c) by failing to produce original documents for ETS' inspection.

Xinbo's failure to give an adequate explanation

25 The first way in which the Unless Order was breached stemmed not from Xinbo's failure to produce the documents, but from its failure to provide an adequate explanation as to why it had failed to produce the documents.

26 Implicit in any order for production is a corresponding obligation for a party to provide an *adequate explanation* if it claims not to possess or control the requested documents. Otherwise, it would be far too easy for parties to make bare and unsubstantiated assertions that they do not possess or control the requested documents. We agreed with the Judge that this obligation to provide an adequate explanation attaches to *all* production orders, regardless of whether the court specifically requires an explanation pursuant to O 11, r 3(2) of the Rules of Court 2021 (Judgment at [96]).

27 On the facts, we agreed with the Judge that there were three key inadequacies in Xinbo's explanations:

(a) Xinbo did not account for all of its representatives who could reasonably be believed to have the requested documents. For example, Xinbo stated that there were at least seven individuals present at the alleged 9 April Meeting (where the parties had purportedly discussed the change in the arbitral institution). Xinbo then made the bare assertion that two of its representatives had changed mobile phones and therefore could not access the documents, but offered no proper explanation for the other representatives allegedly present at the 9 April Meeting not having the documents. This was significant because Xinbo did not claim that the two individuals who had changed their mobile phones were the *only ones* who were managing the change in the arbitral institutions, nor

did they claim that these two individuals were the *only ones* who had the relevant WeChat communications with ETS on these matters.

(b) In any case, even the explanations provided by the two individuals who changed their mobile phones proved wholly inadequate. Significantly, they merely asserted that they were unable to access old messages on the new phones but conspicuously avoided addressing whether the old phones themselves remained accessible.

(c) Finally, none of Xinbo's explanations specified *when* possession and control of the WeChat messages was lost. This was a material detail which would have been well within Xinbo's knowledge, and yet that detail was glaringly omitted.

28 These three inadequacies in Xinbo's explanations, in and of themselves, amounted to a breach of the Unless Order. In this respect, we agreed with the Judge that this was a *distinct* obligation (see Judgment at [118]), and that Xinbo's failure to provide an adequate explanation here did not *necessarily* lead to the conclusion that it was "plain and obvious" that the requested documents in fact existed.

Xinbo's failure to disclose Mr He Hanchu's WeChat messages

29 In his oral submissions, counsel for Xinbo, Mr Kelvin Poon SC ("Mr Poon") accepted that there were other relevant WeChat messages in Mr He Hanchu's possession and rested his argument solely on the fact that these other messages were allegedly not within Xinbo's "control".

30 In our judgment, there were several issues with Mr Poon's contention that Xinbo had no "control" over the messages in Mr He Hanchu's possession.

While we accepted that Mr He Hanchu was supposedly ETS' lawyer in the Arbitration, it was significant that the entire Arbitration was effectively a walkover, with ETS conceding to all claims made by its sister company, Xinbo. More tellingly, despite Mr He Hanchu's role as ETS' counsel in the Arbitration, he readily cooperated with Xinbo's requests while apparently rebuffing the Curator's attempts at contacting him following ETS' bankruptcy.

31 As we put it to Mr Poon at the hearing, if Xinbo's case was that Mr He Hanchu was truly an independent party beyond its "control", the onus was on Xinbo to provide a complete account of its interactions with him and a full explanation of why he withheld the other messages. Xinbo's failure to offer a satisfactory explanation in this context led us to conclude that Xinbo did indeed have "control" over Mr He Hanchu's messages. Accordingly, by not producing these messages, Xinbo breached the Unless Order.

Xinbo's failure to produce original documents for inspection

32 Finally, we agreed with the Judge that Xinbo breached the Unless Order by failing to produce the original documents for ETS' inspection. Instead, it merely printed out the soft copy documents which had already been electronically sent to ETS' solicitors.

33 Xinbo did not dispute this breach in its written submissions. However, in their oral submissions, Mr Poon attempted to downplay the severity of the breach by pointing out that the request to inspect the original documents came only after the Unless Order was issued, and that the inspection was scheduled on the very day of the deadline for compliance with the Unless Order.

