IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 16

Originating Application No 18 of 2024 (Summons No 65 of 2024)

Between

Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy

… *Claimants*

And

(1) Department of Water Supply & Sewerage Management, Kathmandu
(2) Melamchi Water Supply Development Board

… *Defendants*

GROUNDS OF DECISION

[Arbitration — Conflict of laws — Seat of the arbitration]
[Arbitration — Restraint of proceedings — Foreign judicial]
[Conflict of laws — Restraint of foreign proceedings — Breach of legal or equitable right not to be sued]
[International Law — Sovereign immunity — Sections 3, 11, 15 and 16 State Immunity Act 1979 (2020 Rev Ed)]

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v
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Hri Kumar Nair J, Dominique Hascher IJ and Simon Thorley IJ
23 December 2024, 16 January, 15 May 2025

25 June 2025

Hri Kumar Nair J (delivering the grounds of decision of the court):

Introduction

1 A central theme that runs through the internationalisation of dispute resolution is party autonomy. By and large, parties are free to agree on how, where, and by whom they wish to have disputes between them resolved. What is sometimes lost sight of is the *obligation* of abiding by the consequences of the exercise of party autonomy. Thus, if parties agree to have their disputes settled in a particular manner, the court will generally hold them to their bargain.

2 An important weapon in the court's armoury for this purpose is the anti-suit injunction. It compels a party who is amenable to the jurisdiction of the court to refrain from instituting or continuing with proceedings abroad: *BCS*

Business Consulting Services Pte Ltd and others v Baker, Michael A (executor of the estate of Chantal Burnison, deceased) [2023] 1 SLR 1 ("*BCS*") at [1]. Although it is often said that the indirect interference with a foreign court's jurisdiction is a serious matter that calls for caution as a matter of comity (*Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 at [108]), it is well-recognised that the need for caution recedes significantly where an anti-suit injunction is sought for the purpose of enforcing a jurisdiction or arbitration agreement as "there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them": *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 at 96.

3 This principle was engaged in the present application for an interim anti-suit injunction to restrain foreign proceedings seeking to challenge a decision by an arbitral tribunal.

Background facts

Background to the parties' dispute

4 The claimant, Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy ("CMC"), is an Italian-registered company in the business of the construction of infrastructure projects around the world. The first defendant, the Department of Water Supply & Sewerage Management, Kathmandu ("DOW"), is a department of the Ministry of Water Supply of the Government of Nepal, and the lead agency for the implementation of water supply, sanitation and hygiene projects in Nepal. The second defendant, the Melamchi Water Supply Development Board ("MB"), was formed by the Government of Nepal as the

implementing agency for a project to alleviate chronic water shortage in Kathmandu Valley, Nepal (the "Project").[1]

5 In or around July 2013, CMC and MB entered a contract for the provision of construction services in respect of the Project (the "Contract").[2] Clause 20.6(a) of the General Conditions of the Contract ("GCC") provided for any dispute between the parties arising out of or in connection with the Contract to be settled by arbitration.[3] The details of the arbitration were set out in the "Contract Data" contained in the Particular Conditions of Contract ("PCC") as follows:[4]

Conditions	**Ref. GCC**	**Data**
International Arbitration	20.6(a)	International Arbitration shall be: i) administered by the Singapore International Arbitration Centre (SIAC) ii) conducted in accordance with the rules of SIAC
Place of Arbitration	20.6(a)	Singapore

1 1st Affidavit of Roberto Liverani filed in SIC/OA 18/2024 on 8 August 2024 ("RL-1") at paras 6–8.

2 RL-1 at para 9.

3 RL-1 at para 10; Clause 20.6 of the General Conditions of Contract (RL-1 at p 28).

4 RL-1 at para 11; Particular Conditions of Contract (RL-1 at p 30).

6 Various disputes arose between CMC and MB, leading to CMC terminating the Contract in November 2018.[5] On 30 December 2022, CMC commenced arbitration with the Singapore International Arbitration Centre. The named defendant in the arbitration was "Department of Water Supply & Sewerage Management, Kathmandu which was formerly known as Melamchi Water Supply Development Board (MWSDB)",[6] thus referring to both DOW and MB. According to CMC, it had framed the named defendant in this way as it believed, based on statements made by the Government of Nepal, DOW and MB, that MB had been dissolved and succeeded by DOW.[7]

7 A three-member arbitral tribunal (the "Tribunal") was constituted on 30 May 2023.[8] DOW challenged the jurisdiction of the Tribunal and sought an early dismissal of CMC's claims on the basis that there was no arbitration agreement between CMC and DOW (the "Early Dismissal Application").[9] In response, CMC filed an application for a declaration that MB was part of the proceedings and, in the alternative, that MB be joined to the arbitration (the "Joinder Application").[10] Given that the Early Dismissal Application and the Joinder Application were essentially mirror images of one another, the Tribunal heard both together. In a decision issued on 12 September 2023 (the "Joint Decision"), the Tribunal:[11]

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5 RL-1 at para 12.

