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

[2026] SGHC(A) 27

Appellate Division / Civil Appeal No 31 of 2026

Between

China Communications
Construction Company Ltd
(Singapore Branch)

… *Appellant*

And

Zhao Yang Geotechnic Pte Ltd

… *Respondent*

Appellate Division / Civil Appeal No 32 of 2026

Between

Zhao Yang Geotechnic Pte Ltd

… *Appellant*

And

China Communications
Construction Company Ltd
(Singapore Branch)

… *Respondent*

Version No 1: 10 Nov 2026 (10:55 hrs)

In the matter of Originating Application No 1410 of 2025

Between

Zhao Yang Geotechnic Pte Ltd

… *Applicant*

And

China Communications
Construction Company Ltd
(Singapore Branch)

… *Respondent*

GROUNDS OF DECISION

[Building and Construction Law — Dispute resolution — Adjudication]
[Statutory Interpretation — Construction of statute]

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China Communications Construction Co Ltd (Singapore Branch)
v
Zhao Yang Geotechnic Pte Ltd and another appeal

[2026] SGHC(A) 27

Appellate Division of the High Court — Civil Appeal Nos 31 and 32 of 2026
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
21 September 2026

10 November 2026

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 There were two appeals before this court: AD/CA 31 and AD/CA 32 of 2026 ("AD 31" and "AD 32" respectively). The central issue in AD 31 concerned a simple question: whether, in a review application under the Building and Construction Industry Security of Payment Act 2004, a review respondent who has not lodged a review application of its own may nonetheless raise its own items for review. Such an application is referred to in the Act as an adjudication review application ("ARA"). An ARA may be heard by a review adjudicator or a panel of review adjudicators, as the case may be. For ease of reference, we refer to both a review adjudicator and a panel of review adjudicators generally as the "RA".

2 Prior to the decision under appeal, the sole authority on this issue was *Ang Cheng Guan Construction Pte Ltd v Corporate Residence Pte Ltd* [2017] 3

SLR 988 ("*Ang Cheng Guan*"), which was decided in relation to the Building and Construction Industry Security of Payment Act 2004 (Cap 30B, 2006 Rev Ed) ("previous SOPA"). Under the previous SOPA, only a respondent was entitled to lodge an ARA. A claimant was not entitled to do so. Nevertheless, the High Court in *Ang Cheng Guan* held, based on its interpretation of the phrase "review of the determination" in s 18(2) of the previous SOPA, that where a respondent lodged an ARA, the claimant could raise its own items for review. In other words, the claimant could piggyback on the respondent's ARA to raise its own items for review.

3 Subsequently, in 2018, Parliament passed the Building and Construction Industry Security of Payment (Amendment) Act 2018 (Act 47 of 2018) ("SOPA Amendment Act"), which, among other things, extended the right to apply for review to both parties, rather than to the respondent alone. Corresponding amendments to the relevant regulations were made by the Building and Construction Industry Security of Payment (Amendment) Regulations 2019 ("SOPR Amendment Regulations"). Both sets of amendments came into operation on 15 December 2019.

4 The issue before the judge below ("Judge") was whether, under the post-amendment Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("current SOPA"), a review respondent which had not lodged an ARA of its own ("non-applicant") may nonetheless raise its own items for review in the ARA lodged by the review applicant. The Judge, following *Ang Cheng Guan*, answered this question in the affirmative.

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5 We were of the view that *Ang Cheng Guan* was wrongly decided. The decision of the Judge, which followed *Ang Cheng Guan*, was also not correct. Hence, we allowed the appeal in AD 31.

6 The appeal in AD 32 was premised on the decision of the Judge that a review respondent who has not lodged an ARA may raise its own items before the RA. The Judge then remitted such items back to the RA for consideration as the RA had decided that the review respondent was not entitled to raise its own items because it had failed to lodge an ARA. The parties proceeded on the basis that if the review respondent was not entitled to raise its own items, then the appeal in AD 32 would fail. Hence, in the light of our decision in AD 31, the appeal in AD 32 was accordingly dismissed.

7 We set out our grounds of decision below. We also mention the following for clarity: (a) the "previous SOPA" refers to the version of the Act prior to the amendments in the SOPA Amendment Act (see [2] above); (b) "current SOPA" refers to the version in force at the time of our decision (see [4] above); and (c) "Act" refers to the legislation generally. We also refer to the version of the Building and Construction Industry Security of Payment Regulations in force prior to the amendments in the SOPR Amendment Regulations as the "previous Regulations", and to the version in force at the time of our decision as the "current Regulations".

Facts

8 The factual background to the appeals is set out in the Judge's judgment in *Zhao Yang Geotechnic Pte Ltd v China Communications Construction Co Ltd (Singapore Branch)* [2026] SGHC 82 ("Judgment").

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9 The appellant in AD 31 and the respondent in AD 32 is China Communications Construction Company Ltd (Singapore Branch) ("China Communications"). The respondent in AD 31 and the appellant in AD 32 is Zhao Yang Geotechnic Pte Ltd ("Zhao Yang").

10 In 2020, China Communications engaged Zhao Yang as its subcontractor to carry out works at the Singapore Changi Airport for a "fixed price lump sum" of $22,688,000.00 ("Subcontract Sum").

11 On 30 April 2025, Zhao Yang served on China Communications Payment Claim No 62 for $7,210,109.37, inclusive of Goods and Services Tax. On 23 May 2025, China Communications submitted a *nil* payment response.

