



24 FEBRUARY 2021

So You Have Your Arbitral Award. What Now?

Danieli & C Officine Meccaniche SPA v Southern HRC Sdn Bhd (HC)



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In the first decision to consider both s 51(4) and s 8 of the Arbitration Act 2005 (**AA 2005**), the Malaysian High Court held that, after an arbitral award is issued, its coercive and enforcement powers can only be invoked by an application to register the award under s 38 of the AA 2005. The court will not entertain appeals to inherent powers, especially by parties seeking to undermine the award. The decision further illustrates the pro-arbitration approach favoured by the Malaysian courts.



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The plaintiff entered into a contract with the defendant to build a plant to produce hot rolled coils. Disputes having arisen, the matter was referred to arbitration. The defendant was successful in the arbitration. The contract was rescinded, the plaintiff was ordered to refund the purchase price and pay damages, and in return the plant was to be returned to the plaintiff. The plaintiff neither repaid the purchase price nor did it seek to register the award in Malaysia. Instead, the plaintiff sought various declarations and injunctions to gather evidence as to the condition of the plant, to assist it to resist enforcement of the award in Italy.



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Anand Ponnudurai JC dismissed the plaintiff's application, holding that the court had no jurisdiction to grant reliefs or orders in respect of an award which had not been registered in Malaysia. The decision confirms the following:

1. Once an arbitral award is issued, the Malaysian court's sole enforcement power is to recognise and enforce it pursuant to an application under s 38 of the AA 2005;
2. Section 8 of the AA 2005 was intended to bring certainty to arbitration proceedings, by limiting and defining court intervention to only those powers specified under the AA 2005 and discouraging resort to the court's inherent powers. This is consistent with the spirit of minimum court intervention envisaged by the UNCITRAL Model Law 1985;

3. The incorporation of s 51(4) of the AA 2005 during the 2011 legislative amendments clarifies that the AA 2005 includes “*any court proceedings relating to arbitration commenced after the commencement the Act*”. This includes post-arbitral award proceedings. Read with s 8, the court is precluded from intervening in arbitrations except as expressly permitted under the AA 2005.

This decision provides welcome clarity on the post-arbitral powers of the court, which had been the subject of some debate after the remarkably expansionary approach taken by the Singapore Court of Appeal in *Sun Travels*.¹ In *Sun Travels*, the court held that it retained inherent powers post-award, in that case to grant declaratory relief to an applicant without registering the award.

Parties to a foreign arbitral award can take comfort in the fact that the Malaysian courts will firmly uphold the finality of arbitral awards, and will be wary of litigants seeking to reopen matters already decided in such awards under the pretext of inherent or residual powers of the court.

The defendant was successfully represented by [Lee Hishammuddin Allen & Gledhill](#)'s Dato' Nitin Nadkarni (International Arbitration), Andrew Chiew Ean Vooi (Corporate & Commercial Disputes) and Zahidah Marina Zulkifly (Corporate & Commercial Disputes).

The full grounds of judgment can be accessed [here](#).

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Published by the Dispute Resolution Practice

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