34 In our view, this argument did not take Xinbo very far. None of what Mr Poon said negated Xinbo's fundamental failure to produce the original documents by the stipulated deadline. Moreover, as counsel for ETS, Mr Jordan Tan, highlighted during the hearing, Xinbo had discussed the timeline with the AR and had ample opportunity to request for an extension if there were genuine time constraints. Xinbo's failure to do so only reinforced our finding of a breach of the Unless Order.

The Unless Order should be enforced

The relevance of proportionality when enforcing an unless order

35 At the heart of Xinbo's appeal was its contention that the courts must conduct a proportionality analysis when deciding whether to enforce an unless order after it has been breached. We begin by examining this foundational premise.

36 When an unless order is first *imposed* against a party, that party would have already been in breach of at least one prior order and the court would have already considered the proportionality of the stated consequence(s) against the condition(s) specified in the unless order. The pertinent question is whether, following an intentional breach of a valid unless order that stands unchallenged, the court should revisit the issue of proportionality when deciding to *enforce* it? Our answer is an unequivocal "no".

37 In *Mitora*, there was some language which suggested that the court should "be guided by considerations of proportionality in assessing breaches of 'unless orders'" (at [39]). However, this broad statement must be understood within its specific context. In this regard, we agreed with the Judge's

observation that *Mitora* was ultimately a case about a party who "did substantively comply with all its discovery obligations" (*Mitora* at [21]).

38 The facts of *Mitora* are instructive. There, an unless order was imposed which required the claimant to produce, amongst other things, its "monthly bank statements" for a specified period (*Mitora* at [7(f)]). If the claimant failed to produce the relevant documents, the unless order stipulated that the claim would be struck out. After some initial difficulty in disclosing the relevant documents due to extraneous circumstances beyond its control, the claimant eventually complied substantially with the unless order, albeit after the stipulated deadline. In seeking to nonetheless enforce the unless order against the claimant, the defendant argued that the claimant technically breached the order by producing *bank passbooks* for the same period, instead of "monthly bank statements". This court, recognising the disproportionate severity of striking out an entire claim for such a minor and technical deviation, declined to enforce the unless order (at [23]–[26]). In short, the court took the view that there was *substantial* compliance with the unless order and it was *in that context* that the court observed that it would be wholly disproportionate to strike out the entire claim on a bare and technical breach. As we later explained in *Energy & Commodity Pte Ltd and others v BTS Tankers Pte Ltd* [2021] 2 SLR 877 (at [22]), *Mitora* was a unique case because the claimant there was initially hamstrung from complying with the unless order by extraneous circumstance but was nonetheless able to eventually comply. Understood in this way, the court's observations about proportionality were made in the specific context where there was substantial compliance, rather than as a broader principle permitting reassessment of proportionality following a breach of an unless order.

39 We therefore take this opportunity to clarify that the references to "proportionality" in *Mitora* were not intended as an invitation for courts to undertake a *de novo* assessment of proportionality in deciding whether to enforce the consequences stemming from a breach of an unless order. Instead, *Mitora* simply stands for the uncontroversial position that the court always retains a residual discretion not to enforce an unless order – for instance, where there has been substantial compliance with the unless order such that it would be wholly disproportionate for the unless order to be strictly enforced.

40 On the other hand, where a party intentionally chooses to *partially* comply with an unless order – as Xinbo has done here – it cannot then seek refuge in pleas of proportionality to avoid the consequences it has brought upon itself. To permit a second look at proportionality in these circumstances would be to invite parties to engage in tactical gamesmanship through selective non-compliance with unless orders. This would not only undermine the effectiveness of unless orders but would also encourage the kind of tactical disobedience that these orders are designed to prevent.

41 We therefore upheld the Judge's decision to enforce the specified consequences in the Unless Order – namely, the setting aside of the court's permission to enforce the Award (ORC 1189) and the dismissal of Xinbo's underlying application to enforce the Award (OA 222).

The relevance of the NYC when enforcing the Unless Order

42 For completeness, we touch on Xinbo's creative – but ultimately misconceived – argument based on the NYC, which was pushed in its written submissions but eventually tempered in its oral submissions.