The adjudication application

12 On 4 June 2025, Zhao Yang lodged an adjudication application in SOP/AA 135/2025 ("AA 135") with the Singapore Mediation Centre to seek payment of $7,210,109.37. China Communications lodged its adjudication response on 12 June 2025.

13 The central issue in AA 135 concerned whether certain variations should reduce the Subcontract Sum. In this regard, China Communications argued that it had validly varied its subcontract with Zhao Yang to omit various items of work and correspondingly reduced the Subcontract Sum. The alleged variations related to the following five items of work (collectively, the "Disputed Works"):

(a) ARC Tunnel – Curtain grouting along the perimeter wall with 1.0m, 1.5m and 3.0m width at certain sections.

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(b) ARC Tunnel – Base ground improvement works at certain sections.

(c) Ground improvement works between ARC and T5C and ARC and T5D (respectively, "T5C Ramp" and "T5D Ramp").

(d) Ground improvement works at the area between ARC and Substation 2.

(e) Ground Improvement Works along the cable duct at the second parallel taxiway ("Second Parallel Taxiway").

At this juncture, it is important to note that not all the variations alleged by China Communications were omissions. The work in relation to the Second Parallel Taxiway was an addition. China Communications had in its payment response certified a *nil* amount payable to Zhao Yang. In so doing, it had attributed a sum of $1,321,129.36 ("Further Sum") for additional work done in relation to the Second Parallel Taxiway as being payable to Zhao Yang but made various deductions for certain omitted works.

14 Zhao Yang, in turn, argued that this was a lump sum contract and that it was therefore entitled to claim the full Subcontract Sum, notwithstanding that it had not in fact executed some of the works. Consistent with its position, Zhao Yang did not pursue the Further Sum in relation to the Second Parallel Taxiway.

15 The adjudicator in AA 135 ("Adjudicator") rendered his adjudication determination ("AD") on 1 September 2025. The Adjudicator found that, while there had been no contractual variation to the subcontract works, Zhao Yang was not entitled to claim payment for any item which had been omitted, *ie*, in respect of which no work had been carried out. Accordingly, the Adjudicator

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made deductions for the works which he found to have been omitted. The Adjudicator also observed that Zhao Yang had confirmed that it would not pursue a claim in respect of the Second Parallel Taxiway if the third item in respect of the T5C Ramp and the T5D Ramp was assessed separately from the Second Parallel Taxiway. There is no dispute that the third item was assessed separately. The Adjudicator determined that China Communications was to pay Zhao Yang the amount of $3,541,361.21.

The adjudication review application

16 On 9 September 2025, China Communications lodged its adjudication review application in SOP/ARA 012/2025 ("ARA 012"). Alongside its review application, China Communications also provided a set of review submissions, in which it expressly indicated that it sought review only of those items in respect of which the Adjudicator had not found in its favour ("CCCC Review Items").

17 On or about 12 September 2025, the parties were informed that a panel of three RAs was appointed to conduct the adjudication review in ARA 012 ("Review Panel").

18 As is evident from the above summary of the facts, Zhao Yang had chosen not to lodge its own ARA despite being entitled to do so. Instead, it contended in ARA 012 that the Review Panel should not confine its review to the CCCC Review Items, relying on the decision in *Ang Cheng Guan*. Accordingly, Zhao Yang sought to raise two additional items for the Review Panel's consideration in ARA 012, being two omitted items for which the Adjudicator made deductions.

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19 On 26 September 2025, the Review Panel invited parties to address it on the issue of whether Zhao Yang could raise its own items for review when it had not lodged an ARA of its own. In this regard, Zhao Yang submitted that *Ang Cheng Guan* should apply, while China Communications submitted that *Ang Cheng Guan* did not apply following the amendments in 2019 and a non-applicant was not entitled to raise its own items for review.

20 The Review Panel issued its adjudication review determination on 30 October 2025 ("ARD"). The Review Panel agreed with China Communications' submissions and therefore limited its review to the CCCC Review Items. Having reviewed only the CCCC Review Items, the Review Panel reduced the adjudicated amount to *nil*.

Procedural history

21 On 11 December 2025, Zhao Yang filed its application in HC/OA 1410/2025 to set aside the ARD.

22 On 13 April 2026, the Judge found that the Review Panel had erred in concluding that Zhao Yang, as a non-applicant, was not entitled to raise its own items for review and in declining to review the items raised by Zhao Yang. However, he decided that the ARD should not be set aside and instead ordered that the matter be remitted to the Review Panel for consideration of the items raised by Zhao Yang.

23 On 24 April 2026, China Communications appealed in AD 31 against the Judge's finding that the Review Panel had erred in declining to review the items raised by Zhao Yang.

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24 Subsequently, on 28 April 2026, Zhao Yang filed its own appeal in AD 32 against the Judge's decision to remit the ARD to the Review Panel. Zhao Yang's position was that the Judge should have set aside the ARD of the Review Panel *in toto*.

The decision in *Ang Cheng Guan*

25 Given the centrality of *Ang Cheng Guan* to both the Judge's decision and the parties' arguments before us, it is useful first to consider *Ang Cheng Guan* and the developments thereafter before turning to the reasoning of the Judge below.

26 In *Ang Cheng Guan*, Corporate Residence Pte Ltd ("CR") engaged Ang Cheng Guan Construction Pte Ltd ("ACG") to carry out certain works. Subsequently, ACG lodged an adjudication application in relation to a payment claim. The adjudicator found in favour of ACG on certain items, following which CR lodged an ARA seeking review of two specific items. ACG was itself dissatisfied with other aspects of the adjudicator's determination and it raised additional items for the RA's determination. However, the RA took the view that his jurisdiction was confined to the items raised by CR and decided accordingly. ACG then applied to the court to set aside the ARD. The court framed the main question before it as whether an RA was entitled to review the entire adjudication determination ("Broad Interpretation") or only those items raised by a review applicant ("Narrow Interpretation") (*Ang Cheng Guan* at [12]).

