

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

[2026] SGHC 159

Originating Application No 1204 of 2025

Between

SH Design & Build Pte Ltd

... Claimant

And

- (1) Jurong Port Pte Ltd
- (2) HSBC Life (Singapore) Pte Ltd

... Defendants

JUDGMENT

[Building and Construction Law — Building and construction related contracts — Guarantees and bonds]

[Credit and security — Performance bond — Whether call on performance bond was valid]

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SH Design & Build Pte Ltd
v
Jurong Port Pte Ltd and another

[2026] SGHC 159

General Division of the High Court —Originating Application No 1204
of 2025

Lee Seiu Kin SJ
20 April 2026

30 July 2026

Judgment reserved.

Lee Seiu Kin SJ:

1 The applicant is a building and civil engineering contractor. The first respondent (“R1”) is the operator of Jurong Port. The second respondent (“R2”) is an insurance company. In this action (HC/OA 1204/2025 “OA 1204”), the applicant essentially seeks an injunction against the R1 and R2 from calling and paying on a performance bond (the “PB”) issued by the R2 until the determination of arbitration between the applicant and R1.¹ Alternatively, the applicant seeks an injunction against the R1 from using any payment made by the R2 under the performance bond, until the determination of an arbitration between the applicant and the R1.

¹ 1st Affidavit of Arisga Hartanto dated 24 October 2025 (“AH-1”) at p 384.

2 As an interim measure, on 26 November 2025, the applicant filed SUM 3457/2025 (“SUM 3457”) for an interim injunction pending determination of OA 1204. On 27 November 2025, I heard SUM 3457 and granted the interim injunction. Counsel for the applicant and R1 appeared before me on 20 April 2026 to make submissions on OA 1204, for which I now give my decision.

3 Ultimately, the present dispute turned on the finding of whether the Supervising Officer (“SO”) had provided a valid decision within the 30-day time limit that is binding on the parties, and if so whether the letter of demand was valid.

Background facts

4 R1 is the employer in a project known as the “Proposed Ready Mixed Concrete Ecosystem at Jurong Port” (the “Project”). The aim of the Project is to integrate several components of the supply chain in production of ready mixed concrete. Raw material for ready mixed concrete, namely sand and aggregate, are shipped into Jurong Port where they are transferred to storage facilities at the port by a system of conveyors and thereafter to concrete batching plants located within the facility. This material handling system eliminates multiple movement of raw material as well as provides efficiency of scale.

5 Pursuant to a letter of acceptance (“LOA”) dated 14 May 2020 and an agreement (“Agreement”) dated 25 January 2021 (collectively, the “Contract”), R1 engaged the applicant as its main contractor to undertake the main contract works in Phase 1A, 1B and 1C of the Project (the “Works”) for the sum of \$125,698,000 (“Original Contract Sum”). The Contract incorporated the Public Sector Standard Conditions of Contract for Construction Works (Seventh

Edition 2014) (the “PSSCOC”).² The Contract is administered by SO, Sebastian Lee of Arup Singapore Pte Ltd (“Arup”). R2 is the guarantor of the PB issued in favour of R1.³

The Project

6 The Project was divided into phases each attracting different completion dates. The applicant was contracted for five different phases: Phases 1A, 1B and 1C under the original Agreement, Phase 1D under a supplemental agreement (“Supplemental Agreement”) and Phase 1E pursuant to SO Instruction (“SOI”) No 32, under which further variation work was ordered. The Supplemental Agreement for Phase 1D was for an additional contract sum of \$2,976,800.⁴ This brought the total contract sum under the Agreement and Supplemental Agreement to \$128,684,800.⁵ It is undisputed that the completion of Phases 1B, 1C and 1D were substantially delayed.⁶ However, it is disputed between the parties whether the applicant was entitled to extensions of time under the contract.

7 On 8 October 2025, in Payment Response No 61, the SO certified the value of the completed work to be \$122,568,981, about 97.5% of the original contract sum. As for the works under the Supplemental Agreement, the sum certified was \$2,940,540, about 98.8%.⁷ Certificates of Substantial Completion had been issued for all phases of work had been issued by the SO and partial

² AH-1 at p 77.

