IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 11

Originating Application No 10 of 2024 (Summons No 1177 of 2024)

Between

DKB

… *Claimant*

And

DKC

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award]
[Arbitration — Stay of court proceedings — Mandatory stay under International Arbitration Act — Settlement deed containing arbitration agreement]

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v
DKC

[2025] SGHC(I) 11

Singapore International Commercial Court — Originating Application No 10 of 2024 (Summons No 1177 of 2024)
Thomas Bathurst IJ
5, 19 February 2025

16 April 2025

Thomas Bathurst IJ:

Introduction

1 By an originating application dated 21 December 2023, the Applicant, DKB, as the assignee of a final award arising from a Swiss-seated arbitration between [B] and the Defendant, DKC (the "Award"), sought leave to enforce the Award pursuant to s 29 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). DKB also sought orders that within 14 days after service of the order granting leave, DKB be at liberty to enter judgment against DKC in an amount of US$ 315,913,988.82.

2 Leave was granted on 22 December 2023. On 24 April 2024, DKC applied to the court in HC/SUM 1177/2024 to stay the enforcement of the Award pursuant to s 6 of the IAA (the "Stay Application"). On the same day, DKC also applied in HC/SUM 1133/2024 to set aside the enforcement order. I

heard the Stay Application on 5 February 2025. On 19 February 2025, I granted the stay subject to conditions. These are my grounds of decision in respect of the Stay Application.

Background

3 It is unnecessary to set out the details of the Award. Suffice it to say that by a deed of assignment dated 21 March 2017 (the "Deed of Assignment"), [B] assigned its claim under the Award to DKB.

The Settlement Deed

4 By a deed described as a stay and settlement deed (the "Settlement Deed") made between DKB (described in the Settlement Deed as the Claimholder), DKC, [C] and [D], [C] agreed to purchase the shares held by [D] in a company [E] (the "Shares") for the sum of US$ 150m whilst DKB agreed to stay enforcement of the Award on the terms of the Settlement Deed.

5 Clause 3 of the Settlement Deed provided for the terms and conditions of the sale of the Shares. In particular, clause 3.8 provided for the payment of the purchase price by DKC and [C] on the basis of joint and several liability by instalments calculated in minimum yearly amounts. It stipulated that quarterly payments would be made during the period of 1 April 2017 to 31 March 2027.[1]

6 Clause 3.9 provided that for the year 2017, non-payment in full of any two scheduled quarterly amounts required by clause 3.8 would constitute an

[1] Affidavit of Mr [J] in support of Extension of Time Application dated 6 March 2024 ("Mr [J]'s EOT Affidavit") at 186−187.

event of default whilst in subsequent years, failure to make one payment would constitute such an event.[2]

7 Clause 3.11 provided that in case of an event of default in payment by DKC and [C] as set out in clause 3.9, [D] had the right to claim from DKC and [C] on the basis of joint and several liability an amount equal to the total purchase price less any amounts already paid in accordance with clause 3.8.[3]

8 Clause 3.12 provided as follows:[4]

> The Parties agree that neither [C] nor any Proposed New Toller shall be liable under the [Award]. At the same time, the Claimholder agrees, that in the event that the stay of the [Award] ceases in accordance with Clause 4.1(c), the Claimholder shall deduct all sums that [DKC] and/or [C] had actually paid to settle the [Country F] Tax Proceedings (and proof of such payment shall be provided at Claimholder's demand in the Event of Default), but in any event no more than US$ 120 million, from the [DKC] Debt as accrued at that time.

9 Clauses 4.1, 4.2 and 4.4 stated the following:[5]

> 4.1 As soon as reasonably practicable following the Execution Date:
>
> (a) [DKC] and [C] shall take any and all steps as are necessary immediately to terminate the [Country F] Proceedings and to terminate enforcement of the [Country F] Tax Assessment;
>
> (b) [D] shall terminate the [Country G] Proceedings; and
>
> (c) The Claimholder shall stay any and all present, future, contemplated or contingent proceedings relating to or arising in connection with the

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2 Mr [J]'s EOT Affidavit at 187.

3 Mr [J]'s EOT Affidavit at 187.

4 Mr [J]'s EOT Affidavit at 187.

5 Mr [J]'s EOT Affidavit at 188–189.

> [Award] provided DKC and [C] are not in breach of obligations under this Agreement.
>
> 4.2 Upon receiving the Total Purchase Price and any default interest pursuant to Clause 3.10 (or any other amount agreed in writing by the Parties pursuant to Clause 3.6) in accordance with the terms of this Deed, [D] and the Claimholder shall release and forever discharge [DKC] and [C] from any Claims and Proceedings including in respect of the [Award].
>
> …
>
> 4.4 In the event that Clause 4.1(c) applies, no late or other payment to [D] unless made in accordance and compliance with Clause 3.8 shall affect the Claimholder's right of enforcement under Clause 4.1(c).

