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

[2025] SGHC 154

Originating Application No 391 of 2025 (Summonses Nos 1440 and 1486 of 2025)

In the matter of Section 12A of the International Arbitration Act 1994

And

In the matter of Section 4(10A) of the Civil Law Act 1909

Between

Alphard Maritime Ltd.

… *Claimant*

And

(1) Samson Maritime Limited
(2) Underwater Services Company Limited
(3) J M Baxi Marine Services Private Limited
(4) Kotak Mahindra Trusteeship Services Limited (Appointed Trustee of Kotak India Growth Fund II)
(5) Kotak India Private Equity Fund
(6) Kotak Alternate Asset Managers Limited
(7) IndusInd Bank Limited
(8) Saraswat Co-operative Bank

… *Defendants*

JUDGMENT

[Injunctions — Mareva injunction — Court's powers under section 12A of the International Arbitration Act 1994 (2020 Rev Ed)]
[Civil Procedure — Injunctions — Setting aside of worldwide freezing order and prohibitory injunction]

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v
Samson Maritime Ltd and others

[2025] SGHC 154

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Philip Jeyaretnam J
3–4 July 2025, 1 August 2025

11 August 2025 Judgment reserved.

Philip Jeyaretnam J:

1 A seller of assets reneges on the deal before receiving any payment so as to sell them for a higher price to a different buyer. Proceeds from that subsequent sale are used to reduce existing liabilities of the seller that the original buyer knew about and which were contemplated to be paid off by the proceeds of the original sale had it gone ahead. In these circumstances, can the original buyer, in support of its claim for breach of the original sale contract, seek a freezing order on the basis that the repayment of such liabilities shows a real risk of dissipation? This question, as well as others connected to the operation of s 12A of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA") are raised in these applications to set aside two interim injunctions.

2 The interim injunctions were granted to Alphard Maritime Ltd ("Alphard") on 30 April 2025 by the High Court *ex parte* and without notice.

They were granted in support of an arbitration commenced on 20 February 2025 under the rules of the Singapore Chamber of Maritime Arbitration (the "SCMA Arbitration"). In the SCMA Arbitration, Alphard claims against Samson Maritime Limited ("Samson") and its wholly-owned subsidiary Underwater Services Company Limited ("Underwater") for breach of a settlement agreement dated 16 September 2024 (the "Settlement Agreement"),[1] which was to be governed by Singapore law.[2] Alphard alleges that Samson and Underwater breached their obligations to execute sale and purchase agreements for seven vessels owned by Samson, two vessels owned by Underwater and Samson's shareholding in Underwater (the "Shares" and the vessels collectively referred to as the "Assets").[3] Some of the Assets were instead sold to J M Baxi Marine Services Private Limited ("Baxi").

3 Whether the Settlement Agreement was in fact made is contested by Samson and Underwater.[4] They contend that Alphard did not sign the Settlement Agreement when it was first returned to Alphard and that consequently, no agreement was formed at all or at the least, it was not intended to come into force immediately.[5] They say that the Settlement Agreement was instead to be held in trust by an intermediary broker (by which is meant some

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1 Joint Bundle of Documents Vol I for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD I") at p 21 (Captain Alok Kumar's 1st Affidavit in OA 391 dated 16 April 2025 ("AK-1") at para 21).

2 JBOD I at p 272 (Settlement Agreement at cl 17.1).

3 JBOD I at pp 21–24 (AK-1 at paras 22–23).

4 Samson's and Underwater's Written Submissions dated 26 June 2025 ("12DWS") at para 43.

5 Joint Bundle of Documents Vol II for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD II") at pp 545–547 (Ashwin Mohan Samant's 1st Affidavit in HC/SUM 1370/2025 dated 19 May 2025 ("AMS-1") at paras 38–42).

kind of escrow arrangement deferring its coming into force).[6] They say that Alphard only provided them with a signed copy of the Settlement Agreement after it commenced the SCMA Arbitration on 20 February 2025.[7] Moreover, the terms of the Settlement Agreement were not certain, in that some key terms including the exact price of the Assets had not yet been agreed.[8] The price was dependent on the outcome of negotiations with Samson's creditors. Thus, they say that they did not believe that they were under any obligation to sell the Assets to Alphard when they decided to sell some of the Assets to Baxi in January 2025.