³ AH-1 at para 7.

⁴ AH-1 at para 11 and p 153.

⁵ 1st Affidavit of Desmond Lim dated 1 December 2025 (“DL-1”) at paras 13–16.

⁶ DL-1 at paras 19 and 20.

⁷ AH-1 at para 15.

TOP and full TOP status for Phase 1B were obtained on 27 April 2023 and 26 January 2024 respectively.⁸ Consequently, R1 is currently in occupation of the Project,⁹ and live operation had commenced progressively by R1 to handle aggregates from 11 April 2024.¹⁰

Performance Bond

8 Under the Contract, as security for the due performance and observance of the applicant's obligations under the contract the applicant was obliged to either (i) deposit an amount equivalent to 10% of the Contract Sum; or (ii) provide a guarantee from a bank or insurance company.¹¹ This is found in clause 4.5 of PSSCOC provides as follows:

4.5 Security Deposit

(1) Within 14 days of the Letter of Acceptance or such other longer period as may be prescribed by the Employer in the Appendix, the Contractor shall deposit with the Employer an amount specified in the Appendix and by way of security for the due performance of and observance by the Contractor of his obligations under the Contract.

(2) The Contractor may, in lieu of the cash deposit in Clause 4.5(1) and for the same purposes, provide a guarantee for an equivalent amount from a bank or ... insurance company and in the prescribed form.

(3) The term "Security Deposit" shall hereafter refer to:

(i) the cash deposited under Clause 4.5(1); or

(ii) the cash proceeds of any or all demands on the guarantee provided pursuant to Clause 4.5(2).

The Employer may utilise the Security Deposit to make good any loss or damage sustained or likely to be sustained as a result of any breach of contract whatsoever by the Contractor,

⁸ AH-1 at para 16 and Tab 3A.

⁹ AH-1 at para 17.

¹⁰ AH-1 at para 18.

¹¹ AH-1 at para 20.

including any liquidated damages. If the amount of the Security Deposit utilised by the Employer to make good any such loss or damage is found to be greater than the amount of loss or damage actually sustained by the Employer, then the Employer shall pay the balance of the amount utilised by the Employer without the addition of interest to the Contractor or to the bank or insurer, as the case may be, upon issue of the Final Completion Certificate. Where the Security Deposit is made in cash, the Employer shall pay to the Contractor the unutilised amount without interest upon the issue of the Final Completion Certificate.

...

9 Pursuant to clause 4.5(2), the applicant furnished R1 with the PB, which is dated 1 August 2020, issued by R2 in R1's favour for the sum of \$12,569,800. This is 10% of the Original Contract Sum. The PB was originally valid until 31 December 2023, but it was subsequently extended to 30 November 2026.¹² The terms of the PB provide that:

1. In the event of the Contractor failing to fulfil any of the terms and conditions of the said contract, we shall indemnify the Employer against all losses, damages, costs, expenses or otherwise sustained by the Employer thereby up to the sum of Singapore Dollars Twelve Million Five Hundred Sixty Nine Thousand and Eight Hundred Only (S\$12,569,800.00) ("the Guaranteed Sum") upon receiving your *written notice* of claim for payment made pursuant to Clause 4 hereof.

...

4. This guarantee is *conditional upon a claim or direction as specified herein being made by you by way of a notice in writing* addressed to us and the same being received by us...We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim or direction and shall be entitled to rely upon any written notice thereof received by us (within the period specified in Clause 4 hereof) as final and conclusive.

...

¹² AH-1 at para 22.

Adjudication application and letters of demand

10 On 17 May 2025, the applicant lodged Payment Claim No. 57 for work done up to 15 May 2025, in the sum of about \$24m. R1’s Payment Response No 57 was given on 30 May 2025 with a response sum of zero. A number of reasons were given, including a claim for liquidated damages in the sum of almost \$20m and a claim for damages for breaches, delays and disruption of the Contract amounting to about \$17m. On 30 June 2025, the A lodged an adjudication application (“AA 153”) in respect of Payment Claim No 57. Separately, R1 made a demand (“First Demand”) to R2 for the full sum of \$12,569,800.00 by letter dated 3 July 2025 to the R2.¹³ R2’s solicitors replied to state that the PB was a conditional bond and the R1 was required to state where the applicant had failed to fulfil the terms and conditions of the Contract.¹⁴