10 Clause 6.1 provided that the Settlement Deed shall be governed by and construed in accordance with the laws of England.[6]

11 Clause 6.2 contained an arbitration clause which was of critical importance in the present case. It was in the following terms:[7]

> Any dispute, controversy, or claim arising out of or in relation to this Deed, including the validity, invalidity, breach or termination thereof, and whether of a contractual or a non-contractual nature, shall be finally and exclusively settled in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of a sole arbitrator qualified in English law, who shall be a practicing barrister (Queen's Counsel) or retired judge with at least fifteen years working experience as such. The arbitrator shall be appointed by the Board of the Arbitration Institute of the Stockholm Chamber of Commerce within 10 (ten) days of the date a copy of the request for arbitration is sent to the other party. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English.

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6 Mr [J]'s EOT Affidavit at 190.

7 Mr [J]'s EOT Affidavit at 190.

Events subsequent to the Settlement Deed and the issues in the present proceedings

12 It was not disputed that DKC and [C] were required to make certain payments under clause 3.8. DKB claimed that their failure to do so constituted a breach by DKC and [C] of their obligations under the Settlement Deed which by virtue of clause 4.1(c) removed the stay of proceedings relating to the Award and entitled it to bring proceedings to enforce the Award.

13 DKC asserted that it was precluded from making the payments by virtue of the fact that it was prohibited from doing so as a result of sanctions imposed by the United States government on a Mr [H], the effect of which included that entities directly or indirectly owned 50% or more in the aggregate by him were also sanctioned. DKC contended that [D] fell within that category, such that neither it nor [C] could lawfully continue making payments to [D] as was required under the Settlement Agreement (for convenience, I will describe this as the "Sanctions Defence"). It submitted that the Sanctions Defence having been raised, there was a dispute as to whether there had been an event of default under the Settlement Deed and consequentially the right of DKB to enforce the Award. It claimed the proceedings should be stayed pending settlement of that issue by arbitration under clause 6.2 of the Settlement Deed.

14 DKB contended that the Sanctions Defence was spurious and without merit and the fact that it had been raised did not affect its right to enforce the Award. It also contended that on the true construction of the Settlement Deed, the right to enforce the Award arose upon any failure by DKC or [C] to make a payment under the Settlement Deed irrespective of whether the failure could be said to constitute a breach of the obligations of DKC and [C] (the "Contract Issue").

Events subsequent to the institution of the proceedings

15 On 22 January 2025, [D] lodged a request for expedited arbitration with the Arbitration Institute of the Stockholm Chamber of Commerce (the "Stockholm Institute") seeking a declaration that DKC and [C] were in breach of clause 3.8 of the Settlement Deed by failing to make the requisite payments, a declaration that the failure constituted an event of default under the Settlement Deed, and seeking payment of the balance of the purchase price payable for the Shares. Anticipating the Sanctions Defence, the request for arbitration and Statement of Claim stated the defence was without merit. It also asserted (at paragraph 55) that the terms of the Settlement Deed entitled DKB to enforce the Award in any jurisdiction it considered appropriate. It should be noted that DKB was not joined as a party to the arbitration and no declaratory relief was sought in respect of this allegation.

Relevant legislation

16 DKC contended that its entitlement to a stay of proceedings was governed by s 6 of the IAA. It was in the following terms:

> **Enforcement of international arbitration agreement**
>
> **6.**—(1) Despite Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies 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.
>
> (2) The court to which an application has been made in accordance with subsection (1) is to make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter,

> unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.
>
> (3) Where a court makes an order under subsection (2), the court may, for the purpose of preserving the rights of parties, make any interim or supplementary order that the court thinks fit in relation to any property which is the subject of the dispute to which the order under that subsection relates.
>
> (4) Where no party to the proceedings has taken any further step in the proceedings for a period of at least 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.
>
> (5) For the purposes of this section and sections 7 and 11A —
>
> > (*a*) a reference to a party includes a reference to any person claiming through or under such party;
> >
> > (*b*) "court" means the General Division of the High Court, District Court, Magistrate's Court or any other court in which proceedings are instituted.

17 By contrast, as will be seen, DKB contended that the only grounds on which enforcement of the Award could be refused were those found in s 31 of the IAA; it also contended at least implicitly that s 6 had no application in respect of the enforcement of foreign awards. Section 31 is in the following terms:

> **Refusal of enforcement**
>
> **31.**—(1) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the party against whom the enforcement is sought may request that the enforcement be refused, and the enforcement in any of the cases mentioned in subsections (2) and (4) may be refused but not otherwise.
>
> (2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —
>
> > (*a*) a party to the arbitration agreement pursuant to which the award was made was, under the law

applicable to the party, under some incapacity at the time when the agreement was made;

(*b*) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;

(*c*) the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present the party's case in the arbitration proceedings;

(d) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;

(*e*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*f*) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(3) When a foreign award referred to in subsection (2)(*d*) contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted.

(4) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court may refuse to enforce the award if it finds that —

(*a*) the subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore; or

(*b*) enforcement of the award would be contrary to the public policy of Singapore.

> (5) Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made, the court may —
>
> (*a*) if the court considers it proper to do so, adjourn the proceedings or (as the case may be) so much of the proceedings as relates to the award; and
>
> (*b*) on the application of the party seeking to enforce the award, order the other party to give suitable security.

