

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC(I) 10

Originating Application No 4 of 2025 (Summons No 25 of 2025)

Between

(1) DNO

... Applicant

And

(1) DNP

... Respondent

GROUND S OF DECISION

[Arbitration — Award — Recourse against award]

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DNO

v

DNP

[2025] SGHC(I) 10

Singapore International Commercial Court — Originating Application No 4 of 2025 (Summons No 25 of 2025)

Anthony James Besanko IJ

4, 8 April 2025

14 April 2025

Anthony James Besanko IJ:

Introduction

1 Pursuant to an order I made on 27 March 2025, the names of parties in the present action and any identifying details have been redacted to protect the confidentiality of arbitration proceedings. Where necessary, I shall refer to the applicant in this action as “DNO” and the respondent as “DNP”. The action was commenced by an originating application in the General Division of the High Court dated 21 October 2024 (the “Originating Application”).

2 On 8 April 2025, I granted leave to the applicant to file a further affidavit in support of its application, to adduce evidence relating to its standing to bring the Originating Application. These are the reasons for my decision.

Background

3 In the action, the applicant sought an order setting aside a Singapore International Arbitration Centre award dated 25 July 2024 (the “Award”), pursuant to section 24 of the International Arbitration Act 1994 (2020 Rev Ed) (“IAA”) read with Article 34 of the UNCITRAL Model Law on International Commercial Arbitration set out in the First Schedule of the IAA. The respondent in this action was the applicant in the arbitration proceeding. The respondent in the arbitration proceeding was a registered partnership, which I will refer to as the “Partnership”. The applicant in the arbitration (respondent in this action) was the successful party in the arbitration.

4 It is not necessary to set out the orders made in the arbitration proceeding. Broadly speaking, the ground upon which the present applicant challenged the orders made in the arbitration was that there was a breach of the rules of natural justice in the course of the arbitration. There were said to be two aspects to the alleged breach, being the refusal of the applicant’s application to amend a pleading, and the adoption by the Tribunal of what was said to be inconsistent reasoning.

5 As I have said, the applicant commenced this action in the General Division of the High Court of the Republic of Singapore. On 3 March 2025, the action was transferred to this Court. The action had proceeded on the basis of affidavits, rather than pleadings. The issues in the action were identified in the affidavits.

6 The applicant filed an affidavit of Mr [A], affirmed on 18 October 2024, with its Originating Application. Mr [A] was a businessman and a director of the applicant. He stated that his place of business was an address in India.

7 On 7 November 2024, the respondent filed an affidavit of Mr [Z], affirmed on 5 November 2024, in response to the applicant's affidavit. Mr [Z] was the senior executive director of the respondent and his place of business was also an address in India.

8 The respondent brought an application against the applicant for security for costs, but that application was resolved between the parties without the need for argument. Mr [Z] swore a second affidavit in support of that application, but that affidavit can be put to one side for present purposes.

9 The application which is the subject of these reasons was an application by the applicant for leave to file a second affidavit of Mr [A]. The applicant accepted that leave was required. The second affidavit of Mr [A] had not yet been affirmed and was annexed to an affidavit of the applicant's solicitor. No point was taken by the respondent about the fact that the affidavit had not yet been affirmed.

10 The context in which the application was made was that the respondent contested the applicant's standing to challenge the Award. The respondent claimed that the Partnership was the other party to the arbitration and that the Partnership was the party which had standing to challenge the Award.

11 In his first affidavit, Mr [A] stated that the applicant was a registered partnership and, on 30 March 2024, converted to a private limited company pursuant to the provisions of India's Companies Act 2013. This private limited company was DNO, the applicant in the present proceeding.