4 The sale to Baxi was first resolved upon on 7 January 2025, at Samson's Extraordinary General Meeting ("EGM").[9] Samson and Underwater then entered into an agreement with Baxi on 28 January 2025 (the "Advance Agreement").[10] Under the Advance Agreement, Samson agreed to pledge its shares in Underwater and mortgage two vessels to Baxi.[11] The pledge deed over the Shares and the deed of hypothecation over the vessels were executed on 12 and 28 February 2025 respectively.[12] Baxi made payment of the advance to Samson on 13 February 2025.[13]

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6 JBOD II at p 547 (AMS-1 at para 42).

7 JBOD II at p 552 (AMS-1 at para 53).

8 Joint Bundle of Documents Vol II for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD II") at pp 544–555 (Ashwin Mohan Samant's 1st Affidavit in HC/SUM 1370/2025 dated 19 May 2025 ("AMS-1") at para 36).

9 JBOD II at p 553 (AMS-1 at para 55); Joint Bundle of Documents Vol X for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD X") at p 451 (Rajnish Kumar Khandelwal's 1st Affidavit in HC/SUM 1486/2025 dated 23 May 2025 ("RKK-1") at para 18).

10 JBOD X at p 452 (RKK-1 at para 21).

11 JBOD X at pp 453, 558 (RKK-1 at para 22; Advance Agreement at clauses 3.2, 3.4).

12 JBOD X at pp 453–455 (RKK-1 at paras 25, 28).

13 JBOD X at p 454 (RKK-1 at para 26).

5 When Alphard learned of this, it took action against Samson and Underwater, commencing the SCMA Arbitration on 20 February 2025. The tribunal was constituted on 14 April 2025.[14] In its Statement of Case filed on 27 May 2025 in the SCMA Arbitration, Alphard claims (presumably in the alternative) relief akin to specific performance and damages for non-performance.[15]

6 Returning to the injunctions granted on 30 April 2025, the first interim injunction was a worldwide freezing injunction against Samson and Underwater up to the value of US$55,996,116.45.[16] The second was a prohibitory injunction which, pending the conclusion of the SCMA Arbitration, restrains Baxi and the remaining defendants to this action from assisting in or facilitating the dissipating of or dealings with any of Samson and Underwater's assets worldwide.[17]

7 The remaining defendants may be divided into two categories. First, there are Kotak Mahindra Trusteeship Services Limited (Appointed Trustee of Kotak India Growth Fund II), Kotak India Private Equity Fund and Kotak Alternate Asset Managers Limited (collectively, the "Kotak Entities") who are award creditors of Samson, having obtained an arbitral award against Samson and its promoters for close to INR 1.9 billion, along with interest (the "Kotak Award").[18]

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14 JBOD X at p 506 (RKK-1 at para 139).

15 Joint Bundle of Documents Vol XIII for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD XIII") at p 472.

16 JBOD II at p 515 (HC/ORC 2396/2025 dated 30 April 2025 at Order 1).

17 JBOD II at p 515 (HC/ORC 2396/2025 dated 30 April 2025 at Order 2).

18 JBOD I at p 17, 86 (AK-1 at para 14; Arbitral award dated 2 May 2024 at para 430).

8 The other category of defendants to these proceedings are IndusInd Bank Limited and Saraswat Co-operative Bank (the "Lenders"), who are lenders to Samson and Underwater. The debt owed by Samson and Underwater to the Lenders stood at about INR 1.8 billion on 4 May 2025.[19]

9 Thus, the effect of the prohibitory injunction is to stop the Kotak Entities and the Lenders from pursuing Samson and Underwater for what they are owed.

10 Prior to seeking the injunctions from the Singapore High Court on 16 April 2025, Alphard had sought and obtained injunctions (or undertakings to the court) and vessel arrests in India. These include an order from the Bombay High Court made on 2 April 2025 to restrain dealings in the Shares;[20] undertakings from Samson that four of their vessels would maintain the status quo with regard to ownership and possession, and would not leave port;[21] as well as arrests of two vessels belonging to Samson and one vessel belonging to Underwater.[22]

11 Toward the end of their counsel's responsive oral submissions at the hearing before me, counsel for Alphard belatedly submitted that Samson and Underwater ought to have applied to set aside the worldwide freezing injunction before the SCMA Arbitration tribunal (and not the court). He suggested (that such an approach would give effect to the intention of s 12A(7) of the IAA and

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19 JBOD I at p 18 (AK-1 at para 16); JBOD X at p 436 (Loan sheet created by Samson on 22 May 2025).

