IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 20

Court of Appeal / Civil Appeal No 46 of 2025

Between

Pacmar Shipping Pte Ltd

… *Appellant*

And

South of England Protection and Indemnity Association (Bermuda) Limited (in liquidation)

… *Respondent*

In the matter of Originating Application No 738 of 2025

Between

South of England Protection and Indemnity Association (Bermuda) Limited (in liquidation)

… *Applicant*

And

Pacmar Shipping Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award — Whether action to enforce an award was time barred under s 6(1)(*c*) of the Limitation Act 1959 (2020 Rev Ed)]
[Arbitration — Enforcement — Foreign award — Whether s 6(3) of the Limitation Act 1959 (2020 Rev Ed) applied]
[Arbitration — Enforcement — Foreign award — Whether award debtor could argue that underlying claims in the arbitration were time-barred]
[Equity — Defences — Laches]
[Limitation of Actions — When time begins to run — Action to enforce an award]

TABLE OF CONTENTS

Pacmar Shipping Pte Ltd
v
South of England Protection and Indemnity Association (Bermuda) Ltd (in liquidation)

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Court of Appeal — Civil Appeal No 46 of 2025
Steven Chong JCA, Ang Cheng Hock JCA and Hri Kumar Nair JCA
30 March, 14 April 2026

22 April 2026

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

Introduction

1 Limitation periods are statutory time limits that require legal action to be commenced within a specified timeframe after the accrual of the cause of action. Their main functions are threefold. First, limitation periods protect defendants from having claims hanging over them for an indefinite period, and allow them, after a given time, to treat as being finally closed an incident which may have given rise to a claim against them. Second, limitation periods prevent the prosecution of stale claims relating to long-past incidents where records may no longer be in existence and witnesses may no longer have an accurate recollection, thereby undermining the fair and effective adjudication of the dispute. Third, limitation periods encourage claimants not to sleep on their rights but to institute proceedings as soon as it is reasonably possible for them

to do so; if they do not promptly do so, it is thought right that they should no longer be able to enforce those rights after a certain time has elapsed (*Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 ("*Ang Sin Hock*") at [77]; Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 8th Ed, 2018) ("*McGee*") at para 1.047).

2 In general, limitation periods only bar the remedy, and do not extinguish the underlying right (*Ng Chee Tian v Ng Chee Pong* [2025] 3 SLR 235 at [66]). This is because the statute commonly stipulates that the action "shall not be brought" after the expiry of the limitation period (*BBA v BAZ* [2020] 2 SLR 453 ("*BBA v BAZ*") at [69]). Nevertheless, where applicable, limitation periods act as a powerful, often conclusive, bar to seeking legal relief. Even a delay of one day would not be a good reason to allow a claim offending the requisite limitation period to proceed (*Ang Sin Hock* at [78]). In fact, where the statute stipulates that a limitation period commences on "the date on which the cause of action accrued", then in the absence of other statutory provisions, time starts running even if the claimant did not know that it had a cause of action (see, *eg*, s 24A(3)(*a*) of the Limitation Act 1959 (2020 Rev Ed) ("LA"), as discussed in *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat* [2020] 2 SLR 272 at [57]). The potential harshness of limitation periods might perhaps explain why even though the time limits are clearly defined by statute, disputes regularly come before the courts over (a) the relevant time limit (if any) that is applicable, (b) when time should start to run, and (c) when the time limit should stop running.

3 The principal issue in this appeal concerned the limitation period for the enforcement of an arbitral award. The award against the appellant was issued on 17 July 2019. Under s 6(1)(*c*) of the LA, any action to enforce an award shall

not be *brought* after the expiration of six years from the date on which the cause of action accrued. On the eve of the expiry of the six-year period calculated with reference to the date of the award, *ie*, 16 July 2025, the court granted an order to recognise and enforce the award.

4 All three typical areas of dispute identified in [2] were engaged in this appeal. The appellant claimed that the time limit should continue to run until the order recognising the award has been served or the time limit to set aside the order has expired, and if so, the limitation period under s 6(1)(*c*) of the LA would have expired. In the alternative, the appellant also claimed that the doctrine of laches can be invoked to bar the enforcement of the award even if the action was brought within the six-year period. Although both parties appear to accept that time under s 6(1)(*c*) of the LA should start to run from the date of the award, we will take the opportunity to clarify that as a matter of principle, time should start to run from the date when the award was not honoured, though we should hasten to add that in most cases, that would coincide with the date when the award was issued.

