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TWO BITES AT THE CHERRY OR ONE?

Challenging an Arbitral Award That Has Been Registered as a Judgment

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Once an *ex parte* order recognising and registering the Singapore-seated arbitral award as an order of court is obtained, is the award debtor's sole recourse to apply to set aside that very order of Singapore court within that specific originating application or is there an independent or further entitlement to file a fresh originating application to set aside the Singapore judgment registering the award?

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1 Anecdotal evidence suggests that since the commencement of the Building and Construction Industry Security of Payment Act 2004[1] ("SOP Act"), construction disputes have reduced significantly. It is the author's experience that parties to a construction dispute are often content to rely on an adjudication determination to finally dispose of the parties' money entitlements if the difference is not great relative to the contract sum.

2 In construction disputes, the focus in recent times generally centres on the enforcement of adjudication determinations, less so arbitral awards.

3 This article will focus on the avenue(s) available to a contractor as an award debtor to resist the arbitral award issued

1 2020 Rev Ed.

by a Singapore-seated tribunal under the Singapore Arbitration Act 2001[2] ("AA").

I. How does an award debtor resist an award under the Arbitration Act 2001?

4 The question posed in this article is: How does an award debtor (*ie*, the party liable under an arbitration award) resist an award under the AA?

5 The answer, it appears, would depend on whether the award has already been registered as a judgment of the High Court.[3]

6 Under the regime in the AA together with the relevant case law,[4] an award debtor may do one of the following:

(a) if the award is not registered as a judgment, the award debtor may *actively* apply to set aside the award pursuant to the AA (the "Active Remedy"); or

(b) if the award has been registered as a judgment, the award debtor will then *passively* resist enforcement of the award pursuant to the AA by setting aside the judgment (the "Passive Remedy").

7 The *Active* Remedy is as follows:

(a) The award debtor files an originating application under O 34 r 5 of the Rules of Court 2021 ("ROC 2021") to set aside the award pursuant to s 48 of the AA.

2 2020 Rev Ed.

3 There is a distinction between merely seeking leave to enforce the arbitral award and registering the award as a judgment of the High Court under ss 46(1) and 46(2) of the Arbitration Act 2001 (2020 Rev Ed) and s 19 of the International Arbitration Act 1994 (2020 Rev Ed): see generally *ED & F Man Sugar Ltd v Lendoudis* [2007] EWHC 2268 (Comm). This article deals with the situation where the award is registered as a judgment.

4 *PT First Media TBK v Astro Nusantara International BV* [2014] 1 SLR 372, *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125.

(b) The originating application must be accompanied by a supporting affidavit,[5] and it must state the grounds on which it is contended that the award is to be set aside.[6]

8 The *Passive* Remedy is as follows:

(a) The award debtor reacts when the award creditor serves upon the award debtor an order of court under O 34 r 14 of the ROC 2021 (*ie*, the judgment).

(b) Upon being served the judgment, the award debtor (should they so wish) must then apply to set aside the said judgment within 14 days.[7]

9 Guidance from the Singapore Court of Appeal ("SGCA") tells us that the courts will have regard to the International Arbitration Act 1994[8] ("IAA") when interpreting the AA: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd*[9] ("*LW Infrastructure*") and *PT First Media TBK v Astro Nusantara International BV*[10] ("*PT First Media*").

10 Read together, it would appear that *LW Infrastructure* and *PT First Media* both make clear that the AA, similar to the IAA, embodies a "choice of remedies" regime where a dissatisfied award debtor:

(a) may avail themselves of an Active Remedy to set aside the award when the award has *not* been registered as a judgment of the High Court; or

(b) is *only left with* the Passive Remedy of resisting enforcement of the award that *has been* registered as a judgment of the High Court.

This position is analysed below.

5 Rules of Court 2021 O 34 r 5(2).
6 Rules of Court 2021 O 34 r 5(1).
7 Rules of Court 2021 O 34 r 14(4).
8 2020 Rev Ed.
9 [2013] 1 SLR 125 at [33]–[34].
10 [2014] 1 SLR 372 at [38]–[40] and [46]–[47].

11 *Arbitration in Singapore: A Practical Guide*[11] states that the application to enforce a domestic award under the AA is a two-stage process similar to that under the IAA.