20 JBOD I at p 401 (Bombay High Court orders dated 2 April 2025 at para 43(A)).

21 JBOD II at p 357 (Undertaking by Samson in the Gujarat High Court dated 12 March 2025).

22 JBOD X at pp 464–466, 481, 658–660 (RKK-1 at paras 49, 52–54, 80; Gujarat High Court order dated 12 March 2025); JBOD II at pp 355–356 (Orissa High Court order dated 19 March 2025 at para 14.1); JBOD II at pp 348–349 (Gujarat High Court order dated 11 March 2025 at para 10).

the principle of minimal curial intervention, saying that he wanted to raise this as an important point of procedure and policy for the court to think about.[23] Counsel for Samson and Underwater disagreed.

12 Section 12A(7) of the IAA provides that once the arbitral tribunal makes an order relating to the same subject matter as that on which the court decided, the court's order ceases to have effect. Thus, it was open to Samson and Underwater to have applied to the arbitral tribunal instead of the court. However, there is nothing in the section that limits the party against whom the court has made an *ex parte* order to applying to the tribunal and not to court. I will proceed to decide on the application to set aside.

13 From the arguments raised by Samson, I will deal primarily with Samson's argument that there is and was no real risk of dissipation. In relation to Baxi, I will focus on their arguments that the prohibitory injunction against it effectively stops it from dealing with its own property when there is no proprietary claim or other basis for such restraint and that the court has no jurisdiction over non-parties in the position of Baxi. After that, I make some observations on the question of urgency as it arises in two aspects, one being as a condition for the exercise of the court's power as set out in s 12A(4) of the IAA and the other in the context of dispensing with the two hours' notice required by para 71(2) of the Supreme Court Practice Directions 2021 (the "Practice Directions").

No real risk of dissipation

14 A central requirement for the court to grant a freezing order is that there be a real risk that the defendant will dissipate assets to frustrate any judgment

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[23] Transcript (3 July 2025) at p 142 line 14 to p 143 line 27.

which might eventually be made: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 490 at [1]. Where an asset is dealt with for legitimate commercial reasons, such a dealing would not ordinarily constitute unjustified dissipation: *Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 ("*Milaha*") at [32]. I agree with Samson and Underwater that the evidence does not demonstrate a real risk of dissipation on their part.

15 The first alleged act of dissipation is Samson's sale of some of the assets that were the subject matter of the Settlement Agreement to Baxi. However, Samson did so for value (thus substituting the advance payment and the right to receive further payments for what they were selling). There could be no suggestion that this was done at an undervalue because the price was higher than even the upper range of prices in the Settlement Agreement.[24]

16 The second set of alleged acts of dissipation is the use of the advance payment to repay the Lenders and, in part, the Kotak Entities.[25] But repaying commercial creditors is not in itself dissipation. The payments in fact reduced liabilities. There is no suggestion that these liabilities were not genuine. They were even referred to in the Settlement Agreement.[26] The point goes one step further because the Settlement Agreement was premised on the Kotak Entities and the Lenders agreeing to take less than what they were owed and being paid directly by Alphard.[27] Seen together, it is obvious even at this stage of the proceedings that by the time of the Settlement Agreement, Alphard knew about

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24 JBOD I at pp 40, 96 (AK-1 at para 54; Settlement Agreement at cl 3.2); JBOD II at p 156 (Samson's board resolution dated 3 March 2025).

25 JBOD I at p 48 (AK-1 at para 69).

26 JBOD I at pp 139, 141 (Settlement Agreement at Background, cll 2.2 and 2.3).

27 Joint Bundle of Documents Vol XII for SUM 1440 and SUM 1486 dated 26 June 2025 ("JBOD XII") at p 20.

those liabilities and understood the importance of paying them off in part or in full.