5 We heard and dismissed this appeal on 14 April 2026. These are the detailed grounds of our decision.

Facts

Background

6 The appellant, Pacmar Shipping Pte Ltd, was a Singapore company whose principal business was acting as a shipping agent for vessels calling in Singapore. The respondent, South of England Protection and Indemnity Association (Bermuda) Limited, was a Bermuda company that is currently in

liquidation. Before it entered liquidation, the respondent operated as a protection and indemnity club which provided insurance coverage for third party liabilities that arose out of shipping operations carried out on behalf of its insured members.

7 The appellant and the respondent entered into various contracts of insurance for the policy years 2008 and 2009. The respondent claimed that the appellant, as a party to the contracts of insurance, was liable for all calls and supplementary calls made in accordance with the respondent's Rules of Association ("Rules") for the stated policy years. The Rules provided for unresolved disputes relating to the contracts of insurance to be referred to arbitration in London.

The Arbitration

8 The respondent commenced an arbitration ("Arbitration") against the appellant in 2017, for its failure to pay certain calls and supplementary calls. The notice of arbitration ("NOA") was sent by the respondent to the appellant on 31 May 2017 by way of e-mail to its corporate email address and courier to its registered office. The respondent appointed an arbitrator ("Arbitrator") as its arbitrator for the Arbitration. The appellant failed to appoint an arbitrator when called upon to do so; thus, the Arbitrator was appointed as the sole arbitrator. The appellant did not file its defence submissions or participate in the proceedings.

9 The Arbitrator issued the award ("Award") on 17 July 2019, in which he found in favour of the respondent. The Arbitrator ordered that:

(a) the appellant was liable to the respondent for the sum of US$82,332.40 in respect of the unpaid calls;

(b) the appellant was liable to the respondent for interest due till 10 July 2017 in the amount of US$44,854.17;

(c) the appellant was liable to the respondent for interest on the total sum of US$127,186.57 due as at 10 July 2017 at the rate of 5% above the 6-month-USD-LIBOR rate compounded monthly;

(d) the appellant shall pay to the respondent its costs of the arbitration;

(e) the appellant shall pay the tribunal's ("Tribunal") costs of the award; and

(f) the appellant shall pay interest on the costs of the respondent.

Procedural history

10 The appellant did not satisfy the Award. On 15 July 2025, the respondent filed HC/OA 738/2025 ("OA 738") for permission to recognise and enforce the Award ("Recognition Application") pursuant to ss 19 and 29 of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA").

11 On 16 July 2025, the court issued order HC/ORC 4089/2025 ("Recognition Order"), in which the court granted permission to recognise and enforce the Award, and entered judgment against the appellant in terms of the Award. The terms of the order also provided that the judgment on the Award against the appellant was only enforceable 14 days after the service of the order on the appellant (if service was done in Singapore) and this was to allow time for the appellant to apply to set aside the order, if it so wished. Should the

appellant take out an application for setting aside of the order, then the judgment on the Award could not be enforced until after that application was finally disposed of.

12 On 8 August 2025, the appellant filed HC/SUM 2234/2025 ("Setting Aside Application"), to set aside the Recognition Order, or for enforcement of the Award to be refused.

13 In support of the Setting Aside Application, the appellant argued that:

(a) First, enforcement of the Award was time-barred under s 6(1)(*c*) of the LA.

(b) Second, the respondent's underlying claims in the Arbitration were themselves time-barred.

(c) Third, the appellant was not given proper notice of the Arbitration or was otherwise unable to present its case.

(d) Fourth, the doctrine of laches applied due to the respondent's six-year delay in seeking enforcement of the Award, which had caused serious prejudice to the appellant.

Decision below

14 The judge below ("Judge") rejected the appellant's submissions. In the Judge's grounds of decision in *South of England Protection and Indemnity Association (Bermuda) Ltd (in liquidation) v Pacmar Shipping Pte Ltd* [2026] SGHC 8 ("GD"), the Judge held that:

(a) The Recognition Application was brought (*ie*, commenced) within the six-year limitation period under s 6(1)(*c*) of the LA (GD at [22]).

(b) The issue of whether the appellant's claims in the Arbitration were time-barred had already been considered and determined by the Arbitrator, and the role of the enforcement court was not to sit as an appellate court to re-examine the merits of the Arbitrator's decision (GD at [33]–[34]).

(c) The appellant had failed to discharge its burden of proving that it did not have proper notice of the Arbitration and/or was unable to present its case (GD at [37]).

(d) The doctrine of laches was not applicable in this case (GD at [42]).

