NEC Asia Pte Ltd (now known as NEC Asia Pacific Pte Ltd) *v* Picket & Rail Asia Pacific Pte Ltd and others
[2010] SGHC 359

Case Number : Suit No 536 of 2009

Decision Date : 10 December 2010

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Francis Goh and Geraldine Ow (Harry Elias Partnership LLP) for the plaintiff; Navinder Singh (Navin & Co LLP) for the second and third defendants.

Parties : NEC Asia Pte Ltd (now known as NEC Asia Pacific Pte Ltd) — Picket & Rail Asia Pacific Pte Ltd and others

Contract – Sale of Goods

10 December 2010 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 In this action, the plaintiff, NEC Asia Pte Ltd (now known as NEC Asia Pacific Pte Ltd) ("NEC") claims against the first defendant, Picket & Rail Asia Pacific Pte Ltd ("D1") and/or the third defendant, Faisal Alsagoff ("D3"), the sum of US$ 1,402,380.30 being the price of 2390 units of Mitsubishi High End Projectors ("projectors"). The alternative claim of S$1,917,054 (being the Singapore dollar equivalent of US$1,402,380.30) is for the amount of the dishonoured cheque issued by the second defendant, Digital Network Pte Ltd ("D2"), in favour of NEC as payee in purported payment of the price of the projectors.

2 D1 is in liquidation and the action against D1 is stayed as a consequence. Chan Seng Onn J had earlier on 29 June 2010 refused NEC's application for leave to continue with its claims against D1. Hence, the action before me is against D3 personally and D2. I should mention that NEC is no longer pursuing its claim for Goods & Services Tax ("GST") against D3, a position NEC confirmed at the trial through its counsel, Mr Francis Goh.

The dispute

NEC's arguments

3 NEC's pleaded case is that in February 2008, NEC agreed with D1 to supply 2300 projectors at a unit price of US$658.20 and aggregate price of US$1,513,860 ("the February order"). The February order was subsequently varied in June 2008 by D1's letter dated 18 June 2008 whereby the number of projectors to be supplied was revised upwards to 2390 projectors, and the price was adjusted downwards to US$586.77 per unit ("the June order"). The aggregate price of the June order was US$1,402,380.30. NEC purchased the projectors from Mitsubishi Asia Pte Ltd ("MEA"), and delivery of the projectors was made in June 2008 directly to KUB Telekomunikasi Sdn Bhd ("KUB"), the end purchaser in Malaysia, whose vendor, HTI Industries Sdn Bhd ("HTI") had issued a purchase order for the projectors to D1. NEC pleaded that the delivery in June 2008 was made with the knowledge of D1

and D3 who, in any event, never objected to the delivery at the material time. Furthermore, D3 had in a letter dated 12 August 2008, typed on the letterhead of Comat Academy Sdn Bhd ("Comat"), thanked NEC for its prompt delivery and acknowledged that the customer KUB had received the projectors.

4 As the projectors had been delivered, NEC asked D1 for payment on 18 June 2008. D3 informed NEC that D1's finance director was not in the office to sign the cheque. NEC acceded to D3's request to collect the cheque at a later date. On 21 June 2008, NEC received D2's cheque for the sum of S$1,917,054 (which was the Singapore dollar equivalent of US$1,402,380.30) post-dated to 8 August 2008. NEC's Vice-President Enterprise Business Group, Job Chan Siang Hong (Job") explained that D1 was not charged GST. [note: 1] Hence, the figure of S$1,917,054 was without the GST component. D2's cheque signed by D3 was for payment of 2390 projectors but payment was stopped by D3 who had refused to pay for the projectors. NEC presented D2's cheque for payment but it was dishonoured. NEC sued for payment on 22 June 2009.

5 HTI was the parent company of Comat. At all material times, D3 was a shareholder and director of HTI. He was also a director of Comat. D3 was also the sole shareholder and director of D1 as well as the sole shareholder and a director of D2 from 6 September 1996 to 24 August 2008.

6 NEC's main argument against D3 is that the latter used the companies controlled by him interchangeably, including D1 and D2 to contract, to acknowledge receipt of the projectors and to make payment. D3 was the key person in the transaction with NEC and he had treated D1 as his alter ego. As such, D3 cannot rely on the doctrine of separate legal personality of a company to escape from his personal liability to pay NEC for the projectors. The claim against D2 is for the amount of the dishonoured cheque.

D3 and D2's arguments

7 D3 and D2 do not dispute that the projectors were delivered to KUB, and that KUB had paid HTI for the projectors. It was also not disputed that after the projectors were delivered, HTI e-mailed its purchase order to D1. The e-mail also explained that D1 as purchaser would be required to issue its purchase order to NEC.

8 D3 advanced several reasons for D1's refusal to pay for the projectors.

9 First, there was no contractual relationship between NEC and D1 or D3. The contract for the supply of projectors was between MEA and Comat. Second, if there was a contract with NEC, it was between NEC and Comat. D3's position is that the order in June 2008 was meant to be an entirely new contract between NEC and Comat, and not a variation of the order in February 2008. Third, even if, the contract was between NEC and D1, D3's case is that there were no orders from the Malaysian companies in February 2008, and therefore the documents generated and signed in relation to the alleged February order were "invalid". The projectors were never delivered to D1 in February 2008, and NEC's recognition of the February order as a completed transaction was an "illegal" attempt by NEC to increase its revenue for the fiscal year ended 31 March 2008. NEC also backdated documents in respect of the June order so as to tie in that order with the revenues booked in March 2008 for the earlier February order. In the circumstances, NEC should not be allowed to enforce an illegal contract. Four, if the contract was between NEC and D1, NEC's claim for payment of US$1,402,380.30 should be disallowed as it had breached the contract in several ways: (a) delivered the projectors without D1's prior instructions, (b) failed to satisfy the User Acceptance Test ("UAT"), and (c) failed to send invoices for the projectors to D1. Five, even if there was a valid contract between D1 and NEC, and this contract had been duly performed by NEC, D1 was the party responsible to make payment to

NEC, and not D3 personally.

10 D2's defence, not surprisingly, overlaps significantly with D3's, and the first four arguments raised by D3 above at [9] apply with equal force to D2's defence.

11 The Defence pleaded other matters which are, in my view, peripheral, irrelevant and, at times, misconceived. I therefore say no more and will quickly move on to what I see are the main issues in dispute.