11 Thereafter, on 21 July 2025, the applicant and R1 entered into an agreement entitled “Agreement for Proposed Framework for Settlement” (“Framework Agreement”) which,¹⁵ among other things, provided for the suspension of the First Demand until 15 September 2025. The parties also agreed to refer their dispute to mediation in the interim period. However disagreement arose on the interpretation of the Framework Agreement and on 12 August 2025, the applicant filed HC/OA 860/2025 to restrain the R1 from receiving monies under the First Demand until after the outcome of an arbitration between the parties.¹⁶ On 13 August 2025, R1 informed the applicant

¹³ DL-1 at p 3490.

¹⁴ DL-1 at p 3497.

¹⁵ DL-1 at pp 3500–3505.

¹⁶ AH-1 at para 29, pp 579–580.

that it was agreeable to withdrawing the First Demand.¹⁷ The applicant obtained permission of the court to withdraw HC/OA 860/2025.¹⁸

12 Pursuant to a reference made to the SO (“SO Reference”), R1 made a second demand (“Second Demand”) via a demand letter (“Demand Letter”) on 14 October 2025, that stated the terms and conditions breached by the applicant based on the SO’s decision (“SO Decision”).¹⁹ On 24 October 2026 the applicant commenced OA 1204.

PSSCOC dispute settlement regime

13 I first examine the dispute settlement regime under the clause 35 of the PSSCOC, the relevant provisions of which are as follows:

35 SETTLEMENT OF DISPUTES

35.1 Reference to the Superintending Officer

(1) If a dispute or difference of whatsoever kind shall arise between the Employer or the Superintending Officer or the Superintending Officer’s Representative and the Contractor in connection with or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after any termination of the Contract or the Contractor’s employment, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer or the Superintending Officer’s Representative, it shall in the first place be referred by either party in writing to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause and a copy shall be sent to the other party to the Contract.

(2) No later than the expiry of 30 days after the date upon which the Superintending Officer received such reference, the Superintending Officer shall give notice of his decision in

¹⁷ DL-1 at p 3520.

¹⁸ AH-1 at para 30, p 3524.

¹⁹ AH-1 at p 388.

writing to the Employer and to the Contractor and shall for information state therein that it is given pursuant to this Clause. Such decision shall identify the reference pursuant to which it is made and shall be final and binding on the parties to this Contract unless, as hereinafter provided, either party shall require that the decision should be referred to arbitration.

(3) Unless the Contract has already been repudiated or the employment of the Contractor terminated or the carrying out of the Works completed, the Contractor shall, in case of any reference, continue to proceed with the Works in accordance with his obligations under the Contract and the Contractor and the Employer shall give effect forthwith to every decision of the Superintending Officer unless and until the same shall be revised by an arbitrator as hereinafter provided (or as may be otherwise ordered by a Court of competent jurisdiction).

35.2 Reference to Arbitration

If either the Employer or Contractor is dissatisfied with the decision of the Superintending Officer made pursuant to Clause 35.1 hereof, or if the Superintending Officer fails to give notice of his decision on or before the expiry of the 30 day period following the date on which the Superintending Officer received the reference, then the Employer or the Contractor may, within 90 days from the date of receipt of the aforesaid decision of the Superintending Officer, or within 90 days from the date of expiry of the aforesaid 30 day period (as the case may be) give notice to the other party with a copy for information to the Superintending Officer of his intention to refer the decision or the dispute or difference that had not been decided to an arbitrator.

35.3 Arbitration in Event of Termination

Notwithstanding Clause 35.1, if the dispute or difference concerns the termination of the employment of the Contractor or the repudiation or abandonment of the Contract by either party, such dispute or difference shall not be referred to the Superintending Officer for decision pursuant to Clause 35.1 but shall be referred to an arbitrator in accordance with Clause 35.2. Any dispute or difference raised by the Contractor in connection with the termination of his employment or the repudiation or abandonment of the Contract by the Employer shall be referred to arbitration within 60 days of the notice of termination or act of repudiation or abandonment. Failure to do so within such period shall bar the Contractor absolutely from pursuing such dispute or difference in any arbitration or court proceedings whatsoever.