17 There is a third act of dissipation alleged, namely the sale of a property in India known as the Raheja Property.[28] However, there was no suggestion that it was sold at an undervalue or that its proceeds did not go towards repaying debts owed to the Lenders.[29]

18 There is a further factor weighing against there being a real risk of dissipation. This is the fact that Alphard had been a creditor of Samson for about two years before the Settlement Agreement had been entered into.[30] During this time, Alphard does not appear to have taken any specific legal steps against Samson, whether to sue it or to wind it up. That Alphard for all this time saw no need for legal action to protect its interests suggests that it did not consider that there was a real risk of dissipation of assets on Samson's part. The only thing that changed was the intended sale to Baxi, but as I have explained, that sale was not itself dissipative.

19 There is also no evidence of dishonesty on Samson or Underwater's part, let alone dishonesty that had a "real and material bearing on the risk of dissipation": *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [93]. Alphard had not made any payment under the Settlement Agreement when the assets were sold to Baxi so there is no question of Samson or Underwater being paid twice for the same assets. Samson in fact has a

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28 JBOD XII at pp 71–72 (Captain Alok Kumar's 3rd Affidavit in SUM 1440 and SUM 1486 dated 9 June 2025 ("AK-3") at paras 129–130).

29 JBOD II at p 551 (AMS-1 at para 51); JBOD XII at p 72 (AK-3 at para 130).

30 JBOD I at pp 19–21 (AK-1 at paras 19–21).

reasonable defence that at the time the assets were sold to Baxi, it did not think that Alphard was going ahead with the purchase as contemplated under the Settlement Agreement. On that premise, Samson and Underwater would not be expected to inform Alphard that they did not wish to proceed with the Settlement Agreement. In that overall context, the fact that the transactions were set out in publicly available corporate filings with the Indian Ministry of Corporate Affairs[31] militates against any suggestion of their acting surreptitiously, let alone dishonestly. The point is not that Alphard should have been monitoring these filings but that their public nature indicates that Samson and Underwater were not proceeding in secret.

20 Alphard contends that Samson's board resolution dated 25 January 2025 is evidence of dissipation because it contemplated that Samson would pay Underwater, which would then utilise part of the advance payment to repay Samson's own promotors, who would then use those moneys to purchase the shares of the Kotak Entities in Samson.[32] I do not accept this contention. The Kotak Entities had in fact obtained in the Kotak Award orders for those promoters to purchase its shares in Samson.[33]

21 Samson and Underwater were in difficult financial circumstances. Alphard knew this when it entered into the Settlement Agreement. The evidence does not show that Samson and Underwater did anything more than sell assets to reduce their debts. This is not dissipation.

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31 JBOD X at pp 452–453 (RKK-1 at paras 19, 20, 23).

32 JBOD II at pp 455, 464 (AK-2 at para 54(c)–(d); Samson's board resolution dated 25 January 2025).

33 JBOD I at pp 86–87 (Arbitral award obtained by the Kotak Entities against Samson and its promoters dated 2 May 2024).

No basis for a prohibitory injunction against Baxi

22 As Alphard has failed to show a real risk of dissipation, the prohibitory injunction against Baxi must also be discharged. However, I would make some additional points concerning the injunction against Baxi.

23 In so far as the injunction is framed in terms of stopping Baxi from assisting in or facilitating dissipation of assets, it may be argued that all it does is bring to Baxi's attention its potential liability for contempt of court if it were to assist or facilitate Samson or Underwater in breaching the injunction against them.

24 It is certainly the case that a non-party would be in contempt for assisting with a breach of an injunction. In *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina*"), the Court of Appeal explained two ways in which a third party could commit a contempt of court (at [41]–[47], [63], [84]):

> (a) First, where a third party aids and abets a party to the order concerned in the latter's commission of an act in contempt of court. Knowledge of the order and an intention to aid and abet would have to be proven.
>
> (b) Second, where a third party conducts itself in a manner by which there is a real risk that the due administration of justice will be either impeded or prejudiced by defeating the purpose of the court in making the order. Again, intent on the part of the third party is required.

25 The Court of Appeal also highlighted that any conduct by a third party which thwarts or undermines the main purpose of a Mareva injunction (*ie*, to

prevent the unjustified dissipation of assets) would constitute a contempt of court: *Pertamina* at [47].