The supply of projectors and identity of the contracting parties

Overview

12 It is helpful to begin by providing the material facts to the dispute which is best done by identifying the various individuals and companies that are involved. I shall make findings of fact in the course of the narrative below. It will be evident from the narrative and evidence before me that there is no basis, and hence no merit in D3's contention that the contractual relationship for the supply of projectors was between either MEA and Comat, or NEC and Comat. The four-party "pass-through deal", which is explained below, was acknowledged by D3 in his affidavit evidence-in chief and during cross-examination where he accepted that the pass-through deal was between NEC and D1. [note: 2] For the reasons explained below, for there to be a pass-through deal between MEA and NEC, D1's involvement was critical. From this perspective, there had to be a contractual relationship between NEC and D1 rather than with any Malaysian entity. On a related note, it is not disputed that some of the documentation relating to four-party pass-through transaction had been backdated. They are all found in the Agreed Bundle where the authenticity of the documents had been agreed. It is too late for D3 to take issue with a document's authenticity on grounds of backdating or signature.

Analysis of the material facts and conclusions

13 It all began in January 2008. At that time, NEC's sales manager, Shawn Chia Lai Poh ("Shawn"), met D3, Faisal Alsagoff, in MEA's offices at Alexandra Road. Michael Woo ("Michael"), the General Manager of the Visual Imaging Division of MEA made the introductions. D3 was introduced as a director of HTI and Comat. On that occasion, Shawn heard about the PPSMI (Learning Programme for Science, Math and English) project. D3 explained that HTI and Comat would be tendering for the PPSMI project through two bidding parties. The plan was for HTI to manage KUB as one bidding party. The other bidding party, MIMOS (a Malaysian government-linked company), would be managed by Comat. According to D3, the PPSMI project would involve, *inter alia*, the supply of Mitsubishi projectors. Shawn was told by Michael that for NEC to participate in the supply of Mitsubishi projectors, Comat would have to be persuaded that NEC could add value to the PPSMI deal. Michael agreed to "pass the deal" through NEC provided the latter accepted (a) transfer of title to the projectors, (b) assumed timely payment of the projectors to MEA, and (c) issued a performance bond to either KUB or MIMOS (both were the Malaysian purchasing party acting on behalf of either HTI or Comat) depending on whether KUB or MIMOS were the purchasers. NEC agreed to Michael's stipulations. However, it later transpired that NEC Singapore was not in a position to contract directly with Malaysian entities – HTI and Comat were Malaysian companies. I understand that there is NEC Malaysia and NEC Singapore, and each NEC entity is responsible for its respective geographical markets. As such, NEC Singapore was obliged by its corporate policy to conduct business with entities in Singapore. This corporate "impediment" highlighted the importance of D1 in the commercial scheme/arrangement that was put in place in relation to the supply of the projectors for PPSMI project by MEA, NEC, D1, and HTI/Comat.

14 Specifically, D1, a Singapore company was, and I so find, interposed in the supply of the projectors. Evidentially, I find that D1 was an important and an indispensible link in MEA's contract to supply its projectors to NEC, and down the line from NEC to D1 and D1 to either Comat or HTI depending on which Malaysian entity (*ie* KUB or MIMOS) was the purchaser. To complete the commercial scheme/arrangement, there would have to be a purchase order (as D3's alluded to in paragraph 6 of his affidavit of evidence-in-chief) from either Comat or HTI. D3 again referred to this in his written testimony:

> 17.8 The 1st Defendants would proceed to process the deal only when Comat or HTI had issued a PO to the 1st Defendants. [note: 3]

15 In the context of the parties' vernacular, this commercial scheme/arrangement was the mechanics of what was called the "pass-through" deal where D3 in his written evidence had described Michael as saying that MEA was agreeable to "pass the deal through" to NEC. [note: 4] What happened thereafter between NEC and D1 through D3 in February 2008 to June 2008 was pursuant to this commercial scheme/arrangement, and I so find.

16 There is no dispute that the anticipated shipment in February/March 2008 did not take place. The PPSMI project was delayed on account of the Malaysian General Elections. At one stage, on 31 March 2008, D3 indicated to Shawn that the projectors would not be needed until April 2008. Michael also e-mailed Shawn on 31 March 2008 to confirm that MEA would not invoice NEC for the 2300 projectors because of further delays with the PPSMI project. [note: 5]

17 There is evidence on how in June 2008, MEA came to send 2390 projectors to KUB. According to Shawn, Ahmad Sharizal ("Sharizal"), the managing director of HTI, contacted Irina Yeo of MEA ("Irina") in early June 2008 to deliver the projectors to KUB. Irina called Shawn to get permission to deliver the projectors to KUB. Shawn claimed that he had obtained the necessary approval to go ahead with the delivery from NEC's Senior Vice President of the Enterprise Business Group, David Ng Eng Tuan ("David"), and Job Chan, the Vice-President Enterprise Business Group. In relation to this issue, Job said he learned that the projectors were delivered on 7 June 2008 when MEA's shipping documents were sent to him. [note: 6] In re-examination, Job clarified that the first time he became aware that the projectors were delivered by MEA to the end buyer was at the meeting held on 20 June 2008. [note: 7] David said that Shawn was transferred to another department in March 2008, and after March 2008, he was not involved in the discussions relating to this supply of projectors. It was on or about 18 June 2008 that the Managing Director of NEC, Tan Goh Beng, asked him to handle the payment issue with D3.

18 Despite the conflicting evidence, what is clear is that NEC did not obtain D1's prior approval to deliver the projectors to KUB. It appears from the e-mail thread that upon receipt of Sharizal's e-mail of 6 June 2008 (timed 6.20pm) asking for delivery of the projectors, Chio Seng Kit ("Chio") of MEA forwarded at 6.28pm Sharizal's e-mail to D3. However, D3 claimed that he did not open his e-mail, and he only knew of the delivery of the projectors on 9 June 2008 when Shawn informed him of it. Be that as it may, there is no dispute that KUB received the projectors on 7 June 2008, and HTI was paid sometime in June 2008.

