



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

**Yangon Western District Court**

**August 12, 2022**

**Civil Case No. 122/2022**

Judgment creditor

IGNESIS TECHNOLOGIE CO., LTD  
(Represented by Mr. ARVINE KUMAR)

Vs.

Judgment debtor

PINNACLE ASIA COMPANY LIMITED  
(Represented by DAW HLA SEIN YI)

For the judgment creditor: U Thein Tun (Advocate)

For the judgment debtor: U Zeya Aung (Advocate)

## **Order**

on an application to recognise and enforce arbitral award no. 973/2020 dated 21 January 2022 of the Singapore Arbitration Centre.

In this case, IGNESIS TECHNOLOGIE CO., LTD applied that this court should recognise and enforce an arbitral award dated 27 January 2022 no. 973/2020 made by the Singapore Arbitration Centre against the judgment debtor PINNACLE ASIA COMPANY LIMITED.

The application by the judgment creditor company states the following:

“The judgment creditor company and the judgment debtor company are companies established in Myanmar. The judgment debtor entrusted the judgment creditor with work to support the construction of telecommunication towers in Myanmar according to the master agreement signed on 9 April 2018 and amended on 14 February 2020. As disputes arose between the parties in 2020 regarding the master agreement, the judgment debtor on 22 October 2020 sent a notice of arbitration to the judgment debtor as provided for in clause 31 of the contract, to which the judgment debtor on 21 November 2020 replied with a response to the notice of arbitration, stating that it will make a counter-claim. On 1 February 2021, Ms. Sheila Ahuja from the SIAC was appointed as arbitrator. SIAC’s rule 34 provides that the security for the costs of arbitration shall be determined by the SIAC registrar. On 26 October 2020, SIAC notified that the judgment creditor and the judgment debtor should each deposit half of the security for the arbitration costs. The security deposit was set at SGD 25,871.46 per party and its payment was requested. The judgment creditor fully remitted SGD 25,871.46 to SIAC whereas the judgment debtor only remitted SGD 3,800.55. On 1 March 2021, SIAC notified both the judgment

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creditor and the judgment debtor that the judgment debtor refused to make the security deposit. Therefore, since SIAC instructed the judgment creditor to pay SGD 47,942.41 on behalf of the judgment debtor, the judgment creditor had to pay this amount to SIAC on 11 August 2021. On 27 January 2021 [*sic; should probably be "2022"*], SIAC decided to award a total of SGD 47,942.41 to the judgment creditor, including SGD 5,000 in costs. This award was sent to the court by e-mail. Therefore, in order to enforce this order, we request to allow the attachment and sale of property."

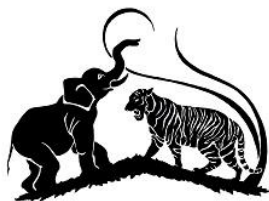
After opening this case according to the application of the judgment creditor company, the court deliberated after hearing the arguments of both sides whether to issue an order according to rule 23(1) of Order 21 under the Code of Civil Procedure and section 46 Arbitration Law to recognise and enforce the award no. 973/2020 dated 21 January 2022 made by the Singapore International Arbitration Centre.

The judgment creditor argued that rule 1 of Order 29 under the Code of Civil Procedure does not apply to the case. The judgment creditor company stated that the address of the judgment creditor and the address of the judgment debtor were submitted separately, and the company extract was also submitted. In the judgment creditor's application, it is stated that there is compliance with the Code of Civil Procedure, and it requests an order to enforce the SIAC's arbitral award.

The lawyer of the judgment debtor argued as follows:

"SIAC's arbitral award dated 27 January 2022 should not be recognised and enforced by this court. The application by the judgment debtor to open a case to recognise the foreign arbitral award should be dismissed. There is no application according to rule 1 of Order 29 and rule 1 of Order 3 under the Code of Civil Procedure. The application did not specify the address of the judgment debtor. There is no right to directly apply to open a case about a foreign arbitral award. The original or certified copy of the arbitration agreement was not presented in the judgment creditor's application. The arbitral award is contrary to the laws in force in Myanmar. There is no systematic review of the arbitral award; the subject matter of the dispute is not actionable under the laws in force in Myanmar; and the award is contrary to the national interest and public policy. Furthermore, awarding legal fees and interest at the rate of 5.35% is contrary to Myanmar's laws in force. Also, the award is a foreign award and no international treaty has been signed between Myanmar and Singapore to recognise this award. The particulars are not fully stated as would be required by rule 11(2) of Order 21 under the Code of Civil Procedure and there is no admission that they are correct, so the application should be dismissed."