15 The appellant appealed against the Judge's decision, raising substantially the same arguments as it made in support of the Setting Aside Application.

Issues to be determined on appeal

16 The following issues arose from the appeal for our decision:

(a) Whether the limitation period under s 6(1)(*c*) of the LA included the time required for service of the Recognition Order, as well as the 14-day period allowed under O 48 r 6(5) of the Rules of Court 2021 ("ROC 2021") before the Award becomes enforceable during which the debtor may apply to set aside the order, and if an application was made to set

aside the order, until that application was disposed of; and whether time under s 6(1)(*c*) of the LA was extended by s 6(3) of the LA by way of execution of the Recognition Order;

(b) Whether the doctrine of laches applied in this case;

(c) Whether the respondent's underlying claims in the Arbitration were themselves time-barred; and

(d) Whether the appellant was given proper notice of the Arbitration.

17 We start by examining the straightforward issues, namely the issues at [16(b)]–[16(d)].

Laches

18 This issue gives rise to two conceptually distinct questions, even if they may overlap in practice: first, whether the doctrine of laches is applicable to common law (*ie*, non-equitable) claims, and second, whether the doctrine of laches is applicable where there is an applicable statutory limitation period.

19 Historically, there has been some difference of opinion in relation to the first question (see *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben Finance*") at [113]–[121]). The orthodox position was that the doctrine of laches only applied to equitable claims, and not non-equitable claims (*Syed Ali Redha Alsagoff v Syed Salim Alhadad bin Syed Ahmad Alhadad* [1996] 2 SLR(R) 470 at [47]).

20 However, this court in *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [32]–[34]

recognised that the doctrine of laches was applicable to a claim for unjust enrichment where no equitable relief was sought, although it found on the facts that it was not established. In *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 ("*eSys*") at [40] and [42], this court left open the question of whether the doctrine of laches applied to common law claims, preferring to decide the matter on the basis that the claimant was not required by the doctrine of laches to bring its claim within a shorter period of time than that afforded under the Limitation Act. The Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on the Review of the Limitation Act (Cap 163)* (February 2007) at para 36, which the appellant had relied on, acknowledged that laches could apply to a common law claim, but the committee explained (at para 29), *in the context of there being no applicable statutory limitation period*, that it would be contrary to logic and policy for there to be no applicable time constraint whatsoever (see also *eSys* at [41] and *Esben Finance* at [121]).

21 This doctrine as a matter of principle therefore cannot apply to claims which are subject to statutory limitation periods for the simple reason that if it did, it would mean that laches can be invoked to reduce the statutory limitation period. When counsel for the appellant, Ms Nur Rafizah binte Mohamed Abdul Gaffoor ("Ms Gaffoor"), was invited to refer this court to caselaw to support this submission, she was unable to do so. In fact, the authorities are contrary to this proposition. Where the law allows a claimant six years to commence an action to enforce an award, that claimant has until the last day to do so and it is untenable to rely on laches to suggest that the claim should be barred even prior to the expiry of the statutory limitation period (*Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [48], cited with approval in *eSys* at [37]–[38]).

22 In any event, the fact that the appellant might have encountered a cyberattack on its server subsequent to the service of the NOA (which was raised by the appellant to demonstrate prejudice for the purposes of the doctrine of laches) does not change the fact that it was properly served prior to the cyberattack and the appellant elected to ignore it. In other words, the appellant's non-participation in the Arbitration was not due to the cyberattack. Furthermore, the Award was also sent by the Arbitrator on 17 July 2019 to the email address of the appellant, which the appellant accepts was its correct corporate email address.

23 Thus, the Judge was, in our view, correct to reject the appellant's attempt to invoke the doctrine of laches (GD at [43]).

Time bar of the underlying claims

24 This was an issue which was examined by the Arbitrator. It is simply not open to the court to revisit the merits of the Arbitrator's decision. The appellant has not sought to frame this ground of appeal under one of the established grounds for resisting enforcement under s 31(2) or s 31(4) of the IAA. Instead, it appeared to be a bare challenge to the merits of the Award. It is trite that the court does not sit as an appellate court to re-examine the tribunal's award on its merits (*COT v COU* [2023] SGCA 31 at [94]). Issues of time bar arising from statutory limitation periods go towards admissibility, not jurisdiction, and they are matters for the tribunal and not the court to decide (*BBA v BAZ* at [73]).