27 The court in *Ang Cheng Guan* found that the Broad Interpretation was to be preferred for the following reasons:

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(a) To begin, there was nothing in the previous SOPA that explicitly spelt out the scope of an adjudication review. However, s 18(2) of the previous SOPA provided that the respondent may lodge an application for "the review of *the* determination" [emphasis added]. *Prima facie*, this referred to the entire adjudication determination and supported the Broad Interpretation (*Ang Cheng Guan* at [16]).

(b) Section 19(6)(*a*) of the previous SOPA provided that the RA shall only have regard to the matters in ss 17(3)(*a*) to (*h*) and the adjudication determination under review. Sections 17(3)(*a*) to (*h*) had set the boundaries of the matters that an RA could consider. If the Narrow Interpretation were intended, either ss 17(3) or 19(6)(*a*) would have been an appropriate place to set that boundary marker. No such marker was set. Instead, s 19(6)(*a*) stated that the review adjudicator may have regard to, amongst other things, the adjudication determination under review. The matters in ss 17(3)(*a*) to (*h*) included, amongst other things, the payment claim, the payment response and the submissions and responses of the parties to the adjudication. These were not all expressed in such a way that regard might only be had to part of those matters, which was consistent with the Broad Interpretation (*Ang Cheng Guan* at [18]–[19]).

(c) Section 19(5) of the previous SOPA stated, in effect, that an adjudication review shall determine the adjudicated amount (if any) to be paid by the respondent to the claimant and, if this was different from that determined by the first instance adjudicator, the RA shall also determine "the date on which the difference in amount is payable". As s 19(5) did not expressly restrict an RA to simply maintaining or

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decreasing the adjudicated amount, the provision left it open for the RA to increase it. This was consistent with the Broad Interpretation (*Ang Cheng Guan* at [20]).

(d) It was a leap of logic to conclude from the fact that only the respondent was entitled to apply for review, that the review was limited only to the items raised by the respondent. Section 18(2) of the previous SOPA simply established the right of an aggrieved respondent to apply for an adjudication review. It did not state that such a review was limited only to the items raised by the respondent (*Ang Cheng Guan* at [23]).

(e) The policy of the previous SOPA was ambivalent as to which interpretation was to be preferred. The Narrow Interpretation might help to balance potential unfairness suffered by a respondent in the adjudication process arising from the claimant having the benefit of deciding the time to initiate the adjudication process. However, adopting the Narrow Interpretation would tend to encourage a respondent to apply for an adjudication review as there would be nothing to lose, but everything to gain, which would undermine the purpose of the previous SOPA in establishing a quick and inexpensive regime for the resolution of payment disputes. To permit a respondent to cherry-pick the parts which he was unhappy with, without a corresponding right on the part of the claimant to seek a review of the parts where the adjudicator might have got it wrong could also be unfair (*Ang Cheng Guan* at [28]–[30]). This element of unfairness appears, to us, to have persuaded the court to conclude that a claimant could raise its own items for review where the respondent had lodged its ARA.

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28 Subsequently, Parliament passed the SOPA Amendment Act, which, among other things, amended s 18(2) of the Act to allow both the claimant and the respondent to apply for an adjudication review. However, the operative words "the review of the determination", which the court in *Ang Cheng Guan* had identified as central, were left unchanged. It is also relevant to note that despite the court's observation in *Ang Cheng Guan* that ss 17(3) or 19(6)(*a*) would have been an appropriate place to set a limit confining an adjudication review to the items raised by a review applicant, Parliament did not introduce any such provision.

Decision below

29 In the proceedings below, the parties and the Judge approached the issue through the framework adopted in *Ang Cheng Guan*, namely, whether the Broad Interpretation or the Narrow Interpretation was to be preferred.

30 The Judge first considered the issue of whether a misdirection on a point of law could constitute valid grounds for setting aside the ARD. He decided that it could. This was not in issue before us and we need not and do not address it.

31 The Judge found that the Broad Interpretation should be preferred over the Narrow Interpretation. In his view, the issue turned on the interpretation of s 18(2) of the current SOPA and his reasons were:

> (a) The textual meaning of s 18(2) of the current SOPA was clear. After an adjudication determination is issued, either the respondent or the claimant may lodge an application for "the review of the determination". The language of s 18(2) unequivocally refers to "the determination" and not part of the determination (Judgment at [28]).

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(b) This conclusion remained the same having considered the context of the provision within the written law. The Judge agreed with the reasoning in *Ang Cheng Guan* that if Parliament intended for the RA to only review part of the adjudication determination, it could have easily inserted language to that effect in the relevant provisions. However, the language of those provisions remained substantially or completely unchanged after the amendments which came into effect in 2019 (Judgment at [29]–[31]).

(c) The Judge rejected China Communications' various arguments based on the text and statutory context of s 18(2) of the current SOPA. As the wording of s 18(2) was sufficiently clear, China Communications could not refer to extraneous material to override the provision's textual meaning. The extraneous material referred to was also insufficient in any case (Judgment at [32]–[35] and [42]).

32 The Judge was of the view that the appropriate order was for the ARD to be remitted to the Review Panel to address the items raised by Zhao Yang.