19 Significantly, there is evidence of a purchase order from HTI to D1 which was in keeping with the commercial scheme/arrangement as described. The understanding was that D1 would issue its purchase order to NEC after receiving HTI or Comat's purchase order. This brings me to an e-mail dated 13 June 2008 from Kok Fook Onn (Kok") to D1's Ron Ng where HTI's purchase order dated

4 June 2008 was sent as an attachment. Kok is from Comat. The subject matter of the e-mail was stated to be "POs for the PPSMI 6 projects". The attachment to the e-mail entitled "PnR PO.doc." was HTI's purchase order dated 4 June 2008 and addressed to D1 for 2390 projectors –XD510U at the unit price of US$592.70 and the aggregate price was stated to be US$1,416,553 in HTI's purchase order. The e-mail reads:

> Hi Ron,
>
> HTI Industries will be purchase projectors from Picket and Rail. Picket and Rail will be purchasing them from NEC. Pretty convoluted so please call me if you need clarification.
>
> I have attached the PO from HTI to PnR.
>
> You need to prepare a PO from PnR to NEC. Below are the details.
>
> NEC Asia Pte Ltd
>
> No 1 Maritime square
>
> #12-10 Harbourfront Centre
>
> S099253
>
> Attn: Shawn Chia, Sales Manager
>
> Model: XD510U
>
> Price per unit: USD 586.77
>
> No of units: 2390
>
> Ron and Shawn, below are both your handphone numbers in case you need to further communicate.
>
> Ron: [xxx]
>
> Shawn: [xxx]
>
> Thanks all,
>
> Kok

20 According to Job, Shawn arranged for him to meet D3 on 12 June 2008. Although D3 and Shawn did not mention this meeting on 12 June 2008 in their written testimonies, D3 accepted that there was such a meeting during cross-examination. D3 said that the meeting with Job on 12 June 2008 was to confirm the four-party pass-through deal. At that meeting, Job was informed by Shawn that the quantity and price agreed in February 2008 had to be revised following a request from the end buyer. He was asked if NEC would accommodate D1. Job agreed and Shawn was tasked to amend the paperwork.

21 On 13 June 2008, D1 issued two documents to NEC. There was a letter from D1 dated 13 June 2008 to explain the change in pricing and quantity of projectors required for the PPSMI project and

amendment to the February 2008 order. D1 wrote:

NEC Asia Pte Ltd Date: 13 June 2008

No 1 Maritime Square

#12-10 Harbourfront Centre

S099253

Attn: Mr Shawn Chia

Subject: Mitsubishi Projector for Malaysia Project

Dear Shawn,

I refer to our PO confirmation on February 2008 for 2300 units of Mitsubishi High End Projector for the Amount of USD1,513,860.

Due to unforeseen political climate changes in Malaysia, we have no choice but to amend the said Purchase price and quantity to the following:

Initial Order

2300 Units of Mitsubishi High End projector @ USD658.20 per unit = USD1,513,860.00

Revised Order

2390 units Mitsubishi High End projector @ USD586.77 per unit = USD1,402,380.30

We will be sending you the amended purchase order in due course. Meantime, should you require any clarification please do not hesitate to contact me?

Yours Sincerely

Sgd.

for Picket & Rail Asia Pacific Pte Ltd

Faisal Alsagoff

Managing Director

22 Contemporaneously, D1 issued its purchase order dated 13 June 2008 for 2390 units of projectors XD510U [MIT-277A] at unit price of US$586.77. Terms of payment was stated as "LC 30 days".

23 After the meeting on 12 June 2008, NEC issued its quotation for the supply of 2390 units of projectors at a unit price of US$586.77. The aggregate price was US$1,402,380.30. Although this quotation was backdated to 10 June 2008, it was signed for and accepted by D1. The quotation was

subject to the following terms and conditions:

1. Prices quoted are valid for 90 days from date of this quote.

2. Prices are subjected to change without prior notice.

3. L/C Payment 60 days.

24 D1's single purchase order for all 2390 projectors was later cancelled to accommodate NEC's request to split the single order into several orders. Eleven replacement purchase orders, all dated 5 June 2008 (and exhibited at pages 76 – 86 referred to in paragraph 7.3 of D3's affidavit of evidence-in-chief), were issued and signed by D1 as D3 had specifically accepted and acknowledged in paragraph 7.3 of his affidavit of evidence-in chief. [note: 8] However, D3 claimed that the orders were not fulfilled because NEC had cut-off the deal unilaterally on 23 June 2008, an accusation that is untenable from evidence before me. The eleven purchase orders were intended to replace the February order. For example, one of purchase order reads as follows:

> Remarks: The Above PO supersede (*sic*) your Quotation Reference SC-0782-08 Dated 1 February 08.

The payment term as stipulated in the eleven purchase orders was "LC 30 days or Cheque".

25 I have already concluded that D1 was an important and indispensible link in the four-party commercial scheme/arrangement. The commercial arrangement which involved the four entities was apparently mentioned by MEA and it was repeated in HTI's e-mail dated 6 June 2008 to MEA. Sharizal wrote:

> Dear Chio,
>
> As I explained to you an hour ago, I am not privy to the details of the 4 party deal involving MEA, NEC, P&R and HTI. Notwithstanding the above, it is within my authority to give you some form of comfort for the delivery of the projectors. As such, you may accept this email of mine as confirmation of our purchase of the Projectors, the terms of conditions among, as follows ...

I digress for a moment to comment that KUB's letter of credit to HTI as beneficiary was issued on 13 June 2008 well after the projectors were received on 7 June 2008. In addition, Sharizal's e-mail to MEA was sent on 6 June 2008. Yet HTI's purchase order to D1 was dated 4 June 2008. Evidently, some degree of backdating of documentation by the parties had been necessary in the circumstances, and above all accepted.

26 In my judgment, the facts in evidence plainly militate against D3's case that the contract for the supply of projectors was between NEC and Comat. D3's argument is untenable and plainly wrong. For completeness, I should mention D3's further allegation that the contract was actually made between MEA and Comat in the middle of May 2008. This claim was neither pleaded nor supported by the facts in evidence. There was no formal letter or contact given to MEA despite Sharizal's promise to do so in his e-mail of 6 June 2008.

NEC's claim against D3 personally

27 I now come to the next identity issue. NEC's case is that the contract for the supply of projectors was with D3 personally as he was the controlling mind and will of D1; that D3 used the

companies under him interchangeably, including D1 and D2, to contract, make payment and receive the projectors. In short, D3 was the key person in the transactions with NEC; he had used D1 and D2 to structure the transaction with NEC, and was in fact the true contracting party in the transaction. These factors made up NEC's contention that D1 was D3's alter ego, and D3 could not rely on the doctrine of separate legal personality of a company to escape his personal liability. In response, D3's case is that the contract was with D1. I must point out that firstly, the alter ego argument is distinct from the situation (which was not the argument advanced) where a person has agreed to be personally liable in relation to a transaction, but performance of his contractual obligation is through an entity. In this example, the original contractual arrangement remains in force whilst performance is carried out by others. Secondly, NEC is not relying on the ground of sham or facade as an exception to the doctrine of separate legal personality. Cases like *Asteroid Maritime Co Ltd v Owners of the ship or vessel "Saudi Al Jubail"* [1987] SGHC 71 ("*Saudi Al Jubail*") and *Children's Media Ltd v Singapore Tourism Board* [2009] 1 SLR(R) 524 ("*Children's Media Ltd*") were instances where the court lifted the corporate veil when the corporate vehicle was found on the evidence to have been used as a sham or a facade.