18 It is unnecessary to set out the arbitration rules of the Stockholm Institute in great detail. However, in particular, I highlight that Art 14 of the 2023 Rules for Expedited Arbitrations of the Stockholm Institute (the "Expedited Arbitration Rules of the Stockholm Institute") empowers the Board of the Stockholm Institute to join additional parties to the arbitration, Art 16 provides for consolidation of arbitrations and Art 43 requires delivery of a final award no later than three months from the date the case was referred to the Arbitrator.[8]

The expert evidence

19 I referred to most of the evidence relied upon by each party in the course of dealing with their written submissions. In particular, each party filed expert evidence on English law in respect of both the Sanctions Defence and the Contract Issue. DKB relied on two reports by a Mr Andrew Lomas, an English barrister practising at One Essex Court, London, whilst DKC relied on a report by a Mr Ng Jern-Fei KC, a barrister practising in England at 7BR Barristers' Chambers. It is unnecessary to set out their qualifications as there is no dispute as to their expertise to give the evidence contained in their reports. Further, although the reports were detailed with extensive citation of authority,

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[8] Claimant's Further Bundle of Authorities dated 25 October 2024 at 15−17 and 25.

because of the view I took as to the correct approach to the disposal of this application, their reports can be summarised relatively briefly.

Mr Lomas

20 Mr Lomas supplied two reports. The first, dated 18 December 2023, dealt with matters which generally were uncontroversial between the parties. He expressed the opinion that the assignment of the Award was valid and effective under English law. He also expressed the view that DKB could enforce the Award under the terms of the Deed of Assignment, although noting that this was subject to clauses 3.12 and 4.1(c) of the Settlement Deed (see [8] and [9] above). However, he also concluded that an arbitration under the Settlement Deed was not a condition precedent to the enforcement of the Award. He arrived at this conclusion as he found force in the argument that a breach arising from non-payment would not be caught by clause 6.2 given the provisions of clause 4.4 which he stated "arguabl[y] act as a carve out", and because there did not seem to be a dispute as to the question of non-payment/breach. Mr Lomas, at least in this report, did not suggest that in the case of a dispute as to whether non-payment constituted a breach, it was unarguable that clause 4.4 operated as a carve out.

21 The second report of Mr Lomas dated 30 August 2024 dealt more directly with the matters raised by the Sanctions Defence and the Contract Issue. He first expressed the view that the mere assertion of a party that a dispute existed was not sufficient to "derail" the enforcement action and stated that the lack of merit of DKC's position would be relevant to addressing whether there was a dispute or not.

22 Mr Lomas also contended that as a matter of English law, foreign illegality (such as a possible breach of US sanctions) would not be a bar to performance unless the illegality arose in the place of performance and even then, only when the party seeking to avoid performance had taken all reasonable steps to overcome the impediment.

23 Mr Lomas asserted that DKC had failed to come close to discharging the evidential burden that performance under the Settlement Deed was legally impossible. He stated the Settlement Deed could be interpreted as granting to DKB the presumptive right to lift the stay on enforcement upon any default in payment and the onus was upon DKC to rebut the presumption that a default in payment was not a breach. He stated that any other interpretation produced a commercially absurd result.

24 Mr Lomas expressed the view that the governing law of the Settlement Deed, including the Arbitration Agreement, was English law. So much may be accepted but it rather begged the question of what law a Singapore court applies in dealing with an application under s 6 of the IAA. Mr Lomas seemed to recognise this as he stated subsequently in his report (and with respect, correctly) that "all stay applications turn on the procedural law of the jurisdiction in which the claim is made and the nature and scope [of] the contractual relationship".[9]

25 Mr Lomas expressed the view that the architecture of the Settlement Deed provided for the stay to be contingent on regular payments being made in accordance with a prescribed schedule. He stated that failure to make such

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9 2nd Affidavit of Mr Andrew Lomas dated 10 September 2024 at 13, para 33.

payments would be a *prima facie* breach of the Settlement Deed and DKB would be entitled to enforce the stay without further steps.

26 Mr Lomas also stated that an arbitration brought by DKC seeking a declaration that performance was impossible would fail as there was no basis in English law for DKC's position. In that context, he expressed the view that the United States sanctions were irrelevant and DKC's position was not supported by cases such as *Ralli Bros v Compania Naviera Sota y Aznar* [1920] 2 KB 287 ("*Ralli Bros*").

27 Mr Lomas provided a detailed argument in support of these propositions, including extensive citation of authorities. However, because of the view I took as to the correct manner of disposal of this application, it was unnecessary to refer to this material in any detail.

Mr Ng Jern-Fei KC

28 Mr Ng reached the contrary view to that expressed by Mr Lomas. He stated that on the material available to him, it was at least arguable that the payment obligation under the Settlement Deed was not enforceable on the application of the *Ralli Bros* principle. He stated that the conclusion of Mr Lomas that there was no illegality appeared to be underpinned by an assumption that the United States sanctions did not apply. He stated this was a matter to be determined under United States law.