35.4 Powers of the Arbitrator

An arbitrator appointed pursuant to Clause 35.2 or Clause 35.3 hereof shall have full power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute or difference which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, subject to any provision of the Contract which may constitute a decision or certificate or other document as final or binding or any document or event or omission as barring or preventing a claim being advanced by one party against the other.

14 The following observations are relevant to the interpretation of this provision:

- (a) Clause 35.1(1) requires all disputes between the Employer and Contractor to, “in the first place”, be referred by either party in writing to the SO (“Reference”).
- (b) Clause 35.3 provides that clause 35.1 does not cover disputes concerning termination, repudiation or abandonment of contract by either party. Apart from this narrow area, a Reference must be made for disputes or differences “of whatsoever kind” arising “in connection with or arising out of the Contract or the execution of the Works”. This language is very wide and only limited by the carve out in clause 35.3.
- (c) Clause 35.1(2) requires the SO to give his decision in writing on the Reference within 30 days. It also provides that such decision shall be “final and binding on the parties” unless the dispute is referred to arbitration under clause 35.2 or 35.3. Clause 35.4 provides that the arbitrator in such an arbitration is not bound by the decision in the SO Reference.
- (d) Clause 35.2 provides that if either the Employer or Contractor is dissatisfied with the decision on the Reference, they may give notice of

arbitration within 90 from the decision under the Reference. If the SO has failed to render a decision within the 30-day deadline in clause 35.1(2), then the notice to arbitration may be given within 90 days of the expiry of the 30-day deadline for the SO to give his decision on the Reference.

(e) Clause 35.1(3) requires the Contractor to continue with the Works in accordance with the Contract (unless it has been terminated) notwithstanding any Reference having been made and both Employer and Contractor shall give effect to any decision under the Reference unless and until such decision is revised in a subsequent arbitration.

(f) Clause 35.1(1) requires the party making the SO to state that it is made under that clause and clause 35.1(2) requires the SO to identify the Reference in his decision.

15 From the observations above, it is clear that the intention behind clause 35.1 is to provide a fast-track dispute resolution mechanism of temporary finality so that an expedited decision may be obtained in relation to any dispute between the parties in order that the construction works can proceed without the undue delay that a festering disagreement would cause. The clause 35.3 exclusion of the application of clause 35.1 to disputes concerning termination, repudiation or abandonment reinforces this conclusion, as there is no issue of proceeding with the works in those circumstances. Further, the wide scope of matters that may be referred in a Reference, the strict 30-day deadline, the requirement for the applicant to state clearly that it is a reference made under clause 35.1, as well the SO similarly to identify clearly the reference in his decision, all point in the same direction. The PSSCOC originated before the Building and Construction Industry Security of Payment Act 2004 (“SOPA”)

came into force. SOPA established a fast-track regime for progress payment claims for the construction sector as a whole (as opposed to the PSSCOC which is designed for public sector construction contracts). But the SOPA regime does not contradict the clause 35.1 framework in the PSSCOC: the latter has a wider application, being available for all manner of disputes (apart from the clause 35.3 exceptions) compared to SOPA which is only for payment claims.

16 Therefore, the issue to be determined is whether the SO's Decision of 5 September 2025 is a decision under clause 35.1(2) of the PSSCOC such that is final and binding on the parties, and sufficient to fulfil the requirements under the PB.

Whether the SO Decision of 5 September 2025 is a decision under clause 35.1(2)

17 On 6 August 2025, R1 made a reference ("SO Reference") to the SO,²⁰ pursuant to clause 35.1 of the PSSCOC. In the SO Reference, R1 stated that it believed that the applicant was "in breach and/or delay" and had "failed to complete the Works on time pursuant and/or in connection with the Contract". As a consequence, R1 was entitled to liquidated damages, presumably on account of such delay. After setting out the grounds for such belief, R1 requested the SO to give his decision pursuant to PSSCOC clause 35.1 on "the total amount of liquidated damages payable by the [applicant] for its delay and/or breach in failing to complete the Works ... in accordance with the Contract".

