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

[2022] SGHC 53

Originating Summons No 900 of 2021 (Summons Nos 5125 and 5275 of 2021)

Between

CNX

… *Plaintiff*

And

CNY

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award — Order granting leave to enforce foreign award]

[Civil Procedure — Service — Service of leave order on foreign State — Time for foreign State to apply to set aside leave order — Section 14(2) State Immunity Act]

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v
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Introduction

1 Where an award creditor is granted leave under s 29 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") to enforce an arbitral award in Singapore against a foreign State, how much time does the foreign State have, following service of the leave order on it, to take the steps necessary to challenge the order?

2 Specifically, s 14(2) of the State Immunity Act (Cap 313, 2014 Rev Ed) ("SIA") provides that any "time for entering an appearance (whether prescribed by Rules of Court or otherwise) shall begin to run 2 months after the date on which the writ or document is so received". Does s 14(2) of the SIA apply to a leave order granted under s 29 of the IAA which is served on a foreign State, and if it does apply, how much time does the foreign State have? These were

some of the interesting issues that I had to consider in HC/SUM 5125/2021 ("SUM 5125"). SUM 5125 was an application by the defendant State, for, *inter alia*, a declaration that it had an additional two months to apply to set aside an *ex parte* order granting the plaintiff leave to enforce a foreign arbitral award against the defendant; alternatively, it sought a corresponding extension of time to do so.

3 HC/SUM 5275/2021 ("SUM 5275") was a cross-application by the plaintiff for security to be furnished by the defendant State as a condition for granting any extension of time.

4 Based on counsel's research and submissions, it appears that this is the first time our courts have been squarely confronted with the issues I highlighted at [1]–[2] above. The only other reported case in which s 14 of the SIA arose for consideration is the decision of Justice Kannan Ramesh in *Josias Van Zyl and others v Kingdom of Lesotho* [2017] 4 SLR 849 ("*Josias Van Zyl*"). However, as I will elaborate below, Ramesh J's comments on s 14(2) were *obiter*, as the *ratio decidendi* of *Josias Van Zyl* concerned s 14(1) of the SIA and the question of whether a leave order must be served in accordance with that provision. As such, and whilst there has been no appeal against my decision, given the dearth of direct local authority on the issues that arose before me, I consider it appropriate to provide my full grounds of decision.

Background

5 The plaintiff, CNX, is a company incorporated in Ruritania, while CNY, the defendant, is the sovereign state of Oceania.[1] A dispute arose between the

[1] 1st affidavit of IR dated 2 September 2021 ("1st affidavit of IR") at paras 5–6.

parties relating to the defendant's alleged breaches of a bilateral investment treaty between Ruritania and Oceania (the "BIT").[2] In September 2013, the plaintiff commenced arbitration proceedings against the defendant (the "Arbitration") pursuant to an arbitration clause in the BIT.[3] The Arbitration was seated in Danubia.[4] In May 2020, the arbitral tribunal issued its final award, ordering the defendant to pay to the plaintiff a sum in excess of US$90 million (exclusive of interest, costs and disbursements) (the "Final Award").[5] It is not disputed that the time for any challenge to the Final Award to be mounted in the seat court has expired and there are no proceedings instituted by the defendant or pending before the seat courts in Danubia seeking to challenge the Final Award.[6]

6 On 2 September 2021, pursuant to O 69A r 6 of the Rules of Court (2014 Rev Ed) ("ROC"), the plaintiff applied *ex parte* in HC/OS 900/2021 ("OS 900") for leave to enforce the Final Award against the defendant under s 29 of the IAA. On 3 September 2021, an assistant registrar granted leave in HC/ORC 4992/2021 (the "Leave Order"). Paragraph 2 of the Leave Order stated as follows:

> Pursuant to Order 69A Rule 6(4) of the Rules of Court, *the Defendant may apply to set aside the order to be made herein* ***within 21 days*** *after service of the order on the Defendant*, and the Final Award shall not be enforced until after the expiration of that period or, if the Defendant applies within that period to

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2 1st affidavit of IR at para 14.

3 1st affidavit of IR at para 11; 3rd affidavit of IR dated 6 December 2021 ("3rd affidavit of IR") at para 8(a).

4 1st affidavit of IR at paras 12–13.

5 1st affidavit of IR at para 23; 1st affidavit of AS dated 10 November 2021 ("1st affidavit of AS") at para 11.

6 1st affidavit of IR at para 24; Defendant's Written Submissions dated 29 November 2021 ("DWS") at para 129.

> set aside the order, until after that application is finally disposed of …
>
> [emphasis added in italics and bold italics]

7 On 6 September 2021, the plaintiff filed a request by way of HC/SOD 58/2021 for the Leave Order to be served on the defendant through the appropriate consular channels, or the government of Oceania. The Leave Order was eventually served on the defendant's foreign ministry in Oceania by the High Commission of Singapore on 20 October 2021.[7] Pursuant to the terms of the Leave Order, the last day for the defendant to apply to set aside the Leave Order was 10 November 2021.

8 On 9 November 2021, the defendant instructed Drew & Napier LLC ("D&N") to act as its local counsel in OS 900.[8] On 10 November 2021, D&N took out SUM 5125, seeking more time for the defendant to apply to set aside the Leave Order. In particular, the defendant sought: (a) a declaration that it may apply to set aside the Leave Order within two months and 21 days from when the Leave Order was served on it, or alternatively, (b) a corresponding extension of time until 11 January 2022 to apply to set aside the Leave Order.

9 In response, the plaintiff took out SUM 5275 on 18 November 2021. This was essentially an application for an order that the defendant furnish security, for a sum representing the Final Award plus accrued interest (amounting to US$137,228,887), as a condition of the court allowing SUM 5125, whether in whole or in part.

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7 1st affidavit of AS at para 13.

8 1st affidavit of AS at para 15.

10 I heard both SUM 5125 and SUM 5275 on 3 December 2021. After considering the submissions from both parties, I delivered brief oral grounds of my decision. I allowed SUM 5125 in part and dismissed the plaintiff's application in SUM 5275.

The parties' cases

11 I begin with a summary of the parties' cases for SUM 5125. Mr Cavinder Bull SC, lead counsel for the defendant, explained the defendant's case as follows. The starting point was that the Leave Order was a document that had to be served in accordance with s 14(1) of the SIA.[9] This was relatively uncontroversial and was not seriously disputed by the plaintiff, particularly since this was a point that had been the subject of detailed and authoritative analysis by Ramesh J in *Josias Van Zyl*. Section 14(1) of the SIA provides that:

> **14.**—(1) Any writ or *other document required to be served for instituting proceedings against a State* shall be served by being transmitted through the Ministry of Foreign Affairs, Singapore, to the ministry of foreign affairs of that State, and service shall be deemed to have been effected when the writ or document is received at that ministry.
>
> [emphasis added]

12 Mr Bull argued that once the Leave Order was served on the defendant in accordance with s 14(1) of the SIA, s 14(2) of the SIA would then apply to govern the time that the defendant had to apply to set aside the Leave Order.[10] Section 14(2) of the SIA states that:

> (2) Any time for entering an appearance (whether prescribed by Rules of Court or otherwise) *shall begin to run 2 months after the date on which the writ or document is so received.*
>
> [emphasis added]

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9 DWS at para 33.