29 Mr Ng stated that it was arguable that the Settlement Deed required payment to be made in United States dollars, and that such payment would be routed through a correspondent bank in the United States and therefore involve the United States financial system.

30 He also stated there were arguments to be made as to the applicable principles and the application of the *Ralli Bros* rule.

31 Mr Ng stated that all these matters gave rise to a dispute under the Settlement Deed which precluded a conclusion that there had been an unarguable breach thereof.

32 Like Mr Lomas, Mr Ng expanded on these propositions in his report with extensive reference to authority. Once again, it was unnecessary to deal with that material in any detail.

33 Mr Ng also expressed the opinion that contrary to the view expressed by Mr Lomas, the language of clause 4.1(c) did not shift the evidential burden or give rise to any kind of presumptive position for the purposes of stay applications or otherwise. He stated that it was for DKC, as the Applicant seeking a stay, to satisfy the Singapore court that it was so entitled, and the Singapore law on arbitral procedure would apply to determine the standard and burden of showing whether a dispute fell within the ambit of the Settlement Deed.

The parties' submissions

DKC

34 In its written submissions, DKC submitted that the Stay Application should be granted for the following reasons:

(a) The basis of the application by DKB for leave to enforce the Award was based on the precondition that DKC and [C] had breached

the Settlement Deed. This was disputed and thus the dispute should be referred to arbitration.[10]

(b) DKC was able to establish all three preconditions for a mandatory stay of proceedings referred to by the Court of Appeal in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*").[11]

(c) Notwithstanding DKB's argument that there had been an unarguable breach of the Settlement Deed, there was a dispute which should be referred to arbitration under clause 6.2 of that Deed. DKC submitted that the competing views of the experts and the other evidence filed demonstrated there was such a dispute between the parties.[12]

(d) DKC in these proceedings was not seeking to suspend or resist enforcement of the Award so the application did not hinge on s 31 of the IAA.[13]

35 Referring to the decisions of the Court of Appeal in *Tomolugen*, *Tjong Very Sumito and others v Antig Investments Pte Limited* [2009] 4 SLR(R) 732 ("*Sumito*") and *AnAn Group (Singapore) Pte Limited v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("*AnAn*"), DKC submitted that the court must grant a stay under s 6 if the applicant can establish a *prima facie* case that there is a valid arbitration agreement between the parties to the court proceedings, the dispute falls within the scope of the arbitration agreement, and the arbitration

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10 Applicant's Written Submissions (SIC/SUM 1177/2024) dated 25 October 2024 ("DWS") at 12.

11 DWS at 18.

12 DWS at paras 2.3, 48−72.

13 DWS at paras 2.4, 79−90.

agreement is not null and void, inoperative, or incapable of being performed.[14] It submitted that DKB did not dispute that there was a valid arbitration agreement or that the arbitration agreement was not null and void, inoperative, or incapable of being performed.[15]

36 In dealing with the question of whether there was a dispute, DKC referred to the statement by the Court of Appeal in *Sumito* at [49] to the effect that "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" [emphasis in original] and "the court is not to examine whether there is 'in fact' a dispute, or a genuine dispute". DKC also pointed out that in *Sumito*, it was stated that even "the lack of a meritorious defence does not entitle a claimant to bypass the prior agreed dispute resolution mechanism *unless the defendant has admitted the claim*, and an open-and-shut case must be distinguished from an admission" [emphasis in original]: see *Sumito* at [62].[16]

37 In dealing with the question of whether a dispute in fact existed, DKC referred to the affidavit of Mr [J] dated 21 May 2024 ("Mr [J]'s Third Affidavit"), filed in support of the Stay Application. Mr [J], the general counsel of DKC, stated that the entitlement of DKB to enforce the Award was the subject of a dispute between the parties which "falls squarely within the ambit of a valid arbitration agreement between them".[17] It should be noted that to the extent relevant, Mr [J], far from merely asserting a dispute existed, set out in

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14 DWS at para 31.

15 DWS at paras 38–40.

16 DWS at paras 41−47.

17 Mr [J]'s Third Affidavit at para 5.

some detail in that affidavit and in various other affidavits the basis on which DKC disputed the entitlement of DKB to enforce the Award.

38 In dealing with the opinion of Mr Lomas, DKC submitted that so far as his opinion concerned English law, the matters raised went to the substantive merits of the underlying dispute rather than the present Stay Application.[18] It also submitted that the contention of Mr Lomas, that the question of what constituted a dispute under the arbitration agreement was governed by English law, was not sustainable.[19]

39 DKC also submitted that its application was not subject or subordinate to its application to set aside the leave granted to DKB pursuant to s 31 of the IAA. It submitted that the proposition that the grounds in s 31 were exhaustive did not apply to a situation where, subsequent to the award, the parties agreed not to enforce the award unless an agreed state of affairs existed, and there was a dispute as to whether that state of affairs had in fact occurred. It submitted that the language of s 31 did not, without more, shut out the availability of a stay.[20]

40 DKC finally submitted that any stay should be unconditional. It submitted that if a stay were to be granted, it would be a matter for DKB as to whether it wished to commence arbitration proceedings before the Stockholm Institute ("Stockholm Arbitration"); it submitted that because clause 4.1(c) required DKB to establish that there had been a breach of the Settlement Deed

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18 DWS at para 64.