6 Notice of Arbitration dated 30 December 2022 (RL-1 at p 32)

7 RL-1 at para 13.

8 RL-1 at para 15.

9 RL-1 at paras 14 and 17(a).

10 RL-1 at para 17(b).

11 RL-1 at para 19.

(a) allowed the Early Dismissal Application, finding that DOW was not a party to an arbitration agreement with CMC and CMC's claims against DOW were thus dismissed;[12] and

(b) allowed the Joinder Application, finding that MB was already a party to the proceedings based on how they were framed and, in any event, joined MB to the proceedings for the avoidance of doubt.[13]

8 On or around 29 October 2023, DOW applied to the High Court Patan in Nepal for the Joint Decision to be set aside (the "First Annulment Application").[14] In response, CMC applied to this court in SIC/OA 18/2024 ("OA 18") for an anti-suit injunction restraining both DOW and MB from pursuing the First Annulment Application and other foreign proceedings to challenge the Joint Decision.[15] OA 18 remains pending as CMC is in the process of effecting service on DOW and MB.[16]

9 In or around June 2024, a dispute arose between the parties as to the location of the seat of the arbitration – MB submitted that the seat was Nepal, whereas CMC maintained that the seat was Singapore.[17] On 20 August 2024, the Tribunal decided that the seat of the arbitration was Singapore (the "Seat

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12 RL-1 at pp 89 (Joint Decision at para 188) and 98 (Joint Decision at para 249.1).

13 RL-1 at pp 95–96 (Joint Decision at paras 226, 228 and 232) and p 98 (Joint Decision at para 249.2).

14 RL-1 at para 21; RL-1 at pp 118–149 (English Translation of First Annulment Application).

15 SIC/OA 18/2024 dated 8 August 2024.

16 RL-1 at paras 27 and 29; 1st Affidavit of Kiran Paudel filed in SIC/SUM 65/2024 on 19 December 2024 ("KP-1") at para 23.

17 KP-1 at para 15.

Decision"), holding that the designation of Singapore as the "Place of Arbitration" under cl 20.6(a) of the GCC read with the Contract Data in the PCC constituted an agreement by the parties as to the seat of the arbitration.[18]

10 On or around 31 August 2024, MB applied to the High Court Patan in Nepal for the Seat Decision to be set aside (the "Second Annulment Application").[19] The present application, SIC/SUM 65/2024 ("SUM 65"), was CMC's application for an interim anti-suit injunction restraining MB from pursuing the Second Annulment Application and other foreign proceedings to challenge the Seat Decision pending the final determination of OA 18.[20]

Procedural history

11 There were three hearings of SUM 65. The resolution of the matter was, somewhat regrettably, protracted due to MB's conduct.

12 SUM 65 was first heard on 23 December 2024 on an urgent *ex parte* basis. At this hearing, Simon Thorley IJ, sitting alone, declined to make any order on the application and adjourned the matter to be heard by the full coram. Directions were given that CMC inform MB of SUM 65 through MB's solicitors in the arbitration, Howard Kennedy LLP ("Howard Kennedy") – who had, on 9 December 2024,[21] written to CMC's counsel informing that they had received instructions to act for MB in OA 18.[22]

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18 KP-1 at para 16.

19 KP-1 at para 25.

20 SIC/SUM 65/2024 dated 19 December 2024.

21 KP-1 at p 133.

22 Minute Sheet (23 December 2024) at p 10.

13 The matter was fixed for hearing on 16 January 2025. A day before the hearing, CHP Law LLC ("CHP") filed a Notice of Appointment of Counsel in OA 18 on behalf of MB.[23] Counsel from CHP, Mr Arthur Yap ("Mr Yap") and Ms Ong Hui Jing, attended the second hearing and sought an adjournment on the basis that they had only just been instructed and were not ready to proceed with the substantive hearing. We were also informed by Mr Yap that, although MB had instructed CHP to appear on its behalf, MB's position was that it had not accepted service and had not submitted to the jurisdiction of the Singapore courts.

14 After hearing the parties, we adjourned the *inter partes* hearing of SUM 65 and heard it on an *ex parte* basis.[24] CMC's counsel submitted on the merits of SUM 65, following which we granted an order in terms of the application, with the order made to be effective until the disposal of the *inter partes* hearing.[25] At the end of the hearing, we gave the following directions:[26]

(a) MB was to write in to the court within three weeks to clarify its position on the issue of service and submission to jurisdiction; and

(b) to facilitate the *inter partes* hearing of SUM 65, MB was to file its response affidavit within six weeks, and for any response from CMC to follow within four weeks thereafter, after which a third hearing would be fixed.

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23 Notice of Appointment of Counsel dated 15 January 2025.

24 Minute Sheet (16 January 2025) at p 2.

25 Minute Sheet (16 January 2025) at p 3; SIC/ORC 8/2025 dated 16 January 2025.

26 Minute Sheet (16 January 2025) at p 3.

15 Unfortunately, no progress was made on either of these fronts. MB did not write in to confirm its position on service and submission to jurisdiction, and did not file any affidavit in response to SUM 65. Instead, on 3 March 2025, after the deadlines for complying with our directions had lapsed, CHP filed an application in SIC/SUM 34/2025 ("SUM 34") to discharge themselves as MB's counsel.[27] In the supporting affidavit filed in SUM 34, CHP stated that MB had decided not to be legally represented in OA 18 and SUM 65.[28] Annexed to the affidavit was an email from MB's representative, one Ratna Prasad Lamichhane, to Howard Kennedy communicating MB's position, which we consider useful to set out in full:[29]

> Dear Edward,
>
> Thank you for your continued support. *We have been closely monitoring the developments in Singapore.*
>
> Following these developments, a meeting was held with the High-Level Committee on Tuesday this week, during which Prakrit ji explained the *consequences of both participation and non-participation in the Singapore proceedings*.
>
> As you are aware, the primary issue in dispute concerns the seat of arbitration. We have already submitted before the High Court of Nepal that the arbitration is seated in Nepal. Pursuing the case in Singapore would require submitting to its jurisdiction, which would directly contradict our position before the High Court of Nepal.
>
> [Redacted]
>
> Accordingly, after due consultation and advice from the High-Level Committee, *we have decided not to pursue or be represented in the matter in Singapore.* Kindly instruct our counsel in Singapore to act in accordance with this decision. Lastly, request you to furnish the final bill from our counsel from Singapore for his excellent service and for your coordination so that we can clear the same at the earliest.