10 DWS at paras 34–35.

13 In this regard, s 2(2)(*b*) of the SIA is also of relevance and provides that in the SIA, "references to entry of appearance … *include references to any corresponding procedures*" [emphasis added]. Mr Bull contended that where a leave order granted under s 29 of the IAA has been served on a foreign State under s 14(1) of the SIA, the relevant "corresponding procedure" to an entry of appearance would be an application to set aside the leave order.[11] In the present proceedings, the defendant argued that it therefore should have had two months from the date on which the Leave Order was served on it, *plus* the 21 days provided for in paragraph 2 of the Leave Order, to apply to set it aside.[12] This would mean, Mr Bull argued, that by right the defendant had until 11 January 2022 to apply to set aside the Leave Order, as opposed to 10 November 2021 which was when the 21 days stated in paragraph 2 of the Leave Order would have lapsed.[13] Mr Bull also submitted that when the plaintiff applied *ex parte* in OS 900 for the Leave Order, it failed to make full and frank disclosure to the court of the existence of s 14(2) of the SIA and the additional two months provided therein.[14] This failure was the reason the defendant had been compelled to take out SUM 5125.

14 Alternatively, the defendant urged the court to exercise its powers under O 3 r 4(1) of the ROC to grant it an extension of time until 11 January 2022 to apply to set aside the Leave Order.[15]

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11 DWS at para 43.

12 DWS at para 61.

13 DWS at paras 28 and 61.

14 DWS at paras 21–22; Notes of Evidence, 3 December 2021, p 4, lines 2–6.

15 DWS at para 65.

15 The plaintiff, represented by Ms Koh Swee Yen as lead counsel, took the position that s 14(2) of the SIA does not apply to an application to set aside the Leave Order.[16] Moreover, the defendant should be denied an extension of time, as any further delay in the enforcement proceedings would cause irremediable and serious prejudice to the plaintiff.[17] In the alternative, if s 14(2) of the SIA were applicable, the plaintiff advanced two alternative positions on how the time for setting aside the Leave Order should be computed. First, that the reference to "entry of appearance" in s 14(2) of the SIA or any "corresponding procedures" should not be interpreted as referring only to an application to set aside the Leave Order, but rather to any step in the proceedings which indicates that the defendant has had a chance to respond to them.[18] In this case, that step had been taken by the defendant by its act of appointing D&N on 9 November 2021 and the filing of SUM 5125 on 10 November 2021.[19] The plaintiff contended that accordingly, the defendant was no longer entitled to the time period of two months provided for in s 14(2) of the SIA, and instead had to bring any application to set aside the Leave Order within 21 days from 20 October 2021. The second and alternative argument advanced was that on a proper construction of s 14(2) of the SIA, the defendant was in any event only entitled to a *maximum* of two months to file its application to set aside the Leave Order, and not two months *plus* 21 days as contended by the defendant.[20]

16 As for SUM 5275, Ms Koh submitted that any extension of time given to the defendant should be made conditional on it furnishing security for a sum

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16 Plaintiff's Written Submissions dated 29 November 2021 ("PWS") at para 46.

17 PWS at para 127.

18 PWS at para 113.

19 PWS at para 116.

20 PWS at para 120.

representing the Final Award plus accrued interest (amounting to US$137,228,887). Ms Koh contended that this would serve to remedy the prejudice the plaintiff would suffer from the delay in enforcement, in light of "clear evidence" that the defendant was taking steps to dissipate its assets in Singapore in order to frustrate enforcement efforts by its creditors.[21] In its written submissions, the plaintiff initially relied on s 31(5) of the IAA as the basis for its application.[22] However, at the hearing before me, Ms Koh clarified that the plaintiff was not relying on s 31(5) of the IAA *per se*, but instead on the court's powers under s 18(2) read with paragraph 15 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") and/or the court's inherent jurisdiction.[23]

17 The defendant's case, in short, was that the court had no juridical basis to order security. Mr Bull argued that the facts of the present case did not fall within the ambit of any of the statutory provisions empowering the court to order the defendant to furnish security. Nor was this an exceptional case warranting recourse to the court's inherent powers.[24]

Issues to be determined

18 Based on the background laid out above, there were four issues for my determination:

(a) Whether s 14(2) of the SIA applies to an application to set aside the Leave Order (**"Issue 1"**);

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21 PWS at paras 148–151.

22 PWS at para 129.

23 Notes of Evidence, 3 December 2021, p 13 lines 4–14.

24 DWS at paras 132 and 138.

(b) If Issue 1 is answered in the affirmative, how much time does the defendant have to file its application to set aside the Leave Order (**"Issue 2"**);

(c) Whether the defendant should be granted an extension of time under O 3 r 4(1) of the ROC (**"Issue 3"**);

(d) If SUM 5125 were allowed, whether the court can or should impose a condition that the defendant be required to furnish security (**"Issue 4"**).

Issue 1: Whether s 14(2) of the SIA applies to an application to set aside the Leave Order

19 It is clear that s 14(1) of the SIA applies to the service of the Leave Order. The plaintiff does not dispute this (see [11] above).

20 As held by Ramesh J in *Josias Van Zyl* (at [41]–[44]), a leave order made under O 69A r 6 of the ROC is a document required to be served for the institution of proceedings to enforce an arbitral award against a foreign State. As such, the Leave Order had to be served on the defendant pursuant to s 14(1) of the SIA and in this case, appears to have been duly served (see [7] above).

21 The key issue in dispute was whether s 14(2) of the SIA likewise applies to the Leave Order or an application to set aside the Leave Order. As this is a point that has not been considered at any length by our courts, I found it helpful to first consider the position under the State Immunity Act 1978 (c 33) (UK) ("UK SIA"), since the SIA was modelled after the UK SIA (see *Singapore Parliamentary Debates, Official Report* (7 September 1979) vol 39 at col 409 (Mr E W Barker, Minister for Law and Science and Technology)). Even then,

there are conflicting English High Court authorities on this issue, as I detail below.