²⁰ DL-1 at p 3688.

18 The applicant provided its submissions for the SO Reference to the SO on 15 August 2025.²¹ One of the objections raised by the applicant was that the SO Reference was premature because the SO had yet to fully and properly assess all the applicant’s claims for extension of time. The applicant pointed out that up to 31 July 2025, the SO had withheld about \$2.75m as “partial provisional estimated” liquidated damages. The applicant submitted that, until all the applications for extensions of time had been assessed and determined by the SO, there was no basis for imposition of liquidated damages.

19 By letter dated 5 September 2025,²² the SO gave his “preliminary response” to the SO Reference (“SO Decision”).²³ The essence of the SO Decision is that the SO had no powers under the PSSCOC to determine liquidated damages. The SO stated that he was empowered by clause 16 of the PSSCOC to certify completion and in that respect, he had given his decision by way of certificates of substantial completion for Phases 1A, 1B, 1C and 1D which had taken into account extensions of time that he had granted. The SO pointed out that R1 had early use and occupation for Phases 1B and 1C and that R1 may wish to take this factor into account in determining the quantum of liquidated damages.²⁴

20 On 18 September 2025, R1 wrote to the SO to request for him to clarify his decision of 5 September 2025 (“Clarification Request”),²⁵ specifically to state his decision on the question posed in the SO Reference, which was the

²¹ DL-1 at p 3694.

²² DL-1 at p 3701.

²³ DL-1 at Tab 21, SO’s letter dated 5 September 2025 at para 2.

²⁴ DL-1 at p 3703, para 13.

²⁵ DL-1 at p 3726.

quantum of liquidated damages that was payable by the applicant for delays in the Project.

21 On 6 October 2025, the SO replied (“SO Clarification”) and stated that, after taking into account the delays to the various phases for which he had certified substantial completion, as well as the fact of early occupation in some phases and early use of the MHE system, the total liquidated damages was assessed to be \$13,224,962.47.²⁶

22 Prior to the SO’s letter of 6 October, the applicant had sent a letter dated 26 September 2025 to R1 to state its dissatisfaction with the SO’s Decision and give notice of intention to refer the matter to arbitration pursuant to clause 35.2 of the PSSCOC.²⁷

23 Prior to that, on 18 September 2025, the applicant submitted Payment Claim No 61 (“PC 61”) for the sum of about \$25m.²⁸ In response, on 1 October 2025, the SO issued Payment Certificate No 61.²⁹ The SO certified that the amount due on the certificate was zero, due primarily to a provision for partial liquidated damages in the sum of about \$3m. On 8 October, the applicant issued its Payment Response No. 61 (“PR 61”) with a response amount of zero.³⁰ One of the bases for the payment response was that the SO had decided (presumably in the SO’s letter of 6 October 2025) that the applicant was liable for liquidated damages in the sum of about \$13m.

²⁶ DL-1 at p 3732.

²⁷ AH-1 at p 652.

²⁸ AH-1 at p 662.

²⁹ AH-1 at p 869.

³⁰ AH-1 at p 738.

24 On 16 October 2025, the applicant filed for adjudication in Adjudication Application 290 of 2025 (“AA 290”) in respect of Payment Claim No 61.³¹ There is no evidence before me as to the outcome of this application.

25 On 14 October 2025,³² R1 issued the Demand Letter for the full sum of the PB, \$12,569,800. The Demand Letter stated that:

8. Clause 16.1 of the Contract provides: *“If the Works shall not have been substantially completed within the Time for Completion or any extended time made pursuant to Clause 14, the Contractor shall pay or allow to the Employer liquidated damages calculated at the rate or rates stated in the Appendix hereto for the period during which the Works shall so remain incomplete and the Employer may recover the amount of such liquidated damages from the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.”*

9. On account of the Contractor’s delays in the project which caused JP to suffer substantial losses, JP made a reference to the Superintending Officer (“**SO**”) on 6 August 2025 pursuant to Clause 35.1 of the Contract (“**SO Reference**”), which entitles JP to a decision by the SO in respect of any dispute or difference of whatsoever kind arising between the Employer and the Contractor in connection with or arising out of the Contract.