25 In our view, the Arbitrator was aware of and did consider the issue of the time bar, which was referenced at [81] of the Award:

> It was accepted that certain of the sums claimed were time barred given the date of the notice of arbitration and SEPIA has resubmitted its claim for an amount of USD82,332.40 exclusive of interest

26 Even if the Arbitrator's determination of the time bar issue was incorrect, that simply amounted to an error of law or fact that the courts would not review. The Judge was therefore correct to reject the appellant's argument to set aside the Recognition Order on the basis of this purported error (GD at [32]–[34]).

Notice of the arbitration

27 Section 31(2)(*c*) of the IAA provides that:

> (2) A court … may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —
>
> …
>
> (*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;

28 The key question was whether the "proper notice" was given. In *DEM v DEL* [2025] 1 SLR 29 ("*DEM v DEL*"), this court summarised the law on proper notice in relation to s 48 of the Arbitration Act 2001 (2020 Rev Ed), which is *in pari materia* with s 31(2)(*c*) of the IAA. In our view, the same principles (*DEM v DEL* at [27]–[31]) are applicable for the purposes of s 31(2)(*c*) of the IAA:

> (a) "Notice" and "service" should be distinguished. Service is not mandatory, provided the evidence is clear that the other party had "proper notice" of the arbitration. The relevant inquiry is whether a party

was adequately notified of the arbitration such that it was given a full opportunity to participate in the same.

(b) "Proper notice" may be actual or deemed.

(c) Actual notice requires proof that the arbitral respondent in fact knew about the arbitration and was in a position to fully present its case. Although the legal burden of proof remains with the arbitral respondent to prove it was not given proper notice, in practice, evidence that the arbitral respondent had actual notice would typically lie with the arbitral claimant.

(d) Deemed notice may be relied on where there is insufficient proof of actual notice. Deemed notice may be rebutted by appropriate evidence of non-receipt.

(e) Even if proper notice is not given, the challenging party will still have to establish that the absence of notice has impacted its ability to present its case before the tribunal. A boycotting party therefore may not rely on the absence of proper notice to challenge the award.

29 In the present case, the respondent has furnished evidence of the following:

(a) On 5 June 2017, the NOA was delivered to the appellant by courier at the appellant's registered address, based on a confirmation of delivery by FedEx. The appellant does not appear to dispute that the address indicated in the confirmation of delivery was its registered address at the material time.

(b) On 2 July 2017, the Arbitrator emailed the parties (including the appellant at "info@pacmar.com.sg") to confirm his appointment as the sole arbitrator.

(c) On 24 October 2017, after the respondent informed the Arbitrator that it had served its claim submissions on the appellant, while the appellant had not submitted its defence submissions, the Arbitrator emailed the parties (including the appellant at "info@pacmar.com.sg") ordering the appellant to file its defence submissions by 2 November 2017.

(d) On 6 November 2017, the respondent emailed the Arbitrator to inform him that the appellant had not filed its defence submissions and requested a final order for service of any defence submissions. On the same day, the respondent received an email acknowledgment from "info@pacmar.com.sg" that the respondent's email dated 6 November 2017 was read on the same day.

(e) On 9 November 2017, the Arbitrator emailed the parties (including the appellant at "info@pacmar.com.sg") ordering the appellant to file its defence submissions by 16 November 2017.

(f) On 12 May 2018, after the appellant had failed to file its defence submissions, the Arbitrator emailed the parties (including the appellant at "info@pacmar.com.sg") that the Tribunal would proceed to issue its award in the matter.

(g) On 17 July 2019, the Arbitrator emailed the parties (including the appellant at "info@pacmar.com.sg") and attached a copy of the Award.

30 The appellant accepted that its correct corporate email address was "info@pacmar.com.sg".

31 In our view, the Judge was correct to find that the appellant had failed to prove that it did not receive proper notice of the arbitration. At its highest, the appellant's case was that it has no record of receiving any NOA, appointment of the tribunal, or a copy of the Award. However, this was perhaps readily explained by the fact that, according to the appellant's own account, it had lost all its corporate data in 2019 as a result of a cyberattack. The appellant's lack of records was simply insufficient to rebut the evidence in the form of the delivery confirmation and emails produced by the respondent.

When time stops to run under s 6(1)(*c*) of the LA

32 As Ms Gaffoor stated at the outset of the hearing, this was the primary issue raised by the appellant in this appeal. It seems to us that the obvious answer was clearly spelt out in the language of s 6(1)(*c*) of the LA, which stipulates that an action "shall not *be brought*" after the expiration of six years from the date on which the cause of action to enforce an arbitral award has accrued. Like all other claims, the limitation period stops running when the action is brought, *ie*, commenced, and not when it is served or the time limit to apply to set aside the order (and the time for subsequent steps thereafter) has elapsed. When this interpretation was brought to Ms Gaffoor's attention, she accepted that the word "brought" would ordinarily mean "commenced".