22 In *Norsk Hydro ASA v State Property Fund of Ukraine and others* [2002] All ER (D) 269 (Oct) ("*Norsk Hydro*"), Justice Gross in the English High Court had to consider the applicability of s 12(2) of the UK SIA in the context of proceedings to enforce an arbitration award. Section 12(2) of the UK SIA is *in pari materia* with s 14(2) of our SIA. On the facts of the case, Norsk Hydro ASA ("Norsk"), having obtained an arbitral award against the Republic of Ukraine (one of the respondents), was granted permission to enforce the arbitral award against it (the "permission order"). The permission order, which was granted *ex parte*, provided that the Republic of Ukraine could apply to set aside the order within 21 days of service. Following service of the permission order and the expiry of the 21-day period, Norsk obtained a third party debt order (the English equivalent of a garnishee order) against Deutsche Bank AG in London. The Republic of Ukraine applied to set aside both the permission order and third party debt order. The questions before the court were, *inter alia*, whether s 12(2) of the UK SIA applied to the permission order and if so, how much time the Republic of Ukraine had to challenge the permission order. The latter question was particularly relevant to the issue of whether the third party debt proceedings had been commenced by Norsk prematurely.

23 On the first question, Gross J found that s 12(2) of the UK SIA did apply to the permission order. The learned Judge observed (at [25]) that this conclusion could be supported by the plain wording of s 12(2) of the UK SIA, as well as the reference to "corresponding procedures" in s 22(2) of the UK SIA (which mirrors s 2(2)(*b*) of our SIA):

> (4) As it seems to me, s.12 means what it says. It deals with procedure. It is not to be confined to the court's 'adjudicative

> jurisdiction'. The two month period is an acknowledgement of the reality that states do take time to react to legal proceedings. It is understandable that states should have such a period of time to respond to enforcement proceedings under ss. 100 and following of the 1996 Act; not untypically, an award will be made in one country but enforcement may be sought elsewhere, perhaps in a number of jurisdictions, where assets are or are thought to be located. I therefore decline to read words into s.12 so as to preclude its application to the enforcement of a: wards [*sic*] under CPR 62.18.
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> (5) Insofar as it remains in dispute, I am satisfied that the wording in s. 12(2) of the 1978 Act, 'Any time for entering an appearance (whether prescribed by rules of court or otherwise)' applies to the time period to be set by the court as available to a defendant to seek to set aside an order for enforcement under CPR 62.18(9). If need be, s.22(2) of the 1978 Act ('.. references to entry of appearance … include references to any corresponding procedures'), though, I suspect, primarily designed for other purposes, is capable of supporting such a construction; for my part, however, I would be inclined to arrive at my conclusion on the wording of s.12(2) standing alone but read in context.

24 On the second question, Gross J concluded that the Republic of Ukraine was entitled to a total of two months and 21 days to apply to set aside the permission order, and that the third party debt application had thus been brought by Norsk prematurely (at [25(6)]).

25 Justice Stanley Burnton had, however, expressed a conflicting view in *AIC Limited v The Federal Government of Nigeria* [2003] EWHC 1357 (QB) ("*AIC*"), which was a case that concerned registration of a foreign judgment. In *AIC,* Burnton J observed that an application to set aside the registration of a foreign judgment was not a "corresponding" procedure to an entry of appearance (at [23]). AIC Limited had obtained an order to register a foreign judgment against the Federal Government of Nigeria. It then obtained another order, extending the Federal Government of Nigeria's time to apply to set aside the order for registration to two months from the date of service. The learned Judge noted that AIC Limited had made the application on the assumption that

a notice of an order for the registration of a foreign judgment is the equivalent of a "writ or other document required to be served for instituting proceedings against a State" within the meaning of s 12(1) of the UK SIA, and that an application by a State to set aside the registration was the corresponding procedure to an entry of appearance within the meaning of ss 12(2) and 22(2) of the UK SIA (at [23]). Burnton J held that this assumption was erroneous and reasoned as follows:

> 23 … In my judgment, those assumptions are unfounded. *An application to set aside the registration of a judgment is not a 'corresponding' procedure to an entry of appearance. An entry of appearance is an act that precedes a judgment, whereas an application to set aside a registration is made after judgment has been entered into.* The registration of a foreign judgment is not the equivalent of a judgment in default of appearance: it precedes the service of any United Kingdom proceedings on the defendant. …
>
> [emphasis added]

26 While *AIC* concerned an application to register a foreign judgment, Burnton J's reasoning would suggest that an application to challenge a leave order should likewise *not* be construed as the corresponding procedure to an entry of appearance, since such an application also *post-dates* the arbitral award, rather than precedes it. The reasoning in *AIC* therefore stands in contradiction to that in *Norsk Hydro.* Although *Norsk Hydro* was decided before *AIC*, it was not raised or considered in *AIC*. Based on the authorities cited to me, it appears to me that the position in England has not been definitively resolved since then. While the correctness of *AIC* was doubted by Justice Teare in *Gold Reserve Inc v Bolivarian Republic of Venezuela* [2016] 1 WLR 2829 ("*Gold Reserve*") (at [64]), and once more by the UK Supreme Court in *General Dynamics United Kingdom Ltd v State of Libya* [2021] 3 WLR 231 ("*General Dynamics (UKSC)*") (at [68]), those doubts appear to have been in relation to a different point, namely Burnton J's reasoning that s 12 of the UK SIA must be applicable

in *its entirety* to the proceedings in question or not at all. Further, the UK Supreme Court in *General Dynamics (UKSC)* declined to express any concluded view on whether an application to set aside a leave order is a corresponding procedure to an entry of appearance under s 12(2) of the UK SIA, as the point had not been fully argued before it (at [75]).

27 Turning now to local case law, the issue of whether s 14(2) of the SIA applies to an application to set aside a leave order, as well as the conflicting authorities of *Norsk Hydro* and *AIC,* were considered by Ramesh J (albeit *obiter*) in *Josias Van Zyl*. The main question in *Josias Van Zyl* was whether an order granting leave to enforce an arbitral award against a foreign State has to be served in accordance with s 14(1) of the SIA (at [1]). In holding that s 14(1) of the SIA *did* apply to a leave order, Ramesh J observed that a consequence of this conclusion was that the reference to "corresponding procedures" in s 2(2)(*b*) of the SIA must accordingly be read to extend to the time for filing an application to set aside a leave order (at [68]–[69]). In particular, the learned Judge noted that the purpose of s 2(2)(*b*) of the SIA is that it "reconciles the provisions of s 14 [of the SIA] with the different terminology used to describe the institution of enforcement proceedings by service of a leave order" (at [69]). It was for this reason that the learned Judge rejected Burnton J's interpretation of s 12(2) of the UK SIA in *AIC* as being "too literal and narrow", and instead preferred the views expressed by Gross J in *Norsk Hydro* (at [71]):

> 71 [*AIC*] conflicts with *Norsk Hydro* ([12] *supra*), which was not cited in *AIC Limited*. In *Norsk Hydro*, 'entry of appearance' was clearly equivocated with an application to set aside an order granting leave to enforce. Moreover, Stanley Burnton J's approach appears too literal and narrow; s 2(2)(*b*) (equivalent to s 22(2) of the UK Act) must exist precisely to cater to such differences as Stanley Burnton J identified. In my view, the correct approach is to first ask whether the proceedings in question are intended to fall within the scope of s 14. The stages of the proceedings in question cannot be expected to be

> identical to the steps of entry of appearance and judgment in default in s 14. A corresponding provision need not necessarily be the same in texture and terminology. That would defeat the purpose of s 2(2)(*b*) of the Act. I therefore prefer the approach in *Norsk Hydro*.