10. In the SO Reference, JP sought the SO’s decision on “the total amount of liquidated damages payable by the Contractor for its delay and/or breach in failing to complete the Works and/or the Project in accordance with the Contract”.

11. Clause 35.1(2) of the Contract provides that the decision by the SO made pursuant to a reference under clause 35.1 of the Contract shall be “final and binding”, until it is revised by an arbitral award.

12. On 5 September 2025, the SO provided its written decision (“**SO Decision**”) to the parties in response to the SO Reference. The SO also issued a clarification of the SO Decision on 6 October 2025 (“**SO Clarification**”). The SO Clarification forms part of the SO Decision.

³¹ AH-1 at p 958.

³² AH-1 at p 388.

13. Copies of the SO Reference, the SO Decision and the SO Clarification are annexed at **Annex B**.

14. The SO Decision clearly states that the Contractor breached its obligations to meet the Revised Contractual Completion Dates. This can be seen from the table at paragraph 13 of the SO Decision, which is reproduced below for ease of reference:

Phase	Revised Contractual Completion Date	CSC Date	Early Date of Use	Remark
1A	28 Apr 2021	26 Apr 2021	Not Applicable	Work completed prior to the date of contractual completion
1B	4 June 2022	25 Sep 2024	10 August 2023	JP started taking over the bunker on 10 August 2023
1C	4 June 2022	Not Yet Issued	10 August 2024	MHE T&C completed on 10 August 2024
1D	19 Dec 2022 (EOT to be granted)	3 Jun 2024	Not Applicable	EOT to be granted for the listed period: 7 days due to inclement weather 15 Mar 2023 to 31 Aug 2023, 4 Sep 2023 to 17 Aug 2023, 19 Dec 2023 to 5 Mar 2024.

It is therefore clear that the works in respect of Phases 1B, 1C and 1D were delayed. The Contractor has failed to complete the “Works and any phase or part of the Works within the Time or Times for Completion” as prescribed in the Contract. As such, the Contractor is in breach of Clause 14.1 of the Contract.

16. In the SO Clarification, the SO stated that its decision pursuant to the SO Reference is that the Contractor has to pay JP liquidated damages in the amount of **\$13,224,962.47** as a result of the Contractor's delays in respect of the works and/or breach(es) of the Contract.

17. JP's separate assessment of the losses that it has suffered as a result of the Contractor's delays, breaches and/or obligations to indemnify JP under the Contract amounts to \$17,080,424.47 ("**JP's Assessment**"). JP's Assessment is still under review, and our client reserves the right to revise or update JP's Assessment.

18. In any event, both the amounts derived from (a) the SO Decision and SO Clarification; and (b) JP's Assessment are greater than the amount secured under the Guarantee and the amount demanded or sought in this Notice of Claim.

19. In accordance with Clause 1 of the Guarantee, you are required to indemnify our client for all losses it has suffered as a result of the Contractor's breach(es) of the Contract.

20. Pursuant to Clause 4 of the Guarantee, we hereby **DEMAND**, on behalf of JP, that you pay JP the sum of **\$12,569,800.00** to JP's bank account as follows:

...

26 The events surrounding the Second Demand, set out above, may be summarised as follows:

- (a) 6 August 2025: SO Reference sent by R1 to the SO.
- (b) 5 September 2025: SO Decision issued by the SO.
- (c) 18 September 2025: R1 sent the Clarification Request.
- (d) 6 October 2025: SO Clarification issued by the SO.
- (e) 14 October 2025: Demand Letter sent by R1 to the applicant.

Whether the SO Reference was a clause 35.1 reference

27 A reference under clause 35.1 of the PSSCOC must fulfil the requirements therein. Firstly, it must relate to a dispute or difference "of

whatsoever kind” arising between the employer and the contractor in connection with or arising out of the contract or execution of the works. The SO Reference clearly falls within the wide ambit of this requirement.

28 Next, the reference must state that it is made pursuant to clause 35.1. I should add that any such reference should err on the side of caution with regard to the clarity of such statement. A copy must also be sent to the other party. These requirements are met in this case.

