

Case Note

ANTI-ARBITRATION INJUNCTION: CASE REVIEW OF THE MALAYSIAN FEDERAL COURT DECISION IN JAYA SUDHIR A/L JAYARAM V. NAUTICAL SUPREME SDN BHD & ORS

*Usharani Balasingam**

ABSTRACT

An anti-arbitration injunction is to prevent arbitration proceedings from being commenced or pursued. The Malaysian Federal Court case of Jaya Sudhir a/l Jayaram v. Nautical Supreme Sdn Bhd & Ors¹ relates to a situation where a non-party to an arbitration agreement seeks to pursue a court action which alleges a proprietary right over shares that is also the subject-matter in an arbitration dispute. The non-party sought to obtain an anti-arbitration injunction to restrain the parties to the arbitration agreement in an ongoing arbitration from proceeding with the arbitration. There are suits between the affected parties before the court. The matter was pursued on appeal to the Federal Court which decided that where there are duplicity or parallel issues in two forums to be adjudicated namely the courts and in arbitration, the courts proceedings will take priority. The Federal Court held that the non-party is not subjected to the Malaysian Arbitration Act 2005 Sections

* Dr Usharani Balasingam is currently a Senior Lecturer with the Faculty of Law, University of Malaya, Kuala Lumpur, Malaysia. She is an Advocate and Solicitor of the High Court of Malaya (currently non practising). Her prior work experiences and exposures include being in active legal practice and in corporate legal advisory. The author can be reached at: usha@um.edu.my.

¹ Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd & Ors, 7 CURRENT L.J. [hereinafter CLJ] 395 (2019).

8 and 10 to be prevented from obtaining the injunction or commencing a suit in court. The court also held that in cases where a non-party to an arbitration agreement is pursuing an injunction the threshold test to be applied is different from the higher threshold that would be applied between parties of an arbitration agreement implicitly indicating that the anti-arbitration injunction may be feasible too for parties in an arbitration agreement.

KEYWORDS: *anti-arbitration injunction, threshold test, non-party to arbitration agreement, duplicity and parallel proceedings and conflicting decisions*