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

[2023] SGHC 362

Originating Application No 437 of 2022

In the matter of Section 27(6) of the Building and Construction Industry Security of Payment Act 2004

Between

JE Synergy Engineering Pte Ltd

… *Claimant*

And

Sinohydro Corp Ltd (Singapore Branch)

… *Defendant*

GROUNDS OF DECISION

[Building and Construction Law — Statutes and regulations — Building and Construction Industry Security of Payment Act — Application to set aside adjudication determinations — Whether adjudication determinations were induced or affected by fraud or corruption]

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v
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S Mohan J:

1 HC/OA 437/2022 ("OA 437") was the claimant's application to set aside:

(a) an adjudication determination dated 6 June 2020 in respect of Adjudication Application No. SOP/AA 132/2020 ("AD 132" and "AA 132" respectively);

(b) an adjudication determination dated 9 July 2020 in respect of Adjudication Application No. SOP/AA 150/2020 ("AD 150" and "AA 150" respectively); and

(c) the Order of Court dated 19 July 2022 in HC/OA 321/2022 ("OA 321"), namely HC/ORC 3729/2022 ("ORC 3729"), granting the

defendant leave to enforce AD 132 and AD 150 (collectively, the "ADs") against the claimant.

In the alternative, the claimant sought to stay the enforcement of the ADs pending the final determination of the dispute in HC/S 950/2020 ("S 950").

2 I dismissed OA 437 on 16 October 2023 and provided brief oral grounds for my decision. As the claimant has appealed to the Appellate Division of the High Court against my decision, I set out my full grounds of decision below.

Background

3 The claimant, JE Synergy Engineering Pte Ltd, is a Singapore company that engages in the business of engineering, procurement and construction management.[1]

4 The defendant, Sinohydro Corporation Limited (Singapore Branch), is a Chinese company that engages in construction and civil engineering.[2] It operates in Singapore via its Singapore branch.[3]

5 The claimant was the main contractor for building works for a Mechanical Biological Treatment facility at 97 Tuas South Avenue 2 (the "Building Works").[4] It awarded a subcontract for a portion of the Building Works (the "Subcontract Works") to the defendant under an agreement dated

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1 Affidavit of Tan Kuen Jong in HC/OA 437/2022 dated 8 August 2022 ("1-TKJ") at para 5.

2 Affidavit of Li Yi in HC/OA 321/2022 dated 12 July 2022 at para 6.

3 Affidavit of Li Yi in HC/OA 321/2022 dated 12 July 2022 at para 6.

4 1-TKJ at para 5.

30 November 2018 (the "JEE-Sinohydro Subcontract").[5] The defendant in turn engaged Vico Construction Pte Ltd ("Vico") to perform part of the Subcontract Works under an agreement dated 3 December 2018.[6]

6 In the course of carrying out the Subcontract Works, the defendant submitted a total of 16 payment claims to the claimant under the JEE-Sinohydro Subcontract.[7] Three of these, Payment Claims Nos. 14, 15, and 16 ("PC 14", "PC 15", and "PC 16" respectively), were relevant to the disputes underlying AA 132 and AA 150 (collectively, the "AAs"), to which I now turn.

AA 132

7 On 11 March 2020, the defendant submitted PC 14 to the claimant, claiming $1,115,788.51 for work done between 26 January 2020 and 25 February 2020.[8] On 7 April 2020, the claimant issued Payment Response No. 14 ("PR 14") certifying PC 14 in full.[9] However, the claimed amount was not paid.

8 On 19 May 2020, the defendant commenced AA 132 against the claimant under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("SOPA 2006"). The defendant sought an order from the adjudicator for the claimant to pay to the defendant the sum of

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5 1-TKJ at para 6.

6 Affidavit of Li Yi in HC/OA 437/2022 dated 6 September 2022 ("1-LY") Vol 1 at para 40.

7 1-LY Vol 1 at para 42.

8 1-TKJ at para 11 and p 334.

9 1-TKJ at para 15 and p 333.

$1,115,788.51,[10] this being the claimed amount in PC 14. The claimant did not lodge an adjudication response.[11]

9 On 6 June 2020, the learned adjudicator awarded the defendant the sum sought of $1,115,788.51.[12] In his view, there was "nothing remiss" in the claimed amount in PC 14.[13] He explained that the claimed amount was justified by the supporting documents[14] and also observed that PC 14 had been accepted by the claimant in PR 14.[15]

AA 150

10 On 30 April 2020, the defendant submitted PC 16 to the claimant, claiming $9,457,063.93 for work done between 1 December 2018 to 25 April 2020.[16] The claimant did not issue a valid payment response in respect of PC 16.[17]

11 On 2 June 2020, the defendant commenced AA 150 against the claimant under the SOPA 2006.[18] The defendant's initial claim was for $9,457,063.93, this being the claimed amount in PC 16.[19] However, the defendant subsequently

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10 1-TKJ at para 18.