28 In *Children's Media*, the corporate veil was lifted after the court found that the first defendant corporation acted as a facade to allow the third defendant to evade his legal obligations. The court also found that the first defendant was a corporate vehicle used by the second and third defendants to bear all liabilities whilst the sponsorship moneys collected by the first defendant were pocketed by the second and third defendants. The court's decision was upheld on appeal. The appellate court found that the first and second appellants, Children's Media Ltd and Tribute Third Millennium Ltd, were no more than corporate puppets compliantly dancing to the tune of the third appellant, Anthony Hollingsworth, who treated their assets as his own, and their liabilities should also be his (see decision of the Court of Appeal reported in [2009] 1 SLR(R) 524 at [9]).

29 In *Saudi Al Jubail*, Lai Kew Chai J found that the beneficial owner of the vessel was using the companies Omega Shipping Company Limited and Saudi Al Jubail Navigation Co. Ltd as mere corporate names which he abused as a cover for his own trading and shipowning activities. Furthermore, the affairs and accounts of the companies were not kept separate from one another or from his own personal affairs. Unsurprisingly, the court lifted the corporate veil and treated these companies as mere extensions of the owner.

30 In *Sitt Tatt Bhd v Goh Tai Hock* [2001] 2 SLR(R) 44, the corporate veil was not lifted because there was no evidence that the corporation in question was created as a sham or facade to shield the defendant from responsibility from what was described as nefarious transactions. These three cases are therefore irrelevant and do not assist D3.

31 The alter ego argument is another ground to lift the corporate veil; it is a distinct ground, different from the one based on fraud of the company's controller. The key question that must be asked whenever an argument of alter ego is raised is this: is the company carrying on the business of its controller? This is inevitably a question of fact. In *Smith, Stone and Knight, Ltd v Mayor, Alderman and Citizens of the City of Birmingham* [1939] 4 All ER 116, Atkinson J found that the subsidiary company was operating a business on behalf of its parent company because its profits were treated entirely as those of the parent company's; it had no staff and the persons conducting the business were appointed by the parent company, and it did not govern the business or decide how much capital should be embarked on it. In those circumstances, the court was able to infer that the company was the agent or nominee of the parent company.

32 NEC relied on three main reasons to support its alter ego argument.

33 First, D3 was the only witness who gave evidence for D2. He was extremely involved in the trial, and was often seen prompting his counsel, Mr Singh during cross-examination of NEC's witnesses. NEC submitted that this behaviour suggested that D3 had a vested interest in the matter, and was not merely an employee or officer of D1 or D2.

34 Second, D3 was closely linked to most of the corporate entities involved in this transaction. He was the sole shareholder of D1 and D2, and a director and shareholder of both HTI and Comat. He was the signatory of letters from D1, Comat, as well as the cheque issued by D2. His deep personal involvement was evident in the way he interchangeably used the pronoun "I" when referring to D1 and D2's actions. To illustrate, NEC referred to D3's answers in cross-examination.

> Q: And why did you stop payment on the cheque?
>
> A: I stopped the payment for the cheque – I presume you're referring that I need to issue a purchase order between HTI and the 1st defendant – er, because to complete the pass-through transaction. When I issue --- sorry, when the 1st defendant issues an invoice to HTI, I would have to include a GST charge of 7% because I have no evidence of exporting any goods, so I would have to add into my invoice any amount of 7% which amounts to about $150,000. With no tax invoice --- corresponding tax invoice from NEC, I could not knock off this 7% against an input tax of 7%, so I would have to incur --- sorry, the 1st defen --- defendant would have to incur a tax liability of a $150,000. Secondly, my earning --- the earnings of the 1st defendant would have been inflated by 1.9 million and without a corresponding invoice to expense out, there would be an 18% corporate tax debt on these earnings, which would amount to about $350,000. My total tax liability --- sorry, the 1st defendant's tax liability would have been half a million dollars. The 1st defendant was looking at making a profit of only $20,000. I cannot, in the best interest of the 1st defendant, allow this transaction to happen. [note: 9]

35 Third, D3 had caused D2 to issue a cheque to NEC as payment in order to fulfil D1's payment obligations under the contract. This was despite the fact that D2 was not involved in the contract at all. This showed, so the argument ran, that D3 regarded himself as the real party to the transaction, and that it did not matter which of his companies was used to deal with different parts of the contract.

36 In the present case, NECs first and second arguments are insufficient to establish that D3 had employed D1 and D2 as his alter ego in transacting with NEC. Evidence of sole shareholding and control of the company without more will not move the court to intervene. Nothing adverse can be read into D3's prompting or giving instructions to his counsel during the trial. If anything, I would attribute it more to his command and knowledge of the facts and documents than anything else. Finally, D3's frequent use of the pronoun "I" when referring to D1 and D2s' actions was nothing more than habit. It is certainly could not be used as evidence that these companies were his alter ego.

37 As for D2 paying for the debt of D1, the evidence is that NEC wanted to be paid for the projectors that were already delivered and was willing to accept a cheque payment from another company in the same group of companies as D1. [note: 10] There is no evidence that D2 was a corporate vehicle and alter ego of D3 in the entire transaction, other than an independent commercial player. Again there is nothing damning in D3 causing D2 to issue a cheque to NEC in respect of a debt owed by D1.

38 Above all, NEC's contention ran counter to its own conduct throughout the entire course of

events. NEC had always regarded D1, and not D3, as its counterparty in the four-party pass-through deal. It is worth noting that NEC had earlier rejected D3's offer of interposing D2 in the commercial scheme as it was an inactive company. Indeed, NEC had asked D3 to provide evidence of D1's financial standing before agreeing to accept D1 as a suitable counterparty in the pass-through deal. There were other occasions where NEC pointed to D1 as its counterparty. For example, around the time D2's cheque was dishonoured, Comat sent a letter to NEC on 12 August 2008 suggesting that it was NEC's counterparty. NEC instructed lawyers who in rejecting the suggestion firmly maintained the position that it had no contractual relations with Comat, and that its contract was only with D1. [note: 11]

39 For these reasons, D3 was not NEC's counterparty: D1 is a separate legal personality and the alter ego argument is unsustainable on the facts in evidence. Accordingly, D3 is not personally liable to NEC for the supply of the projectors pursuant to the pass-through deal.

Is payment of the price due?

40 D3's contention is that NEC's claim should be dismissed as payment was not due. First, NEC had breached the contract by delivering the projectors without D1's prior instructions. Second, the UAT requirement was not satisfied; and third, NEC failed to send the invoices to D1. The allegation of illegality is discussed in another part of this judgment.