26 However, that is not all that the prohibitory injunction does. It goes beyond prohibiting assisting or facilitating dissipation of Samson and Underwater's assets to prohibiting dealings involving them. Thus, it stops Baxi from asserting its own contractual rights and claims against Samson and Underwater, even though counsel for Alphard accepted that no proprietary claim was being made against Baxi.[34] Indeed, against the other defendants, the point is even more stark: the Kotak Entities are stopped from enforcing the Kotak Award which pre-dated the Settlement Agreement. The Lenders are stopped from collecting the debts owed to them, which again pre-dated the Settlement Agreement. There is no basis for such an injunction.

27 I also heard arguments concerning jurisdiction over Baxi. Baxi is not a party to the SCMA Arbitration nor to the arbitration agreement contained in the Settlement Agreement. It is not incorporated in Singapore, does not have any presence or property in Singapore and does not carry out any business in Singapore.[35]

28 Initially during the *ex parte* application, Alphard had sought a freezing order against Baxi in support of intended court proceedings in India against Baxi.[36] This was refused. Alphard had also sought the prohibitory injunction in

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34 Transcript (4 July 2025) at p 58 lines 17–19.

35 Baxi's Written Submissions dated 26 June 2025 ("3WS") at para 6.

36 JBOD I at p 7 (Originating Application in HC/OA 391/2025 filed 16 April 2025); JBOD II at p 421 (Claimant's Skeletal Submissions for *ex parte* application dated 16 April 2025 at para 1).

support of the SCMA Arbitration.[37] This alternative raises the question of the basis for granting an injunction against a non-party to the SCMA Arbitration. Alphard's counsel accepted that the court must have *in personam* jurisdiction against a defendant in order to issue an interim injunction against it.[38] In the context of interim injunctions in support of foreign proceedings, this requirement was reiterated by the Court of Appeal in *Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation) and another* [2019] 2 SLR 595 at [62].

29 Alphard contends that the court has *in personam* jurisdiction over Baxi as it had been granted permission for service out of jurisdiction on the basis that Singapore is the appropriate court to hear the action: s 16(1)(*a*)(ii) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) read with O 8 r 1(1) of the Rules of Court 2021. Alphard contends that Singapore is the appropriate court to hear the action by reference to para 63(2) of the Practice Directions, which indicates as follows:

> (2) For the purposes of showing why the Court is the appropriate court to hear the action, the claimant should include in the supporting affidavit any relevant information showing that:
>
> (a) there is a good arguable case that there is sufficient nexus to Singapore;
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> (b) Singapore is the *forum conveniens*; and
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> (c) there is a serious question to be tried on the merits of the claim.

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37 JBOD II at p 421 (Claimant's Skeletal Submissions for *ex parte* application dated 16 April 2025 at para 1).

38 Transcript (4 July 2025) at p 35 lines 19–26; Alphard's Further Written Submissions dated 1 August 2025 ("CFWS") at para 35.

30 In support of its submission that there is a good arguable case that there is sufficient nexus to Singapore, Alphard relied on four factors under para 63(3) of the Practice Directions in its application for permission for service out of jurisdiction and highlighted two of those factors in this application.[39]

31 Paragraph 63(3)(*d*)(iii) of the Practice Directions, which concerns a "claim brought to … obtain relief in respect of the breach of a contract … governed by the law of Singapore" does not apply here. Baxi is not a party to the Settlement Agreement and it would be "highly anomalous that jurisdiction could be obtained against a defendant not within the jurisdiction by reference to a contract to which he was not a party": see *Alliance Bank JSC v Aquanta Corporation and others* [2013] 1 All ER (Comm) 819 at [60], citing *Global 5000 Ltd v Wadhawan* [2012] 2 All ER (Comm) 18 at [64].

32 The main factor relied on by Alphard in this application is set out in para 63(3)(*n*) of the Practice Directions where "the claim is made under … any other written law". Alphard contends that this factor applies in this case because it claims against Baxi under s 12A of the IAA.[40]

33 Traditionally, a claim for an interlocutory injunction such as a freezing order was not considered sufficient to found jurisdiction: see *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112. After the oral hearing, I found the Court of Appeal's decision in *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 ("*Li Shengwu*"), which considered the same phrase in its former location at O 11 r 1(*n*) of the Rules of Court (2014

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39 JBOD II at pp 441–443 (AK-2 at para 28); Alphard's Written Submissions dated 26 June 2025 ("CWS") at fns 120, 122; Transcript (4 July 2025) at p 42 line 14–p 43 line 5.