11 1-TKJ at para 19.

12 1-TKJ at pp 46–61.

13 1-TKJ at p 59.

14 1-TKJ at p 59.

15 1-TKJ at p 59.

16 1-TKJ at p 389.

17 1-TKJ at para 26.

18 1-TKJ at para 30.

19 1-TKJ at p 79.

reduced the amount sought to $8,815,063.94 after withdrawing one of its heads of claim.[20] Again, the claimant did not lodge an adjudication response.[21]

12 On 9 July 2020, the learned adjudicator awarded the defendant the sum of $7,678,070.06, substantially allowing all of the defendant's claims.[22] One of the issues before the learned adjudicator was the value of the works done since the end of the reference period in AA 132. Although the learned adjudicator did not accept all of the increases in value alleged by the defendant,[23] he accepted the defendant's submission that the value of the certified works had increased by $171,388.95, this being the claimed amount (before Goods and Services Tax) in PC 15 which the defendant had fully certified in Payment Certificate No. 15.[24] As Payment Certificate No. 15 represented the claimant's own confirmation that the corresponding works had been carried out, they also constituted a sufficient basis for the learned adjudicator to arrive at the same conclusion.[25]

S 950 and the Arbitration

13 On 2 October 2020, the claimant commenced S 950 against: (a) its Project Director, Niu Ji Wei ("Mr Niu");[26] and (b) its Senior Project Engineer, Chen Zhe ("Ms Chen"),[27] alleging that Mr Niu and Ms Chen had breached their

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20 1-TKJ at p 80.

21 1-TKJ at para 42.

22 1-TKJ at pp 62–101.

23 1-TKJ at pp 98–99.

24 1-TKJ at pp 93, 904.

25 1-TKJ at p 93.

26 1-TKJ at pp 972–982.

27 1-TKJ at pp 972–982.

contracts of employment with, and/or fiduciary duties owed to, the claimant.[28] Mr Niu and Ms Chen are also husband and wife.[29] In brief, the claimant's case in S 950 is that Mr Niu and Ms Chen had obtained bribes, kickbacks, and/or secret profits from the defendant in exchange for: (a) ensuring that the defendant would be awarded the Subcontract Works; and (b) approving payment claims submitted by the defendant without any proper verification of the work done, leading to an over-certification of the value of the Subcontract Works that were carried out.[30]

14 The defendant was subsequently added to S 950 as a third party on the application of Mr Niu and Ms Chen, and entered an appearance on 17 September 2021. Vico was then also added to S 950 as a fourth party on the defendant's application, and entered an appearance on 29 July 2022.

15 On 12 July 2022, the claimant commenced arbitration proceedings against the defendant (the "Arbitration") in accordance with an arbitration agreement contained in the JEE-Sinohydro Subcontract.

16 On 19 October 2022, the defendant, in its capacity as the third party in S 950, applied to stay all further proceedings in S 950 under the inherent jurisdiction of the court and/or pursuant to its case management powers pending the final determination of the dispute in the Arbitration.

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28 Statement of Claim (Amendment No. 1) in HC/S 950/2020 at para 16 (1-TKJ at p 1043).

29 Statement of Claim (Amendment No. 1) in HC/S 950/2020 at para 3 (1-TKJ at p 1033).

30 Statement of Claim (Amendment No. 1) in HC/S 950/2020 (1-TKJ at pp 1032–1053).

17 The learned Assistant Registrar ("AR") allowed the defendant's application and granted a stay of the proceedings in S 950. I upheld the AR's decision following an appeal by the claimant: see *JE Synergy Engineering Pte Ltd v Niu Ji Wei and another (Sinohydro Corp Ltd (Singapore Branch), third party; Vico Construction Pte Ltd, fourth party)* [2023] SGHC 281. I note parenthetically that the claimant has appealed to the Court of Appeal against my decision in S 950. That appeal is currently pending.

OA 321

18 On 12 July 2022, the defendant commenced OA 321, applying for leave to enforce the ADs.[31] Leave was granted to the defendant on 19 July 2022 in ORC 3729.[32]

The parties' cases

19 In OA 437, the claimant sought primarily to set aside the ADs, and consequently also ORC 3729, under s 27(6)(*h*) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("SOPA") on the basis that "the making of the adjudication determination was induced or affected by fraud or corruption".