When considering the arguments of both parties, it is initially necessary to review the argument of the judgment debtor that there is no application according to rule 1 of Order 29 and rule 1 of Order 3 under the Code of Civil Procedure. Order 3 under the Code of Civil Procedure is a provision related to recognised agents / lawyers (pleaders). In the original provisions of rule 1 of Order 3 under the Code of Civil Procedure, the following is prescribed:



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Rule 1 Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be **made or done by the party in person**, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Although the company is a legal person with the right to sue and be sued according to the law, it is not a natural person and cannot appear in court in person. In the above-mentioned rule 1 of Order 3, it says “made or done by the party in person” which means that the party must appear himself, so this provision does not apply to companies, and it is clear that this provision only covers the delegation of authority in order to act on behalf of a natural person before the court in this person’s case. This case is a corporate dispute only between IGNESES TECHNOLOGIE CO., LTD and PINNACLE ASIA COMPANY LIMITED, and it is not covered by rule 1 of Order 3 under the Code of Civil Procedure, which is a provision on the delegation of authority by a natural person, so this provision does not need to be considered.

In reviewing the argument referring to rule 1 of Order 29 under the Code of Civil Procedure, as Mr. ARVINE KUMAR was appointed by IGNESES TECHNOLOGIE CO., LTD to act as the company’s representative in this case, section 196 Myanmar Companies Law must be considered.

196. (a) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if the person is acting with leave granted under section 197 and is:

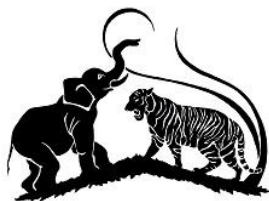
(1) ...

(2) ...

(b) Proceedings brought on behalf of a company must be brought in the company’s name.

(c) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

As according to section 3(d) and (g) Interpretation of Expressions Law, 1973, section 196(c) Myanmar Companies Law overrides the provisions of the Code of Civil Procedure, it is obvious that there is no need to consider the provisions of rule 1 of Order 29 under the Code of Civil Procedure in proceedings on behalf of a company. In fact, section 196(c) Myanmar Companies Law even directly abolished the



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right to act on behalf of a company according to rule 1 of Order 29 under the Code of Civil Procedure, so it is evident that this provision has turned into a defunct provision that cannot be used anymore.

According to the minutes of the meeting, Mr. ARVINE KUMAR was appointed to act on behalf of the company by the decision of the meeting of the board of directors dated 21 May 2022, and as this is in compliance with section 160(d) Myanmar Companies Law, there is no need to review the appointment of the judgment creditor company's company representative.

Although the judgment debtor argued that there is no right to directly apply to open a case about a foreign arbitral award, paragraph 46 of the Arbitration Procedures issued by the Supreme Court of the Union under section 57 Arbitration Law clearly specifies that a foreign arbitral award shall be enforced in accordance with the procedure for enforcing the decree of a court, and if we review paragraphs 43, 45 and 46 of this procedure, it is clear that the recognition and enforcement of a foreign arbitral award is to be decided only by the court.

In relation to the particulars to be submitted in the recognition and enforcement of a foreign arbitral award, section 45(a) Arbitration Law provides as follows:

45. (a) The party applying for the recognition and enforcement of a foreign arbitral award shall produce the following evidence to the court:
  - (1) the original award or duly certified copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
  - (2) the original arbitration agreement or duly certified copy thereof;
  - (3) the evidence as may be necessary to prove that the arbitral award is a foreign arbitral award.

In this case, the judgment creditor submitted a certified true copy of the award of the Singapore International Arbitration Centre dated 27 January 2022, and a certified true copy of the master agreement signed by the judgment creditor and the judgment debtor dated 9 April 2018. Also, the authenticity of the award of the Singapore International Arbitration Centre was confirmed by the signature of Chew Kiat Jinn, notary public in Singapore, and on top of that, Melissa Goh, Head of Statutory Service of the Singapore Academy of Law, attached an additional letter of support (apostille).