33 The language of s 6(1)(*c*) of the LA simply does not support the appellant's interpretation that time should continue to run until after the order recognising the award has been served or the time limit to apply to set aside the order has expired. The appellant's interpretation would introduce an untenable

measure of uncertainty in determining when time stopped running and would encourage defendants to try to run down the clock by evading service.

34 The appellant relied on *Sinwa SS (HK) Co Ltd v Nordic International Ltd* [2016] 4 SLR 320 ("*Sinwa*") in aid of its submission. In that case, the plaintiff shareholder sought leave to commence a derivative action (*via* arbitration) in the name of the company. The defendant argued that the *derivative action* was time-barred. The issue was whether time ceased to run when the application for leave to commence the derivative action was filed, or only when the derivative action itself was commenced *after* leave was granted (at [15]). The court held that the latter was the case. On its face, there was nothing in s 6 of the LA to suggest that the leave application constituted an "action" by the company to enforce its accrued cause of action (at [21]).

35 However, the appellant's reliance on *Sinwa* was misplaced. In that case, there were *two distinct proceedings* – the leave application in the plaintiff's name, and the intended arbitration in the company's name. The intended arbitration was the only "action" in which the relevant causes of action vested in the company would be prosecuted (*Sinwa* at [23]), and that action had not yet been brought. In the present case, the relevant "action" was the action to enforce the Award, *ie*, OA 738. That action was brought within the limitation period. There was no subsequent action to be brought. In this case, while the appellant could have applied to set aside the Order pursuant to O 48 r 6(5) of the ROC 2021, that would be an application in the same set of enforcement proceedings. Section 31(1) of the IAA provides that:

> *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. [emphasis added]

Thus, the application to resist enforcement by setting aside the leave order is one that is made within the same set of enforcement proceedings. As such, it is not a separate action that will be subject to the LA.

36 In any event, even if it can be argued that there may subsequently be some separate set of proceedings, that would be immaterial. The relevant "action" was the action to enforce the Award, and not any subsequent action, and that relevant action was *brought* within the applicable limitation period.

37 In support of its argument, the appellant also relied on *CDM v CDP* [2021] 4 SLR 1272 at [42] and [58], where the court held that a leave order became final 14 days after it was served. Similarly, the appellant cited *Man Diesel Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537 ("*Man Diesel*") at [34], where the court stated:

> … the *ex parte* leave order is not immediately enforceable; the foreign award cannot be enforced until the applicable period of time has expired. If the award debtor does not contest the matter, the *ex parte* leave order takes effect after expiry of the applicable time limit. However, if the award debtor applies to set aside the *ex parte* leave order within the time stipulated in the order (or extended timeline, if any), the foreign award may not be enforced until such application is finally resolved.

38 However, the above authorities simply stand for the proposition that a leave order does not become final, and may not be enforced, until the 14-day period has expired or an application to set aside the leave order has been finally determined. They did not address the issue about when an "action to enforce an award" was considered "brought" for the purposes of s 6(1)(*c*) of the LA. The language in the LA refers to when "*actions to enforce* an award" may be

brought; it does not say that an award is only "enforceable" or "may only be enforced" within the limitation period. As explained above at [33], this is also consistent with the relevant policy considerations.

39 Since the action to enforce the award was brought on 15 July 2025, which is prior to the expiry of the six-year limitation period under s 6(1)(*c*) of the LA, the action to enforce the award was plainly not time-barred.

Section 6(3) of the LA concerns a different limitation regime governing actions upon judgments

40 For completeness, we will also address the appellant's submission that the six-year limitation period under s 6(1)(*c*) of the LA cannot be "enlarged" by s 6(3) of the LA because it would otherwise render s 6(1)(*c*) of the LA "functionally redundant", since every award could always be converted into a judgment at the eleventh hour. In our judgment, this submission was premised on a misunderstanding of s 6(3) of the LA, which deals with a separate limitation period to commence an action *upon a judgment* and is not relevant to construing the meaning and effect of s 6(1)(*c*) of the LA.