19 DWS at para 65.

20 DWS at paras 79–87.

by both DKC and [C], DKB was the only party which could commence such proceedings.[21]

41 At the hearing, counsel for DKC pointed to the notice of arbitration from the arbitration proceedings brought by [D] against it, stating that this provided ample evidence that a dispute existed.[22]

DKB

42 DKB relied on two sets of written submissions, the first dated 26 July 2024 and the second dated 25 October 2024. Counsel for DKB also made submissions before me. I consolidate the arguments from their written submissions and the hearing under five broad headings.

43 First, DKB initially submitted, without any reference to Singapore authority, that the stay should be decided on the basis of English law being the law of the arbitration agreement, and that this court should consider the merits of the dispute as part of the Stay Application. DKB stated that this was because the Stay Application would ultimately depend on its own factual and legal circumstances and not every dispute would invariably fall within the realm of a dispute requiring arbitration.[23]

44 In its second set of submissions, DKB modified to some extent its contention as to the proper law to be applied to the Stay Application submitting that whilst it was arguably the case that Singapore law applies, nevertheless the determination should have regard to the governing law of the arbitration

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21 DWS at paras 91−96.

22 5 February 2025 Minute Sheet at 2–3.

23 1CWS at para 11.

agreement contained in clause 6.2 of the Settlement Deed.[24] It submitted that the governing law of the arbitration agreement was English law.[25] It submitted that under English law, all stay applications would depend on their own facts and legal circumstances. It referred, in particular, to the following remarks made by Mr Lomas in his second report:[26]

> 32. Specifically, and as recognised by Clarke LJ at [63], all stay applications will depend on their own factual and legal circumstances. Thus, in *Northumbrian Water Ltd v Doosan Enpure Ltd* [2022] EWHC 2881 (TCC) Cockerill J – when applying *Collins (Contractors)* – refused to grant a stay under the 1996 Act and instead granted summary judgment to the claimant seeking enforcement, notwithstanding the existence of an alleged dispute. This was because the defendant had not identified any grounds of challenge to the decision for want of jurisdiction or procedural unfairness and, as a matter of construction of the dispute resolution procedure in that case, the decision was binding unless and until revised in arbitration and enforceable as a matter of contractual obligation.

45 The reference to *Collins (Contractors)* was a reference to the judgment of Clarke LJ in *Collins (Contractors) Ltd v Baltic Quay Management (1994) Ltd* [2004] EWCA Civ 1757 ("*Collins (Contractors)*").

46 It should be noted that immediately following the passage relied on by DKB, Mr Lomas made the following additional remarks:

> 33. It is therefore not correct to state that *Collins (Contractors)* stands for an immutable principle that it is sufficient to articulate a basis for non-performance to be granted a stay. Indeed, beyond offering an insight as to how the English Courts will construe and apply section 9 of the 1996 Act, there is limited utility in citing such case law. Ultimately, all stay applications turn on the procedural law of the

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[24] Claimant's Additional Written Submissions dated 25 October 2024 ("2CWS") at para 24.

[25] 2CWS at para 28.

[26] 2CWS at para 30.

> jurisdiction in which the claim is made and the nature of and scope the [*sic*] contractual relationship.

47 DKB contended that the Stay Application should be refused as there was no dispute for the purposes of the arbitration agreement.[27] It submitted that the question of whether there had been a breach by DKC of its contractual obligations under the Settlement Deed, was a question governed by English law.[28] So much may be accepted but the relevant question is whether a dispute existed such as to warrant a stay under s 6 of the IAA.

48 That was a matter to be determined in accordance with the law of Singapore.

49 Second, DKB made extensive submissions in support of its contention that there was no merit to DKC's claim that DKC was not required to make the payment. In particular, submissions were made as to why the expert evidence of Mr Lomas should be preferred to that of Mr Ng KC. In effect, DKB was inviting the court to resolve the dispute raised by DKC on the merits or at the very least conclude that notwithstanding the views expressed by Mr Ng KC, the matters raised had so little merit that they did not give rise to a real dispute such as to warrant a stay. As I point out below, I did not regard that as my task in this application.

50 At the hearing, counsel for DKB referred to clause 4.4 of the Settlement Deed, submitting that its effect was that regardless of whether there was a dispute as to payment, if payment was not made under clause 3.8, the stay on enforcement of the Award provided for in clause 4.1(c) no longer applied and

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27 2CWS at 21.

28 2CWS at para 37.

DKB would be entitled to enforce the Award. This submission is what I have described above as the Contract Issue.[29]

51 Counsel for DKB submitted that it was necessary to look at the Settlement Deed in totality. He submitted that the deed had been crafted so that the Award would not be the subject of further arbitration.[30] The difficulty with that submission was that the Stockholm Arbitration would not involve a consideration of the validity of the Award but rather whether DKB was prevented from enforcing it by virtue of the Settlement Deed.