12 Mr [Z] addressed this issue in his affidavit in response. Broadly speaking, and without going into unnecessary detail, he asserted that

section 24 of the IAA provides as a ground for setting aside an award a breach of the rules of natural justice where “the rights of any party have been prejudiced” and “party” is defined in section 2 of the IAA as “a party to an arbitration agreement”. The respondent contended that the Partnership was the party to the arbitration agreement with it, and that the applicant did not have standing to challenge the Award. Furthermore, the evidence was that the Partnership was the party to various contracts and commercial documents with the respondent which were relevant in the arbitration. The respondent submitted that the Partnership was still in existence and it pointed to a number of Goods and Services Tax (“GST”) forms lodged by the Partnership which established that fact or, at least, suggested that it was the case.

13 Mr [A]’s second affidavit, in respect of which leave was sought, sought to refute the suggestion that the Partnership was not converted into the applicant and that there were two entities still in existence. He annexed to his affidavit a large number of documents and referred to certain sections of the Indian Companies Act 2013.

14 This action is listed for a one-day hearing on 19 May 2025.

Proposed structure of analysis

15 Each party filed what can only be described as extensive written submissions in support of its case on the applicant’s application for leave to file the second affidavit of Mr [A]. The submissions of each party suggested at various points that I could decide the standing issue at this stage. I made some observations about that suggestion at the beginning of the oral submissions.

16 I indicated that it seemed to me after reading each party’s written submissions, that there was a risk that the parties were treating the application

as something it was not. The application was not an application for the hearing and determination of a separate question. No question had been formulated, although this particular problem might be overcome without too much difficulty. However, there are a number of other hurdles to be overcome before the Court would accede to the hearing and determination of a separate question before trial. There is a substantial body of law addressing those issues. This was an application for leave to file an affidavit. I indicated to the parties that on an application for leave to file a further affidavit the issues are first, whether the affidavit is related or relevant to the issues in the case and second, whether discretionary factors, including (if relevant) delay, are in favour of a grant of leave. It is open to an applicant to withdraw its application or argue that leave is not required, but it appeared that the applicant was not suggesting that either of those matters was relevant.

17 I indicated that I proposed to ask the respondent to address first on whether the affidavit was relevant or related to the issues in the case, assuming that it wished to pursue the issue. I indicated that I would then ask the applicant to address on the discretionary factors. By the expression, “related or relevant to the issues in the case”, I mean no more than whether, on the face of it, the affidavit addresses relevant issues in the case. As I will explain later in these reasons (at [21] and [44]), even if the test is satisfied and leave is granted, the normal rights of the opposing party with respect to an affidavit, are preserved.

18 I should say at this point that in formulating the first issue in this way, I have had regard to the particular circumstances of this case. The test I have formulated may not be appropriate in other cases.

Issue 1: Relevance

19 The respondent made brief oral submissions on the first issue and, in addition, I had the benefit of its written submissions, at paragraphs 16–23. The respondent submitted that Mr [Z]’s affidavit clearly established that there were two entities, the applicant and the Partnership. It also submitted, as I understood it, that the applicant had not adduced evidence of Indian law relevant to the status of the applicant and the Partnership and that was necessary because the status of an entity, be it a registered partnership or company, is to be determined by the place of registration or incorporation. Mr [A] did not and could not give evidence directed to those issues.

20 I considered that these submissions of the respondent went to the merits of the standing issue and ruled that they were not relevant to the application for leave to file a further affidavit. They would be relevant to an application to strike out the proceeding or the determination of a separate question, but that was not the nature of the application before the Court.

21 I reached the conclusion that the affidavit was related or relevant to the issues in the case in the sense I have described. That is the appropriate test at this stage of the action. Questions of foreign law, the necessary qualifications of a person able to give evidence on matters of foreign law, the satisfaction of the procedural requirements in the Rules and the extent to which the Court may draw its own conclusions from documents may raise complex issues which cannot and should not be addressed on an application for leave to file an affidavit. I would make the point, largely for the applicant’s benefit, that all matters relevant to the admissibility or weight to be placed on the affidavit remains available to the respondent at trial.