Issues to be determined

33 The issues for our determination were as follows:

(a) whether the Judge was correct to find that the Review Panel had erred in limiting its scope of review to the items raised by China Communications; and

(b) if so, whether the Judge was correct to find that the items raised by Zhao Yang should be remitted to the Review Panel for consideration.

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AD 31: Whether the Judge was correct to find that the Review Panel had erred in limiting its scope of review to the items raised by China Communications

Principles of statutory interpretation

34 Given that the central issue in AD 31 concerned the interpretation of s 18(2) of the current SOPA, it is helpful to set out briefly the framework for statutory interpretation in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (at [54]):

(a) The court must first ascertain the possible interpretations of the relevant statute, having regard not just to its text but also to its context within the written law.

(b) The court must then ascertain the legislative purpose or object of the provision and compare the possible interpretations against that purpose. The interpretation which furthers the purpose of the provision should be preferred over those which do not.

(c) The court may only consider extraneous material in ascertaining the meaning of the text if the provision is ambiguous or obscure on its face, or if the ordinary meaning of the provision leads to a manifestly absurd or unreasonable result. Where the ordinary meaning of the provision is clear, extraneous material may only be used to confirm that the ordinary meaning accords with the legislative purpose.

The central issue in AD 31

35 Before turning to our analysis proper, we first address the framing of the issue in AD 31. The parties have framed the issue as a question of whether an

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RA is entitled to review the entire AD below (*ie*, the Broad Interpretation) or only those items raised by the review applicant (*ie*, the Narrow Interpretation). This is, presumably, following *Ang Cheng Guan*, which had also framed the issue in similar terms.

36 We found it unfortunate that the enquiry had been framed as a choice between whether an RA is entitled to review the entire AD below or only those items raised by the review applicant. In our view, that framing obscured the real issue. There could be little doubt that an RA may review the entirety of the AD. The RA must be empowered to review the entire AD, as parties are entitled pursuant to s 18(2) of the Act to apply for a review of the AD without limitation as to which portions. This wording is intended to allow parties to seek a review of any part of, or indeed the entirety of, the AD, as long as the limits in s 18(1) of the Act are not engaged. But that does not answer the separate question of whether, where a review applicant has chosen to put only specified parts of the AD in issue, a non-applicant may independently enlarge the scope of the review by seeking to review parts of the AD that are not the subject of the ARA brought by the review applicant.

37 That, to our minds, was the real question: Is a non-applicant allowed to raise items outside of the scope of the review sought by the review applicant?

38 We stress, as the Review Panel did, that this is distinct from the question of what arguments a non-applicant may advance in relation to an item which has already been raised by the review applicant. For clarity, when we refer to a party "raising an item for review", we mean that the party seeks a different determination in respect of a distinct part of the AD. This is different from raising an issue or argument as to how an item already raised in an ARA should

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be determined. As we elaborate below at [54]–[61], it may be that a non-applicant is not confined to supporting the reasoning or conclusion reached by the adjudicator on an item raised by the review applicant and remains entitled to advance its own arguments in relation to that item, including arguments which differ from the reasoning adopted by the adjudicator. The critical distinction is therefore between advancing arguments concerning an item which is already before the RA, and seeking to introduce for review a separate item from the AD which is not part of the ARA lodged by the review applicant.

Claimants were not entitled to raise their own items for review under the previous SOPA

39 Given that the Judge's decision rested on *Ang Cheng Guan*'s interpretation of the previous SOPA, we start by considering whether *Ang Cheng Guan* was correctly decided.

40 The predicate of the decision in *Ang Cheng Guan* was the interpretation placed on the phrase "review of the determination" found in s 18(2) of the previous SOPA. In our view, *Ang Cheng Guan* incorrectly understood this phrase. The reference to the "review of the determination" simply identified the AD as the subject matter of the review. It did not speak to what items may be raised and by whom for consideration by the RA. The same error underlay the court's reliance on ss 17(3)(*a*) to 17(3)(*h*) and 19(6) of the previous SOPA. This misreading, to our minds, stemmed from the unfortunate framing of the issue as whether the RA is entitled to review the entire AD, rather than whether a non-applicant is allowed to raise items outside the scope of review sought by a review applicant.

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41 This leads us to our more fundamental objection to *Ang Cheng Guan*, namely, that the interpretation the court placed on s 18(2) was inconsistent with the overall adjudication framework under the previous SOPA. As the court in *Ang Cheng Guan* itself acknowledged (at [13]), the adjudication regime under the Act is a creature of statute. Each step in that process, from the adjudication application to the ARA and any subsequent challenge before the court, is prescribed by statute. Importantly, under s 18(1) of the previous SOPA, only the respondent was entitled to lodge an ARA; the claimant had no corresponding statutory right. The respondent's right to lodge an ARA was also circumscribed. An ARA could only be lodged within seven days after the respondent was served with the AD (s 18(2) of the previous SOPA), subject to the condition that the adjudicated amount exceeded the relevant response amount by the prescribed amount or more (r 10 of the previous Regulations). Further, the ARA was to comply with the requirements in s 18(4) of the previous SOPA.

42 *Ang Cheng Guan*'s interpretation of s 18(2) effectively circumvented those statutory limits. It permitted a claimant who had no statutory right of review at all to raise its own items for review by piggybacking on an ARA lodged by the respondent and it permitted the claimant to do so without having to satisfy any of the statutory conditions which Parliament had imposed on the respondent's right of review. In our view, an RA had no jurisdiction to entertain such a challenge under the previous SOPA. A claimant which had no statutory entitlement to invoke the review jurisdiction could not acquire one merely because the respondent had validly invoked the jurisdiction for its own ARA. Ultimately, reinforcing the point we made earlier, the RA's review jurisdiction is statutory. Accordingly, in what circumstances, in what manner and by whom such jurisdiction may be invoked and engaged is statutorily prescribed. The interpretation taken in *Ang Cheng Guan* has, with respect, missed this point.