28 I agree with Ramesh J that the reasoning of Gross J in *Norsk Hydro* is to be preferred over that of Burnton J in *AIC*. Under Singapore law, it is trite that a statute must be interpreted purposively, having regard to the text of the provision as well as the context of the provision within the written law as a whole: *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37]. In other words, the interpretation of the provision in question should be informed by other relevant provisions within the same statute (*Tan Cheng Bock* at [44]). To my mind, it was clear that s 14(2) of the SIA must be read together with the relevant definition in s 2(2)(*b*) of the SIA, which extends the definition of "entry of appearance" to include "any corresponding procedures".

29 In my view, the plain meaning of the term "corresponding procedures", when applied to s 14(2) of the SIA in the context of a leave order granted under O 69A r 6 of the ROC, *does* refer to an application to set aside the leave order. Based on a plain reading of s 2(2)(*b*) of the SIA, it is clear that the phrase "any corresponding procedures" is broad and meant to be an inclusive definition. Moreover, the very existence of s 2(2)(*b*) of the SIA suggests that s 14(2) of the SIA is meant to apply to a range of procedures, some of which may not have stages that are the same in "texture and terminology" to the steps of entry of appearance and judgment in default set out in s 14 of the SIA (*Josias Van Zyl* at [71]). In my judgment, the correct approach to determining the applicability of s 14(2) of the SIA is therefore to ask if the proceedings in question have a stage that is similar *in substance* to an entry of appearance. As observed in *Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2021) at para

12/1/1, the rationale of entering an appearance is "to enable the defendant to officially communicate his intention to defend or challenge the action". I agreed with the defendant that by parity of logic, in proceedings where leave has been granted to enforce an arbitral award against a foreign State and the leave order has been served on the defendant State in accordance with s 14(1) of the SIA, the corresponding procedure to an entry of appearance would be *the next step* that the defendant is required to take to communicate its intention to challenge the leave order.[25] That next step would, in my view, be the defendant's application to set aside the leave order. As provided for in O 69A r 6(4) read with O 69A r 6(5) of the ROC, that is the very step that is required to be expressly stated in any leave order made under O 69A r 6 of the ROC. I was therefore satisfied that an application to set aside the Leave Order did fall within the meaning of "corresponding procedures" in s 2(2)(*b*) of the SIA, such that s 14(2) of the SIA applied to the present proceedings.

30 Moreover, I was of the view that such a conclusion better accorded with the legislative purpose of s 14(2) of the SIA. The fact that s 14(2) of the SIA gives States a longer timeline to enter an appearance is an explicit recognition of "the reality" that States require more time to react to proceedings, as noted in *Josias Van Zyl* at [45]:

> 45 This accorded with the underlying purpose of s 14 [of the SIA]. The two-month time period in s 12 [of the UK SIA] serves to acknowledge 'the reality that states do take time to react to legal proceedings'. It is not disproportionately generous, since often 'an award will be made in one country but enforcement may be sought elsewhere, perhaps in a number of jurisdictions, where assets are or are thought to be located' (*Norsk Hydro* ([12] *supra*) at [25(4)]). I thus agreed with the reasoning at [19] of the AR's GD ([1] *supra*) that:

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[25] DWS at para 43.

> States require time to respond to proceedings brought against them, and enforcement proceedings are no exception. Proceedings to enforce an award may be brought in any jurisdiction in which the respondent State has assets, independent from that jurisdiction's connection to the underlying arbitration or the merits of the substantive dispute. The need for time and opportunity to respond applies with equal force.

31 I did not see any reason why the observations in *Josias Van Zyl* should not apply in the context of proceedings to enforce an arbitral award against a State. In its submissions, the plaintiff argued that a State does not require as much time to react to *enforcement* proceedings as compared to *fresh* claims against it, since it would be aware of the disputes and arbitral proceedings giving rise to the arbitral award, particularly in instances where the State had actively and fully participated in the underlying arbitration.[26] I did not agree with this submission. As noted in *Josias Van Zyl* (at [46]), while the enforcement of an arbitral award may not take a respondent State by surprise, different considerations come into play when a State is faced with the potential enforcement of the award in a particular jurisdiction, as compared to the considerations at play in the underlying arbitral proceedings. In my judgment, this remains true even if parallel enforcement proceedings have been brought in other jurisdictions – the grounds for resisting enforcement may apply differently across different jurisdictions, and different jurisdictions may well have differing court processes for resisting enforcement of an arbitral award. Accordingly, I disagreed that the defendant should be deprived of its entitlement to the additional time allowed under s 14(2) of the SIA, simply because it had participated in the Arbitration.

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[26] PWS at para 71.

32 For the foregoing reasons, I disagreed with the plaintiff that s 14(2) of the SIA does not apply to a leave order which was granted under O 69A r 6 of the ROC and served in accordance with s 14(1) of the SIA.

33 In support of the plaintiff's position, Ms Koh also drew my attention to the comments of Teare J in *Gold Reserve*.[27] In discussing Burnton J's judgment in *AIC*, the learned Judge stated as follows (at [63]–[64]):

> 63 The basis of the decision [in *AIC*] appears to be that section 12 [of the UK SIA], which deals in subsection (1) with the mode of service, in subsections (2) and (3) with entry of appearance and in subsections (4) and (5) with judgments in default of appearance, must be applicable in its entirety to the proceedings in question. The procedure of ordering registration of a judgment without notice to the defendant and providing for the defendant to apply to set aside the order was not the equivalent of the provisions for entry of an appearance and for judgments in default of appearance. The judge concluded that an application for registration of a judgment required the issue and service of a claim form.
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> 64 With diffidence and with great respect to Stanley Burnton J I do not consider that the provisions of section 12 must be read in that manner. In my judgment section 12 makes special provision with regard to the questions of service, entry of appearance and judgments in default of appearance. But if the particular proceedings do not involve any one of those steps then the special provision of section 12 relating to that step does not apply. This appears to me to be clearly so with regard to section 12(1). It only applies to writs or other documents "required to be served". If the document instituting the proceedings is not required to be served then the subsection has no application. If an entry of appearance (now acknowledgment of service) is required then subsections (2) and (3) apply. If an entry of appearance (now acknowledgment of service) is not required than the subsections do not apply. If judgment in default of appearance (now acknowledgment of

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27 PWS at para 47.