41 Before addressing the appellant's submission on s 6(3) of the LA, it is important to recognise that there is a conceptual distinction between the recognition of an *award* as a judgment of the national court, and the enforcement of that *judgment* within the national jurisdiction. As explained in Gary B Born, *International Commercial Arbitration* (Kluwer Law International, 3rd Ed, 2021) at §22.01[B][3]:

> An international arbitral award may be "recognized" (alternatively termed "confirmed" or granted "exequatur") in the courts of the arbitral seat. The "recognition" or "confirmation" of an award produces a national court judgment, incorporating or restating the terms of the award (e.g., an order or judgment

> that the award-debtor pay a specified sum to the award-creditor), that is then capable of enforcement in national (and foreign) courts in the same manner as other judgments.
>
> In general, unless an award is recognized or confirmed, it cannot provide the basis for enforcement (although it may have preclusive effects). It is elementary, but fundamental, that the judgment confirming or recognizing the award is a separate legal instrument from the award itself, and can generally be separately recognized and enforced. …

42 The foregoing analysis coheres with the statutory scheme in Singapore, under which an award creditor applies for permission to enforce an award under s 29 read with s 19 of the IAA, subject to the limitation period under s 6(1)(*c*) of the LA. If the application is successful, then "judgment may be entered in terms of the award". The court judgment may then be separately enforced by the award creditor (now judgment creditor) by way of any applicable mode of execution.

43 Furthermore, we agreed with the Judge at [23] of the GD that the law distinguishes between the substantive right to sue for and obtain a judgment and the procedural machinery for enforcing a judgment. The respondent now has a judgment of the Singapore court in its hands, and the limitation period to bring an action upon this judgment is provided under s 6(3) of the LA, which states as follows:

> An action upon any judgment shall not be brought after the expiration of 12 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

44 Section 6(3) of the LA, unlike s 6(1)(*c*) of the LA, provides for a distinct limitation period for "any action upon any judgment". As observed in *Teh Siew Hua v Tan Kim Chiong* [2010] 4 SLR 123 (*"Teh Siew Hua*") at [33], actions on

judgments are now very rare and are only maintainable in exceptional circumstances. In this regard, it is important to bear in mind that there are two ways of enforcing judgments: by action and by execution (*Teh Siew Hua* at [32]). Only the former is caught by s 6(3) of the LA. Section 6(3) of the LA is strictly inapplicable to modes of enforcement like garnishee proceedings, charging orders and insolvency proceedings, for which the LA does not prescribe any time bar (*Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR(R) 71 at [67]).

45 Having explained the conceptual distinction between the recognition of an award as a judgment and the enforcement of that judgment, and the purpose of s 6(3) of the LA, it is clear that the appellant's submission that s 6(3) of the LA has the effect of enlarging the limitation period under s 6(1)(*c*) of the LA was entirely misconceived.

46 Here, the respondent has yet to decide on the mode of execution to enforce the judgment following the Recognition Order. That, as correctly observed by the Judge at [25] of the GD, was irrelevant because "the statutory limitation period in s 6(1)(*c*) of the Limitation Act no longer applied once the [respondent] had commenced the Recognition Application and the Recognition Order was granted".

47 In support of its argument, the appellant relied on the decision of the Malaysian Court of Appeal in *Deb Brata Das Gupta v Christopher Martin Boyd* [2014] 4 MLJ 590 ("*Deb Brata (CA)*"). In that case, the claimant obtained an arbitral award on 4 January 2000, and registered the same as a judgment on 19 January 2004. On the basis of the registered award, the claimant issued a bankruptcy notice on 4 April 2012 and a creditor's petition on 3 May 2012

against the defendant. The court held that, to determine whether the claimant's bankruptcy proceedings were time-barred, the crucial date for calculation of the limitation period was 4 January 2000, the date of the award. The relevant limitation period was six years, as provided for in s 6(1)(*c*) of the Limitation Act 1953 (M'sia) ("LA 1953 (M'sia)") (which is *in pari materia* with our s 6(1)(*c*)). Since the bankruptcy proceedings were commenced on 4 April 2012, they were time-barred (at [13]). The court reasoned as follows (at [12]):

> … Any arbitral award emanates from the parties' mutual agreement to refer disputes to arbitration and the obligation to satisfy the arbitral award must also be contractual in nature and that rights can only crystalise when the arbitral award is handed down. The registration of the arbitral award cannot give more than what the parties had agreed in their contractual relationship. That registration cannot recrystallise and give another few years of life to the parties' contractual rights. Hence the registration or the transformation of the arbitral award into a judgment is nothing but a mere procedure to enforce an award.