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43 Seen in this light, *Ang Cheng Guan* was, in effect, an attempt to plug what the court perceived to be unfairness to a claimant who did not have a statutory right to apply for a review, by allowing it to piggyback on the respondent's ARA and raise its own items. However, in so doing, the court had, with respect, not considered the points made above at [40] to [42]. In our view, it was for Parliament, rather than the court, to address any unfairness or gap.

Non-applicants are not entitled to raise their own items for review under the current SOPA

44 Parliament subsequently did do so, by way of the amendments which took effect in 2019. Accordingly, under the current SOPA, both claimants and respondents are now entitled to lodge an ARA. The question, then, was whether, under the current SOPA, a non-applicant may raise items for review by the RA where it has omitted to lodge its own ARA. In our view, a non-applicant may not do so.

The adjudication review framework under the current SOPA

45 Section 18(1) of the current SOPA permits either party to an adjudication to apply for review, provided that the adjudicated amount differs from the claimed amount or relevant response amount, in the case of the claimant and respondent respectively, by the prescribed amount of $100,000 or more in r 10(1) of the current Regulations.

46 We briefly digress at this juncture to observe that the claimed amount and relevant response amount would appear to refer to, respectively, the amount stated in the payment claim which formed the subject of the adjudication and the amount stated in the payment response served in relation to that payment claim. Accordingly, it appears that the prescribed threshold is to be assessed by

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reference to the entire amount of the claim or the payment response and not the amount attributable to the particular item in respect of which review is sought. However, this could lead to an illogical result. Take, for example, a payment claim for $500,000 where the adjudicated amount is $90,000. The difference of $410,000 would exceed the prescribed amount in r 10(1) of the current Regulations. Suppose, however, that the claimant sought review only of the adjudicator's determination in respect of an item for which it had claimed $50,000 but was awarded nothing. On an interpretation which looks at the difference between the entire amount initially claimed before the adjudicator and the adjudicated amount, the claimant would be entitled to seek review of that item even though the amount actually in dispute on review is only $50,000 and would not, taken by itself, satisfy the prescribed threshold. It seems to us that the threshold under r 10(1) was set to act as a filter on the assumption that the difference of $100,000 or more between the adjudication determination and the amount in the claim or the payment response, as the case may be, would represent a significant enough dispute between the parties to warrant a review application being made. But that may not necessarily be true as the amount sought in review may be lower than the amount originally stated in the claim or the payment response with the result that the former is lower than $100,000 but yet the threshold is still satisfied. Our example is an illustration of that. This may be a matter which warrants legislative consideration but we say no more about it as it was not in issue in AD 31.

47 We then turn to s 18(2) of the current SOPA, which requires a review applicant to lodge its ARA within 7 days after being served with the adjudication determination. The consequence of non-compliance is set out in s 19(5)(*a*) of the current SOPA, namely, the RA *must* reject any ARA lodged outside the time limit in s 18(2). This is similar to the previous SOPA except

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that, under the previous SOPA, only the respondent had a statutory right to lodge an ARA.

48 Section 18(3) of the current SOPA provides that where a respondent applies for review, the respondent must pay the adjudicated amount to the authorised nominating body. By contrast, where only the claimant applies for review, the respondent is to make payment to the claimant after the adjudication review has been determined: see s 22(2) of the current SOPA.

49 Section 18(4) of the current SOPA sets out the requirements for an ARA, namely, that it must be made in writing (s 18(4)(*a*)), contain such information or be accompanied by such documents as may be prescribed (s 18(4)(*b*)), and be accompanied by such application fee as may be determined by the authorised nominating body (s 18(4)(*c*)). Regarding s 18(4)(*b*), r 10(2) of the current Regulations prescribes that every ARA must be accompanied by a copy of the adjudication determination which is the subject of the application and, where the ARA is lodged by the respondent, must also contain proof of payment of the adjudicated amount to the authorised nominating body. Regarding s 18(4)(*c*), r 12(*a*)(ii) of the current Regulations provides that the fee payable to an authorised nominating body for an ARA shall not exceed $1,200. Regulation 14(1) of the current Regulations further empowers the authorised nominating body to require a review applicant to pay an initial deposit in respect of the fees payable to the RA at the time of lodgment of the ARA. Pursuant to s 19(5)(*b*) of the current SOPA, the RA must reject any ARA that is not made in accordance with ss 18(4)(*a*) or 18(4)(*b*), but no such consequence is prescribed for non-compliance with s 18(4)(*c*).

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50 Regulation 10(3) of the current Regulations then provides that the authorised nominating body shall, upon receipt of an ARA:

> (*a*) appoint one review adjudicator if —
>
> > (i) the adjudicated amount exceeds the relevant response amount by at least $100,000 but less than $1 million; or
> >
> > (ii) the claimed amount exceeds the adjudicated amount by at least $100,000 but less than $1 million; or
>
> (*b*) appoint a panel of 3 review adjudicators if —
>
> > (i) the adjudicated amount exceeds the relevant response amount by at least $1 million; or
> >
> > (ii) the claimed amount exceeds the adjudicated amount by at least $1 million.