20 The factual substratum of the claimant's case consisted of essentially the same allegations on which it relies in S 950, to the effect that the defendant had paid bribes, kickbacks, and/or secret profits to Mr Niu and Ms Chen. These allegations were as follows.[33] The bribery scheme was executed through a

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31 Originating Application in HC/OA 321/2022 dated 12 July 2022 at paras 1–2.

32 HC/ORC 3729/2022 in HC/OA 321/2022 dated 22 July 2022 at paras 1–2.

33 Claimant's Written Submissions dated 4 August 2023 ("CWS") at paras 17–53.

conduit company Shi Rong Technology Limited ("Shi Rong"). On 18 September 2018, Shi Rong was engaged to act as a consultant for the purposes of assisting the defendant in bidding for the Subcontract Works. They agreed that, if the defendant was successful in its bid, it would pay Shi Rong a service and consultancy fee amounting to $1,000,000 upon the defendant receiving payment from the claimant for the Subcontract Works. This service and consultancy fee was to be paid in the form of instalments amounting to 5% of each progress payment received by the defendant from the claimant. Mr Niu and Ms Chen had, through Shi Rong, transmitted to the defendant confidential information regarding the details of the Building Works project for the purposes of assisting the defendant in winning the tender for the Subcontract Works. On or about 11 December 2018, after the claimant had awarded the Subcontract Works to the defendant on 30 November 2018, Ms Chen acquired 9,000 shares of Shi Rong and became the full legal owner of Shi Rong. The defendant further entered into an agreement with Shi Rong where the defendant allegedly agreed to purchase from Shi Rong certain items, including what appeared to be construction apparatus (*eg*, an "Overhead Crane Guiderail"), for the price of S$1,950,000. However, it was uncertain whether this construction apparatus had in fact been delivered.

21 The claimant argued that, in return for receiving the bribes, kickbacks, and/or secret profits, Mr Niu and Ms Chen would approve payment claims submitted by the defendant without conducting any proper verification of the work done. This resulted in amounts overclaimed by the defendant (in Payment Claim Nos. 1–15) being certified in full in the claimant's Payment Response Nos. 1–15. As no payment response was filed in response to PC 16, the claims by the defendant were accepted by the adjudicator in AA 150 almost in full. According to the claimant, this culminated in an over-certification of

approximately $3m.[34] As the adjudicators in AA 132 and AA 150 had relied, respectively, on PR 14 and PR 15, the ADs (and therefore ORC 3729 also) were liable to be set aside on the grounds of fraud and/or corruption under s 27(6)(*h*) of the SOPA.[35]

22 In its written submissions, the claimant also appeared to rely on the alleged corruption of Mr Niu and Ms Chen in ensuring that the defendant would be awarded the Subcontract Works in the first place.[36] Specifically, the claimant alleged that Mr Niu and Ms Chen had conveyed to the defendant confidential information, such as the size of the claimant's budget for the Subcontract Works, in addition to recommending the defendant as subcontractor to the claimant's directors and majority shareholder.[37] These allegations appeared to have been put forward as an additional ground on which to set aside the ADs and ORC 3729 under s 27(6)(*h*) of the SOPA. However, at the hearing before me on 11 August 2023, counsel for the claimant, Mr Raymond Wong ("Mr Wong"), informed me that the claimant was no longer advancing the case that the ADs and ORC 3729 should be set aside on the basis that the JEE-Sinohydro Subcontract was allegedly awarded as a result of fraud and/or corruption (by way of kickbacks, bribery and/or secret profits), but without prejudice to its right to advance this case in S 950 and/or in the Arbitration.[38] This concession was made largely in response to the written submissions of the defendant. The defendant submitted that on the basis of the Court of Appeal's

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34 CWS at paras 42–48.