52 Third, DKB addressed the case of *Sumito*. DKB argued that the principles in *Sumito* should not be applied to the Stay Application as their application would have an extremely prejudicial effect on its right to enforce the Award. It submitted that if those principles were applied, it would lead to the absurd situation that a party could continually delay enforcement of an award by submitting that there was a valid and enforceable arbitration agreement, obtaining a stay on the basis of the principles in *Sumito*, waiting for the result of an arbitration and if the arbitration resulted in a declaration that there was no dispute, raising another dispute and going through a similar process, thereby perpetually delaying the enforcement of an award contrary to the principles in the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law").[31]

53 DKB also submitted, both in its written submissions and at the hearing, that the arbitration agreement in the present case could be distinguished from

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29 5 February 2025 Minute Sheet at 5.

30 5 February 2025 Minute Sheet at 8.

31 1CWS at paras 9–10.

that considered by the Court of Appeal in *Sumito*[32] because *Sumito* and other similar cases did not involve the enforcement of an arbitral award. However, counsel for DKB accepted that on his argument, I would have to first determine that the principles contained in *Sumito* did not apply in the particular circumstances of this case and, second, that there was no merit in the defence.[33]

54 Fourth, DKB submitted that the only bases on which enforcement of a foreign award could be refused was on the eight grounds in s 31(2)(*a*)−31(2)(*f*) and s 31(4)(*a*)−31(4)(*b*) of the IAA. It stated that, in any event, s 31(5) of the IAA could not be invoked as no application had been made for the setting aside or suspension of the Award to a competent authority in Switzerland.[34]

55 In its second set of submissions, DKB supported this contention by referring to the judgment of Judith Prakash J (as she then was) in *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and another* [2006] 3 SLR(R) 174 at [46], [56] ("*Aloe Vera*") and to the Court of Appeal judgment (delivered by Menon CJ) of *Swissbourgh Diamond Mines (Pty) Limited and others v Kingdom of Lesotho* [2019] 1 SLR 263 ("*Swissbourgh Diamond Mines*") at [65], [68] and [80]. DKB submitted that, having regard to these authorities, it could be argued that neither s 31(2)(*a*)−31(2)(*f*) nor s 31(4)(*a*)–31(4)(*b*) of the IAA provided for the situation wherein the enforcement of a valid and binding foreign arbitral award could be refused on the basis of what was essentially a contractual promise.[35] It submitted it was arguably the case that DKC could only "stay" the enforcement of the Award by applying for an adjournment under

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32 Claimant's Further Written Submissions dated 26 July 2024 ("1CWS") at paras 6−11.

33 5 February 2025 Minute Sheet at 7–9, 15.

34 1CWS at paras 12−14.

35 2CWS at para 45.

s 31(5) of the IAA.[36] DKB also submitted that the application must fail because the prerequisites to setting aside an award were not engaged, and the Stay Application had not been properly commenced under s 31(5) of the IAA.[37]

56 Finally, DKB submitted that any stay, if granted, should be subject to conditions including the provision of security. It pointed, in that context, to the express power to order security contained in s 31(5)(*b*) of the IAA.[38] It submitted that security could also be furnished for applications for injunctions against enforcement of an award.[39] It further submitted that the stay should be conditional upon DKC commencing proceedings in accordance with the 2023 Rules for Expedited Arbitrations of the Stockholm Institute within 14 days of any such order, and furnishing security in an amount of US$ 315,913,988.82.[40] At the hearing, counsel submitted that security in the sum of US$ 15m would be appropriate, rather than the amount stated in its written submissions.[41]

Consideration

57 It is convenient to deal with the issues raised in the Stay Application under the following headings. First, the proper law of the application. Second, whether a dispute existed between the parties in respect of a provision of the Settlement Deed. Third, whether absent the provisions of s 31 of the IAA, the dispute should be referred to arbitration under clause 6.2 of the Settlement Deed. Fourth, whether s 31 of the IAA precluded the granting of a stay unless one or

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36 2CWS at para 52.

37 2CWS at 55.

38 2CWS at para 58.

39 2CWS at para 60.

40 2CWS at paras 61, 66.

41 5 February 2025 Minute Sheet at 21.

other of the grounds for refusal of enforcement contained in that section were made out. Fifth, if a stay was to be granted what, if any, conditions should be imposed on the granting of such a stay.

The proper law of the Stay Application

58 This was an application brought in the Singapore courts under the provisions of a Singapore statute (*ie*, the IAA). It was clear, in my view, that the matter fell to be determined by reference to the law of Singapore.

59 Ultimately, that did not seem to be disputed by DKB. However, DKB submitted, relying on the evidence of Mr Lomas, that the determination should have regard to English law.