29 The importance of stating clearly that a letter is a reference under clause 35.1 is that this brings to the attention of the SO the urgency of the matter because he only has 30 days to give his decision on the reference. It is also important that the other party be given a copy of the reference so that it has an opportunity to provide its response to the SO for his consideration. This begs the question as to whether there is any deadline for such response to be given to the SO for his consideration. Obviously the earlier the SO can obtain the response, the more time he has to consider both submissions and make his decision. However, the other party may not have prior notice of the matter and would require a reasonable time to prepare its case. Clause 35.1 does not make any provision for the deadline for the response, nor for extension of time for the SO to render his decision on the reference. As explained at [15] above, the policy behind this regime is expedition, having regard to the temporary finality of the SO’s decision. Therefore, it is imperative that the SO issues his decision on any reference within the 30-day time limit. Although the PSSCOC is silent as to whether the SO should give the other party the opportunity to respond to a reference, this should, as a matter of course be done. However, given the very short time frame, if the other party declines to provide a response, or does not do so in time for the SO to take it into account, then the SO must proceed with his decision on the reference even without the benefit of a response. But he must

use his best endeavours to apply his mind to the issues as fairly as he can. This issue is not relevant to the present case where the SO had the benefit of the applicant's response to the SO Reference and issued the SO Decision within the 30-day requirement.

Whether the SO Decision is a decision under clause 35.1(2)

30 The more difficult issue concerns the content of the SO Decision. The question posed in the SO Reference was unambiguous: the SO was asked to decide on the total amount of liquidated damages payable. This is clear from the concluding paragraph of the SO Reference, which states as follows:

“8. The Employer therefore seeks the Superintending Officer's decision pursuant to Clause 35.1 of the PSSCOC on the total amount of liquidated damages payable by the Contractor for its delay and/or breach in failing to complete the Works and/or the Project in accordance with the Contract.”³³

31 The question is whether the SO Decision has provided a reply to that question. The first observation I make about the SO Decision is that he called it his “preliminary response”. This immediately begs the question whether there will be a final response. If the SO had written a letter before the deadline and called it a preliminary response, which is followed by a response (clearly identified as such) before the 30-day deadline, then it would be appropriate to ignore the so-called preliminary response and simply take the latter as the decision under clause 35.1. That was not the case here, in which the SO enigmatically stated that the SO Decision was his “preliminary response”, and proceeded to set out the submissions from both sides and his findings on the related issue of extensions of time for the various phases of the project. Then,

³³ DL-1 at p 3688.

under the heading “The JP Reference” (which is a reference to the SO Reference of 6 August 2025) he stated as follows:

“15. To the extent the [SO] Reference refers to a dispute or disagreement regarding the alleged delay by [the A] to complete the works and disentitlement to EOTs, the SO’s decision on EOT claims is documented in the SO EOT Decisions as supplemented by the EOT to be granted as detailed in paragraph 13 above.

16. With respect to a referral to the SO of a decision on the total amount of LDs payable, the SO notes that neither Clause 16 nor Clause 32.1 defer the obligation to certify LDs to the SO. It is therefore the Employer’s right to levy LDs and instruct the SO accordingly.”

32 In my view, nothing turns on the statement by the SO that the SO Decision is a “preliminary response” in the circumstances of this case as the paragraphs following that clearly show that this was the final response. The court must look beyond such labels and consider the substantial response in the context of the entirety of the letter.

33 At paragraph 16 of the SO Decision, the SO seemed to say that he did not have power under the Contract to determine the quantum of liquidated damages and therefore did not provide an answer to the sole question posed in the SO Reference.

Whether the SO Clarification is a decision under clause 35.1(2)

34 However, there is the additional complication of the SO Clarification.³⁴ It should be recalled that the SO Clarification stated that the total liquidated damages was about \$13m. It is also clear that the SO Clarification provided the

³⁴ DL-1 at p 3732.

answer to the question posed in the SO reference. However, this raises two questions.