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27 SIC/SUM 34/2025 dated 3 March 2025.

28 1st Affidavit of Ong Hui Jing filed in SIC/SUM 65/2024 on 3 March 2025 ("OHJ-1") at para 7.

29 OHJ-1 at pp 13–14.

> Thank you,
>
> Best Regards
>
> --
>
> Ratna Prasad Lamicchane
>
> Executive Director
>
> Melamchi Water Supply Development Board
>
> Panipokhari, Kathmandu
>
> [emphasis added]

16 It was clear from this correspondence that MB had been given adequate notice and a reasonable opportunity to participate in SUM 65 but had decided not to do so. That being the case, we were satisfied at the third hearing on 15 May 2025 that the matter should not be delayed. We thus heard SUM 65 on an *inter partes* basis notwithstanding MB's absence.

CMC's submissions

17 CMC argued that this was a straightforward case for an anti-suit injunction to issue against MB as the Second Annulment Application constituted a clear breach of the arbitration agreement.[30]

18 In this regard, CMC submitted that the reference to Singapore as the "Place of Arbitration" in cl 20.6(a) of the GCC read with the Contract Data in the PCC amounted to an express agreement between the parties for the arbitration to be seated in Singapore.[31] The effect of the parties designating Singapore as the seat was that: (a) the Singapore courts had *in personam*

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30 Claimant's Written Submissions for SIC/SUM 65/2024 dated 20 December 2024 ("CWS") at para 18.

31 CWS at paras 19–20.

jurisdiction over MB;[32] and (b) any attempt to challenge or set aside the Seat Decision in a foreign court rather than a Singapore court constituted a breach of the arbitration agreement.[33] The Second Annulment Application thus constituted a breach of the arbitration agreement that should be restrained by anti-suit injunction.[34]

Issue to be determined

19 The sole question for our determination was whether an interim anti-suit injunction should be granted in SUM 65.

Our decision

Applicable legal framework on anti-suit injunctions

20 A good starting point for the principles applicable to the issue of anti-suit injunctions is the Court of Appeal's decision in *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*Kirkham*"), in which the court set out five factors to be considered when deciding whether to grant an anti-suit injunction (at [28]–[29]):

(a) whether the defendant is amenable to the jurisdiction of the Singapore court;

(b) whether Singapore is the natural forum for resolution of the dispute between the parties;

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32 Claimant's Supplemental Written Submissions for SIC/SUM 65/2024 dated 14 May 2025 ("CSWS") at para 35.

33 CWS at para 17.

34 CWS at para 22.

(c) whether the foreign proceedings would be vexatious or oppressive to the plaintiff if they are allowed to continue;

(d) whether the anti-suit injunction would cause any injustice to the defendant by depriving the defendant of legitimate juridical advantages sought in the foreign proceedings; and

(e) whether the institution of foreign proceedings was or would be in breach of any agreement between the parties.

21 However, the *Kirkham* factors should not be approached as if they are the requirements of a statute or as a box-ticking exercise where every factor must be mechanistically checked off before an anti-suit injunction can be issued: Adeline Chong & Yip Man, *Singapore Private International Law: Commercial Issues and Practice* (Oxford University Press, 2023) ("*Chong & Yip*") at para 4.06. In the first place, it is important to bear in mind that the anti-suit injunction is not a monolithic creature as there are different bases on which it may be granted. Although varying taxonomies have been proffered due to the drawing of distinctions at different levels of specificity, it suffices, for present purposes, to distinguish between contractual and non-contractual anti-suit injunctions (see, for example, *VKC v VJZ and another* [2021] 2 SLR 753 ("*VKC*") at [16] and [18]):

(a) In a contractual anti-suit injunction, the injunction is granted to restrain the defendant from pursuing foreign proceedings in breach of a jurisdiction clause or arbitration agreement unless there are strong reasons not to grant the injunction (see, for example, *VKC* at [16]).

(b) In a non-contractual anti-suit injunction, the injunction may be granted to restrain the defendant from pursuing foreign proceedings that

(i) unduly interfere with the process, jurisdiction or judgments of the forum court; or (ii) amount to vexatious or oppressive conduct (see *VKC* at [18]; *BCS* at [53]).

The significance of this distinction is that the constituent elements for each species of anti-suit injunction are different. Given that CMC's application in SUM 65 was for an anti-suit injunction to enforce the arbitration agreement in cl 20.6(a) of the GCC read with the Contract Data in the PCC (see [17]–[18] above), we confine our focus below to synthesising the elements of a contractual anti-suit injunction based on the applicable factors from the list in *Kirkham* above.