12 At the second stage of the enforcement process for awards under the AA, the party applying to set aside the order granting leave to enforce the award (*ie*, the judgment) will be required to raise grounds for the court to refuse enforcement, which would be similar to those under the IAA as "it would be untenable for two similarly worded provisions to operate differently".[12]

13 In the *Singapore Court Practice 2014*[13] ("*Singapore Court Practice 2014*") similarly writes that the enforcement of awards under the AA is a two-stage process, requiring the award debtor (at the second stage) to apply to set aside the *ex parte* order (*ie*, the judgment) and the court to determine if there are grounds for refusing enforcement,[14] and that the grounds for refusing enforcement of awards under s 46 of the AA should be the same as those under the "similarly worded s 19 IAA".[15]

II. The doctrine of merger

14 Does the doctrine of merger apply to the process set out above? The doctrine of merger provides that once judgment has been given on a cause of action, the said cause of action *merges* with the judgment and ceases to have a separate existence.[16]

11 *Arbitration in Singapore: A Practical Guide* (2nd Ed, Sweet & Maxwell, 2018).
12 See *Arbitration in Singapore: A Practical Guide* (2nd Ed, Sweet & Maxwell, 2018) at paras 14-026.
13 *Singapore Court Practice 2014* vol 2 (Jeffrey Pinsler ed) (LexisNexis, 2010).
14 See *Singapore Court Practice 2014* vol 2 (Jeffrey Pinsler ed) (LexisNexis, 2010) at paras 69/14/1 and 69/14/3–69/14/6.
15 See *Singapore Court Practice 2014* vol 2 (Jeffrey Pinsler ed) (LexisNexis, 2010) at para 69/3/6.
16 See *Michael Vaz Lorrain v Singapore Rifle Association* [2020] 2 SLR 808 at [14]–[15]. See also the judgment of Lord Sumption in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46 at [17], which has been applied by Coomaraswamy J in *PNG Sustainable Development Program Ltd v Rex Lam Paki* [2022] SGHC 188 at [41]–[43].

15 Because of this doctrine, an action *could not* be discontinued after judgment was obtained as "there is simply nothing for the parties to 'discontinue'".[17]

16 In the case of *CBS v CBP*,[18] the Court of Appeal recognised that the doctrine of merger can apply in arbitrations (albeit in a different context).

17 *Russell on Arbitration*[19] states that when a court grants permission to enforce an award, a judgment may also be entered in terms of the award, and if so, then the award merges with the judgment.

18 However present Singapore case law[20] appears to suggest that even after an award has been registered as a judgment of the Singapore High Court, the award debtor is not limited to the Passive Remedy, but would also appear to have an Active Remedy again before the Singapore High Court.

19 This article argues that an award debtor is "only left with" the Passive Remedy *once an award has been registered as a judgment of the Singapore High Court* because of the doctrine of merger. The Active Remedy, before the Singapore High Court, would not be available any more.

A. Does the enforcement process determine the setting-aside procedure?

20 As a result of the doctrine of merger, once an arbitral award has been registered as judgment of the High Court in an originating application (*eg*, Originating Application No 1 ("OA1")), the only avenue for the award debtor to resist the award is to take out a summons to set aside the judgment registering the award, *within* OA1.

17 *Michael Vaz Lorrain v Singapore Rifle Association* [2020] 2 SLR 808 at [16].
18 [2021] 1 SLR 935.
19 *Russell on Arbitration* (23rd Ed, Sweet & Maxwell, 2007) at paras 8–006 and 8–007.
20 See para 22 below.

21 In the face of an OA1 judgment, there is no longer any avenue for the award debtor to take out a fresh originating application (*eg*, Originating Application No 2 ("OA2")) to challenge the OA1 judgment nor indeed, the underlying arbitral award.

22 In the following Singapore cases, a *fresh* originating summons was filed to set aside an arbitral award that had already been registered under a *prior* originating summons:[21]

(a) *AUF v AUG*:[22] *ex parte* order granted in OS 789/2014 to enforce award as a judgment of court; fresh OS 790/2014 filed to set aside (in part) the award together with SUM 4899/2014 to set aside the *ex parte* order granted in OS 789/2014.

(b) *AYH v AYI*:[23] orders granted in HC/OS 98/2015 to enforce award; fresh HC/OS 349/2015 filed to set aside the award together with HC/SUM 2752/2015 to set aside order to enforce the award.