35 CWS at paras 85–88 and 92.

36 CWS at paras 17–25.

37 CWS at para 40.

38 Notes of Evidence dated 11 August 2023 at p 5 ln 30–p 6 ln 9.

decision in *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131 ("*Rakna*") at [98] in relation to s 24(*a*) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the same wording is retained in s 24(*a*) of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA")) which is *in pari materia* with s 27(6)(*h*) of the SOPA, even if the JEE-Sinohydro Subcontract was procured by corruption, that would not suffice to invoke s 27(6)(*h*) of the SOPA.[39]

23 As an alternative to its application to set aside the ADs and ORC 3729, the claimant sought to stay the enforcement of the ADs pending the final determination of the court in S 950. The claimant submitted, in the main, that the defendant's behaviour in obtaining the ADs by means of fraud and/or corruption constituted *prima facie* evidence of an abuse of process in the context of the SOPA regime. This in turn suggested that any moneys paid by the claimant to the defendant would not ultimately be recovered if the dispute were finally resolved in the claimant's favour.[40] The claimant also cited two further considerations favouring a stay of enforcement: (a) the defendant had waited for more than two years before seeking leave to enforce the ADs;[41] and (b) as the JEE-Sinohydro Subcontract had since been rescinded or terminated, the defendant was no longer required to perform the Subcontract Works, so that there was no pressing need for any interim payments to be made to the defendant.[42]

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39 Defendant's Written Submissions dated 4 August 2023 ("DWS") at para 18a.

40 CWS at paras 112–119.

41 CWS at paras 120.

42 CWS at paras 121–122.

24 In resisting the claimant's application to set aside the ADs and ORC 3729, the defendant strenuously denied any fraud and/or corruption in connection with the procuring of the JEE-Sinohydro Subcontract and the certification of its payment claims.[43] In any event, even if Mr Niu and Ms Chen had corruptly and/or fraudulently over-certified the value of the Subcontract Works in PR 14 and PR 15, the defendant contended that this did not materially induce or affect the issuance of the ADs. In both AAs, the learned adjudicators had independently satisfied themselves that the defendant had met the requirements of establishing a *prima facie* case as regards the orders that it sought. This exercise had involved a careful review by the adjudicators of all the evidence, including the supporting documents, as opposed to a mere reliance on PR 14 and PR 15.[44]

25 The defendant also submitted that there was no legal or factual basis for the alternative application to stay the enforcement of the ADs. There was no suggestion that any monies paid to it would subsequently be irrecoverable. To grant a stay in the absence of any evidence that this high threshold had been met would defeat the rationale underlying the SOPA.[45] The defendant also explained its delay in obtaining leave to enforce the ADs by reference to, among other things, the COVID-19 pandemic and earlier attempts to reach an amicable settlement with the claimant.[46] Moreover, although the Subcontract Works were no longer ongoing, the importance of cashflow continued to apply with

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43 DWS at paras 20–38.

44 DWS at paras 35–36.

45 DWS at paras 39–41.

46 DWS at para 42.

undiminished force given that the defendant was still engaged in several other large-scale projects.[47]

Issues to be determined

26 The following issues therefore arose for my determination:

(a) Whether the ADs and ORC 3729 should be set aside pursuant to s 27(6)(*h*) of the SOPA on the grounds that the ADs were induced by fraud and/or corruption.

(b) If the answer to the first issue was in the negative, whether the enforcement of the ADs should be stayed pending the final determination of the dispute in S 950.

Whether the ADs and ORC 3729 should be set aside on the grounds of fraud and/or corruption

27 Section 27(6)(*h*) of the SOPA provides as follows:

> **Enforcement of adjudication determination as judgment debt, etc.**
>
> **27.**— …
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> …
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> (6) The grounds on which a party to an adjudication may commence proceedings under subsection (5) include, but are not limited to, the following:
>
> …
>
> (*h*) the making of the adjudication determination was induced or affected by fraud or corruption.

47 DWS at paras 43–44.

28 I begin with a preliminary comment about Mr Wong's clarification that the claimant would not, in its setting aside application, rely on the alleged corruption of Mr Niu and Ms Chen in ensuring that the defendant would be awarded the Subcontract Works (see [22] above). In my view, this concession was fairly made given what must be the correct position in law. In *Rakna*, the Court of Appeal held that s 24(*a*) of the IAA contemplates a situation where the *award itself*, rather than the *underlying contract* between the parties, is tainted or induced by fraud or corruption. As I mentioned at [22], s 27(6)(*h*) of the SOPA is *in pari materia* with s 24(*a*) of the IAA. Therefore, similarly, in this application, the claimant could not argue that the ADs should be set aside because the *underlying contract*, *ie*, the JEE-Sinohydro Subcontract, was procured by fraud and/or corruption. The claimant was therefore correct to limit its challenge by relying on the allegation of over-certification of the payment claims as the sole basis for its setting aside application.