> service) is sought then subsections (4) and (5) apply. If it is not sought then they do not apply.

34 The plaintiff rightly observed that *Gold Reserve* is authority for the proposition that s 12(2) of the UK SIA does not apply by the mere fact that a writ or document is served in accordance with s 12(1) of the UK SIA; if proceedings commenced against a State do not involve an entry of appearance or a corresponding procedure, then s 12(2) of the UK SIA would not have any application.[28] As an aside, *AIC* was also doubted on this point in *General Dynamics (UKSC)*; see above at [26]. However, in my view, *Gold Reserve* was ultimately of limited assistance to the plaintiff. As is clear from the above passage, *Gold Reserve* does not deal with the question before me, which was *what*, if anything, in the context of a leave order, constitutes a corresponding procedure to an entry of appearance. Moreover, for the reasons detailed above at [28]–[31], I considered that the present proceedings *did* envision a stage in the proceedings that would be the equivalent to an entry of appearance (*ie,* the defendant's application to set aside the Leave Order) and that accordingly, s 14(2) of the SIA would apply to the Leave Order. Thus, *Gold Reserve* did little to buttress the plaintiff's case.

35 Ms Koh also referred me to s 14(6) of the SIA, which provides that where a writ or other document has been served in a manner previously agreed to by a foreign State, the foreign State cannot avail itself of the two-month timeline prescribed under s 14(2) of the SIA. Ms Koh submitted that s 14(6) of the SIA shows that the procedural privileges afforded to States under s 14 are "not immutable", and can be retracted when it is clear that the State is aware of the proceedings commenced against it and is able to respond.[29] As such, the two-

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28 PWS at para 47.

29 PWS at paras 54–56.

month timeline prescribed under s 14(2) of the SIA was simply a "proxy" for what was thought to be a reasonable time for a State to conduct internal consultations before meeting a fresh claim brought against it.[30]

36 In my view, this argument was untenable. I did not find that s 14(6) of the SIA took anything away from the plain meaning or purpose of s 14(2). While the plaintiff may be correct to observe that s 14(6) of the SIA carves out certain circumstances under which States are not afforded the privilege of the additional time under s 14(2), the fact remains that the plain wording of s 14(2) of the SIA mandates that States be accorded a two-month timeline in all other cases.

37 Moreover, even if the plaintiff is correct that the privilege of additional time under s 14(2) of the SIA is "not immutable", I did not see any basis on which the additional time set out in s 14(2) SIA could be whittled down in the present case. In this respect, the plaintiff submitted that the court has the power under O 69A r 6(4) of the ROC to decide on the appropriate time period within which a State may apply to set aside a leave order, *notwithstanding* s 14(2) of the SIA.[31] O 69A r 6(4) of the ROC provides:

> (4) Within 14 days after service of the order [granting leave to enforce an arbitral award] or, if the order is to be served out of the jurisdiction, *within such other period as the Court may fix*, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.
>
> [emphasis added]

38 The plaintiff contended that the phrase "within such other period as the Court may fix" expressly leaves it open to the court to decide on the appropriate

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30 PWS at para 63.

31 PWS at paras 66–70.

time period within which a debtor State may apply to set aside a leave order, notwithstanding the two-month timeline provided for in s 14(2) of the SIA.[32] In support of its position, the plaintiff cited the English Court of Appeal decision in *General Dynamics United Kingdom Ltd v State of Libya* [2019] 1 WLR 6137 ("*General Dynamics (CA)*"), as well as the decision of the High Court of Australia in *Firebird Global Master Fund II Ltd v Republic of Nauru and another* [2015] 326 ALR 396 ("*Firebird*").

39 I was not persuaded by the plaintiff's arguments and the case authorities cited above at [38] did not assist the plaintiff. With regard to *General Dynamics (CA)*, Ms Koh drew my attention to the following excerpt from the judgment:

> 51 … such order must, in accordance with CPR r 62.18(9), set a period within which the state may apply to set aside the order and provide for it not to be enforced meanwhile. *No doubt, in the case of a foreign state, the normal such period should be two months by analogy with section 12(2) but there is no statutory requirement that that period must always be given.*
>
> [emphasis added]

40 The above comments were made by the English Court of Appeal *in endorsement* of Burnton J's decision in *AIC*. However, as I noted above (at [26]), *AIC* was not followed by the UK Supreme Court in *General Dynamics (UKSC)* and the decision in *General Dynamics (CA)* was in fact reversed by the UK Supreme Court. I therefore did not consider *General Dynamics (CA)* to be persuasive. Further, *General Dynamics (CA)* itself should be understood in its proper context. The issue that arose in that case was whether the requirements of s 12(1) of the UK SIA (*in pari materia* with s 14(1) of the SIA) were applicable to a leave order and if so, whether they were mandatory or capable of being waived or dispensed with. The decision did not therefore concern

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[32] PWS at paras 66–68.

s 12(2) of the UK SIA and as I mentioned at [26] above, the UK Supreme Court declined to express any concluded view on the applicability of s 12(2) of the UK SIA.

41 Likewise, the observations in *Firebird* also need to be read and understood in context. The question in *Firebird* was whether a summons application to register a foreign judgment had to be served on the judgment debtor State, through one of the modes of service prescribed under the Foreign States Immunities Act 1985 (Cth). Justices Nettle and Gordon answered this question in the negative (at [215]). Nonetheless, they noted that under the Uniform Civil Procedure Rules 2005 (NSW), a court *could* still require the service of the summons through one of the prescribed modes of service, in situations where it would be expedient to do so. Where the judgment debtor is a foreign State, the court would also usually afford a longer time period to the foreign State to apply to set aside the registration order. It was in this context that the learned Judges made the observations that the plaintiff relied on, *ie*, that the rules on service are "facultative … rather than imposing an inevitable and ineluctable service requirement regardless of the facts and circumstances of the case" (at [216]).

42 From the foregoing, it is clear that the true purport of Nettle and Gordon JJ's comments is that the court has a discretion to fix a *longer* time period for setting aside a registration order where it is expedient to do so, and not that the court is entitled to *shorten* the time period for setting aside a registration order *despite* what may be prescribed by statute. Moreover, the comments of the learned Judges were made *obiter*, since the question before the High Court of Australia in *Firebird* did not touch on the time that a State had to set aside a registration order or leave order. I therefore found the plaintiff's reliance on *Firebird* to be of little assistance to its case.