40 Alphard's Written Submissions dated 26 June 2025 ("CWS") at para 77.

Rev Ed). I therefore invited counsel to file further submissions on this case, which they did on 1 August 2025. Following *Li Shengwu*, the reference to "any other written law" would encompass power-conferring provisions such as the IAA and is not limited to statutes that grant a right or establish a cause of action: see *Li Shengwu* at [156]–[161]. However, as the Court of Appeal noted at [162], falling within one of the heads of claim in the then O 11 was not by itself enough to found leave for service out of the jurisdiction. The same point applies under the new regime, and perhaps with greater force, as the question of whether to grant permission to serve out of the jurisdiction depends on whether Singapore is the appropriate court to hear the matter, which in turn requires consideration of whether there is a sufficient nexus to Singapore, whether Singapore is the convenient forum and whether there is a serious question to be tried on the merits of the claim. This is accepted by both Alphard and Baxi.[41]

34 Where a claim is made under s 12A of the IAA for an interim injunction in support of an arbitration seated in Singapore against a party to that Singapore-seated arbitration who is outside the jurisdiction, Singapore is plainly the appropriate court as parties have chosen to seat the arbitration in Singapore and thus submitted to the jurisdiction of the Singapore courts as the supervisory court at the seat.

35 I turn then to non-parties to the arbitration. I accept that s 12A of the IAA also empowers the court to grant interim relief in support of a Singapore-seated arbitration against non-parties to the arbitration. I note in passing that the position in England is that s 44 of the Arbitration Act 1996 (c 23) (UK) (which has similar provisions to s 12A of the IAA) does not empower the English courts

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41 CFWS at paras 36–38; Transcript (4 July 2025) at p 37 lines 6–12; Baxi's Further Written Submissions dated 1 August 2025 at para 11.

to make an order against a non-party to the arbitration: see *Cruz City 1 Mauritius Holdings v Unitech Ltd and others* [2015] 1 All ER (Comm) 305 ("*Cruz City*") at [47] and *DTEK Trading S.A. v Morozov and another* [2017] EWHC 94 (Comm) ("*DTEK Trading*") at [56]. The recent English cases have drawn on certain phrases within the English provision to suggest that the section was not intended to apply to non-parties: *Cruz City* at [48] and *DTEK Trading* at [36]–[42]. However, in Singapore under s 12A, the court is given the same powers as a court hearing other actions or matters: see Explanatory Statement of the International Arbitration (Amendment) Bill (Bill No 20/2009). This means that the court acting pursuant to s 12A has the same power to make injunctive orders against non-parties as in an action before the court. I also note that the power to grant relief against non-parties gives teeth to s 12A. Otherwise, non-parties could potentially collude with a defendant "to frustrate the fruits of a claim": Robert Merkin & Louis Flannery, *Merkin and Flannery on the Arbitration Act 1996* (Informa Law from Routledge, 5th Ed, 2014) at p 175.

36 However, there remains the further question of whether Singapore is the appropriate court for such interim relief against any specific non-party. In my view, this requires something more than just the arbitration being seated in Singapore. Possible bases for such a finding that Singapore is the appropriate court would include:

(a) where the non-party is a party to the arbitration agreement even though not to the arbitration itself;

(b) where the non-party holds or controls assets within the jurisdiction for which there is a good arguable case that those assets belong beneficially to a party to the arbitration; or

(c) where the non-party is a corporate entity within the jurisdiction that is owned by a party to the arbitration such that dissipation of that entity's assets would in effect be dissipation of value otherwise available for the satisfaction of any eventual award against the party to the arbitration.

37 In this case, the injunction sought against Baxi involves none of the three situations I have described in the preceding paragraph. Baxi is not within the jurisdiction nor are its assets or the obligations owed to it by Samson and Underwater. Thus, it is hard to see any substantial basis for holding that Singapore is the appropriate court *vis-à-vis* Baxi and I decline to do so.

38 Moreover and in any event, the prohibitory injunction as framed is without proper basis (see [26] above). Consequently, there is no serious question to be tried on the merits of any such injunction. Accordingly, I set aside the prohibitory injunction against Baxi and the leave granted for service out of the jurisdiction on Baxi, for reasons additional to and independent from my setting aside of the freezing order against Samson and Underwater.