35 The first one is a preliminary point, relating to the decision-making process. Although I have stated at [29] above that, given the policy of expedition, under certain circumstances, it is not fatal to a decision under clause 35.1 if it is made in the absence of a response from the other party. But the principles of natural justice would still require that such party be given an opportunity to respond. This is why clause 35.1(1) requires a copy of the reference be sent to that other party. Indeed, it would render any reference, and any decision pursuant to such reference, invalid if this is not carried out. The Clarification Request was not copied to the applicant and the SO Clarification was made without affording the applicant the opportunity of providing a response. Therefore, the SO Clarification was tainted by this breach of natural justice, which arises not only under common law, but implied from the specific requirement under clause 35.1 that a copy of the reference be sent to the other party.

36 The second is a more fundamental matter: having issued the SO Decision on 5 September 2025, is it valid for the SO, in the SO Clarification, to give a different answer to the question posed after the 30-day deadline? In some circumstances, it may well be valid for the SO to clarify the decision he had made which does not amount to a substantial change of the decision. However, in the present case, the SO Clarification is more than a mere clarification of the SO Decision. The Clarification Request acknowledges as much when it stated at paragraph 3:

“In the [SO Decision], although the SO provided its assessment on EOTs, the SO did not make clear its decision as to the “*total amount of liquidated damages payable*” even though this was expressly stated to be the subject of the ... SO Reference.”

Although framed as a clarification, the SO Clarification was a decision in response to the question posed in the SO Reference. The SO Clarification, to the extent that it renders a decision of the SO, in answer to the question posed in the SO Reference, is invalid because it was not given within the 30-day deadline. Indeed, it was given some 60 days after the SO Reference but given the rigid deadline under the clause 35 regime, I would venture to suggest that even a one-day delay would invalidate the late decision.

37 In short, the SO Decision did not provide a decision in respect of the quantum of liquidated damages payable by the applicant to R1, and therefore there is no decision therein that is final and binding on the parties (subject to subsequent arbitral decision). The SO Clarification, to the extent that it contains a decision on the quantum of liquidated damages, is not a valid decision pursuant to clause 35.1 because it was given after the 30-day deadline.

Whether the Demand Letter was a valid demand

38 Counsel for the parties agree that the PB is a conditional bond, on the authority of *AXA Insurance Pte Ltd v Chiu Teng Construction Co Pte Ltd* [2021] 2 SLR 549 (“*AXA*”) because the material term of the PB is in *pari materia* with the instrument in *AXA*: at [40] and above at [9]. In the Demand Letter, R1 had relied on the purported determination by the SO of the quantum of liquidated damages payable by the applicant as set out above at [25].

39 It can be seen that R1 was relying on the SO Decision (i) having determined the quantum of liquidated damages payable by the applicant; and (ii) that decision being final and binding until revised in arbitration. However, as I have found above, the SO Decision of 5 September 2025 did not make a determination of the liquidated damages payable, and if R1 relies on the

SO Clarification having decided on the quantum of liquidated damages payable, that is not valid because it was rendered outside the 30-day deadline. Hence the premise in paragraph 11 of the Demand Letter that there was a decision of the SO pursuant to clause 35.1 and that it is binding on the applicant, is false. The demand on the PB is therefore not valid.

Conclusion

40 Therefore, the R2 is not obliged to make the payment demanded in the Demand Letter on the basis of the SO Decision or the SO Clarification and R1's application to set it aside the injunction must be dismissed. I will hear parties on the question of costs.

41 I should add that if, pursuant to a reference by an employer to the SO under clause 35.1, the SO makes a determination within the 30-day deadline (and which complies with all the requirements of that clause) on the amount of liquidated damages payable by the contractor, that decision is binding on the parties pursuant to the same clause. In my view, the employer would be entitled to rely on this determination to form the basis of a demand on the PB. However, I recognise that this issue is not strictly necessary for the purpose of the application before me and may well be obiter.

Lee Seiu Kin
Senior Judge

Chuah Chee Kian Christopher, Lee Hwai Bin, Koh Huini Valerie,
Leong Wen Wei Michael, Yang Yuanhong Bernard (Christopher
Chuah Law Chambers LLC) for the claimant;
Thio Shen Yi S.C., Loh Eu Tse Derek, Ow Guan Jie Daniel, Chen
Sixue, Terence Yeo (TSMP Law Corporation) for the first defendant;
Wee Anthony (Titanium Law Chambers LLC) for the second
defendant.