In addition, as the Myanmar Embassy in Singapore endorsed the certificate of Melissa Goh, Head of Statutory Service of the Singapore Academy of Law, which endorses the notary certificate of authenticity, which in turn endorses the "partial award between IGNESES TECHNOLOGIE CO., LTD (claimant) and PINNACLE ASIA COMPANY LIMITED (respondent)", it cannot be said the documents



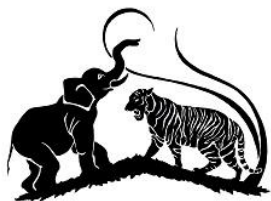
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attached to the submission of the judgment creditor are not in conformity with the provisions of section 45(a)(1) referred to above.

Also, clauses 30 and 31 of the certified true copy of the master agreement dated 9 April 2018 and signed by the judgment creditor and the judgment debtor contain an arbitration clause stating that the dispute shall be resolved through arbitration at the Singapore International Arbitration Centre, so it is clear that this contract is the arbitration agreement referred to in section 45(a)(2). In addition, Singapore is a member country that has ratified the New York Convention, and the Singapore International Arbitration Centre (SIAC), which made the arbitral award, is headquartered in Singapore. SIAC's arbitral award dated 27 January 2022 for which recognition and enforcement is sought is therefore a foreign arbitral award that falls within the definition of section 3(k) Arbitration Law, so the application of the judgment creditor company is considered to be in full conformity with the provisions of section 45 Arbitration Law.

Therefore, what needs to be further reviewed is whether or not to recognise and enforce the arbitral award no. 973/2020 dated 27 January 2022 made by SIAC. In relation to the recognition and enforcement of foreign arbitral awards, section 46 Arbitration Law provides as follows:

46. (a) The court shall recognise and enforce a foreign arbitral award as if it were a decree of the court except in the case of refusal of recognition and enforcement of a foreign arbitral award under sub-sections (b) and (c).
- (b) The court may refuse to recognise and enforce any foreign arbitral award, if the party against whom it is invoked can prove any of the following:
  - (1) the parties to the arbitration agreement were under some incapacity under the law applicable to them;
  - (2) the arbitration agreement is not valid under the law which the parties are subject to or, in the absence of any indication of the law applicable to the parties thereon, under the law of the country where the award was made;
  - (3) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator, or the arbitral proceedings were not properly conducted, or he was otherwise unable to present his case in the arbitral proceedings;
  - (4) the arbitral tribunal's award deals with a dispute which is not contemplated by or not falling within the terms of submission to arbitration pursuant to the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration;



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- (5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- (6) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which that arbitral award was made.

In fact, the provisions of section 46(b) correspond to the provisions of article 5 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Article 5 of the New York Convention reads as follows:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

According to the provisions of section 46(b) and article 5 of the New York Convention above, it is obvious that the applicant, the judgment debtor company, must prove that it falls within a specific category.

The judgment debtor argues that the foreign arbitral award is contrary to the laws in force in Myanmar, that it does not state that it was decided in accordance with the laws in force in Myanmar, that the subject matter of the dispute may not be settled by arbitration under Myanmar's laws in force, and that the award is contrary to Myanmar's national interest and public policy.

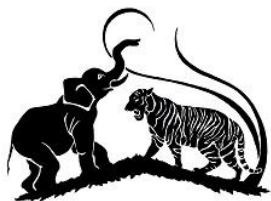
Paragraph 2(e) of the Arbitration Procedures issued by the Supreme Court of the Union under section 57 Arbitration Law provides the following definition of the term "contrary to the national interest":

"Contrary to the national interest" means effects such as environmental damage to the nation's land, water and air, infringement of the interests of all citizens, and damage to the national cultural heritage.

If we look at the arguments of the judgment debtor, it can be said that there is no need to consider accepting the arguments of the judgment debtor that this foreign arbitral award is contrary to the national interest, as there is not a single sentence in it that falls within the interpretation mentioned above.

SIAC's award dated 27 January 2022 shows that the legal costs paid by the judgment creditor on behalf of the judgment debtor and the interest allowed for this were awarded as "partial award".