(c) *BAZ v BBA*[24] (Singapore High Court) and *BBA v BAZ*[25] (SGCA): order obtained in OS 490/2016 to enforce award as judgment of court; fresh OS 784/2016 and OS 787/2016 filed to set aside the award along with SUM 4499/2016 and SUM 4497/2016 to set aside the said order of court.

(d) *CDI v CDJ*:[26] leave granted to enforce award was registered as a High Court order (ORC 8300/2019). The defendant applied to set aside the leave order, and did not commence separate proceedings to apply to set aside the award itself. At [5], the court held: "A party may of course, in appropriate circumstances, also seek to invoke both active and passive remedies."

21 See *AUF v AUG* [2016] 1 SLR 859, *AYH v AYI* [2015] SGHC 300, *BAZ v BBA* [2020] 5 SLR 266, *CKR v CKT* [2021] SGHCR 4, *BTN v BTP* [2022] 4 SLR 683 and *CLX v CLY* [2022] SGHC 17, where a summons was filed in the prior originating summons to resist enforcement of the arbitral award in addition to the filing of the fresh originating summons.
22 [2016] 1 SLR 859.
23 [2015] SGHC 300.
24 [2020] 5 SLR 266.
25 [2020] 2 SLR 453.
26 [2020] 5 SLR 484.

(e) *CDM v CDP*:[27] *ex parte* order granted in OS 1124/2019 for leave to enforce award as judgment of court; fresh OS 1307/2019 filed to set aside the award and SUM 5816/2019 filed in OS 1124/2019 to stay enforcement of the award (among others) pending disposal of OS 1307/2019.

(f) *CKR v CKT*[28] and *BTN v BTP*:[29] HC/OS 1401/2019 ("OS 1401") and HC/OS 874/2020 ("OS 874") were filed to set aside the awards; separately, HC/OS 1274/2020 and HC/OS 1275/2020 were filed seeking leave to enforce the award and the leave orders were granted. HC/SUM 471/2021 and HC/SUM 472/2021 were filed in OS 1401 and OS 874 respectively to set aside the leave orders.

(g) *CLX v CLY*[30]: order granted in HC/OS 212/2021 for leave to enforce award as judgment of court; fresh HC/OS 433/2021 filed to set aside the award together with HC/SUM 2174/2921 to set aside the order granting leave.

(h) *Mount Eastern Holdings Resources Co Ltd v H&C S Holdings Pte Ltd*:[31] order obtained in OS 740/2015 granting leave to enforce award as a judgment; fresh OS 870/2015 filed to set aside the award together with an application for extension of time to set aside the order granting leave.

(i) *Year Sun Chemitanks Terminal Corp v Gunvor Singapore Pte Ltd*:[32] leave to enforce award as a judgement was granted in OS 1311/2020; fresh OS 51/2021 filed to set aside the award.

23 The judgments of the above cases do not indicate that the doctrine of merger was considered.

27 [2021] 4 SLR 1272.
28 [2021] SGHCR 4.
29 [2022] 4 SLR 683.
30 [2022] SGHC 17.
31 [2016] SGHC 1.
32 [2022] 3 SLR 1271.

III. Fourteen-day deadline

24 If the doctrine of merger applies to awards registered as Singapore court judgments, this would mean that the time limited for an award debtor to set aside an arbitral award is only 14 days (ROC 2021 O 34 r 14(4)), and *not* the period of three months under s 48(2) of the AA.

IV. *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm)

25 While this issue has not yet been decided by the Singapore courts, it has been dealt with by the English Technology and Construction Court in the case of *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd*[33] ("*Ashapura Minechem*"), a decision of Sarah Cockerill J.

26 In *Ashapura Minechem*, Cockerill J heard an application by the claimant, Ashapura Minechem Ltd ("Ashapura"), under s 72 of the English Arbitration Act 1996[34] (the "s 72 Application") to set aside two awards.[35] Section 72 of the English Arbitration Act 1996 states:

> **Saving for rights of person who takes no parts in proceedings**
>
> (1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question —
>
> (a) whether there is a valid arbitration agreement,
>
> (b) whether the tribunal is properly constituted, or
>
> (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,
>
> by proceedings in the court for a declaration or injunction or other appropriate relief.
>
> (2) He also has the same right as a party to the arbitral proceedings to challenge an award —

33 [2018] EWHC 3056 (Comm).
34 c 23 (UK).
35 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [1].