Issue 2: Discretionary factors***The applicant's case***

22 I then invited the applicant to make submissions on the second issue.

23 As a general observation, I had difficulty reconciling a number of the applicant's submissions. The only evidence adduced on the issue of discretionary factors was that contained in paragraph 8 of Mr [A]'s second affidavit in which he stated that the respondent failed to take action to resolve a threshold issue of standing which it raised and therefore the respondent's behaviour "should be construed against it and the Respondent should not be allowed to belatedly raise this issue to prejudice the applicant's case". In addition, at paragraphs 9 and 19 of its written submissions, the applicant denied that the affidavit was late and submitted or, came very close to submitting, that the affidavit was brought forward only to assist the Court.

24 I turn now to the more specific submissions made by the applicant.

25 First, the applicant acknowledged that whilst this Court was required to consider the "expeditious and efficient administration of justice according to law"(O 1 r 3(a) of Singapore International Commercial Court Rules 2021 (the "SICC Rules")), that requirement was not breached or contravened in any way by a grant of leave because it was not suggested by either party that a grant of leave would affect the trial date. There would be no prejudice to the respondent which could not be overcome by an order for costs (*Affert Resources Pte Ltd (in compulsory winding up) v Industries Chimiques du Senegal and another* [2024] 4 SLR 258 ("*Affert Resources*") at [3]; *The "Tokai Maru"* [1998] 2 SLR(R) 646 at [21])

26 Secondly, the applicant submitted that a strict approach to a grant of leave was not the only consideration. A flexible approach guided by considerations of fairness was also relevant (see O 1 r 3(b) of the SICC Rules). It was necessary to consider both matters and when that was done, the balance in this case, favoured a grant of leave (*Affert Resources* at [3])

27 Thirdly, the applicant submitted that there was a potential inconsistency in the respondent's approach to the standing issue. The respondent argued in this action that the Partnership was the proper party, but there was at least a possibility that it would seek to enforce the Award against the applicant. The applicant submitted that the respondent should not be permitted to take this approach.

28 Fourthly, the applicant submitted that although there had been delay on its part in seeking to file a further affidavit, that was to be explained by the fact that it had only recently reached the conclusion that it would be "best" if it did so.

29 Finally, the applicant submitted that a factor in favour of a grant of leave was that the respondent had at no time issued an application to strike out the action on the ground of a lack of standing or sought the determination of the issue as a separate question. Furthermore, the applicant submitted that it was relevant that the lack of standing was a "positive averment" raised by the respondent.

The respondent's case

30 The respondent organised its submissions under three broad headings. They were as follows: (a) the applicant had not complied with the Rules of Court 2021 ("ROC 2021") and the SICC Rules (together, the "rules of court"), and a

grant of leave at this stage would be inconsistent with objects of the SICC Rules; (b) the applicant had notice of the respondent's challenge to its standing since the respondent filed its affidavit in response and yet did nothing until its recent application; and (c) the applicant had not explained the reason for its delay in making this application.

31 I will address the respondent's submissions under those headings.

ROC 2021 and the SICC Rules

32 The Rules which applied to the action before it was transferred to this Court were the ROC 2021. The respondent submitted that the provisions of the ROC 2021 which were relevant in the circumstances of this case were the following:

(a) First, O 6 r 13 of the ROC 2021 provides that the affidavit accompanying the Originating Application must contain all the evidence that is necessary or material to the claim. The action was transferred from the General Division of the High Court to this Court on 3 March 2025, but that did not affect the obligation of the applicant under O 6 r 13 of the ROC 2021. Those propositions are correct. The ROC 2021 provides that no further affidavits after a respondent's affidavit are to be filed except in a special case (O 6 r 12(6) of the ROC 2021).

(b) Second, an applicant would need permission to file a further affidavit and in determining whether that permission should be given the Court would have regard to the objects of the ROC 2021 as set out in O 3 rr 1(2) and 1(3). That was the position between 7 November 2024 when the respondent filed its affidavit, and 3 March 2025 when the action was transferred to this Court.