60 I was unable to agree with that proposition which found no support in the authorities concerning s 6 of the IAA. It should be noted that the case cited by Mr Lomas in paragraph 32 of his second report, *Northumbrian Water Ltd v Doosan Enpure Ltd* [2022] EWHC 2881 (TCC) ("*Northumbrian Water*"), provided little support for the proposition that the court, in considering whether or not to grant a stay, should have regard to the provisions of English law as the law of the arbitration agreement when considering the particular facts and circumstances in deciding whether or not to grant a stay. First, that case was concerned entirely with English law. Second, in that case, the presiding judge, O'Farrell J, referred to the judgment of Clarke LJ in *Collins (Contractors)* for the proposition that "it is no answer to an application for a stay to say that [there] is not a real dispute because the defendant has no defence to the claim" (see *Northumbrian Water* at [58], citing *Collins (Contractors)* at [37]). Her Ladyship, however, refused a stay in *Northumbrian Water* because of the express provision in the contract to the effect that the decision in question (*ie*,

an interim award by an adjudicator) would be final and binding unless and until reviewed in an arbitration (at [51] and [63]−[68]). Properly understood, the case provided no support for the proposition that English law should be considered in determining the stay application nor, for that matter, that it was necessary to consider the merits of the defence.

61 That was not to say that the merits of the claim could not, in appropriate cases, be considered in determining the conditions on which to grant a stay: see, for example, *ESCO Corporation v Bradken Resources Pty Ltd* [2011] FCA 905 at [76], *Soleh Boneh International Ltd and another v Government of the Republic of Uganda and National Housing Corp* [1993] 2 Lloyd's Rep 208 at 211. Although these cases concerned applications under the Australian and United Kingdom equivalents of s 31(5) of the IAA, there did not seem to be any reason why the same approach could not be taken in determining whether conditions, including the grant of security, could be imposed in granting a stay under s 6 of the IAA.

Did a dispute exist between the parties to which clause 6.2 of the Settlement Deed applied?

62 There were two matters in dispute between the parties. The first, which I have described as the Sanctions Defence, involved the question of whether in the events which occurred the failure by DKC and [C] to make a payment as required by clause 3.8 of the Settlement Deed constituted an event of default under that Deed such as to lift the stay of enforcement of the Award contained in clause 4.1(c). Being a dispute arising out of or in relation to the Deed, that was a matter which fell within clause 6.2 of the Settlement Deed.

63 The second area of dispute to which I have referred as the Contract Issue, involved the question of whether as a matter of construction of the Settlement

Deed, the stay in respect of the Award would be lifted on the failure to make a payment under clause 3.8 irrespective of whether the failure could be said to constitute an event of default. This was plainly a dispute arising under the Settlement Deed and fell within the arbitration provision contained in clause 6.2.

Absent the provision of s 31 of the IAA, should the dispute have been referred to arbitration?

64 The relevant dispute was a dispute as to the entitlement of DKB to enforce the Award.

65 That right was, in the events which had happened, dependent on two conditions. First, was DKB a valid assignee of the Award? Second, had the contractual restraint on enforcement contained in the Settlement Deed been lifted by virtue of DKC's and [C]'s failure to make the payments required under clause 3.8 of that Deed? The latter was the subject of the dispute.

66 DKC correctly summarised the relevant provisions in its written submissions (see [35] and [36] above). Relevantly for present purposes, the existence of a valid arbitration agreement was not disputed. Next, did the dispute fall within the scope of the arbitration agreement? As I indicated, in my opinion, it did. Finally, it was not contended that the arbitration agreement was null and void or incapable of being performed.

67 In these circumstances, the authorities referred to by DKC – *Tomolugen*, *Sumito* and *AnAn* – required that the proceedings be stayed. It is unnecessary to cite from the authorities in any detail. I would merely refer to *Sumito* at [49] and [51] for the proposition that a mere assertion of a dispute suffices to warrant a

stay of proceedings without any enquiry as to the genuineness or merits of the dispute.

68 As I pointed out, DKB submitted that if the principle applied, it would lead to an absurd situation since a party could submit that there was a valid and enforceable arbitration agreement, obtain a stay on the basis of the principles in *Sumito*, wait for the result of an arbitration, and if the result was unfavourable to it, repeat the process thereby delaying the enforcement of the award contrary to the principles of the Model Law. There were three answers to this. First, the adoption of such a process could well be held to constitute an abuse of the process of the court and the stay could be refused on that ground (see *eg*, *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and other appeals* [2024] 2 SLR 654 on the *Henderson* doctrine). Second, it is within the powers of the court to grant security as a condition of a stay. Third, so far as the principles in the Model Law were concerned, the principles contained in the Model Law are based on significant respect for the principle of party autonomy and there is nothing against that principle to grant a stay in favour of a dispute resolution procedure that the parties have agreed to adopt.

69 It followed that, subject to the argument based on s 31 of the IAA, a stay should be granted to enable the dispute to be arbitrated pursuant to clause 6.2 of the Settlement Deed.

Does s 31 of the IAA preclude granting of a stay unless one or more of the grounds for refusal of enforcement contained in that section are made out?