> (a) by an application under section 67 on the ground of lack of substantive jurisdiction in relation to him; or
>
> (b) by an application under section 68 on the ground of serious irregularity (within the meaning of that section) affecting him;
>
> and section 70(2) (duty to exhaust arbitral procedures) does not apply in his case.

27 An English s 72 Application is therefore a setting-aside application similar to a s 48(2) AA application.

28 However, before the filing of the s 72 Application:

(a) Cooke J had made an order for summary enforcement of the awards;[36] and

(b) Teare J had granted an application to convert the two awards into judgment.[37]

29 Armada (Singapore) Pte Ltd ("ASPL") resisted Ashapura's s 72 Application, arguing that (among others):

(a) The s 72 Application is "misconceived as a matter of law" as the "awards have merged into the judgments of Teare J".[38]

> 17. So against that background, ASPL bases its defence of the application essentially on three bases. The first two are what one might call the procedural basis. They say the application under section 72 is misconceived as a matter of law in that the awards have merged into the judgments of Teare J dated 16 February 2016.

36 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [14].
37 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [16].
38 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [17].

(b) If a s 72 Application is to be made, it could only be done if Teare J's judgments and Cooke J's orders were set aside.[39]

> 18. Secondly, they say that if an application were to be made under section 72, it could only be made if the orders of Cooke J dated 9 March 2010 and the judgment of Teare J dated 16 February 2016 could be set aside, and no application could succeed because the application is far too late. In particular it would be wrong to grant an extension of time, ASPL would suffer material prejudice, and the merits of the proposed application under section 72 are hopelessly weak.

30 Cockerill J agreed with both arguments by ASPL. The court held that the submission that the awards had merged into Teare J's judgments was "perfectly correct" and "supported by the highest and recent authority of Lord Sumption JSC in [*Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46] explaining the nature of merger on judgment". Cockerill J held that on this point alone, Ashapura's s 72 Application "falls at the first fence":[40]

> 23. The basis of claim under section 72, says ASPL, is a challenge which relates to an award, and it pertains to declarations that awards are invalid, ineffective and not binding. *ASPL submits to me that the awards do not exist, so section 72 effectively cannot bite.* They direct me to the judgment of Lord Hobhouse, in *Associated Electric and Gas Insurance Services v European Reinsurance Co of Zurich* [2003] 1 WLR 1041, where he said:
>
> > It is an implied term of an arbitration agreement that the parties agreed to perform an award, so the award creates new rights between the parties which supersede previous rights. Those rights are contractual and give rise to a cause of action.
>
> 24. *However, when judgment is entered, say ASPL, under section 66.2, the cause of action created by the award merges in the judgment.* They have referred me to the textbook on arbitration

39 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [18].

40 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [23]–[26].

known as *Russell on Arbitration*, paragraph 8-008. That effectively echos what is said in more general law, and there is verified authority for this. Lord Sumption in *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited* [2013] UKSC 46; [2014] AC 160 at 17 explained this:

> The doctrine of merger which treats a cause of action as extinguished once judgment has been given on it and the claimant's sole right is being a right on the judgment. Although this produces the same effect as the second principle [to which he had previously referred], it is in reality a substantive law about the legal effect of an English judgment which is regarded of a higher nature and therefore as superseding the underlying cause of action.

25. ASPL therefore say that, based on that authority as to the structure of how right of action on an award works and how it then becomes merged in a judgment once a judgment is obtained, the awards are merged in the judgments of Teare J dated 16 February 2016, and there is no right which could be raised under section 72.

26. *Having considered this submission and looked at the authorities, that submission seems to me to be perfectly correct.* It is, as I have noted, supported by the highest and recent authority of Lord Sumption in *Virgin Atlantic Airways* explaining the nature of merger on judgment. *Accordingly, in my judgment, the application under section 72 falls at the first fence.*

[emphasis added]

31 Cockerill J also agreed that because of the doctrine of merger, Ashapura can *no longer* set aside the two awards *unless and until* the judgments were set aside:[41]

> 28. Next is the application to set aside. The argument of ASPL is, as I have explained, if Ashapura had wished to bring an application under section 72, what they would have needed to do is also make an application to set aside the judgment of Teare J and to set aside the order of Cooke J made under the Act. That effectively is reliant on the same underpinning of law which I have just explained; that effectively the nature of the right in relation to the arbitration award is different.