22 The first factor in *Kirkham* (*viz*, whether the defendant is amenable to the jurisdiction of the court) is universally applicable to any anti-suit injunction: *Chong & Yip* at para 4.07. Put simply, the court can only issue an anti-suit injunction against a defendant that is subject to the court's *in personam* jurisdiction: *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 at [17]; *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2015] 5 SLR 873 at [75]; Thomas Raphael QC, *The Anti-Suit Injunction* (Oxford University Press, 2nd Ed, 2019) ("*Raphael*") at para 4.84.

23 The fifth factor in *Kirkham* (*viz*, whether the institution of foreign proceedings is in breach of an agreement between the parties) is the essence of the contractual anti-suit injunction: *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") at [67]–[68].

24 The second *Kirkham* factor (*viz*, whether the forum court is the natural forum) does not arise in a contractual anti-suit injunction as it is superseded by

the more stringent test of whether there is strong cause to decline enforcement of the parties' agreement: *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 at [84]. The scope for the parties to argue that the forum court is not an appropriate forum is necessarily narrower in a case where they have agreed to submit to that forum. In such a case, "[t]he applicant does not have to show that the contractual forum is more appropriate than any other; the parties' contractual agreement does that for him": *Turner v Grovit and others* [2002] 1 WLR 107 at [25]; *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] 3 WLR 659 at [66]. Consequently, "[i]t should take more to convince a court to sanction a breach of agreement than it would to convince the court not to let the case be heard in the natural forum": Yeo Tiong Min, "Natural Forum and the Elusive Significance of Jurisdiction Agreements" [2005] SJLS 448 at 456–457, endorsed by the Court of Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 at [107]–[108]; *Riverrock Securities Ltd v International Bank of St Petersburg (Joint Stock Co)* [2021] 2 All ER (Comm) 1121 at [29], citing *Enka Insaat ve Sanayi AS v OOO 'Insurance Co Chubb' and others* [2020] 2 All ER (Comm) 315 at [42].

25 The third and fourth *Kirkham* factors can be taken together because the third factor (*viz*, whether injustice would be caused to the defendant by depriving it of legitimate juridical advantages sought in the foreign proceedings) is subsumed under the fourth factor (*viz*, whether the foreign proceedings are vexatious and oppressive). Indeed, the Court of Appeal in *Kirkham* itself stated that "the third and fourth elements are really quite closely related, being two sides of the same coin" (at [29]). Put simply, the injustice that would be caused to the defendant feeds into the broader question of vexation or oppression which is an independent basis for the grant of a non-contractual anti-suit injunction

(see [21] above). Given that the enforcement of a contractual right is "a separate inquiry distinct from the requirement of vexatious or oppressive conduct" (*UBS AG v Telesto Investments Ltd and others and another matter* [2011] 4 SLR 503 at [111]; *Raphael* at para 7.18), the third and fourth *Kirkham* factors do not directly feature in the analysis on a contractual anti-suit injunction, although the third factor can be relevant in the calculus as to whether there is strong cause to decline enforcement of the parties' agreement: *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 at [94], citing *Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd* [1977–1978] SLR(R) 112 at [11].

26 Drawing the threads together, the requirements that must be established for the grant of a contractual anti-suit injunction can be stated as follows:

(a) First, the defendant is amenable to the jurisdiction of the court.

(b) Second, the foreign proceedings are in breach of an exclusive jurisdiction clause or arbitration agreement between the parties.

(c) Third, there are no strong reasons to decline enforcement of the parties' agreement.

27 We have thought it useful to clarify the operative considerations for a contractual anti-suit injunction as some confusion was demonstrated in CMC's submissions due to the wholesale application of the factors from *Kirkham*. For example, CMC argued that "[it] would in fact be vexatious and oppressive to allow MB to pursue or continue to pursue the Second Annulment Application before the High Court Patan in Nepal in further breach of the Arbitration Agreement".[35] The difficulty with this submission is that while it is certainly possible for more than one basis for the grant of an anti-suit injunction to be

[35] CWS at para 28.

operative on a given set of facts, the strands of reasoning are conceptually distinct and ought not to be run together in this way. In the final analysis, an applicant seeking an anti-suit injunction should be clear on the basis on which the injunction is sought and how this bears on the requirements which must be satisfied.

Whether an anti-suit injunction should be granted to CMC

Whether MB was amenable to the jurisdiction of this court

28 CMC argued that this court had *in personam* jurisdiction over MB due to MB's submission to the supervisory jurisdiction of the Singapore courts by the parties' designation of Singapore as the seat of the arbitration.[36]

29 We agreed with CMC's submission. It is trite that a choice of seat embodies the parties' submission to the curial jurisdiction of the courts of the seat: *CXG and another v CXI and others* [2024] 3 SLR 1282 at [32]–[33]; *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills and others and another matter* [2024] 2 SLR 516 ("*COSCO*") at [61]. Thus, if CMC and MB were found on a true construction of the arbitration agreement to have agreed for the arbitration to be seated in Singapore, it would have been unarguable that Singapore was the seat of the arbitration.

30 In our judgment, the effect of the designation of Singapore as the "Place of Arbitration" under cl 20.6(a) of the GCC read with the Contract Data in the PCC was either an express or implied agreement by the parties for Singapore to be the seat of the arbitration. It is well-established that, because the physical venue or place at which the arbitration occurs is of far less significance than the

[36] CSWS at paras 36–40.

seat of the arbitration, if the word "seat" is not used in the arbitration agreement, a reference by the parties to a chosen "place" or "venue" for arbitration will usually be construed as a choice of the seat: *Mustill & Boyd: Commercial and Investor State Arbitration* (David Foxton gen ed) (LexisNexis, 3rd Ed, 2024) at paras 4.77–4.78. Indeed, the clear international consensus on this is evidenced by how Art 20(1) of the UNCITRAL Model Law on International Commercial Arbitration, which has the force of law in Singapore as the First Schedule of the International Arbitration Act 1994 (2020 Rev Ed), uses the term "place" as a reference to the seat of the arbitration: *PT Garuda Indonesia v Birgen Air* [2002] 1 SLR(R) 401 at [23]–[25].