33 The position is relevantly the same in the case of an action in this Court. Under O 7 r 4(2) of the SICC Rules, further witness statements may not be filed after the respondent's statement unless the Court has given its permission. The Court must seek to achieve the "General Principles" in O 1 r 3 of the SICC Rules in deciding whether to grant permission. The respondent identified one of those principles as being the expeditious and efficient administration of justice according to law. There are other principles, and they include procedural flexibility and fair, impartial and practical processes.

34 The respondent placed heavy reliance on the decision of the High Court in *CZD v CZE* [2023] 5 SLR 806 ("*CZD*"). The respondent submitted that the relevance of *CZD* was not affected by the fact that it was a case in the General Division of the High Court rather than this Court. I agreed with that submission. In *CZD*, a defendant who was the moving party sought permission to file a further affidavit after the claimant had filed its affidavit in response. The High Court refused to grant permission. The Court in *CZD* said (at [18]–[20]), that in light of ROC 2021, permission would not be granted unless the circumstances were "special". A case might be special where the defending party introduces new issues in its responding affidavit, being issues not within the reasonable contemplation of the moving party at the time it filed its affidavit (*CZD* at [21]). The case before the Court in *CZD* did not fall into that category (*CZD* at [22]).

35 The respondent also submitted that the onus was on the applicant to establish its standing (*Phoa Eugene (personal representative of the estate of Evelyn Phoa (alias Lauw Evelyn Siew Chiang), deceased and personal representative of the estate of William Phoa, deceased) v Oey Liang Ho (alias Henry Kasenda) (sole executor of the estate of Wirio Kasenda (alias Oey Giok Tjeng), deceased) and others* [2024] 4 SLR 1108 at [43]). I accepted that proposition for present purposes. The respondent then submitted that, by reason

of the ROC 2021, the applicant should have included all of its evidence relevant to standing in its initial affidavit. I did not accept this proposition without qualification. Whilst the onus may be on the applicant to establish standing because it is its claim and it is more likely to have the relevant information, I considered that the issue of standing was somewhat unique in terms of how it was raised and addressed by the parties before the hearing. The applicant did address the issue very briefly in its first affidavit, probably because there appeared to be a difference between its name and the name of the party to the contracts and other commercial documents and the party to the arbitration. I did not consider that it was unreasonable for the applicant to go no further until it received the respondent's affidavit. Otherwise, much time and effort might be expended on what ultimately, was not a contentious issue.

36 The factors which were more significant in the circumstances of this case, were the applicant's conduct in indicating that all relevant material had been filed and in not clearly explaining why it now sought to file a further affidavit. It is to those issues I now turn.

The applicant's inaction and acquiescence

37 The respondent was correct in submitting that the applicant gave no indication, between 7 November 2024 and the date of filing of the Case Management Plan ("CMP") on 26 March 2025, to the respondent or the Court and that it wished to file a further affidavit. In the CMP and in response to a question to the effect of whether all relevant pleadings had been filed, the applicant said that it wished to file an affidavit of no more than five pages on the question of standing and, in particular, to demonstrate that the party to the arbitration was a registered partnership which was converted to private limited company (being the present applicant, DNO) on 30 March 2024.

38 Between 7 November 2024 and 26 March 2025, there were four case conferences. The applicant gave no indication at any of those conferences that it intended to apply for permission to file a further affidavit and on at least two occasions indicated either expressly or by silence that it did not intend to file any interlocutory applications in the future.

39 Prior to the transfer of this action from the High Court to this Court and in the context of a proposal to transfer, the applicant indicated that it did not intend to call an expert witness to “determine” issues of Indian law and public policy. It was not clear how much weight should be placed on this factor, bearing in mind that the respondent proposed to argue that Mr [A] was not an expert in Indian law.

40 At all events, in my opinion the respondent had established on the material that it was reasonable for both the respondent and the Court to assume until the CMP that the applicant would not seek to file any further affidavits.