June order: was it new or a variation of February order

41 It seems to me that it does not really matter to the outcome of the case whether the June order was a new contract or a variation of the February order. From NEC's point of view, the distinction is, however, important because it had earlier recognised the February order as a sale, and hence revenue for the fiscal year ended 31 March 2008. NEC's position is that the June order was a variation of the February order. D3 disagreed.

42 It is not controversial that the question of whether the June order was a variation of the February order, or an entirely new contract, is a question of mixed fact and law. In my judgment, there is sufficient evidence to establish that the June order was a variation of the February order which, in my judgment, was a conditional sale; it was conditional pending receipt by D1 of a purchase order from either HTI or Comat.

43 I have earlier referred to the pass-through deal, and the commercial scheme/arrangement put in place as the mechanics of the pass-through deal. Like I said, it was in keeping with the commercial scheme/arrangement that in February 2008, D1 accepted NEC's ten quotations to supply a total of 2,300 units of projectors at a unit price of USD658.20. The aggregate price was USD1,513,860. NEC's quotations of various dates in February 2008 were subject to the following terms and conditions:

1. Prices quoted are valid for 90 days from date of this quote.

2. Prices are subjected to change without prior notice.

3. Payment Terms: Monthly payment for 24 months.

The quotations had the words 'Accepted by Customer" at the bottom of the page, together with D1's stamp and address of D1, and was signed by D1's staff Chris Foo.

44 As it was a pass-through deal, NEC purchased the projectors from MEA. The documentation in

the Agreed Bundle shows that each NEC quotation to D1 in February 2008 was correspondingly supported by a delivery order and tax invoice from MEA. Notably, the MEA documentation had various dates in February 2008. Included in the bundle of Agreed Documents is also NEC's purchase order to MEA for 2300 projectors.

45 In my judgment, there was an agreement to sell 2300 projectors, but this sale was conditional upon HTI or Comat issuing a purchase order to D1. Even though there was an unsigned copy of HTI's purchase order dated 27 February 2008 addressed to D1, [note: 12] it is common ground that the PPSMI project was delayed, and that in June 2008, HTI issued its purchase order to D1 for 2390 projectors. The terms of payment under HTI's purchaser order at US$598.75 per unit was stated as "Letter of Credit 30 days from delivery". [note: 13]

46 D3 stated that at the end of May 2008, HTI received an order from KUB for 2390 projectors. Prior to that, in the middle of May 2008, Comat met MEA to negotiate directly for a reduced unit price of US$598.75 and the quantity to be supplied was 2390 projectors. Shortly after that meeting, D3 gave the impression in his written testimony that new terms were agreed upon at a later meeting attended by Michael and Choi from MEA, Shawn from NEC, D3, and Kok representing Comat. The relevant terms are summarised as follows: [note: 14]

(i) All previous documents relating to the supply of projectors were to be purged.

(ii) The June order would be a completely new deal with new prices and new terms and conditions.

(iii) NEC would prepare a Performance Bond for HTI.

(iv) MEA would drop its price to HTI/Comat by 2%. 1% would go to NEC and the other 1% to D1 for processing and pass-through fees. (This 1% would translate to S$20,000 of profit to D1).

(v) Payment from D1 to NEC would be by Letter of Credit as this would ensure proper delivery documentation;

(vi) The transaction would be zero rated for GST purposes; and

(vii) D1 would proceed to process the deal only when Comat/HTI had issued a purchase order.

47 I make a few points at this juncture. The opening sentences of paragraph 17 of D3's written testimony are misleading as it gives the reader the impression that a binding agreement was reached at that meeting. If such an agreement on the terms set out in sub-paragraphs 17.1 to 17.8 was reached as alleged, it would not have been legally possible for Sharizal, as managing director of HTI, to inform MEA in his e-mail of 6 June 2008 that HTI was buying the projectors on the terms set out in his e-mail; and that HTI would issue a formal letter and contract to MEA, but in the meantime, MEA could rely on his e-mail confirmation to deliver the projectors. [note: 15] If there was such an agreement as alleged, the subsequent paperwork did not match the alleged new terms. Furthermore, if there was an agreement as alleged, there would have been no need for Shawn to arrange a meeting on 12 June 2008 for Job and D3 to meet. The meeting was to inform Job of the variation of the February order and to raise and discuss D3's request for NEC's accommodation to revise the quantity and price. When questioned by Mr Goh on the alleged agreement in paragraph17, D3 initially said that it was not an agreement but a "plan"; [note: 16] and from a plan, it was later watered-down by D3 to "a rough guideline" [note: 17] of the pass-through arrangement. So even if direct delivery was not in

accordance with the "agreed plan", [note: 18] it was not contractual in nature and that could be the reason why D3 at the material time never objected to direct delivery.

48 By and large, the documentation, which was signed on behalf of D1 in June 2008, showed that D1 had treated the June order as a variation of the February order. For example, D1's letter to NEC dated 13 June 2008 was marked for the attention of Shawn and also addressed to him. It referred to the changes as a revision of the February order and that D1 would be sending NEC an amended purchase order (see text of letter at [21] above). [note: 19] In his written testimony, D3 said he rejected a letter dated 13 June 2008 "addressed to Goh Beng". [note: 20] The letter I had referred to was marked for Shawn's attention and it was also addressed to Shawn. [note: 21]

49 In a letter backdated to 18 June 2008, which was from D1 to NEC and signed by D3, the June order was treated as a variation of the February order: [note: 22]

> ...
>
> We seek your understanding that due to the changing political situations in Malaysia, we have no choice but to void the purchase order (Ref:PR/PO/343/08 dated 13 June 08) and the following Initial Order Confirmation in Table 1, and to revert back the New Variation Order dated 5th June 2008 in Table 2 to maintain paperwork consistencies as required in this Project.
>
> ...
>
> Based on the back to back understanding that we have with the payment terms in-lieu of the back to back LC that we had received for this Project, hereby we will issue a post-dated cheque of S$1,917,054.00 **(USD 1,402,380.30 Exchange Rate: USD 1.367)** to ensure our buying commitment from NEC Asia for this Project.
>
> Kindly note that this cheque is issued from The Digital Network Pte Ltd which is part of the Picket and Rail Group of Companies.
>
> [emphasis in original]

Both D3 and Shawn testified that the 18 June letter which was marked for the attention of Tan Goh Beng had been voided at NEC's request. NEC wanted D1 to issue a fresh letter marked for the attention of Eiji Seki, but no such letter was signed by D3. Accordingly, NEC was wrong to rely on the 18 June letter which had been cancelled. I do not accept the position adopted by D3. Until actually replaced, there was only one letter dated 18 June 2008 and marked for the attention of Tan Goh Beng in existence and binding on D1.