29 On a related point, s 24(*a*) of the IAA is derived from s 36(3) of the Draft New Zealand Arbitration Act ("the making of the award was induced or affected by fraud or corruption"): Law Reform Committee, Singapore Academy of Law, *Report on Review of Arbitration Laws* (August 1993) (Chairman: Giam Chin Toon) at para 23. In *Ironsands Investments Ltd v Toward Industries Ltd* [2012] NZHC 1277 ("*Ironsands*"), the High Court of New Zealand took judicial notice of the *Shorter Oxford Dictionary* (Oxford University Press, 5th Ed, 2002) definition of "corruption" as the "perversion of a person's integrity in the performance of (esp. official or public) duty or work by bribery etc" (at [59]), concluding at [61] that corruption may be the result of bribery, or of threats, coercion, blackmail or other forms of undue influence. This coheres with the Court of Appeal's observation in the context of an application to set aside an arbitration award (albeit not specifically in relation to the corruption ground)

that corruption includes "illegal conduct, bribery and fraud": *Lao Holdings NV and another v Government of the Lao People's Democratic Republic* [2023] 1 SLR 55 ("*Lao Holdings*") at [74]. In my view, *Ironsands* and *Lao Holdings* provide some helpful guidance on at least a working definition of what could constitute "corruption" for the purposes of s 27(6)(*h*) of the SOPA. It is worth noting that neither case purported to set out an exhaustive definition; nor do I attempt to do so.

30 Reverting to the application before me, it suffices to say that the allegations raised by the claimant of over-certification of the payment claims in the present case, if established, would amount to both fraudulent and corrupt conduct. To reiterate, the core of the allegation was that the payment claims presented by the defendant to the claimant were over-certified as a result of Mr Niu and Ms Chen receiving bribes, kickbacks, and/or secret profits from the defendant.

31 However, at the same time, it cannot be gainsaid that the allegation made by the claimant of fraud and/or corruption in the over-certification of the said payment claims was an intensely factual one, and one which went to the very heart of the merits of the claims being advanced by the claimant: (a) against Mr Niu and Ms Chen *in S 950*; and (b) against the defendant *in the Arbitration*. This was not disputed by the claimant.

32 The law is clear that in an application to set aside an adjudication determination, the court does not review the merits of the adjudicator's determination. That is not within the purview of the supervisory jurisdiction of the court: *Facade Solution Pte Ltd v Mero Asia Pacific Pte Ltd* [2020] 2 SLR 1125 ("*Facade*") at [36]. In my view, to engage in the merits of

the dispute *as a whole* is antithetical to the scope of the court's supervisory role under the SOPA. The philosophy underpinning the SOPA lies in the pithy adage "pay now, argue later": *Diamond Glass Enterprise Pte Ltd v Zhong Kai Construction Co Pte Ltd* [2021] 2 SLR 510 at [48]. To allow parties to litigate the very substance of the underlying merits of the dispute in a SOPA setting aside application would effectively mean bringing forward the "*argue later*" stage to the stage where the adjudication determination to "*pay now*" is being reviewed by the court pursuant to its supervisory jurisdiction. If the court were to engage the merits in this way, it would in effect translate to "*pay now, argue now and argue again later*". In my view, that would go against the very purpose and philosophy undergirding the SOPA regime. It places the supervisory court in the invidious position of having to engage and decide on the merits of the case solely on the basis of affidavit evidence. In addition, it also subverts the parties' choice of having the merits of the dispute decided in their agreed forum, such as *via* arbitration.

33 Therefore, when the court exercises its supervisory role in a SOPA setting aside application, the court should not engage on the merits of the dispute as a whole especially where there is a significant overlap between the ground relied upon in the setting aside application and the merits of the underlying dispute as a whole. Applying this principle to the present case, given that the allegation of fraud and/or corruption in the over-certification of payment claims is at the heart of and the very subject of the substantive dispute, which is to be resolved in S 950 or the Arbitration, I was of the view that the court should not enter the arena and engage in the disputed merits of the case in this application.

34 However, I would caveat my comments and observations above. It is also clear from *Facade* at [35] that an adjudication determination will not be set

aside because of mere allegations of fraud There must be compelling evidence of fraud before the court. In my view, that must also be the case when allegations of corruption are raised. If the evidence of fraud and/or corruption is so compelling that there is effectively *no dispute* on the merits to be had, then the supervisory court in finding that the making of an adjudication determination was induced by fraud and/or corruption would *not* be intruding into the territory of a dispute on the merits, or reviewing the merits of the adjudicator's determination. There is, in the scenario above, effectively no dispute on the merits to begin with and therefore the court would not be subverting the SOPA regime. Thus, in a case where just on the affidavit evidence alone, the high threshold of compelling evidence of fraud and/or corruption inducing or affecting the adjudication determination is met, then the adjudication determination may be set aside (*Facade* at [35]). For instance, in *Facade* itself, the evidence was "incontrovertible" that the appellant had fraudulently represented that it had control over all the undelivered window panels and could have performed the contract. There was also indisputable evidence that the appellant did not in fact have control over all the undelivered window panels (at [39], [40], [43] and [44]). As such, *Facade* may be explained as an instance where the evidence of fraud was so strong and compelling that there was effectively no dispute on the merits of the case to be had.