31 More generally, the aforesaid approach has also been applied by the Court of Appeal in the context where the word "place" is not even used by the parties:

(a) In *BNA v BNB and another* [2020] 1 SLR 456 ("*BNA*"), the court held that the phrase "arbitration in Shanghai" was "most naturally construed as a reference to the seat of the arbitration", although it accepted that "the natural reading can be displaced by contrary indicia" (at [69]).

(b) In *ST Group Co Ltd and others v Sanum Investments Ltd and another appeal* [2020] 1 SLR 1, the court was faced with the phrase "[arbitration] using an internationally recognized … arbitration company in Macau, SAR PPC" and concluded that "the most natural interpretation" was that the reference to Macau was to the seat of the arbitration rather than simply a venue (at [84]).

These decisions were binding on us. In our view, they led to the inexorable conclusion that the parties in this case had agreed to Singapore as the seat of the arbitration.

32 The only contraindication that could plausibly support MB's position that Nepal was the seat of the arbitration was the fact that the governing law of the Contract was the law of Nepal. However, this was not sufficient to displace the natural interpretation that the parties' choice of Singapore as the "Place of Arbitration" in cl 20.6(a) of the GCC read with the Contract Data in the PCC was the selection of Singapore as the seat. The English High Court decision of *Shagang South-Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics* [2015] 1 Lloyd's Rep 504, which was cited with approval by the Court of Appeal in *BNA* (at [67] and [69]), is a case on point. In that case, Hamblen J (as he then was) considered the interpretation of the phrase "Arbitration to be held in Hongkong. English law to be applied" and held that the reference to "English law to be applied" did not displace the conclusion that the parties had chosen Hong Kong as the seat of the arbitration as "it [was] most naturally to be read as referring to the substantive law applicable" (at [39]).

Whether the Second Annulment Application was a breach of the arbitration agreement

33 Next, we were also satisfied that the Second Annulment Application was a breach of the arbitration agreement.

34 This was a straightforward issue. A choice of seat by the parties is generally construed as a choice of the *exclusive* jurisdiction in which the parties can challenge decisions made by an arbitral tribunal: *A v B* [2007] 1 Lloyd's Rep 237 at [111]; *C v D* [2008] 1 Lloyd's Rep 239 at [17]. The corollary of this is that "[t]he agreement to arbitrate implies a negative obligation that, following

an agreement on the seat of the arbitration, the parties would not set aside or otherwise attack any issued award other than through the mechanisms provided for in the seat of the arbitration": *Hilton International Manage (Maldives) Pvt Ltd v Sun Travels & Tours Pvt Ltd* [2018] SGHC 56 at [54]; *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc)* [2024] 5 SLR 28 at [52].

35 In our judgment, MB had a negative obligation not to challenge the Seat Decision other than before the Singapore courts. The Second Annulment Application was a clear breach of this obligation which this court should *prima facie* restrain by grant of an anti-suit injunction in the absence of strong reasons to the contrary.

Whether there were strong reasons not to grant an anti-suit injunction

36 Finally, we were satisfied that there were no strong reasons not to grant an anti-suit injunction to restrain MB's breach of the arbitration agreement.

37 In *Sun Travels*, the Court of Appeal held that the *prima facie* disposition to enforce the parties' agreement could give way to comity if there was excessive delay in bringing the injunctive application such that the foreign proceedings had become too far advanced (at [68]).

38 This factor did not apply in this case. There was no unreasonable delay on CMC's part in bringing SUM 65. CMC had only received a copy of the Second Annulment Application on 10 December 2024,[37] and SUM 65 was filed

[37] KP-1 at para 27.

shortly after on 19 December 2024.[38] Furthermore, as at the time of the third hearing of SUM 65 on 15 May 2025, we were informed by an affidavit dated 14 May 2025 deposed to by CMC's representative, Mr Kiran Paudel ("Mr Paudel"), that the Second Annulment Application was still in its infancy as the Nepalese court had only just issued directions on the service of the Second Annulment Application on the members of the Tribunal (who had also been made parties to the same). Given this, we saw no reason why it would be contrary to comity for an anti-suit injunction to be issued to restrain MB from taking further steps to progress the Second Annulment Application.

39 Indeed, the state of play as at the date of the third hearing confirmed that there were strong reasons *in favour* of an anti-suit injunction being granted. After obtaining this court's indulgence for an adjournment of the *inter partes* hearing on the pretext that it required time to consider its position, MB continued acting in breach of the arbitration agreement and, worse still, the anti-suit injunction we had granted on an *ex parte* basis. In his affidavit Mr Paudel recounted MB's active participation at a hearing of the Second Annulment Application on 4 May 2025 at which the issue of service of the Second Annulment Application on the Tribunal was addressed.[39] While the affidavit did not mention if the Nepalese court had been made aware of the anti-suit injunction (which ambiguity CMC's counsel conceded before us),[40] it was indisputable that MB was aware of the injunction since: (a) CHP was in attendance when we granted the injunction;[41] (b) CMC's counsel had written to

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38 SIC/SUM 65/2024 dated 19 December 2024.