50 Finally, I refer to D1's eleven purchase orders dated 5 June 2008 (mentioned in the 18 June 2008 letter). D3 accepted those purchase orders as D1's as they were signed. [note: 23] The D1's purchase orders made reference to the February order. For example, the purchase order with reference number SC-0782-08-R1 was annotated with a remark which stated:

> The above PO supersede (sic) your Quotation Reference SC-0782-08-08 dated 01 Feb 08.

51 In light of the above evidence, I find that the June order was a variation of the February order between NEC and D1.

Performance of the supply contract

Delivery

52 There is no doubt that NEC had, through MEA, caused the projectors to be sent to the end buyer, KUB. NEC gave written confirmation of its authorisation to MEA to deliver the 2390 units of projectors directly to KUB in a letter which was backdated to 3 June 2008. [note: 24] I do not think it matters that this written confirmation was backdated to 3 June 2008. The fact of the matter is that it is common ground that the projectors were delivered on 7 June 2008 to KUB by MEA directly. [note: 25] Crucially, and it is also common ground that when MEA sent the projectors to KUB, it purported to give delivery on HTI's behalf. [note: 26] Thereafter, HTI issued its purchase order to D1 with instructions to D1 to issue its purchase order to NEC. At the risk of repetition, D3 confirmed that the projectors were paid for by KUB and that HTI received payment sometime in June 2008.

53 The key question here is whether NEC had agreed or acquiesced to the delivery of the projectors to KUB directly. At the heart of the defence is that NEC cannot recover the sum it seeks to recover in this action without effecting delivery to D1, or at the very least obtaining D1's authorisation to directly deliver the projectors to KUB.

54 D3 claimed that the projectors were sent to KUB without D1's authorisation. Shawn confirmed that D1's authorisation prior to delivery was not sought. Both David and Job in their written testimonies stated that they did not know of the direct delivery until the MEA shipping documents were forwarded to NEC. It is not known when the shipping documents were forwarded. In re-examination, Job clarified that the first time he became aware that the projectors were delivered by MEA to the end buyer was at the meeting on 20 June 2008. [note: 27] Be that as it may, I am satisfied that direct delivery by MEA to KUB was in accordance with the pass-through deal and NEC's obligations under its contract with D1 as the projectors were for the PPSMI project. There were many opportunities for D3 to object but he did not do so. This was certainly odd since one might have expected the authorisation issue to have arisen much earlier if the delivery of the projectors was done without D1's authority. The missed opportunities on the various occasions highlighted below give credence and support the view that direct delivery was agreed by the parties in the pass-through deal or accepted by D1.

55 First, the e-mail sent by HTI to MEA on 6 June 2008 regarding the delivery of the projectors to KUB was forwarded to D3 as soon as MEA received it. Even if as D3 claimed, he did not open the e-mail of 6 June 2008 until later, there is no doubt that he knew about it from Shawn on 9 June 2008. D3 did not protest or voice his objections at that point.

56 Second, Comat had sent an email to Ron of D1 and copied to D3, Shawn and Sharizal of HTI, to notify them of the pass-through deal and the identity of the contracting parties. [note: 28] Hence, by 13 June 2003, D3 was already aware of the direct delivery and his conduct showed that he was agreeable to or had approved direct delivery. Instead of protesting about direct delivery, D3 went on to affirm by conduct the June order and delivery. The evidence showed that D3 caused D1 to issue its purchase order to NEC on 13 June 2008 for the purchase of 2390 projectors at the price of US$1,402,380.30. [note: 29] This purchase order was signed by D3. Later on, this single order was split into eleven purchase orders. Again D3 accepted in his written testimony that they were issued and signed. There is also the 18 June 2008 letter.

57 Third, D3's e-mail to NEC on 26 June 2008 again shows that direct delivery was agreed between

the parties. In this email, D3 complained to NEC that he had not been given the warranties and delivery documents (and not the absence of D1's prior authorisation): [note: 30]

> Dear Shawn,
>
> What is happening? I cannot contact you at all
>
> There are several outstanding matters
>
> 1) Warranty statement. I need to submit this to the government. If not NEC and Mitsubishi products will be blacklisted for govt jobs.
>
> 2) Where are all the delivery documentation? I have nothing. The govt will charge me for GST evasion! This is serious.
>
> 3) Where is my receipt for my cheque I send to Goh Beng?
>
> 4) Who is going to compensate me for the defect? The projectors were delivered without the asset tags. We were penalized RM 250 per projector. Who is going to pay? I am going to bill NEC for this. You can settle with Mitsubishi. Not my problem.
>
> 5) Who is the rude piece of shit from your accounts dept that called my FC? His name sounds like "Kim Liong". Can we have someone else to coordinate with?

Notably, D3 did not protest that direct delivery to KUB had taken place with D1's prior authorisation. Instead, D3 complained that the projectors were delivered to KUB without asset tags and warranty statements, and that he had no documentation on the delivery. In context, in the case of direct delivery by MEA to the end buyer of 2390 projectors, the only delivery order one would expect to see would be the MEA's delivery order, especially when MEA had stated in its delivery order that the delivery was made on behalf of HTI. It would be incongruous to put in circulation in June 2008 delivery order(s) per se from NEC to D1. The direct delivery in June 2008 to the end user in Malaysia is to be compared with the paperwork for the shipment initially anticipated to be in February/March 2008. In the bundle of Agreed Documents are (a) pre-signed delivery orders of various dates in February 2008 issued by MEA to NEC; (b) NEC's purchase orders to MEA (only one purchase order was signed) and (c) pre-signed delivery orders dated February 2008 from NEC to D1. From those documents, one sees provision for delivery within Singapore to D1 at its Woodlands address.

58 In the circumstances, I find that direct delivery was agreed between the parties. The projectors had been delivered, and the sale price was due and payable. I find that payment was not conditional upon D1's receipt of NEC's delivery orders for the 2390 units of projectors. It seems to me that MEA's delivery order and export documents such as MEA's packing lists, and cargo clearance permit all form a part of the documentation produced in the four-party pass-through deal that would suffice as documentary proof of delivery for the purpose of payment in the four-party pass-through transaction between NEC and D1.

Other breaches of the contract

59 D1 maintained that NEC was not entitled to payment because any payment was conditional upon the NEC resolving the UAT failures as reported ("the UAT argument"). D3 also contended that no invoices had been rendered to D1.