35 In contrast, in the present case, the allegations of fraud and/or corruption in the alleged over-certification of the defendant's payment claims levelled by the claimant against the defendant were hotly contested and, as I mentioned above, was an intensely factual dispute on the merits. The affidavit evidence on the allegations of over-certification was by no means incontrovertible. In these circumstances, I could not legitimately engage the merits of the claimant's case, for the reasons explained above at [32]–[33] above. Further, and for the

following reasons, I found that *on the evidence before me*, the claimant had not in any event established a compelling case of fraud and/or corruption that had induced or affected the making of the ADs such as to justify setting aside the ADs.

36 First, the claimant relied on the absence of any defects noted in the first 15 payment claims as one of the *indicia* of corruption.[48] However, the defendant had provided an explanation on affidavit for the absence of any defects in the payment claims submitted and approved, namely that there was a process of discussion and meetings to align the payment claims and it was not the case that the payment claims were blindly certified.[49] This process included email exchanges and meetings (including site meetings) to discuss the payment claims, and making changes to the *proformas*.[50] In my view, this was not an implausible explanation. Whether the explanation ultimately holds true is to be determined in S 950 or the Arbitration.

37 Second, from the payment certificates themselves, it was apparent that there were individuals from the appointed Quantity Surveyor, DGA (Singapore) Pte Ltd ("DGA"),[51] who were directly responsible for certifying and/or reviewing the payment claims.[52] Yet, no allegations were made by the claimant that any individuals from DGA were in any way involved in the corrupt and/or fraudulent over-certification scheme. Even for the claimant's employees Mr Ang Chiap Heong and Mr Mark Chue, who signed off on payment responses,

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48 CWS at para 44.

49 1-LY Vol 1 at paras 62–65.

50 1-TKJ at pp 328–331; 1-LY Vol 6 at pp 3500–3518; 1-LY Vol 8 at pp 4636–4637.

51 1-TKJ at para 12; 1-LY Vol 1 at para 8.

52 1-TKJ at pp 890–904.

no specific allegations were made or proceedings brought against them by the claimant.[53] Instead, the proceedings brought by the claimant in S 950 are only against Mr Niu and Ms Chen, both of whom, on the evidence before me, had not been shown to have had any *specific* role(s) to play in the alleged fraudulent and/or corrupt scheme to over-certify the defendant's payment claims. The absence of any evidence of the claimant taking action against the entities/persons who, on the face of the documents, were directly responsible and involved in the certification process also diluted the strength of the evidence as to the existence of the alleged fraudulent and/or corrupt scheme, at least for the purposes of meeting the requisite threshold *in this application*.

38 Third, the claimant relied on the fact that the defendant's certification of the work done by the defendant's sub-contractor Vico, in terms of the percentage of work done, were in some instances lower than what the defendant itself claimed from the claimant up the chain.[54] However, in my view, that in and of itself was not compelling evidence of fraud and/or corruption in the certification of the payment claims such as to induce or affect the making of the ADs, whether in whole or in part. Counsel for the defendant, Mr Martin See ("Mr See"), pointed out that by the same metric, there were also instances where the defendant's certification of the work done by Vico were *higher* than what the defendant itself claimed from the claimant up the chain.[55]

39 To be clear, I do not express any conclusive views as to the correctness of the defendant's calculations and explanations. They were raised at the

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53 DWS at para 31.