51 Both parties appeared to accept that the sub-provisions in r 10(3) of the current Regulations are to be read disjunctively, *ie*, that the applicable comparator depends on which party applies for review: the relevant response amount applies where the respondent is the review applicant, while the claimed amount applies where the claimant is the review applicant. In our view, this interpretation is correct. It follows from the use of the word "or" in r 10(3) and is consistent with s 18(1) of the current SOPA, which expressly distinguishes between the thresholds applicable to each party.

52 Pursuant to s 19(6) of the current SOPA, the RA must determine the ARA within 14 days after the commencement of the adjudication review, unless parties agree to a longer period.

53 Section 19(7) of the current SOPA provides that the RA may refuse the ARA or substitute his own determination for the AD. Where the RA decides to substitute the AD with his own determination, he must determine, pursuant to s 19(8) of the current SOPA:

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> (*a*) the adjudicated amount (if any) to be paid by the respondent to the claimant;
>
> (*b*) the amount (if any) to be returned by the authorised nominating body to the respondent;
>
> (*c*) where the adjudicated amount mentioned in paragraph (*a*) is different from the amount that the respondent has paid to the authorised nominating body under section 18(3), the date on which the difference in amount is payable;
>
> (*d*) the interest payable on any such amount; and
>
> (*e*) the proportion of the costs of the adjudication review payable by each party to the adjudication review[.]

54 It appears that s 19(8)(*c*) of the current SOPA applies where the applicant for review is the respondent because it refers to a payment to be made by the respondent to the authorised nominating body under s 18(3) and that payment is required before a respondent lodges an ARA.

55 Section 19(8)(*c*) of the current SOPA also appears to envisage a situation where the amount determined by an RA is higher than the original amount determined by an adjudicator since there is a "difference in amount" that is payable by the respondent over and above the amount that the respondent has paid under s 18(3).

56 This therefore suggests that where the respondent is the review applicant and is seeking to pay a lower amount, it may end up paying a higher amount even if the claimant has not lodged its own ARA.

57 If correct, that would mean that in considering the items for review sought by a respondent, an RA may even increase the sum already accorded notwithstanding the absence of an ARA by the claimant. These observations were made in *BFK v BFL* [2021] SCAdjR 656 ("*BFK*") at [102] and [103] on the basis that the claimant may seek a higher sum on the same item claimed by

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the respondent notwithstanding the absence of an ARA by the claimant because the claimant is not introducing its own item for review but addressing the item raised by the respondent, although it would be seeking a higher sum. In other words, a claimant need not only be on the defensive in such a situation but may take the offensive to argue for a higher sum.

58 In the present appeal, China Communications appears to have accepted the observations in at para 59 of its written submissions.

59 However, we have some reservations as to the correctness of the observations as they may in turn mean that a claimant is in effect raising its own item for review without having lodged its own ARA.

60 Moreover, a question will then arise as to whether a claimant would be in a more advantageous position than a respondent if the observations are correct. This would be in the sense that where a claimant has not lodged its own ARA, it may nevertheless take the offensive, as mentioned. However, the converse does not necessarily apply. Hence, where a respondent has not lodged its own ARA, it is doubtful that it may take the offensive in respect of the items sought to be reviewed by the claimant.

61 The observations in *BFK* were not in issue before us and we need not reach a conclusion on them. However, we mention them as they are important and legislative clarification would be desirable.

The possible interpretations of s 18(2) of the current SOPA

62 As we have explained above (at [40]), we were of the view that the interpretation that the Judge and Zhao Yang placed on the term "review of the

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determination", following *Ang Cheng Guan*, was untenable. For the reasons we have given, we did not consider it significant that this language remained untouched following the amendments enacted in 2019.

63 What is more important is the fact that under the current SOPA, a claimant may now also lodge an ARA. There is therefore no logical reason to allow it to raise its own items for review where it omits to lodge its own ARA. Accordingly, there is even less reason for interpreting s 18(2) as permitting a non-applicant to raise its own items for review under the current SOPA.

(1) Section 19(5)(*a*) of the current SOPA precludes an RA from considering items raised by a non-applicant

64 In our view, the question of whether a review respondent who has not lodged its own ARA is allowed to raise its own items for review was clearly answered by both s 18(2) and s 19(5)(*a*) of the current SOPA. Section 19(5)(*a*) provides in no uncertain terms that the RA *must* reject any ARA that is not made within the 7-day period in s 18(2). To allow a review respondent who has failed to lodge its own ARA within the stipulated time, and thereby lost its entitlement to seek a review of the AD, to nonetheless raise its own items for review in the other party's ARA would permit it to achieve indirectly what s 19(5)(*a*) expressly precludes it from doing directly. It would, in substance, allow it to pursue an out-of-time review and deprive s 19(5)(*a*) of its effect.

65 When this point was put to Zhao Yang's counsel, Mr Choa Sn-Yien Brendon ("Mr Choa"), at the hearing of the appeals, his only response was to suggest that s 19(5)(*a*) of the current SOPA is concerned merely with whether an ARA has been lodged within time. On his submission, once any ARA has

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been lodged within time and the review process has thereby been initiated, either party is entitled to raise any other item for consideration by the RA.

66 We found this argument to be unpersuasive. On Mr Choa's formulation, where both parties have lodged ARAs but one party's application is out of time, the RA would be required by s 19(5)(*a*) of the current SOPA to reject that application, yet remain entitled to consider, in the course of the other party's timeous ARA, the very same items raised in the rejected application. It was, to our minds, difficult to see how such a result could have been intended by Parliament.