70 It is well established that the grounds for refusal of enforcement of an award contained in s 31 of the IAA are exhaustive and unless the party against whom enforcement is sought can make out one of the grounds in s 31(2), the court will enforce the award: see *Aloe Vera* at [46], [56]; *Swissbourgh Diamond*

Mines at [65] and [80]; Nigel Blackaby, Constantine Partasides & Alan Redfern, *Redfern and Hunter on International Arbitration* (Oxford University Press, 7th ed, 2022) at para 7.65; Gary Born, *International Arbitration: Law and Practice* (Kluwer Law International, 3rd ed, 2021) at 460. Further, it must be remembered that s 31(5) provides a mechanism whereby enforcement proceedings can be adjourned when an application for the setting aside or suspension of the award has been made to a competent authority of the court in which, or under the law of which, the award was made.

71 There was some force in this contention. Section 31 of the IAA does not expressly entitle a court to refuse to enforce an award on the basis of an agreement not to do so entered into after the award was made. Further, the draconian effect of such a conclusion would be ameliorated to some extent by the provisions of s 31(5) where an application is made to a relevant competent authority in respect of the award. An agreement not to enforce an award under certain circumstances could well provide the basis for such an application.

72 Notwithstanding the force of these arguments, I was of the view that the power in s 6 (to grant a stay and refer to arbitration the dispute between the parties as to the beneficiary of the award's entitlement to enforce it) could apply where the parties to the award had agreed post the award that enforcement should be subject to contractual restraints, and that any dispute between them as to the ongoing existence of those restraints be referred to arbitration. This was for the following reasons.

73 First, although I accepted that the effect of s 31 is that an award will be enforced unless one of the grounds in s 31(2) is made out, s 31 does not purport to deal with a situation where post the award, the parties agreed on the circumstances for enforcement. The ability of a party having the benefit of such

a contract to assert its rights by seeking injunctive relief to restrain the other party from enforcing the award or as in the present case, seeking a stay pending the determination of that contractual entitlement, did not seem to me to undermine the principles which underpin s 31.

74 Second, the Stay Application made by DKC fell within the literal words of s 6. As was accepted by counsel for DKB, DKC and DKB were parties to the arbitration agreement contained in clause 6.2 of the Settlement Deed. Proceedings for enforcement commenced by DKB were in respect of the matter which was the subject of that agreement namely, whether the Settlement Deed in the circumstances prevented DKB from enforcing the Award.

75 In these circumstances, the preconditions for a stay under s 6 were made out unless s 6 was limited so as not to apply to proceedings relating to the enforcement of an award. In my view, there was no reason to impose such a limitation.

76 Third, it must be remembered that what was involved in the present case was not a challenge to the Award, but rather a dispute as to whether DKB was contractually prevented from proceeding with the enforcement action. It seemed to me that since the parties had chosen to make contractual provisions for the enforcement of the Award and proposed a dispute resolution mechanism in respect of any dispute concerning those provisions, there was nothing in s 31 or in the principles of party autonomy which underpin the Model Law that would prevent a court from giving effect to such an agreement.

77 For these reasons, I was of the view that a stay should be ordered.

The conditions for the stay

78 There was no dispute that if I were minded to grant a stay, I could impose conditions on its grant. Section 6(2) of the IAA expressly provides for the imposition of such conditions.

79 DKC submitted that no conditions should be imposed whilst DKB submitted that conditions should be imposed to provide for the prompt determination of the dispute. In particular, DKB submitted that security in the sum of US$ 15m should be given as a condition of the grant of a stay.

80 I agreed that conditions should be imposed to ensure the dispute was promptly resolved. The Expedited Arbitration Rules of the Stockholm Institute, which I have summarised at [18], provide for prompt resolution of any dispute. In my opinion, it was appropriate to order as a condition of the stay that DKC promptly commence an arbitration in the Stockholm Institute within ten days and expeditiously pursue such proceedings.

81 However, I decided not to impose security as a condition of the stay. This was because I was of the view that the dispute could be speedily resolved under the rules of the Stockholm Institute and there was no evidence before me to suggest that DKC would use the stay as an opportunity to divest itself of any assets it may have had or place them beyond the reach of DKB should it become entitled to enforce the Award.

Conclusion

82 For these reasons, I made the orders which were published on 19 February 2025, which I reproduce below.

(1) Subject to the conditions in paragraph (2) hereof, order that all further proceedings in this action be stayed pursuant to s 6 of the *International Arbitration Act 1994*.

(2) The stay is granted subject to the following conditions:

(a) that the Defendant within 10 days of the making of these orders commences an arbitration in accordance with the Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce pursuant to clause 6.2 of the Deed of Settlement dated 23 March 2017 between the Defendant, [C], [D] and the Applicant seeking orders that in the events which have happened the Applicant is not entitled to enforce the arbitration award, the subject of these proceedings; and

(b) that the Defendant diligently prosecute the arbitration referred to in clause (2)(a) and comply with all directions of the arbitrator or of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce.

(3) Grant liberty to either party to apply to vary or revoke this order or the conditions imposed in respect thereof on two business days' notice.

(4) Reserve all questions of costs.

Thomas Bathurst
International Judge

James Ch'ng Chin Leong and Lee Wei Cong Terence (A.Ang, Seah & Hoe) for the claimant;
Chong Yee Leong, KarLuis Quek, Liew Pei Jun Annette and Ng Ying Ning Theodora (Allen & Gledhill LLP) for the defendant.