54 CWS at paras 49–53.

55 DWS at paras 26–28; Notes of Arguments dated 11 August 2023 at p 14 ln 31 – p 15 ln 23.

hearing before me and I did not have the complete picture of the numbers or the parties' respective versions of what the amounts should be. In any event, I could not arrive at any conclusions on either side's contentions. These were, chiefly, matters to be thrashed out in S 950 or the Arbitration. Furthermore, the point remained that there could well be innocent explanations for the alleged discrepancies highlighted by the claimant, which would need to be tested in a final hearing in the appropriate forum. Therefore, these so-called "discrepancies", in and of themselves, did not amount to compelling evidence of fraud and/or corruption justifying the setting aside of the ADs. In this regard, I agreed with Mr See that at the end of the day, the allegations levelled by the claimant against the defendant and the defendant's explanations would be more appropriately explored, tested, argued and resolved in the proper forum, be it S 950 or the Arbitration (as the case may be) – the latter being the forum where the "ground-clearing" has been ordered to take place pursuant to my judgment in S 950 affirming the AR's decision to grant a case management stay (see [17] above).

40 Fourth, the claimant relied on a report of their expert, Mr See Choo Lip (the "Expert"), to support its case on over-certification.[56] In particular, the claimant relied on the Expert's computation on the amount by which the payment claims were allegedly over-certified, *ie*, to the tune of approximately $3m.[57] The claimant argued that the Expert's analysis constituted compelling evidence that the payment claims were most likely issued and certified fraudulently and/or corruptly. In my view, there were a number of problems with that argument.

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56 Affidavit of See Choo Lip in HC/OA 437/2022 dated 11 October 2022 ("SCL").

57 CWS at para 47; SCL at p 24.

41 Firstly, the mere fact of over-certification (assuming that that was factually the case) was not necessarily compelling evidence that the payment claims must have been issued and/or certified fraudulently and/or corruptly. For one, it did not, for example, explain the precise role(s) of the persons alleged to be involved in the alleged fraudulent and/or corrupt scheme. I focus especially on the role(s) that Mr Niu and/or Ms Chen allegedly played in the certification/approval process, bearing in mind they are the only natural persons against whom the claimant has commenced proceedings in respect of the alleged over-certification of the payment claims to date, as I noted above at [37].

42 Secondly, in my view, there were some doubts as to the correctness of the Expert's method of quantifying the value of the works done. The Expert used the subtractive method for assessment, where he considered the balance of works not done and subtracted it from the contract price, which he derived from a "Schedule of Rates".[58] I was mindful that the defendant did not adduce any expert evidence of its own to refute the methodology of the Expert and sought instead to rely on certain calculations proffered by the defendant's representative and fleshed out by its counsel during the oral hearing.[59]

43 Nonetheless, the court could take note of the fact that the JEE-Sinohydro Subcontract was a lump sum contract. The defendant argued that as such, the proper analysis should require taking the percentage of the work done and multiplying it by the assigned contract value for that particular item of work, rather than making reference to a "Schedule of Rates" which was not even

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58 SCL at pp 157–158.

59 Notes of Evidence dated 11 August 2023 at p 17 ln 14–23; 1-LY Vol 1 at para 145.

provided for or referred to in the JEE-Sinohydro Subcontract.[60] In my judgment, that was an arguable basis for the defendant to challenge the soundness of the Expert's methodology and the accuracy of his computations. In and of itself, the Expert's report could not (without more) amount to compelling evidence of fraud and/or corruption in the alleged over-certification of the defendant's payment claims. Neither was the threshold crossed when the Expert's report was considered with the rest of the affidavit evidence. Once again, I found that the claimant's arguments here were, in substance, an invitation for the court to dive into the dispute on its merits, when those merits could only be properly resolved in the appropriate forum (*ie*, S 950 or the Arbitration) with the benefit of fuller evidence.

44 Thirdly and more fundamentally, even if the Expert's report was accepted at face value and the defendant's computations were entirely disregarded, that report was at best evidence of over-certification. It still left an important question unanswered – at what point did the quantum of over-certification reflect that it was likely to be the result of the alleged fraudulent and/or corrupt scheme coming to fruition? Let me elaborate. If, for example, the over-certification had amounted to $100,000, would that conclusion still support a finding of fraudulent and/or corrupt over-certification by Mr Niu and/or Ms Chen? What if the amount was $1m? No clear answer was given to the court by the claimant on this; indeed, in my view, this was because it was incapable of a clear answer. Viewed in this light, it was difficult to see how the Expert's *numerical* conclusions, *without more*, justified a finding by the court of fraud and/or corruption inducing or affecting the ADs. To arrive at any

60 1-LY Vol 1 at paras 144–145.

conclusion on these matters (even a tentative one) would inevitably require the court to delve into the underlying merits of the case.