48 *Deb Brata (CA)* was subsequently overturned on appeal by the Federal Court of Malaysia in *Christopher Martin Boyd v Deb Brata Das Gupta* [2014] 9 CLJ 887 ("*Deb Brata (FC)*"). The Federal Court held at [20]–[23] that:

> [20] … there is a clear distinction between "registration of an arbitration award" and "enforcement of a judgment" that arises from the arbitration award that is duly registered as a judgment of the court, which in our present case is the subject matter of the bankruptcy proceedings. The provisions of s. 27 of the Arbitration Act 1952 and s. 38(1) of the Arbitration Act 2005 are simply procedural provisions enabling an award made in consensual arbitration proceedings to be registered. In principle, unlike an order or judgment of the Court, an arbitration award does not immediately entitle a successful party to levy execution against the assets of the unsuccessful party. The arbitration award must first be converted into a judgment or order of the court before the successful party can levy execution. Only upon converting the arbitration award will it be considered as a judgment or order of the court.
>
> …

> [23] … the enforcement of arbitration awards must be viewed in two parts. First is the registration of the arbitration award itself as a judgment of the court, and secondly the enforcement or execution of such a judgment.

49 On the facts of that case and as was the case here, the application to register the award (on 19 January 2004) was well within the six-year limitation period under s 6(1) of the LA 1953 (M'sia) (*Deb Brata (FC)* at [24]). Enforcement proceedings by way of execution are not governed by s 6(1)(*c*) of the LA.

50 The appellant sought to distinguish *Deb Brata (FC)* on the basis that the award in that case was registered as a judgment well within time, whereas the award in this case has not been enforced in time because "the governing procedural regime itself postpones enforceability beyond the six-year period". However, this attempt to distinguish the cases was untenable in light of our finding that the respondent brought the action to enforce the award within the limitation period of six years. However, as conceded by the respondent, if no action was brought to recognise and enforce the Award as a judgment within the six-year limitation period under s 6(1)(*c*) of the LA, then the 12-year period under s 6(3) would not be engaged.

51 The respondent referred us to the decision of the Hong Kong Court of Appeal in *Shenchao Technology Investment v Century Jingyuan Technology* [2025] HKCA 551 ("*Shenchao*") to illustrate the point that s 6(3) of the LA does not have the effect of allowing "18 years of enforceability". There, the court briefly considered the applicant's argument that an award creditor had six years to enforce an award by "recognising" it as a judgment, and thereafter a further 12 years to "execute" the judgment – in other words, a total of 18 years (at [35]). The court held at [37] that:

> … it is wrong to *aggregate* the limitation for an action to enforce an award (six years, under section 4(1)(*c*)) with the limitation for subsequently executing it as a judgment (12 years, under section 4(4)). Where a party fails to enforce an award within the six-year limitation period, he does not thereby lose the 12-year period for execution. He simply does not have a judgment to execute and the 12-year limitation period does not begin to run. [emphasis added]

52 Sections 4(1)(*c*) and 4(4) of the Hong Kong Limitation Ordinance (Cap 347) are *in pari materia* with ss 6(1)(*c*) and 6(3) of the LA.

53 In sum, the relevant question in this case was whether the action to enforce the Award was *brought* within the six-year limitation period under s 6(1)(*c*) of the LA. If it was not, then any limitation period for subsequent actions upon a judgment in terms of the Award could not assist the award creditor. If, however, the award creditor brought an action to enforce the Award within the limitation period under s 6(1)(*c*) of the LA, then whether there was any applicable limitation period to the enforcement of the judgment thereby obtained – which depended on whether such enforcement was by action or by execution – was a separate question altogether.

When time starts to run

54 Although both parties appear to have implicitly proceeded on the basis that time started to run from 17 July 2019, *ie*, the date when the Award was issued, the appellant in its written submissions for the appeal alluded to the view that the six-year limitation period "ran from the date of breach, namely non-compliance with the award". While it is not clear to us whether the appellant intended to draw this distinction between the date of the Award and the date of the breach, as we will elaborate below, this submission of the appellant correctly reflects the law.

55 The authorities and academic writings appear to speak with one voice that time starts to run from the date when the award debtor fails to honour the award and not from the date of the award. In *Agromet Motoimport v Maulden Engineering Co (Beds) Ltd* [1985] 1 WLR 762 ("*Agromet*"), Otton J held (at 772) that "the action to enforce an award is an independent cause of action … distinct from … the original contract or the breach occurring from it", and time began to run from the breach of the implied term to honour the award. However, we note that there was no specific observation in *Agromet* that time does not run from the date of the award. Instead, Otton J (at 771) merely referred to a passage in Mustill & Boyd, *Commercial Arbitration* (Butterworths & Co, 1982) ("*Mustill & Boyd*") at pp 368–369 that "time begins to run from the date on which the implied promise to perform the award is broken, *not from the date of the arbitration agreement nor from the date of the award*" [emphasis added].