39 3rd Affidavit of Kiran Paudel filed in SIC/SUM 65/2024 on 14 May 2025 ("KP-3") at paras 14–15.

40 Minute Sheet (15 May 2025) at p 2.

41 KP-3 at para 15(a).

CHP on 22 January 2025, after the *ex parte* hearing, annexing a copy of the orders we had made;[42] and (c) the email sent by MB's representative to Howard Kennedy preceding CHP's discharge application in SUM 34 stated that MB had been "closely monitoring the developments in Singapore" (see [15] above). Even if neither MB nor CMC informed the Nepalese court of the anti-suit injunction, the fact remained that MB was aware, but chose to act in wilful disregard, of it.

40 Even if CMC's obtaining of an anti-suit injunction was to end up pyrrhic if MB persisted in its pursuit of the Second Annulment Application, it is well-established that "[w]hen granting an injunction the court does not contemplate that it will be disobeyed": *South Bucks District Council v Porter and another* [2003] 2 AC 558 at [32]. Thus, the potential futility of the anti-suit injunction due to MB's non-compliance and CMC's inability to enforce it in Nepal was no reason for us to refrain from granting it: *COSCO* at [107] and [111].

41 For these reasons, we were satisfied at the third hearing that the anti-suit injunction sought in SUM 65 should be granted and we so ordered as follows:[43]

> (a) MB be restrained from pursuing or continuing to pursue Case No. 081-RE-0639 and/or Case No. 081-RE-1194 (the updated case number for the Second Annulment Application as clarified by CMC)[44] before the High Court Patan in Nepal until the final determination of OA 18; and

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42 KP-3 at para 15(b) and pp 9–15.

43 SIC/ORC 32/2025 dated 15 May 2025.

44 KP-3 at paras 9–10.

(b) MB be restrained from pursuing or continuing to pursue any proceedings of any nature in relation to the setting aside of or challenge to the decision made by the arbitral tribunal in ARB 331/22/BSB dated 20 August 2024 (*ie*, the Seat Decision) until the final determination of OA 18.

Costs

42 We gave directions at the end of the third hearing for CMC to file written submissions on the costs of SUM 65. Subsequently, CMC sought costs of US$76,265.50 (comprising US$71,230.00 for work done in SUM 65 and US$5,035.50 for work done in the preparation of its costs submissions) and disbursements of S$31,800.00.[45] A costs schedule containing a detailed breakdown of the costs claimed, along with an outline of the work done by the relevant members of CMC's counsel and their respective time costs, was set out in an annex to CMC's written submissions.[46]

43 The costs regime of the Singapore International Commercial Court is based on the premise that a successful litigant should not be unfairly put out of pocket for sensibly prosecuting his claim or defence: *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 ("*Senda*") at [51]. This is reflected in O 22 r 3(1) of the Singapore International Commercial Court Rules 2021 which sets out the general principle that "a successful party is entitled to costs and the quantum of any costs award will generally reflect the costs incurred by the party entitled to costs, subject to the principles of proportionality and reasonableness": *Senda* at [56].

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45 Claimant's Costs Submissions for SIC/SUM 652024 dated 29 May 2025 ("CWS (Costs)") at para 2.

46 CWS (Costs) at pp 6–11.

44 The starting point, therefore, was that all costs actually incurred by CMC should be allowed, subject to them not being reasonably incurred or reasonable in their quantum: *Senda* at [52]–[54]. Having considered the costs schedule provided by CMC, we were satisfied that the costs claimed were neither unreasonable nor disproportionate. We thus fixed the costs of SUM 65 in the aggregate sum of US$76,265.50 and S$31,800.00, with interest at 5.33% per annum to run from the date of our order (5 June 2025) until payment.[47]

Postscript: Whether MB enjoyed sovereign immunity from the jurisdiction of the Singapore courts

45 While preparing these grounds of decision, it came to our attention that the present case may implicate the question of whether MB was entitled to sovereign immunity as an entity linked to the Government of Nepal. If this is answered in the affirmative, MB would have been immune from the jurisdiction of this court, and the anti-suit injunction could not have been issued.

46 Although this issue was not raised and addressed by CMC, we consider that we are compelled to take the point on our own motion as s 3(2) of the State Immunity Act 1979 (2020 Rev Ed) (the "SIA") specifically provides that "[a] court is to give effect to the immunity conferred by this section even though the State does not file and serve a notice of intention to contest or not contest in the proceedings in question". The effect of s 3(2) is that the question of sovereign immunity is engaged regardless of whether it is raised by any party before the court.