43 On a proper reading of s 14(2) of the SIA, the plaintiff's proposition that the court retains a residual discretion under O 69A r 6(4) of the ROC to fix *any* time limit it sees fit for an application to set aside a leave order was simply unsustainable. Section 14(2) of the SIA provides that "[a]ny time for entering an appearance (*whether prescribed by Rules of Court or otherwise*) shall begin to run 2 months after the date on which the writ or document is so received" [emphasis added]. It is clear from the italicised wording that the court's power to fix a timeline under the ROC does not supersede or supplant the timeline prescribed under s 14(2) of the SIA – to hold otherwise would result in the tail wagging the dog. Rather, s 14(2) of the SIA and the ROC are meant to work in tandem, such that any time period fixed by the court under O 69A r 6(4) of the ROC begins to run two months *after* the date of service. Where a foreign State has been served with a leave order to enforce an arbitral award, the effect of s 14(2) of the SIA is therefore this: the foreign State has two months under s 14(2) SIA to set aside the leave order, *plus* any *further* time afforded to it by the court in exercise of its discretionary powers under O 69A r 6(4) of the ROC. I elaborate on this below at [50]–[52], when I consider Issue 2. Suffice to say for now that I did not agree with the plaintiff that the court has power under O 69A r 6(4) of the ROC to *shorten* the time a State has for applying to set aside a leave order, irrespective of what is stipulated in s 14(2) of the SIA. In my judgment, the reference to "such other period as the Court may fix" in O 69A r 6(4) of the ROC simply refers to the court's power to *extend* the period for setting aside a leave order beyond *the minimum* allowed under s 14(2) of the SIA.

44 For the reasons set out above, I found that an application by the defendant to set aside the Leave Order constituted the corresponding procedure to an entry of appearance under s 14(2) of the SIA, and that the time the

defendant had to set aside the Leave Order was therefore governed by s 14(2) of the SIA.

Issue 2: Computation of time under s 14(2) of the SIA

45 Having answered Issue 1 in the affirmative, I now turn to the issue of how time to set aside the Leave Order should be computed. Mr Bull submitted that the two-month period under s 14(2) of the SIA should be added to the 21 days provided for in the Leave Order, such that the defendant would be entitled to two months and 21 days commencing from 20 October 2021, being the date on which the Leave Order was served.[33] Time for applying to set aside the Leave Order would therefore expire on 11 January 2022. As I summarised at [15] above, Ms Koh advanced two alternative submissions on how the time should be computed:

> (a) First, the reference to an "entry of appearance" in s 14(2) of the SIA should be construed as referring not only to an application to set aside the Leave Order, but also to *any* step in the proceedings taken by the foreign State that indicates the State has had a chance to respond to the proceedings.[34] The plaintiff argued that the defendant took a step in the proceedings when it appointed D&N as local counsel on 9 November 2021 and filed SUM 5125 on 10 November 2021. The plaintiff submitted that the defendant therefore entered an appearance on 9 November 2021 and accordingly should only have 21 days from 9 November 2021 (*ie,* up till 30 November 2021) to apply to set aside the Leave Order.

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33 DWS at para 61.

34 PWS at para 113.

(b) Alternatively, the plaintiff argued that based on a plain reading of s 14(2) of the SIA, the defendant should have a *maximum* of two months from the date on which the Leave Order was received, to apply to set aside the Leave Order.[35]

46 With regard to the submissions at [45(a)] above, I disagreed that the appointment of D&N and the filing of SUM 5125, taken singly or together, constituted an "entry of appearance" or a corresponding procedure for the purposes of s 14(2) of the SIA. The plaintiff's interpretation of s 14(2) of the SIA is not supported by the ordinary meaning of the words in the provision. As noted above at [29], an entry of appearance enables the defendant to officially communicate his intention to defend or challenge the action. It is a specific action as compared to some other step in the proceedings. The plaintiff's interpretation was not, in my view, a possible interpretation having regard to the ordinary meaning of s 14(2) of the SIA. Thus, the plaintiff's interpretation did not pass the first step of a purposive interpretation of s 14(2) of the SIA, which is to ascertain possible interpretations of the legislative provision: see *Tan Cheng Bock* at [37].

47 Moreover, if I accepted the plaintiff's contention, the defendant would paradoxically be disadvantaged for trying to avail itself of the two-month timeline it would otherwise be entitled to under s 14(2) of the SIA. On the plaintiff's reasoning, the defendant would have been entitled to two months under s 14(2) of the SIA to react to the enforcement proceedings, once the Leave Order was served on it. Yet, by the very act of filing SUM 5125 to seek a declaration that it was indeed entitled to the time provided for in s 14(2) of the SIA, the defendant had supposedly waived its entitlement to the additional two

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[35] PWS at para 120.

months and would be left with only 21 days to apply to set aside the Leave Order. This somewhat circular and tautological conclusion cannot plausibly be the manner in which s 14(2) of the SIA was *intended* to operate. It would also fly in the face of the well-established canons of statutory interpretation that Parliament shuns tautology and does not legislate in vain: *Tan Cheng Bock* at [38].

48 In any case, even if, *arguendo*, I accepted that the phrase "entry of appearance" in s 14(2) of the SIA encompassed *any* further step in the proceedings, I was not persuaded that anything done by the defendant thus far amounted to a further step in the proceedings. As held by the Court of Appeal in *Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd* [2008] 4 SLR(R) 460, a "step in the proceedings" is one that evinces a party's "unequivocal submission" to the jurisdiction of the courts (at [95]).

49 On the facts before me, I did not think that the actions of the defendant satisfied this requirement. The appointment of D&N as counsel or the filing of SUM 5125 (which essentially asked for an extension of the deadline by which the defendant could apply to set aside the Leave Order) did not *ipso facto* evidence the defendant's unequivocal intention to challenge the Leave Order. A defendant may very well apply for more time to apply to set aside a leave order, *while* it considers more carefully whether it indeed wishes to apply to set aside the order. In any event, I note that the defendant expressly reserved its right to dispute the regularity of *service* of the Leave Order (and consequently, the court's jurisdiction) in the supporting affidavit filed with SUM 5125.[36] Put simply, it did not appear to me that any step taken by the defendant thus far

[36] 1st affidavit of AS at para 16.

amounted to an unequivocal submission to the jurisdiction of the Singapore courts or an unequivocal intention to challenge the Leave Order.

50 With regard to the plaintiff's second argument set out above at [45(b)], I was ultimately not persuaded that a plain reading of s 14(2) of the SIA supported the plaintiff's contention that the defendant should be entitled only to a *maximum* of two months to apply to set aside the Leave Order. In my judgment, a plain reading of s 14(2) of the SIA supported the defendant's contention that it was entitled to two months *and* 21 days from the date of service of the Leave Order. As I suggested above at [43], on a proper reading of s 14(2) of the SIA, the two-month timeline under s 14(2) of the SIA is meant to be *added* to any time a State otherwise has for entering an appearance (or undertaking a corresponding procedure). This is the natural meaning of the words "*[a]ny time* for entering an appearance (whether prescribed by Rules of Court or otherwise) *shall* ***begin*** *to run 2 months after* the date on which the writ or document is so received" [emphasis added in italics and bold italics]. Put another way, the effect of the wording of s 14(2) of the SIA is to *delay* by two months the point at which the time period for entering an appearance (or complying with a corresponding procedure, as the case may be) would otherwise begin to run.