60 In relation to the UAT argument, one has to look at the contractual documents. I start first with the February order and its terms and conditions. NEC's quotations, which were accepted by D1, listed down three terms and conditions, namely: the quantity of projectors to be sold, the price at which they are to be sold, as well as how the price was to be paid. There was no provision that payment was subject to the projectors passing the UAT. There was also no provision that payment was due after the invoices were received by D1.

61 The terms of payment stipulated in the eleven purchase orders dated 5 June 2008 was "LC 30 days or Cheque". In this case, D1 did not give a letter of credit to NEC. In May 2008, Comat and MEA had discussed the changes to quantity and price and this was agreed to by NEC at the meeting on 12 June 2008 attended by Job, Shawn and D3. After the meeting, NEC issued one document (a quotation) dated 10 June 2008 which was accepted and signed by D1. [note: 31] The terms accepted by D1 were:

1. Prices quoted are valid for 90 days from date of this quote.

2. Prices are subjected (sic) to change without prior notice.

3. L/C Payment 60 days

Subsequently, D1 issued to NEC a purchase order dated 13 June 2008. The term of payment was stipulated as "LC 30 days". This was accompanied by a letter dated 13 June 2008 marked for the attention of Shawn and addressed to Shawn (see [21] above). [note: 32] That letter only referred to changes in quantity and price. Later, D1 issued eleven purchase orders to replace the single order of 13 June 2008. The payment term was "LC 30 days or Cheque".

62 According to Job, it was at the meeting on 20 June 2008 that D3 raised for the first time that payment by cheque would be subject to UAT. In the Defence, D3's plea is that NEC had orally agreed that payment would only be made once UAT requirements were completed and the transactional documentation delivered to D1. Job informed Shawn and Doris that the UAT point was raised at the meeting held on 20 June 2008. Job wrote: [note: 33]

> Dear both,
>
> I have summarized our discussion with P&R tonight. Please follow up accordingly when you meet tomorrow afternoon.
>
> ...
>
> 4. P&R to issue a post dated cheque with standing order, e.g. Subject to UAT acceptance. Preferably under P&R company cheque to avoid complication if possible, please try to pursue with Feisal. If no choice, issue cheque under another company but issue letter to proof they are part of the group.

63 Whilst this email referred to "UAT acceptance", it did not explain what this exactly entailed. D3 said that the asset tag would come under "UAT acceptance". [note: 34] During cross-examination, Job accepted that UAT was raised orally "but it was not commercially recorded because it's (sic) a very minor issue." [note: 35] Job clarified that he was referring to affixing an ownership tag on the projectors. It was a very minor issue that was quickly resolved by MEA's technicians. [note: 36] D3 did not refute Job's evidence that the asset tag problem had been resolved. In cross-examination, D3

disclosed that no penalty of RM250 per projector was imposed by KUB. I note that D3 had in his e-mail of 26 June 2008 said that this penalty of RM250 per projector was referable to projectors without asset tags. During cross-examination, D3 brought up the problem with the projector's lamp which he said was corrected by MEA. [note: 37] In the circumstances, and in the absence of particulars and evidence of any other outstanding UAT failures, and absence of a corresponding counterclaim from D1 on the matter, D3's excuse to stop payment until rectification of "all reported UAT failures" [note: 38] was plainly fanciful, and without any merit whatsoever.

64 In relation to the invoices, NEC admitted that it did not invoice D1. Whilst it is normal for a seller to invoice the buyer in the course of business, there is nothing in the evidence to suggest that D1's payment obligation would arise only after invoicing D1. In this case, the replacement purchase orders, which were back-dated to 5 June 2008, stipulated as a term payment "LC 30 days or Cheque". The undisputed evidence is that on 18 June 2008, David went to see D3 to ask for payment as the projectors had been delivered on 7 June 2008. A cheque was not forthcoming as the excuse was that D1's finance director was out. D3 promised to send a cheque later and NEC agreed to wait. NEC received D2's cheque post-dated to 8 August 2008 on 21 June 2008. NEC's omission to invoice D1 was not a valid reason for non-payment. At the most, NEC's failure to issue the invoices might amount to a breach of contract allowing D1 to commence a counterclaim for an abatement of the purchase price.

Whether the contract was void for illegality

65 Mr Singh raised illegality as a defence to payment. Specifically, he contended that the supply contract was void for common law illegality. Under the doctrine of common law illegality, a contract is unenforceable if the party seeking to enforce the contract has incited the commission of, or actively participated in, the illegal performance as in the case of *Ashmore Benson Pease & Co Ltd v Dawson* [1973] 1 WLR 828. Mr Singh argued that this principle was applicable in the present case. NEC had booked the February order as revenue even though there was no physical delivery of the projectors to D1 in February/March 2008. NEC charged GST in the invoices when the supply was for export and the sale would be zero rated. NEC's motivation was to ensure that NEC could meet its sales and revenue targets for the fiscal year ended 31 March 2008. Mr Singh argues that what NEC did was illegal and the contract between NEC and D1 was tainted and thereby void.

66 In my judgment, Mr Singh cannot rely upon any principle of illegality. It is plain that the principle upon which Mr Singh seeks to rely is one which is dependent upon there being found in the contract as a matter of its true construction a requirement to carry out an act which is unlawful in the place of performance. There is no merit in D1's contentions. The contract between NEC and D1 was not tainted by illegality.

67 NEC does not dispute that the contract was supposed to be zero-rated and that no GST would be charged as it was an export deal. [note: 39] The documentation was prepared and pre-signed in expectation and with some degree of confidence that the projectors would be delivered by March 2008 [note: 40], and that there would be export documents to substantiate the transaction as zero-rated. As it turned out, the delivery was delayed. At that time, Job was told by Shawn that the projectors would be needed in April 2008. NEC also obtained MEA's assurance that it would not in the meantime bill NEC. Based on the aforesaid information, Job explained that NEC decided to recognise the February transaction for that particular fiscal year first, and that the GST would be reversed at a later stage when proper export documentation was available. This explained why GST was reflected in the invoices despite the contract being a zero rated one. NEC's witness Shintaro Miki, the vice president of NEC, testified that there was indeed a reversal of the GST [note: 41] which had initially

been booked, as was initially planned by NEC. Further, according to the IRAS e-Tax Guide on GST: A Guide on Exports (9th Edition) at page 3, NEC would have been unable to charge zero-rated GST on the transaction at the point of time when it had declared its GST return. Pursuant to the Inland Revenue Authority of Singapore's policy, if the company does not have custody of the goods to be exported, nor control over the export arrangement, the company is required to treat the sale as a local supply and charge GST accordingly. This was the case for NEC when it declared its GST return in March 2008, as the projectors had yet to be exported and they did not have the export documentation required to prove that the transaction was zero-rated.