47 Save for a passing reference in the High Court decision of *Josias van Zyl and others v Kingdom of Lesotho* [2017] 4 SLR 849 which is consistent with

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47 SIC/ORC 38/2025 dated 6 June 2025.

our interpretation (at [67]), there does not appear to be any local decision that has considered s 3(2) of the SIA. Given this dearth of local authority, we draw support for our view from decisions of the English courts in respect of the State Immunity Act 1978 (c 33) (UK) ("UK SIA"), which is *in pari materia* to the SIA and which contains an identical provision to s 3(2) at s 1(2) of the UK SIA. Most recently, the point was directly considered by the UK Supreme Court in *Royal Embassy of Saudi Arabia (Cultural Bureau) v Costantine* [2025] 1 WLR 1207 ("*Saudi Arabia*"). Lord Lloyd-Jones JSC, delivering the unanimous judgment of the court, held that a domestic court had a duty to consider an issue of sovereign immunity on its own motion (at [38]):

> … If a court exercises jurisdiction over a foreign state which is entitled to state immunity, there is a breach of international law. To require a foreign state entitled to immunity to appear before a court and to enquire into its conduct of sovereign affairs would be a violation of the foreign state's sovereignty. This also explains why it was necessary to include in the [UK SIA] a provision which *requires a court to give effect to state immunity even if the state does not appear in the proceedings and does not take the point itself*. A provision such as section 1(2) of the [UK SIA] is necessary in order to ensure that domestic courts do not exercise jurisdiction in breach of a foreign state's right to immunity. … ***As the matter relates to jurisdiction, there must be a duty on a domestic court to take the point of its own motion***.
>
> [emphasis added in italics and bold italics]

48 We respectfully adopt the analysis in *Saudi Arabia*. We emphasise, however, that, going forward, applicants seeking relief against entities that may be entitled to sovereign immunity should raise the issue to the court's attention and ensure that it is addressed: *ETI Euro Telecom International NV v Republic of Bolivia and another* [2009] 1 WLR 665 ("*ETI Euro*") at [128]; *Border Timbers Ltd and another v Republic of Zimbabwe* [2024] 1 Lloyd's Rep 427 at [115]. In our view, in an application that is heard on an *ex parte* basis, an issue of sovereign immunity would readily come within the scope of the applicant's

duty of full and frank disclosure, as a positive answer on sovereign immunity would deal a "knock out blow" to the application: *The "Xin Chang Shu"* [2016] 1 SLR 1096 at [47]–[48], citing *The "Eagle Prestige"* [2010] 3 SLR 294 at [73] and [84]. Furthermore, even if the application is heard on an *inter partes* basis such that the duty of full and frank disclosure does not strictly apply, we think that it would still be incumbent on the applicant to raise a possible issue of sovereign immunity, given not only its potentially dispositive significance but its implications on matters of importance such as comity and state sovereignty: *Re Fullerton Capital Ltd (in liquidation)* [2025] 1 SLR 432 at [133]–[134].

49 Be that as it may, as we explain, we are satisfied at this stage to draw the conclusion that MB is not entitled to sovereign immunity and thus amenable to our jurisdiction. We caveat, however, that what is expressed below is the conclusion we have reached based on the limited material currently before us in the absence of any claim by MB that it is entitled to sovereign immunity.

50 The starting point is s 3(1) of the SIA, which provides that "[a] State is immune from the jurisdiction of the courts of Singapore except as provided in the following provisions of [Part 2 of the SIA]". Although it is not quite apparent from the structure of the SIA itself, it is generally accepted that the SIA draws a distinction between the Singapore courts' "adjudicative jurisdiction" and "enforcement jurisdiction". Sections 4–13 of the SIA provide exceptions to the immunity from adjudicative jurisdiction ("adjudicative immunity"), whereas ss 15(2)–(6), 16(3) and 16(4) of the SIA address exceptions to the immunity from enforcement jurisdiction ("enforcement immunity"): *Alcom Ltd v Republic of Colombia* [1984] AC 580 ("*Alcom*") at 600.

51 In our view, regardless of whether MB is entitled to sovereign immunity, it is unarguable that MB did not enjoy adjudicative immunity in respect of

SUM 65. Given our finding above that MB had agreed, by cl 20.6(a) of the GCC read with the Contract Data in the PCC, to submit to the curial jurisdiction of the Singapore courts, the exception to adjudicative immunity under s 11(1) of the SIA clearly applied:

> **Arbitrations**
>
> **11.**—(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts in Singapore which relate to the arbitration.
>
> (2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

In *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania and another (No 2)* [2007] QB 886, the English Court of Appeal observed that "the principle underlying [s 11 of the SIA] is that, if a state has agreed to submit to arbitration, it has rendered itself amenable to such process as may be necessary to render the arbitration effective" (at [117]). In so far as an allegation that MB had breached an arbitration agreement lay at the heart of SUM 65, SUM 65 was a proceeding relating to arbitration for the purposes of s 11(1) of the SIA.

52 The issue of enforcement immunity, on the other hand, is a thornier one. This is because s 15(2)(*a*) of the SIA institutes a *specific* bar against the grant of injunctive relief against a State, which is only waived by more specific consent by the State than submission to the jurisdiction of the Singapore courts *per se*:

> **Other procedural privileges**
>
> …
>
> (2) Subject to subsections (3) and (4) —

> (*a*) relief must not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and
>
> (*b*) the property of a State must not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action in rem, for its arrest, detention or sale.
>
> (3) Subsection (2) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and that consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