51 Accordingly, I considered that the correct approach to computing the time that a State has under s 14(2) of the SIA to enter an appearance is as follows: (a) determine the "normal" or default time period that the State would have for entering an appearance, if not for the existence of s 14(2) of the SIA, and (b) *add* two months to this time period. As to how the normal time period for entering an appearance should be ascertained, s 14(2) of the SIA provides that the time period for entering an appearance may be "prescribed by Rules of Court or otherwise". In my view, this simply makes clear that the normal time

limit for entering an appearance may be contained in the ROC or elsewhere. So, for instance, in a writ action where a foreign State is the defendant, the foreign State would have the usual prescribed time period of 21 days (or such extended period as the Court may allow) under O 12 r 4(*b*) of the ROC, *plus* an additional two months by operation of s 14(2) of the SIA, to enter an appearance.

52 Where there is no time limit stipulated in the ROC, the question then is whether a time limit is prescribed "otherwise". The words "or otherwise" in s 14(2) of the SIA would, in my view, include a time limit contained within *an order of court*. Thus, where an order required to be served under s 14(1) of the SIA, such as the Leave Order, provides for a time limit for a defendant State to undertake a procedure corresponding to entering an appearance, the time limit stated in the order begins to run two months after the date of service of the order.

53 Applying my observations above (at [50]–[52]) to the present case, I agreed with Mr Bull's submissions that the defendant was entitled to a total of two months and 21 days to apply to set aside the Leave Order. The time for applying to set aside a leave order is prescribed in O 69A r 6(4) of the ROC as "[w]ithin 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix". On the facts before me, it is plain that the assistant registrar exercised his discretion under O 69A r 6(4) of the ROC to grant a longer time of 21 days to set aside the Leave Order, instead of the default time limit of 14 days. Accordingly, by virtue of s 14(2) of the SIA, the 21-day limit in the Leave Order would only begin to run two months after the date on which the Leave Order was served on the defendant, such that the defendant had a total of two months and 21 days (*ie,* up until 11 January 2022) to apply to set aside the Leave Order.

54 In this regard, the conclusion I have reached above is also consistent with how the relevant time to set aside a leave order was computed in several cases that were cited by the parties. First, in *Norsk Hydro*, Gross J held that the Republic of Ukraine was entitled to two months under s 12(2) of the UK SIA *plus* the 21 days stipulated in the permission order, to apply to set aside the order (at [25(6)]), and that therefore, on the facts, the third party debt application had been commenced by Norsk prematurely. Likewise, in *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan* [2009] 1 All ER (Comm) 505, the claimants' solicitors initially drafted a leave order stating that the Government of Pakistan had 31 days to apply to set aside the leave order. After the English High Court observed that the claimants had failed to take into account the timeline provided for in s 12(2) of the UK SIA (at [54]), the claimant resubmitted and obtained a new leave order granting the Government of Pakistan two months *and* 23 days to apply to set aside the leave order. In addition, in *Gold Reserve*, the leave order provided that the Republic of Venezuela could apply to set it aside within two months and 22 days after service of the order (at [55]). On the other hand, I also noted that in *General Dynamics (UKSC)*, the leave order provided that the State of Libya had two months from the date of the order to apply to set it aside (at [3]). Nonetheless, I was cognizant of the fact that none of these cases considered the appropriate methodology for computing the time limit for setting aside a leave order. I therefore based my decision primarily on the plain wording of s 14(2) of the SIA (as detailed at [50]–[52] above).

55 For the foregoing reasons, I agreed with the defendant that it had a total of two months and 21 days to apply to set aside the Leave Order. In my judgment, the period of 21 days stated in the Leave Order was therefore incorrect. It should instead have stipulated that the defendant was entitled,

pursuant to s 14(2) of the SIA, to *two months and 21 days* to apply to set aside the Leave Order. Alternatively, the defendant ought to have been separately notified that it had an additional two months under s 14(2) of the SIA to apply to set aside the Leave Order.

Issue 3: Whether the defendant should be granted an extension of time under O 3 r 4(1) of the ROC

56 If I was wrong in my interpretation of s 14(2) of the SIA, there remained the question of whether an extension of time should be afforded to the defendant pursuant to the court's powers under O 3 r 4(1) of the ROC. The existence of this power was not disputed by the parties. For convenience, O 3 r 4(1) ROC provides that:

> **Extension, etc., of time (O. 3, r. 4)**
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> 4.—(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.

57 It was common ground that the factors that a court should consider when deciding whether to exercise its powers under O 3 r 4(1) of the ROC were summarised by Justice Belinda Ang Saw Ean in *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 3 SLR 725 ("*Bloomberry Resorts*") at [49]:

> 49 The words 'such terms as it thinks just' gives the court discretion to grant time extension in order to achieve justice in the circumstances of the case. Generally, the factors the court takes into consideration in deciding whether to grant an extension of time are: (a) the length of delay; (b) the reasons for delay; (c) the chances of the defaulting party succeeding on appeal if the time for appealing were extended; and (d) the degree of prejudice to the would-be respondent if the extension of time were granted: see *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [29]; *AD v AE* [2004] 2 SLR(R) 505 at [10]) with the courts generally focusing on the first two:

> *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202 at [14] …

58 Applying the factors set out in *Bloomberry Resorts* to the present case, I considered it just to grant the defendant an extension of time up to and including 11 January 2022 to challenge the Leave Order. Allowing the defendant an extension of time of approximately six weeks from the date of the hearing before me would not cause inordinate delay. More importantly, in my judgment, there were valid reasons for this delay. As discussed above at [30]–[31], foreign States reasonably require more time to react to proceedings to enforce an arbitral award, even where the State participated in the underlying arbitration. In any event, on the evidence before me, it was clear that the defendant *did* require more time to react to the enforcement proceedings commenced against it. While the Leave Order was first served on the defendant on 20 October 2021, the Leave Order was mistakenly forwarded to the wrong government department of the defendant, and only forwarded to the correct authority on 29 October 2021.[37] The defendant notified its international counsel, White & Case Pte Ltd ("White & Case"), of the Leave Order on the same day.[38] White & Case then started the process of instructing Singapore counsel on 1 November 2021, and eventually appointed D&N to act for the defendant in the present proceedings on 9 November 2021.[39] If no extension of time were granted to the defendant, the defendant would have had to apply to set aside the Leave Order by 10 November 2021 (*ie,* 21 days after service of the Leave Order on 20 October 2021), merely one day after D&N had been appointed. Based on the foregoing, it was clear to me that the defendant reasonably required more time to respond to the Leave Order.