56 In *Xiamen Xinjingdi Group Ltd v Eton Properties Ltd* [2016] 4 HKC 357 ("*Xiamen*"), the Hong Kong Court of Appeal at [113] read *Agromet* as holding that time started to run when the losing party fails to honour the award, and *not from the date of the award*.

57 Although *Xiamen* and perhaps *Agromet* purported to have drawn a distinction between the date when the award debtor fails to honour the award and the date of the award, this distinction was actually not in issue before the court in those cases. In *Agromet*, the issue was whether, for the purposes of the action to enforce the award, time started running from the breach of the underlying contract, or from the breach of the implied term to honour the award. The issue of the limitation period was not even a live one before the court in *Xiamen*. The relevant award was issued in 2006 and the common law action to enforce the award was brought in 2008. The court's discussion of when time

started to run for this new cause of action arose in the course of its discussion of the ingredients of this cause of action that had to be pleaded (at [113]–[114]), and in particular whether the implied promise to honour the award had to be pleaded (it was held that it did not) (at [149]).

58 To properly understand which of the two views is correct and whether in substance there is any difference between the two, it is first necessary to examine the legal foundation upon which an award can be enforced. Endorsing the view of *Mustill & Boyd,* Otton J in *Agromet* (at 770–772) accepted that **"**the action to enforce an award is an independent cause of action. It is distinct from and not entangled with the original contract or its breach … there is an implied term of the original agreement that an award will be honoured, and if it is not honoured, there is then a breach of the implied term, and time, for the purposes of the Limitation Act, begins to run." On the premise that an action to enforce an award is an independent cause of action based on the implied promise of the parties to the arbitration agreement to honour the award when issued, it is correct as a matter of *principle* that the time to enforce this independent cause of action would arise from the date when the award debtor fails to honour the award.

59 That having been said, it seems to us that the conceptual distinction is grounded in principle with no consequential impact in most cases. If there is a real difference between these two views, it should translate to situations where an action to enforce an award was found not to be time-barred because it was brought within six years from the date when it was not honoured, although it would have been time-barred if time had started to run from the date of the award. Not surprisingly, there are no such authorities to support this distinction.

60 A party against whom an award is made can be understood as coming under an *immediate obligation to pay* the amount of the award, which strictly should be construed as a liquidated debt obligation (as contrasted with a claim for *damages* for breach of the implied promise to pay, which would only accrue after a reasonable period is allowed for the necessary payment to be made) (*International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India* [1996] 1 All ER 1017 ("*International Bulk Shipping*") at 1022a–b). That being the case, the award debtor would typically be in default of the award if it is not paid upon issuance. However, this default starting time can be displaced when the award itself specifies a different date for the performance of the award. In our view, in the absence of any deferred time for the performance of the award, the award is immediately due upon issuance and hence the award debtor would be deemed to have failed to honour the award. As such, the date when the award is not honoured would typically coincide with the date when the award is issued. In the vast majority of cases, the parties would know the date when the award is issued and that payment is due immediately upon issuance. Here, although the appellant did not participate in the Arbitration, it was notified of the Award on the same day it was issued – 17 July 2019. Therefore, nothing turns on the appellant's non-participation in the Arbitration.

61 In our judgment, adopting this view conduces to both clarity and certainty and avoids arguments that a failure to honour an award only arises when there is an unequivocal breach of the award debtor's contractual obligation to pay. In fact, such an argument was unequivocally rejected in *International Bulk Shipping* at 1022e–g as it "would lead to the conclusion that the claimants would not have a cause of action, and no right to enforce the awards, unless and until the [award debtor] clearly refused to pay, and the [award debtor] could defer their liability accordingly".

Conclusion

62 For the foregoing reasons, we dismissed the appeal, with costs to the respondent fixed in the sum of $40,000 (all-in) with the usual consequential orders.

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Nur Rafizah binte Mohamed Abdul Gaffoor, Kunal Mirpuri and Ace Yuan Yong Long (Joseph Tan Judge Benny LLP) for the appellant; Lye Kah Cheong and Chan Michael Karfai (Breakpoint LLC) for the respondent.