67 At this juncture, we also consider the scenario where a review applicant lodges its ARA within time, but initially seeks review of only certain items in the AD and, after the expiry of the seven-day period, seeks to expand the review to encompass other items. Our view was that this would also be precluded by s 19(5) of the current SOPA. The additional items would, in substance, constitute an out-of-time application for review which the RA is required by s 19(5)(*a*) to reject. This point assumes that an ARA would identify the items to be reviewed and would not be open-ended.

(2) A non-applicant cannot circumvent the statutory requirements for review

68 Another reason for concluding that a review respondent who has not lodged an ARA of its own cannot nonetheless raise its own items in the other party's ARA is found in s 18(4) of the current SOPA. Section 18(4) provides that an ARA must be made in writing to appoint one or more RAs (s 18(4)(*a*)), contain such information or be accompanied by such documents as may be prescribed (s 18(4)(*b*)), and be accompanied by the application fee determined

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by the authorised nominating body (s 18(4)(*c*)). Regulation 14 further permits the authorised nominating body to require a review applicant to pay an initial deposit in respect of the RA's fees at the time the ARA is lodged. Where the review applicant is the respondent, it must also make full payment of the adjudicated amount to the authorised nominating body before lodging its ARA pursuant to s 18(3).

69 On the other hand, a non-applicant is not required to comply with any of these requirements. Accordingly, as China Communications observed, Zhao Yang's interpretation would permit a party to obtain the benefit of having its own items reviewed without satisfying any of the statutory conditions imposed on a party seeking such review. In substance, it would allow the non-applicant to circumvent these conditions by simply piggybacking on the other party's ARA. This is notwithstanding s 19(5)(*b*) of the current SOPA providing that an ARA that does not comply with ss 18(4)(*a*) and (*b*) *must* be rejected by the RA.

70 This also places a party who does not lodge its own ARA in the anomalous position of being better off than one who does. In particular, a respondent who does not lodge its own ARA could have its own items considered on review without paying the requisite application fee or deposit, complying with the other requirements attendant upon the lodging of an ARA or, critically, paying the adjudicated amount to the authorised nominating body pursuant to s 18(3). If the parties' roles in the present case were reversed, for example, China Communications could have its own items considered on review while retaining the significant sum of approximately $3.5 million which it would otherwise have been required to pay to the authorised nominating body had it lodged its own ARA. It was difficult to see why Parliament would have intended such a result.

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(3) A non-applicant cannot circumvent the jurisdictional threshold in s 18(1) of the current SOPA

71 There was a further difficulty with Zhao Yang's interpretation of the current SOPA. Much like the interpretation adopted in *Ang Cheng Guan*, it raises an issue of jurisdiction. While, in the present case, the difference between Zhao Yang's claimed amount of $7,210,109.37 and the adjudicated amount of $3,541,361.21 exceeded the prescribed amount of $100,000, a finding that a non-applicant may nonetheless raise its own items for review would apply equally where the non-applicant had not lodged an ARA because it did not satisfy the threshold in s 18(1) of the current SOPA and was therefore not entitled to seek review in the first place.

72 Zhao Yang's proposed interpretation of s 18(2) of the current SOPA would allow a party with no statutory entitlement to invoke the RA's review jurisdiction to effectively acquire such an entitlement merely because the other party had validly invoked that jurisdiction for the purposes of its own ARA. This, to our minds, was untenable.

(4) Zhao Yang's interpretation would undermine the mechanism in r 10(3) of the current Regulations

73 Regulation 10(3) of the current Regulations provides a mechanism for determining the number of RAs to hear the ARA by reference to the quantum involved, such that reviews involving an applicable difference of at least $1 million are heard by a panel of three RAs, while those involving a difference of at least $100,000 but less than $1 million are heard by a single RA (see [50] above).

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74 China Communications argued that if non-applicants were allowed to raise their own items for review, this would lead to confusion and jurisdictional issues. Take, for example, a case where the difference between the adjudicated amount and the claimed amount exceeds $1 million, while the difference between the adjudicated amount and the relevant response amount exceeds $100,000 but is less than $1 million. If only the respondent lodges an ARA, then following r 10(3)(*a*)(i) of the current Regulations, only a single RA is appointed. However, under Zhao Yang's proposed interpretation, the non-applicant claimant is entitled to raise its own items, which exceed the adjudicated amount by more than $1 million, for review. China Communications argued that this raises an issue of jurisdiction as the sole RA does not have jurisdiction to hear ARAs involving an applicable difference of over $1 million. This would also defeat the Parliamentary purpose in enacting the streamlining mechanism in r 10(3).

75 The Judge addressed this concern (at [34] of the Judgment) on the basis that no jurisdictional issue would arise if the non-applicant is entitled to raise its own items for review. This was because the number of RAs is determined once and for all when the ARA is received by the authorised nominating body, and does not change even if items subsequently raised cause the applicable difference to exceed $1 million. The Judge considered this to be compatible with an interpretation which permits both parties to raise items for review even where there was only one review application.

76 We respectfully disagreed with the Judge. The Judge's reasoning did not address the point that Zhao Yang's interpretation would undermine the very mechanism established by r 10(3) of the current Regulations. The evident purpose of r 10(3) is to allocate a greater number of RAs to reviews involving a

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larger quantum. Yet, on Zhao Yang's interpretation, items which would have required the appointment of three RAs had they been raised in an ARA could nevertheless be heard by a single RA, simply because they were subsequently raised by a non-applicant in the course of the other party's review. That would undermine the mechanism which r 10(3) establishes for determining the appropriate number of RAs by reference to the quantum involved.