The lack of a clear explanation for the delay

41 As I said earlier (at [23]), the only express explanation for the delay was that provided by Mr [A] in paragraph 8 of the affidavit under consideration. I did not accept that Mr [A]’s explanation was an adequate one. The applicant was equally able to ensure the issue was disposed of well before the hearing in circumstances in which the respondent had raised the issue in its affidavit of 7 November 2024.

42 The only other explanation for the applicant’s delay was that provided by its counsel in his submissions. The submission was that the applicant considered that it was “best” to file an affidavit and that it did so to assist the Court. I did not accept the second part of the submission without qualification.

The applicant may well have thought that the affidavit would assist the Court, but I found it difficult to accept that it did not also think it needed to file the affidavit in its own interests. In any event, the whole explanation put forward by the applicant's counsel did not address why these matters did not prompt the applicant to act much earlier.

Questions posed to the respondent during oral submissions

43 I should say for completeness that I raised a number of matters with the respondent during its oral submissions. First, I asked the respondent whether a failure by the applicant to establish standing was fatal to the applicant's action. It said that it was, although it would not be seeking an order to that effect until the hearing. Secondly, I asked the respondent about the applicant's point that the respondent would ultimately seek to enforce the Award against the applicant. To test the point, I asked the respondent if it was prepared to give an undertaking that it would not seek to enforce the Award against the applicant. The respondent's response was that it was not in a position to give such an undertaking, and, in any event, enforceability was a matter of Indian law. Finally, I asked the respondent whether the statement in Mr [A]'s first affidavit was sufficient to establish standing, unless and until the respondent indicated that the matter was in dispute. It seemed to me that the respondent did not accept that proposition.

My decision

44 I carefully considered whether the applicant should be given leave to file the further affidavit. The issue was finely balanced. I reached the conclusion that leave should be granted, but not in any way which affected the respondent's rights to argue at the hearing that the affidavit was not admissible, or was to be given little or no weight, or was insufficient to establish standing.

45 The matters which led me to conclude that leave to file the affidavit should be granted were as follows.

46 First, I did not think the delay by the applicant was designed to achieve a tactical advantage or done with an improper purpose. It resulted from a failure by the applicant to consider the matter carefully and/or confused or muddled thinking about the respondent being “required” to seek the resolution of the issue of standing well before the hearing.

47 Secondly, I considered that a relevant factor was that if the respondent’s argument was successful and the action was dismissed, it was possible or at least could not be ruled out, that the respondent may nevertheless seek to enforce the Award against the applicant. Of course, the chances of that happening were unknown, but even the possibility is a relevant factor.

48 Thirdly, the prejudice to the applicant if its application was refused was significant. Assuming the respondent’s argument succeeded, it seemed that in view of the three-month time limit, it might not have been possible to substitute the Partnership as the applicant in the present proceeding. On the other hand, the prejudice to the respondent was not particularly significant. It had not suggested that the hearing date would be lost or, at the point of my making of the order on 8 April 2025, that it wished to file a further affidavit.

49 Finally, compliance with the rules of court is obviously important, and they are not to be treated by parties as mere guidelines. At the same time, the requirement concerning expedition and efficiency (see [33] above) was not as significant in this case as it may be in other cases because, even if I made the order sought by the applicant, it appeared that the trial date would be preserved.

Orders made

50 I made the following orders:

- (a) Subject to reserving to the respondent all rights to submit at the hearing that the affidavit or parts thereof was not admissible or as to the weight to be placed on the affidavit or parts thereof or as to the sufficiency of the affidavit to establish standing, the applicant has leave to file an executed copy of the affidavit of Mr [A] on or before Monday, 14 April 2025.
- (b) The respondent has leave to file an affidavit in response to Mr [A]’s further affidavit on or before Friday, 18 April 2025.
- (c) Costs of the application be reserved to the hearing.

Anthony James Besanko
International Judge

Gursharn Singh Gill s/o Amar Singh and Ramachandran Doraisamy
Raghunath (PDLegal LLC) for the applicant;
Mohammad Haireez bin Mohameed Jufferie, Ow Jiang Meng
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