41 *Ashapura Minechem Ltd v Armada (Singapore) Pte Ltd* [2018] EWHC 3056 (Comm) at [28]–[29].

> 29. Paragraph 3 of the order of Cooke J provided that the defendant had the right to apply to set aside the order within 23 days of service of it. As I have said, the order was served pursuant to CPR 62.18 (7) and (8), and that was on 24 March 2010. Accordingly, any application to set aside the order was required to be made by 16 April 2010, and no application has ever been made to set the order aside.

32 Is the decision in *Ashapura Minechem* consistent with Singapore Law? This article suggests that it is.

V. Setting aside a judgement of a court of co-ordinate jurisdiction

33 Firstly, a *regular* judgment of a court cannot be set aside by a court of co-ordinate jurisdiction generally. See, *eg*, Prakash J's decision in *Sunny Daisy Ltd v WBG Network (Singapore) Pte Ltd*[42] ("*Sunny Daisy*").

34 Allowing an award debtor to set aside an OA1 judgment in a fresh OA2 application would appear to be inconsistent with *Sunny Daisy*.

35 Further, in O 34 r 14, the ROC 2021 specifically provides that the award debtor should set aside the order granted in O 34 r 14(1) by taking up an application under O 34 r 14(4) within the same originating application.[43]

36 Since the rules of court provide for a clear remedy to the award debtor, there appears to be no reason for an award debtor to disregard and circumvent this provision by commencing OA2.

37 More to the point, commencing an OA2 setting-aside application would not avail the award debtor of a remedy which they do not already have in an OA1 setting-aside application.[44]

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42 [2008] 4 SLR(R) 769 at [28]–[30].

43 The cases referred to in para 22 above were decided under the Rules of Court (2014 Rev Ed), but the provisions under the Rules of Court (2014 Rev Ed) are substantively similar to the provisions under the Rules of Court 2021.

44 In Paul Tan, Nelson Goh & Jonathan Lim, *The Singapore International Arbitration Act: A Commentary* (Oxford University Press, 2023), the commentators note,

(cont'd on the next page)

38 Additionally, the case of *Grafton Isaacs v Emery Robertson*[45] ("*Grafton Isaacs*"), which has been cited with approval in the Singapore Court of Appeal decision of *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC*[46] ("*Pertamina Energy*"), may support the argument as to why there is no longer an Active Remedy (by way of OA2) once there is an OA1 judgment.[47]

39 *Grafton Isaacs* is authority for the proposition that:

(a) An order made by a court of unlimited jurisdiction must be obeyed until it is set aside.

(b) A failure to comply with the order, even if the person is of the view that it is irregular or void, would amount to contempt of court.

40 As stated at [82] of *Pertamina Energy*:

> 82 The following observations in a leading textbook are also apposite (see *Hoyle* … at para 9.17):
>
> > It is no defence to contempt proceedings to allege that the order should not have been made, or has been discharged. An order of the court must be obeyed while it stands, and a breach is still contempt even if, at a later stage, the order is in fact discharged. *The same principle applies if the original order was wrongly made; the defendant's remedy is to apply for its immediate discharge while keeping to its terms.*
> >
> > Reference may also be made to the English Court of Appeal decision of *Hadkinson v Hadkinson* [1952] P 285,

in the context of the IAA, at para 18.17 that "The main grounds for refusing enforcement of a foreign award in Sections 31(2) and 31(4) are substantially similar to the grounds for setting aside under Article 34 of the Model Law." Robert Merkin & Johanna Hjalmarsson, *Singapore Arbitration Legislation: Annotated* (Informa Law, 2nd Ed, 2016) at p 86: "It has been held in New Zealand that, once an order has been made under this section, the court has no jurisdiction to entertain an application to set aside the award itself. The position in Singapore may well be different as a result of *PT First Media TBK v. Astro Nusantara International BV*, which treats negative resistance and positive challenge as independent, but the point is unlikely to arise given the time limits applicable to challenges to the award itself." This passage is not further explained.