77 Indeed, the fact that the number of RAs is to be determined upon receipt of the ARA(s) points, in our view, in the opposite direction from that suggested by the Judge. It indicates that the statutory scheme contemplates that the items which each party seeks to have reviewed will have crystallised by the expiry of the period for lodging an ARA under s 18(2) of the current SOPA, such that the authorised nominating body can determine the appropriate number of the RAs on that basis. If a non-applicant was free thereafter to introduce its own items for review, this might well change the premise upon which the number of RAs had been determined.

(5) A non-applicant cannot be allowed to ambush the review applicant

78 China Communications also argued that if a non-applicant may piggyback on an ARA, it catches the review applicant by ambush. The Judge took the view that if the law is clear that the RA was entitled to review the entire adjudication determination, then there was simply no "ambush" as the review applicant would expect the other party's items to be open for review as well. The Judge also noted that the items in the ARA would already have been argued in the underlying adjudication, making it a reasonable assumption that a review applicant could anticipate the arguments that the other side would raise (Judgment at [33]).

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79 We respectfully disagreed with the Judge. The fact that the entirety of an AD may potentially be the subject of review before the expiry of the seven-day period in s 18(2) of the current SOPA does not mean that, once that period has expired, a review applicant should be expected to anticipate and address items which the other party has not itself raised for review. As a matter of practical reality, a review applicant would prepare its case by reference to the items which have been put in issue in an ARA lodged within the prescribed period. It would have no reason to prepare to address items which the other party had not raised by then. It is one thing to say that a review applicant can anticipate "arguments" from its opponent in relation to items that are the subject of the review. It is quite another to say that the review applicant should anticipate new items which were not raised by the opponent in its own ARA in the first place. To permit a non-applicant thereafter to introduce new items for review would therefore require the applicant to meet a case which it had no reason to anticipate when the deadline for lodging ARAs has expired. In our view, that would be neither consistent with the structure of the review process nor fair to the review applicant.

Purpose of the Act

80 From the above, it was, to our minds, evident that s 18(2) of the current SOPA could not bear the interpretation put forward by Zhao Yang. Accordingly, there was no need to have recourse to the purpose of the Act to determine which possible interpretation should be preferred or to extraneous material.

Conclusion on AD 31

81 Accordingly, we found that a non-applicant is not permitted to raise its own items for review. The Judge erred in concluding otherwise in this regard.

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The Review Panel was therefore correct in finding that Zhao Yang, having failed to lodge its own ARA, was not entitled to raise its own items for review.

AD 32: Whether the Judge erred in ordering the ARD be remitted to the Review Panel

82 Given our finding that the Review Panel had not erred, there was no reason to set aside the ARD or remit any matter to the Review Panel.

83 Nevertheless, we would briefly address one argument raised by Zhao Yang on appeal. Before us, Zhao Yang suggested that the Review Panel had erred in confining its review to the items raised by China Communications. It pointed out that the overarching issue in relation to all of the Disputed Works was whether there had been valid variations to the subcontract works such that the Subcontract Sum had been correspondingly adjusted. China Communications had sought review only in respect of the alleged variations involving omissions of work, which, if upheld, would reduce the Subcontract Sum, while excluding the Second Parallel Taxiway, where the alleged variation concerned additional works and which, if upheld, would entitle Zhao Yang to the Further Sum. Zhao Yang contended that China Communications could not delimit the scope of the review in this manner by selecting only certain alleged variations for review. On this basis, it argued that the Review Panel ought also to have considered the implications of its findings on the CCCC Review Items on Zhao Yang's entitlement to the Further Sum in respect of the Second Parallel Taxiway.

84 There were two responses to this. First, as mentioned, Zhao Yang had ceased to pursue the Further Sum before the Adjudicator and had not put its entitlement to the Further Sum in issue before the Review Panel. Accordingly,

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it did not lie in Zhao Yang's mouth to complain that the Review Panel had erred in failing to consider its claim for the Further Sum. Nor did it assist Zhao Yang to suggest that it had not claimed the Further Sum because its primary position was that the contract was for a lump sum which precluded additions or omissions. This did not preclude Zhao Yang from arguing, in the alternative, that if the additions were to be considered, the finding should extend to its entitlement to the Further Sum.

85 Second, even if the Review Panel had erred in failing to consider the effect of its findings on the Second Parallel Taxiway, such an error would not, without more, constitute a valid ground for setting aside the ARD. As the Court of Appeal observed in *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd* [2018] 1 SLR 979, the role of a court in considering whether an ARD should be set aside is not to review the merits of that determination (at [73]). Any error by the Review Panel in failing to consider the implications of its findings for the Second Parallel Taxiway would go to the merits of the ARD, rather than establish a breach of a mandatory provision of the Act. Indeed, at no time in the appeal before us did Zhao Yang argue that even if it was precluded from raising new items, it was nevertheless entitled to raise its claim in respect of the Second Parallel Taxiway.

Conclusion

86 Accordingly, we allowed AD 31 and dismissed AD 32. We therefore set aside the costs order below and ordered Zhao Yang to pay China Communications costs below fixed at $6,000 (all-in). While that sum may appear low bearing in mind that Zhao Yang had failed on the central issue as well as the consequential order to be made, it was the sum claimed by China Communications. We also ordered Zhao Yang to pay China Communications

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the costs of both appeals fixed at $40,000 (all-in). The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Chong Kuan Keong, Tay Yan Xia and Loh Pei Wen Bernadette Rena (Chong Chia & Lim LLC) for the appellant in AD 31 and the respondent in AD 32;
Choa Sn-Yien Brendon and Lim Jia Xin Kimberly (Patrick Ong Law LLC) for the respondent in AD 31 and the appellant in AD 32.

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