43 In its written submissions, Xinbo advanced the untenable argument that giving effect to the Unless Order would be tantamount to fashioning a new ground for refusing enforcement in contravention of the exhaustive grounds of challenge set out in the NYC. In our view, this argument could not withstand scrutiny. Arbitral awards can only enter into the legal system of the enforcing state through the recognition and enforcement regime of the domestic court. This process necessarily entails compliance with the rules and processes of the domestic court. Indeed, Art III of the NYC expressly states that "[e]ach Contracting State shall recognise arbitral awards as binding and enforce them *in accordance with the rules of procedure of the territory* where the award is relied upon" [emphasis added]. As Mr Poon conceded during the hearing, these "rules of procedure" logically encompass the court's authority to impose both production orders and subsequent unless orders to secure relevant documents in the face of persistent non-compliance. It follows inexorably from this that the court must have the power to enforce such unless orders, even where the enforcement results in dismissing an application to enforce an arbitral award. In such instances, the non-enforcement flows directly from the award creditor's failure to comply with the forum's procedural rules, rather than from any implied additional ground under the NYC.

44 Recognising the inherent flaw of the argument, Mr Poon candidly recognised at the hearing that he would have hesitated to make this submission but for the English Court of Appeal's decision in *Gater Assets Ltd v Nak Naftogaz Ukrainiy* [2008] Bus LR 388 ("*Gater Assets*"). In that case, Rix LJ suggested in *obiter* (at [81]) that refusing enforcement due to an award creditor's failure to provide security for costs would amount to setting aside an enforcement order "on a ground not expressly within the [NYC]". Quite apart from being an *obiter* observation which has been doubted in *Diag Human SE v*

Czech Republic [2014] 1 All ER (Comm) 605 (at [15]), the imposition of security for costs as a procedural hurdle is quite different from the enforcement of an unless order. While security for costs is imposed by the court without reference to the award creditor's conduct, an unless order's consequences flow directly from the award creditor's own choices and actions. Viewed from this perspective, there is nothing unfair or unjust in enforcing an unless order because it is a matter for the party to decide whether it will or will not comply with those rules; if it does not do so, then it must be prepared to face the consequences of its actions. When a party consciously chooses non-compliance despite clear warning of the consequences, those consequences flow not from some novel procedural hurdle to enforcement, but from the party's own deliberate choice to disregard the court's multiple orders.

45 In the face of these difficulties, Mr Poon refined Xinbo's position at the hearing. Rather than challenging the court's *ability* to enforce an unless order, he submitted that the court should not be "too quick" to do so. In our view, the essence of Mr Poon's argument was that the NYC's enforcement regime should attenuate the force of an unless order where its enforcement would effectively deny recognition of an international arbitral award. Although this argument was not explicitly framed in terms of "proportionality", it remains at its core an argument about the disproportionality of enforcing an unless order in light of the enforcement policy of the NYC. However, having determined that proportionality has no role at this stage (see [36]–[40] above), this argument necessarily failed.

46 For completeness, we should also add that having failed to appeal against the Unless Order, Xinbo cannot now avoid its specified consequences by proposing alternative sanctions such as an adverse costs order or the drawing

of adverse inferences. The time to challenge these consequences was when the Unless Order was made. If Xinbo disagreed with the consequences set out in the Unless Order, the proper step to take would have been to appeal against the decision to impose the Unless Order, which it elected not to do.

Conclusion

47 We therefore dismissed the appeal with costs fixed in the aggregate sum of $40,000, with the usual order for payment out of security.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Judith Prakash
Senior Judge

Kelvin Poon SC, Devathas Satianathan, Ng Shi Min Nicole, Ku Chern Ying Vanessa (Rajah & Tann Singapore LLP) (Instructed Counsel); Terence Tan Ky Won and Lena Tan (Genesis Law Corporation) for the appellant;
Jordan Tan, Victor Leong, Lim Jun Heng (Audent Chambers LLC) (Instructed Counsel); Nicholas Poon and Michael Chan (Breakpoint LLC) for the respondent.