53 The grant of an anti-suit injunction to enforce an arbitration agreement falls within the court's enforcement jurisdiction rather than its adjudicative jurisdiction: *UK P&I Club NV and another v República Bolivariana de Venezuela* [2024] KB 399 at [44]–[51]. Moreover, the exception to adjudicative immunity under s 11(1) of the SIA does not override or cross over into enforcement immunity under s 15(2)(*a*) of the SIA: *ETI Euro* at [113]; *UK P&I Club NV and another v República Bolivariana de Venezuela* [2022] 1 WLR 4856 at [92]. Section 15(3) of the SIA also makes clear that MB's submission to the curial jurisdiction of the Singapore courts under cl 20.6(a) of the GCC read with the Contract Data in the PCC does not constitute a waiver of its enforcement immunity. In this regard, case law suggests that a relatively specific reference to a waiver of sovereign immunity is required for "written consent" under s 15(3) of the SIA to be found: see, for example, *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [18]; *A Company Ltd v Republic of X* [1990] 2 Lloyd's Rep 520 at 522–523; *Sabah Shipyard (Pakistan) Ltd v Islamic Republic of Pakistan and another* [2003] 2 Lloyd's Rep 571 at [18] and [25]. Alternatively, in the absence of a specific reference to sovereign immunity, a clear and unambiguous reference to the State's consent to an award being "wholly enforceable" may

suffice: *General Dynamics United Kingdom Ltd v State of Libya* [2025] 4 WLR 34 at [48] and [61]. No expression of consent of this nature features in the extracts of the Contract that are in evidence before us. The sum total of the above is that, if s 15(2)(*a*) of the SIA applied, no anti-suit injunction could have issued or be maintained.

54 Nevertheless, based on the information before us, we have concluded that MB is not entitled to sovereign immunity. Although the SIA does not contain a definition of a "State", s 16(1) of the SIA sets out the entities which are conferred the privilege of sovereign immunity:

> **States entitled to immunities and privileges**
>
> **16.**—(1) The immunities and privileges conferred by Part 2 apply to any foreign or Commonwealth State other than Singapore; and references to a State include references to —
>
> (*a*) the sovereign or other head of that State in his or her public capacity;
>
> (*b*) the government of that State; and
>
> (*c*) any department of that government,
>
> but not to any entity (called in this section a separate entity) which is distinct from the executive organs of the government of the State and capable of suing or being sued.
>
> (2) A separate entity is immune from the jurisdiction of the courts in Singapore if, and only if —
>
> (*a*) the proceedings relate to anything done by it in the exercise of sovereign authority; and
>
> (*b*) the circumstances are such that a State would have been so immune.

55 It is admittedly not wholly clear what the status of MB is within the structure of the Government of Nepal. In the affidavit deposed to by CMC's representative, Mr Roberto Liverani, in support of OA 18, MB is described as having been "formed by the Government of Nepal as an implementing agency

of the Melamchi Water Supply Project, which aims to alleviate the chronic water shortage in Kathmandu Valley and to improve the health and well-being of its inhabitants".[48] In the Joint Decision, the Tribunal recorded that DOW had taken the position that MB was, under s 4 of the Nepalese Development Board Act 2013, "a body corporate with perpetual succession", "entitled to transact and hold movable and immovable property", and capable of suing and being sued.[49] This indicates that MB has separate legal personality, a status that is confirmed by how MB was able to contract with CMC on its own behalf. While the issue of whether a party is to be characterised as a department of government or a separate entity does not turn on any single factor and the existence of separate legal personality is therefore not decisive in itself, caution is warranted before a party with separate legal personality is treated as a department of government: *Ministry of Trade of the Republic of Iraq and another v Tsavliris Salvage (International) Ltd (The "Altair")* [2008] 2 Lloyd's Rep 90 at [61], [64] and [73]. In the circumstances, we consider that MB is what s 16(1) of the SIA refers to as a "separate entity" which is not clothed with sovereign immunity save for the limited circumstances set out in s 16(2) of the SIA.

56 In this connection, we are of the view that s 16(2) of the SIA does not apply. Given that the Contract was a contract for the supply of services by CMC, the Contract is a "commercial transaction" as defined under s 5(3)(*a*) of the SIA. In *Alcom*, Lord Diplock, with whom the other members of the House of Lords agreed, explained that the provisions of the SIA should (at 597–598):

> … fall to be construed against the background of those principles of public international law as are generally recognised by the family of nations. The principle of international law that is most relevant to the subject matter of

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48 RL-1 at para 8.

49 RL-1 at p 83 (Joint Decision at para 151.3 and fn 101).

> the Act is the distinction that has come to be drawn between claims arising out of those activities which a state undertakes *jus imperii*, ie, in the exercise of sovereign authority, and those arising out of activities which it undertakes *jure gestionis*, ie, transactions of the kind which might appropriately be undertaken by private individuals instead of sovereign states.

The two categories of acts identified in the aforesaid extract correspond to the concepts of "exercise of sovereign authority" and "commercial transaction" in the legislative scheme of the SIA. An act can only amount to *either* an exercise of sovereign authority *or* a commercial transaction, but not both: Hazel Fox & Philippa Webb, *The Law of State Immunity* (Oxford University Press, 3rd Ed, 2013) at pp 194–195. Thus, our conclusion that the Contract is a "commercial transaction" under s 5(3)(*a*) of the SIA means that MB cannot be said to have been exercising sovereign authority such that s 16(2) of the SIA could apply.

57 For these reasons, we are satisfied that MB was not entitled to sovereign immunity from the jurisdiction of the Singapore courts and the provisions of the SIA did not prevent us from issuing the anti-suit injunction.

Hri Kumar Nair
Judge of the High Court

Dominique Hascher
International Judge

Simon Thorley
International Judge

Ashish Chugh, Jeunhsien Daniel Ho, Lee Yu Lun Darrell and Lim Jia Ren (Wong & Leow LLC) for the claimant;
The first defendant absent and unrepresented;
The second defendant absent and unrepresented.