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37 2nd affidavit of AS dated 25 November 2021 ("2nd affidavit of AS") at paras 21–22.

38 2nd affidavit of AS at para 28.

39 2nd affidavit of AS at paras 30–31.

59 I did not think that the defendant should be expected to react to the enforcement proceedings commenced by the plaintiff within a shorter span of time, simply because the defendant had participated in the underlying Arbitration, or because the defendant has been represented by the same international counsel in proceedings in other jurisdictions to resist enforcement of the Final Award.[40] The fact remains that proceedings had not previously been brought to enforce the Final Award in *Singapore*. As I have elaborated above at [31], court processes and grounds for resisting enforcement may differ across jurisdictions; the defendant therefore cannot be expected to react more quickly simply because it is resisting enforcement in other jurisdictions.

60 I was not persuaded by the plaintiff's arguments that granting an extension of time would cause the plaintiff substantial or irremediable prejudice. The plaintiff complained that the defendant was seeking an extension of time to delay enforcement of the award, and alleged that the defendant was dissipating its assets in the meantime.[41] The plaintiff relied primarily on various news articles to support its allegations – in my view, this was clearly inadequate. At best, the articles cited by the plaintiff merely repeated accusations made by third parties. As Mr Bull pointed out during oral arguments, if the plaintiff genuinely believed that the defendant as a State party was dissipating assets in an effort to frustrate the Final Award, the appropriate remedy would have been a Mareva injunction[42] – however, this was not sought by the plaintiff.

61 For these reasons and if necessary as an alternative ground for my decision, I found it just, in the exercise of my discretionary powers under

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40 3rd affidavit of IR at paras 40–45; 2nd affidavit of AS at paras 29 and 33.

41 PWS at paras 90–96 and 107–112.

42 Notes of Evidence, 3 December 2021, p 6, lines 13–14.

O 3 r 4(1) of the ROC, to grant the defendant an extension of time until 11 January 2022 to apply to set aside the Leave Order. I therefore made the following orders in SUM 5125:

(a) I allowed the defendant until 11 January 2022 to apply to set aside the Leave Order; and

(b) I ordered that the Final Award shall not be enforced until after 11 January 2022, or if the defendant makes an application by 11 January 2022 to set aside the Leave Order, until that application is finally disposed of.

Issue 4: Whether the defendant should be required to furnish security

62 Turning now to the plaintiff's application in SUM 5275, this concerned the plaintiff's application for security amounting to the full sum of the Final Award plus interest (*ie,* US$137,228,887), in the event that the defendant was allowed an extension of time to apply to set aside the Leave Order. I dismissed SUM 5275 as I found no juridical basis for the application.

63 In its written submissions, the plaintiff relied on s 31(5) of the IAA as the basis for its application.[43] Section 31(5) of the IAA provides as follows:

> (5) Where, in any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court is satisfied that *an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made*, the court may —
>
> > (*a*) if the court considers it proper to do so, adjourn the proceedings or, as the case may be, so much of the proceedings as relates to the award; and

[43] PWS at para 129.

> (*b*) on the application of the party seeking to enforce the award, order the other party to give suitable security.
>
> [emphasis added]

64 From the wording of s 31(5) of the IAA, a threshold requirement is that "an application for the setting aside or for the suspension of the award has been made to a competent authority of the country in which, or under the law of which, the award was made". In the present proceedings, it was undisputed that no such application had been taken out or was pending before the seat court in Danubia (see above at [5]). I therefore could not see how s 31(5) of the IAA was even applicable in the present case. All the authorities cited by the plaintiff in its written submissions, including *Continental Transfert Technique Ltd v The Federal Government of Nigeria* [2010] EWHC 780 (Comm), involved in substance some form of proceedings taken or pending before the seat court to challenge the award. No authority was cited to me where a court, faced with similar circumstances as those before me, invoked the equivalent of s 31(5) of the IAA as the juridical basis for ordering the award debtor to furnish security as a condition of granting it time to apply to challenge a leave order. Unsurprisingly, at the hearing before me, Ms Koh conceded that s 31(5) of the IAA had no application in the present case.[44]

65 Instead, Ms Koh put forward a number of alternative bases for the plaintiff's application. The first of which was s 18(2) of the SCJA read with paragraph 15 of the First Schedule to the SCJA, which concerns the court's power to order interim payments:

> **Interim payment**
>
> 15. Power to order a party in a pending proceeding to make interim payments to another party or to a stakeholder or into court on account of any damages, debt or other sum, excluding

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44 Notes of Evidence, 3 December 2021, p 13, line 12.

> costs, which he may subsequently in the proceeding be adjudged to be liable to pay.

66 I disagreed that this provision had any relevance or application to the present proceedings. Section 18(3) of the SCJA provides that the court's powers in the First Schedule to the SCJA must be exercised in accordance with, *inter alia*, the ROC. First, the plaintiff's application was, essentially, for the defendant to furnish *security* and not for *payment*; an interim payment application was therefore, and by definition, a very different creature. Second, the plaintiff did not in any event bring an application for interim payment under O 29 r 10 of the ROC, which is the relevant provision governing applications for interim payment. Even assuming that an application for an interim payment was the appropriate application to make in the circumstances before me, such an application requires the applicant to show that the grounds in either O 29 r 11 or O 29 r 12 of the ROC are made out. The plaintiff did not adduce any evidence in the present proceedings that would have assisted it to advance any arguments that an interim payment was warranted, whether unconditionally or otherwise.

67 The second alternative basis advanced by Ms Koh was pursuant to the court's inherent powers. I agreed with Mr Bull that the present case did not warrant an exercise of my inherent powers under O 92 r 4 of the ROC. It is well-established that the court will generally *not* invoke its inherent powers where there is an existing rule already covering the situation at hand, save in the most exceptional circumstances: *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at [81]. Further, the "essential touchstone" for the court's exercise of its discretionary inherent powers is really one of "need": *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27]. In this case, I disagreed that the present facts were sufficiently exceptional to

warrant recourse to the court's inherent powers; nor was there any need to do so. I therefore dismissed SUM 5275.

Conclusion

68 For the reasons set out in these grounds of decision, I allowed the defendant's application in SUM 5125 on the terms set out above at [61] and dismissed SUM 5275.

69 I awarded costs of both applications to the defendant. Taking into consideration the novelty surrounding the issues pertaining to s 14(2) of the SIA, I fixed costs in the round at S$22,000 together with disbursements at S$3,400 to be paid by the plaintiff to the defendant.

S Mohan
Judge of the High Court

Koh Swee Yen, Quek Yi Zhi Joel, Dana Chang Kai Qi, Andrea Seet Sze Yuen and Axl Rizqy (WongPartnership LLP) for the plaintiff;
Cavinder Bull SC, Lin Shumin and Lee Zhe Xu (Drew & Napier LLC) for the defendant.