45 [1985] AC 97.

46 [2007] 2 SLR(R) 518.

47 *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR(R) 518 at [82].

> especially at 288, as well as the Privy Council decision (on appeal from the Court of Appeal of Saint Vincent and the Grenadines) of *Grafton Isaacs v Emery Robertson* [1985] AC 97.
>
> [emphasis in original]

41 The "discharge" process referred to by Mark S W Hoyle[48] (cited as *Hoyle* in *Pertamina Energy* at [82]) would suggest the procedure allowed under the relevant specific originating application. In our example, that would be OA1.

42 Further, the OA1 judgment is not an inchoate judgment dependent on a further act to crystallise or be effective. In *Deutsche Schachtbau-und Tiefbohrgesellschaft mbH v R'AS al-Khaimah National Oil Co*,[49] the English Court of Appeal stated that:[50]

> Once Bingham J. had given D.S.T. leave to enforce the award as a judgment, as he did in the same order as that granting the injunction, D.S.T. became judgment creditors of Rakoil, albeit subject to a suspension of their right to levy execution and subject to the possibility that the order giving them this status might be set aside on the application of Rakoil. It was not the case that D.S.T. would become judgment creditors if and when Rakoil failed to set the order aside. Once the order was made, D.S.T. were in precisely the same position as any plaintiff who has obtained judgment, subject to a stay pending an application to the Court of Appeal to set the judgment aside.

VI. Merger – a substantive rule of law

43 If the doctrine of merger "is in reality a *substantive rule* about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action" [emphasis added],[51] it is suggested that the

48 Mark S W Hoyle, *Freezing and Search Orders* (Informa Law, 4th Ed, 2006).
49 [1987] 3 WLR 1023.
50 *Deutsche Schachtbau-und Tiefbohrgesellschaft mbH v R'AS al-Khaimah National Oil Co* [1987] 3 WLR 1023 at [1037-A]. The decision was reversed in part on other grounds that would render this statement unnecessary, but it is respectfully submitted that this statement is nevertheless an accurate reflection of the law in England and in Singapore.
51 Lord Sumption in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46 at [17]; see also *Chia Ah Sng v Hong Leong Finance* [2000] SGHC 273,

application of the doctrine of merger is not discretionary[52] in an OA1/OA2 situation.

44 Because an action on an arbitral award is founded on an agreement to comply with the award in the first place,[53] it should be subject to the normal operation of the doctrine of merger. There does not appear to be any compelling reason, policy or otherwise, to carve out an exception to the doctrine of merger operating in this context.

VII. Section 48(2) of Arbitration Act 2001

45 What then of s 48(2) of the AA and the three-month period provided for in a setting-aside application (instead of the 14 days under O 34 r 5(2) of the ROC 2021)? Section 48(2) of the AA is reproduced below:

> (2) An application for setting aside an award may not be made after the expiry of 3 months from the date on which the party making the application had received the award, or if a request has been made under section 43, from the date on which that request had been disposed of by the arbitral tribunal.

46 Section 48(2) of the AA simply states that an award may not be set aside after the expiry of three months, which is a long stop date, a limitation period. This provision is similar to that found in Art 34(3) of the Model Law incorporated in the IAA.

47 Neither s 48 of the AA nor Art 34(3) of the Model Law requires the doctrine of merger to be disapplied or modified in the process of registration of arbitral awards as court judgments and fresh independent setting-aside applications where both applications are taken before the Singapore Courts in respect of the same award.

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per Selvam J.

52 See also *Zavarco Plc v Nasir* [2021] EWCA Civ 1217 at [27], *per* Sir David Richards LJ (now Lord Richards SC): "The doctrine of merger is a rule of substantive law that is strictly applied. It does not involve the exercise of any discretion by the court."

53 *Associated Electric and Gas Insurance Services Ltd v European Reinsurance Co of Zurich* [2003] 1 WLR 1041 at [9].

48 If the position put forward in this article is correct, then perhaps it would be prudent for an award debtor to initiate setting-aside proceedings once served with an OA1 judgment, *within OA1 itself*, and to do so within 14 days as opposed to assuming that there exists an option of a fresh OA2 application, lest they face an assertion that the doctrine of merger applies to pre-emptively strike out OA2.