Section 2(1) Singapore International Arbitration Act defines the term arbitral award as follows:



“award” means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or **partial award**;

Rule 27(g) of the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) provides the following as “Additional Powers of the Tribunal”:

- g. issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration

Therefore, it cannot be said that it is contrary to the Singapore International Arbitration Act and the SIAC Rules that SIAC awarded as a partial award the legal costs paid by the judgment creditor company on behalf of the judgment debtor company and the interest allowed for this. As there is no legal provision that prohibits interest or restricts the amount determined by the court, the submission of the judgment debtor company that SIAC's arbitration award dated 27 January 2022 is against the laws in force in Myanmar cannot be said to be correct.

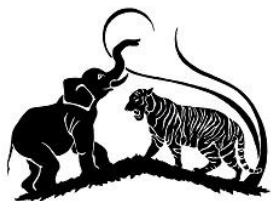
We are now analysing the judgment debtor's argument that Myanmar and Singapore have not signed any international treaty for enforcing SIAC's arbitration award dated 27 January 2022. There is no provision in the Arbitration Law saying that a foreign arbitral award may only be recognised and enforced if a specific international treaty was signed between the country in which the award was made and Myanmar.

The reciprocating territory stipulation in section 44A Code of Civil Procedure is only a provision for the enforcement of a foreign decree, and this case is not about the enforcement of such a foreign decree, but a foreign arbitral award, so there is no need for there being a bilateral treaty signed between Myanmar and Singapore in order to enforce the award.

Therefore, Myanmar and Singapore may not have signed any international treaty for recognising a foreign arbitral award, but it is considered unnecessary to consider the argument presented by the judgment debtor.

We are now analysing the argument that it is contrary to section 46(a)(2) Arbitration Law that the governing law between the parties is not disclosed. Clause 31 of the “Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works” dated 9 April 2018, which was signed by the judgment creditor and the judgment debtor, states as follows:

- 31.1 if the parties are not able to resolve a dispute within 30 day after delivery of written notice of such dispute as provided in clause 30 above, either party may submit the dispute to binding arbitration, and both parties agree to participate in such arbitration. Any such dispute shall be referred to and finally resolved by arbitration in Singapore in accordance



with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force,...

It turns out that both the judgment creditor company and the judgment debtor company are companies based in Myanmar. Section 5(2) Singapore International Arbitration Act provides as follows:

- (2) Notwithstanding Article 1 (3) of the Model Law, an arbitration is international if (a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore;

Therefore, according to the provisions of section 5(2) above, it is clear that the arbitration process in SIAC is “international arbitration” for Singapore. Section 3 Singapore International Arbitration Act stipulates that the Model Law applies in Singapore, and according to Section 2(1) of the Act, the Model Law means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law. Therefore, in international arbitration held in Singapore, the UNCITRAL Model Law is the applicable law.

Rule 1.1 of the SIAC Rules states as follows:

- 1.1 Where the parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

Because the “Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works” signed between the judgment creditor and the judgment debtor indicates that the award will be made in accordance with the Arbitration Rules of the Singapore International Arbitration Centre, if Rule 1.1 SIAC Rules and section 5(2) and section 3 of the Singapore International Arbitration Act are read in context, the governing law in the arbitration agreement of the “Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works” dated 9 April 2018 signed by the judgment creditor and the judgment debtor may be considered to be the UNCITRAL Model Law.

In other words, the reference to the Arbitration Rules of the Singapore International Arbitration Centre in the arbitration agreement between the judgment creditor and the judgment debtor means that the law that they must follow is the UNCITRAL Model Law, and the UNCITRAL Model Law has been adopted by Singapore, which is the seat of arbitration, according to section 3 Singapore International Arbitration Act, and therefore it cannot be said that the submission by the judgment debtor is correct that it is contrary to section 46(b)(2) Arbitration Law that the governing law between the judgment creditor and the judgment debtor is not disclosed.





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Therefore, it is ordered that the Singapore International Arbitration Center's Arbitration award no. 973/2020 dated 27 January 2022 shall be recognised and enforced.

There is no charge for this order.

(Soe Khun Phyu)  
Associate District Judge (1)  
Yangon Western District Court

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