68 As can be seen, the revenue recognition was an internal matter as far as NEC was concerned. No invoices were actually sent to D1 as it was not NEC's intention to ask D1 for payment before shipment. The anticipated shipment in February/March 2008 did not take place. The PPSMI project was delayed on account of the Malaysian General Elections. NEC also did not expect the pricing and quantity to change from the numbers in the February order. Instead of April 2008, there was a further delay of almost two months before the projectors were finally shipped out in June 2008 to KUB in Malaysia for the PPSMI project. The pre-mature revenue recognition in March 2008 was a misjudgment. However, it would not and did not, in my view, affect or taint the underlying transaction, that is to say, the pass-through deal, which was simply a four-party commercial arrangement. The pass-through deal was not illegal. The performance of the pass though deal was also not illegal.

NEC's claim against D2

69 NEC's claim against D2 is based on the D2's cheque for S$1,917,054.00. NEC presented the Cheque on 11 August 2008 [note: 42] but was informed that the cheque payment had been stopped.

70 In this case, I find that D2 had issued the cheque to NEC in order to discharge D1's obligation to make payment to NEC under the supply contract. Accordingly, NEC had given good consideration to D2 (*ie*, releasing D1 from its payment obligations) in exchange for its issuance of the cheque. NEC is a holder for value in respect of the cheque under s 27 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed).

71 Section 55 of the Bills of Exchange Act sets out the liability of a drawer of a bill of exchange or a cheque:

> (1) The drawer of a bill, by drawing it —
>
> (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
>
> (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

According to Guest, A.G., Chalmers and Guest on Bills of Exchange and Cheques (Sweet & Maxwell, 17th Ed, 2009) at [7-023], the drawer of a cheque promises that the cheque will be paid upon presentment for payment. Hence, prima facie, D2's act of issuing the cheque to NEC renders it liable to NEC for the sum of S$1,917,054 should the cheque be dishonoured.

Conditional payment

72 D2's defences against NEC's claim mirror the first four arguments raised by D3 as to why he should not be held liable (above at [9]). I have already rejected these four arguments and do not intend to go through them in full again.

73 I will deal only with D2's strongest argument, which is that its cheque was not meant to be presented for payment until the UAT was satisfied and the export documents and invoices delivered to D1. In response, Mr Goh suggested to D3 (who denies it) that the real reason why D2's cheque was post dated to 8 August 2008 was for it to coincide with the expiry date of the CIMB Bank letter of credit as D2 had to await funds (represented by the proceeds of the CIMB Bank letter of credit) to meet the cheque. [note: 43] I accept Mr Goh's case theory as plausible, because at that time, NEC knew that D2 was not an active company. The only reason why NEC would have accepted D2's cheque was because it knew that D2 would be receiving funds from the CIMB Bank letter of credit later.

74 In addition, D2's cheque was given in lieu of D1's obligation to provide NEC with a letter of credit on terms back to back with CIMB Bank letter of credit from HTI. In the 18 June 2008 letter D3 had indicated:

> Based on the back to back understanding that we have with the payment terms in-lieu of the back to back LC that we have received for this Project, hereby we will issue a post dated cheque of $S1,917,054.OO (USD 1,402,380.30 Exchange Rate: USD 1.367) to ensure our buying commitment from NEC Asia for this Project.
>
> Kindly note that this cheque is issued from The Digital Network Pte Ltd which is part of the Picket and Rail Group of Companies

75 There is nothing in the 18 June 2008 letter that shows that D2's commitment to pay NEC was subject to other conditions. Furthermore, the CIMB Bank letter of credit that KUB provided to HTI was not subject to any conditions on documentation, [note: 44] meaning that HTI could have presented it for payment without any accompany documents as none was identified. Given that the cheque was meant to stand in place of the letter of credit that D1 was supposed to be issued to NEC, and this was supposed to be "back to back" with the CIMB Bank letter of credit issued by KUB to HTI, it is a reasonable inference that the payment by cheque was not subject to conditions.

76 Accordingly, NEC's claim against D2 succeeds and D2 is liable to pay the sum of S$1,917,054.00 to NEC.

Result

77 For the reasons given:

(a) NEC's claim against D3 personally is dismissed. As for costs, NEC is to pay 35% of D3's costs of the action.

(b) NEC succeeds in its claim against D2 in the sum of S$1,917,054.00 together with interest at the rate of 5.33% from the date of the Writ of Summons to date of payment, and costs.

[note: 1] Job Chan's AEIC para 25

[note: 2] Transcripts of Evidence dated 23 July 2010 at p 46; D3's AEIC at paras 17.4; 17.6 & 17.8.

[note: 3] D3's AEIC at p 10

[note: 4] D3's AEIC at para 5.

[note: 5] AB 112

[note: 6] Job Chan's AEIC para 23

[note: 7] Transcripts of Evidence dated 20 July 2010 at p 36

[note: 8] AB 124-134

[note: 9] Transcripts of Evidence dated 22 July 2010 pp 25-26

[note: 10] AB 166

[note: 11] AB 229

[note: 12] AB 92

[note: 13] AB 123

[note: 14] D3's AEIC para 17

[note: 15] AB 136

[note: 16] Transcripts of Evidence dated 22 July 2010 at p 46

[note: 17] Transcripts of Evidence dated 22 July 2010 at p 47

[note: 18] Transcripts of Evidence dated 22 and 23 July 2010 at p 52 and p 2 respectively

[note: 19] AB 156

[note: 20] D3's AEIC para 22

[note: 21] AB 156

[note: 22] AB 162-163

[note: 23] D3's AEIC at para 7.3 and exhibits at pp 76-86

[note: 24] AB 121

[note: 25] AB 137

[note: 26] AB 137

[note: 27] Transcripts of Evidence dated 20 July 2010 at p 36

[note: 28] AB 151

[note: 29] AB 154 & 156.

[note: 30] AB 177

[note: 31] AB 150

[note: 32] AB 156

[note: 33] AB 166

[note: 34] Transcript of Evidence dated 23 July 2010 at p 33

[note: 35] Transcript of Evidence dated 20 July 2010 at p 14

[note: 36] Transcripts of Evidence dated 20 July 2010 pp 13-14

[note: 37] Transcripts of Evidence dated 23 July 2010 p 34

[note: 38] AB 209

[note: 39] NEC's Closing Submissions, p 81

[note: 40] Transcripts of Evidence dated 21 July 2010 at pp 36-37

[note: 41] Transcripts of Evidence dated 22 July 2010 at pp 4-5

[note: 42] AB 210-212.

[note: 43] Transcripts of Evidence dated 23 July 2010 at p 53

[note: 44] AB 158