Observations on urgency

39 I turn now to urgency. The issue of urgency arises in two distinct ways. First, under para 71(2) of the Practice Directions, *ex parte* applications may only be made without notice in cases of "extreme urgency", as was explained by the Court of Appeal in *Bouvier* at [115]. Secondly, it is a condition to an application being made to the General Division of the High Court under s 12A(4) of the IAA (without the permission of the arbitral tribunal or the agreement in writing of the other parties), that the circumstance be "one of urgency".

40 Alphard contends that OA 391 was "a case of extreme urgency" given

that (a) Samson and Underwater were continuing to take steps to dissipate their assets and (b) they were undeterred by Alphard's legal notices and the interim relief sought and obtained in India.[42]

41 Whether the Practice Directions have been complied with is a matter for the discretion of the court hearing the *ex parte* application without notice. Unless additional evidence emerges by the *inter partes* stage on the question of urgency, a different court hearing the setting aside *inter partes* would not ordinarily revisit that question. In *Bouvier*, the failure to comply with the Practice Directions was considered together with three other factors as establishing an abuse of process, rather than as an independently sufficient ground to set aside the Mareva injunctions: see [108], [130] and [134]. However, for s 12A(4) of the IAA, urgency is a jurisdictional fact in the sense that it is a condition for the exercise of the court's power to grant interim relief. It must be satisfied.

42 If there is no urgency, then under s 12A(5) of the IAA, the court may only grant the injunction (or other interim measures) where there has been notice to the tribunal and the other party, and the application is then made to court with either the permission of the tribunal or the other party.

43 Given this legislative structure which clearly limits the court in the absence of urgency, in my view, the court hearing the setting aside must examine the question of urgency afresh in the light of the totality of the evidence by then available to the court. That there was in fact no urgency would also form an independent and sufficient ground to set aside the freezing order granted *ex parte*.

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[42] CWS at paras 44, 97, 99; JBOD I at pp 53–54, 61.

44 One scenario of urgency is where notice to the arbitrator and the other party would defeat the purpose of seeking a freezing order, either because of the delay inherent in giving such notice or because notice may trigger or accelerate dissipation. In this scenario, the injunction may need to be sought not only *ex parte*, but also without notice.

45 I certainly accept that sometimes a freezing order needs to be sought without giving notice to the other party, including where the assets of the other party are easily moved. However, in this case, the dispute was already very much in the open.[43] Interim relief had been sought and obtained in India in respect of many assets covered by the freezing order. In these circumstances, and on the evidence put forward, there was no basis for Alphard to believe that notice of its application would trigger or accelerate the alleged dissipation. Accordingly, I find that the application for the freezing order was not urgent and there was no necessity to dispense with notice. Consequently, the condition of urgency in s 12A(4) of the IAA was not satisfied. The proper course would have been to seek the permission of the arbitral tribunal (with notice to the other parties) as the arbitral tribunal had already been constituted.

Conclusion

46 Returning to the question posed in the opening paragraph of this judgment, I hold that, in the circumstances of this case where the second sale appeared to be at arm's length for a higher price than the original sale, and where the proceeds of the second sale were used to reduce pre-existing liabilities of the seller that the first buyer had been aware of, there is no real risk of dissipation. I also could not find any proper basis to prohibit the second buyer

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[43] See, for *eg*, JBOD I at pp 19–21 (AK-1 at paras 19–21); JBOD XII at p 20 (AK-3 at para 21).

(or for that matter, others who are owed money by the seller) from dealing with the seller in their own interests. I therefore set aside the injunctions granted. I will hear parties on consequential orders and on costs.

Philip Jeyaretnam
Judge of the High Court

Vergis S Abraham SC, Veluri Hari and Choo Qian Ke (Providence Law Asia LLC) for the claimant;
Mahesh Rai s/o Vedprakash Rai, Loh Tian Kai and Nicole Tan Muzhen (Chen Muzhen) (Drew & Napier LLC) for the first and second defendants;
Koh Swee Yen SC, Pang Yi Ching Alessa, Zerlina Yee Zi Ling and Victoria Liu Xin Er (WongPartnership LLP) for the third defendant.