45 Finally, a further difficulty was that even if the court accepted the Expert's report as demonstrating fraudulent and/or corrupt over-certification by Mr Niu and/or Ms Chen, the claimant's *best case* was that there had been an over-certification by approximately $3m.[61] Since the claimant was no longer running a case that the ADs should be set aside because the JEE-Sinohydro Subcontract itself was tainted by corruption (see [22] above), there was really no basis in this case to contend that fraud unravels *all* and that both ADs should still be set aside *in their entirety*. There was still, even on the claimant's best case, approximately $6m of the total sum determined in the ADs to be due to the defendant that was not tainted by any alleged fraudulent and/or corrupt over-certification. In fact, this "untainted" sum amounting to approximately $6m would, even on the claimant's best case, represent the value of work *legitimately* carried out by the defendant. I could not imagine it to be just to set aside both ADs in their *entirety* amounting to approximately $9m simply because (and *assuming*) there was fraud and/or corruption in the over-certification of the payment claims by some $3m, on the claimant's best case.

46 For the reasons above, I found that the claimant had not established a cogent case, let alone a compelling one, that the making of the ADs was induced or affected by fraud and/or corruption. I reiterate my view at [31] above that the allegations raised by the claimant in this application, which form the very subject of the substantive dispute in S 950 and the Arbitration, are vigorously

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61 CWS at para 47; SCL at p 24.

contested; those substantive disputes are to be resolved in the appropriate forum and not in this application.

47 Accordingly, I dismissed the claimant's application to set aside the ADs and ORC 3729. In light of my decision, it was not necessary for me to consider what impact, if any, the facts pertaining to the alleged fraud and/or corruption might have had on the outcome of the ADs (had they been brought to the attention of the adjudicators) or if these were facts and matters that were known to the claimant at the material time and could or ought to have been raised by it during the adjudication proceedings.

Whether to grant a stay of the enforcement of the ADs

48 In *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380, the Court of Appeal held at [70] that a stay of enforcement of an adjudication determination may ordinarily be justified where there is clear and objective evidence of the successful claimant's actual present insolvency, or where the court is satisfied on a balance of probabilities that if the stay were not granted, the money paid to the claimant would not ultimately be recovered if the dispute between the parties were finally resolved in the respondent's favour by a court, a tribunal or some other dispute resolution body.

49 The claimant did not adduce any evidence or advance any convincing arguments for why either of the recognised grounds for seeking a stay of the enforcement of the ADs was met in this case. Further, the claimant's allegation of an abuse of process by the defendant relied on the exact same allegations of fraud and/or corruption in the over-certification of the payment claims (see [23] above). As I have already explained above, no compelling evidence was adduced by the claimant of the latter allegations; that alone would be fatal to the

claimant's allegations of abuse of process. In my view, the alternative relief sought by the claimant simply could not get off the ground.

50 Finally, I also rejected the claimant's further alternative oral application for a *partial* stay of the enforcement of the ADs in the sum of approximately $3m,[62] representing the approximate amount by which the payment claims were, according to the claimant, fraudulently and/or corruptly over-certified.

51 In light of my decision above that the claimant had failed to discharge its burden in this application of adducing compelling evidence of fraud and/or corruption in the alleged over-certification of the defendant's payment claims and which thereby induced or affected the making of the ADs, I saw no principled basis upon which I should nevertheless exercise my discretion to order a partial stay of enforcement of the ADs, much less any basis to order a complete stay.

52 Accordingly, the claimant's alternative relief for a stay of enforcement of the ADs and/or ORC 3729 was also dismissed.

Conclusion

53 For the foregoing reasons, I dismissed OA 437 in its entirety. I also ordered that the security that was paid into court by the claimant together with all interest accrued thereon be paid out forthwith to the defendant or its solicitors.

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62 Notes of Evidence dated 11 August 2023 at p 18 ln 22–26.

54 As for the costs of the application, I fixed costs at $20,000 to be paid by the claimant to the defendant, with disbursements incurred by the defendant on the standard basis to be agreed by the parties and, failing agreement, to be assessed by me.

Post-script

55 As the parties could not agree on the disbursements payable by the claimant to the defendant, I subsequently received submissions from the parties on the same. After considering their submissions, I assessed the disbursements in favour of the defendant at $30,000.

S Mohan
Judge of the High Court

Raymond Wong (Wang Xukuan) (RWong Law Corporation) (instructed), Cephas Yee Xiang (Yi Xiang) and Matthew Tan Jun Ye (Aquinas Law Alliance LLP) for the claimant;
See Kwang Guan (Xu Guangyan), Koh Kia Jeng, Ng Guo Xi (Wu Guoxi) and Fan Wai Leong Benson (Dentons Rodyk & Davidson LLP) for the defendant.