

IN THE MATTER OF
THE CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004
AND IN THE MATTER OF AN ADJUDICATION

BETWEEN

AL PTE LTD
CLAIMANT

AND

AMPTE LTD
RESPONDENT

ADJUDICATION DETERMINATION

Claimant

AL Pte Ltd
YYY (Address)

Attn: Mr J

Respondent

AM Pte Ltd
YYY (Address)

Attn: Mr K

IN THE MATTER OF
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ADJUDICATION DETERMINATION

1. This is the determination of Johnny Tan Cheng Hye of No. 1 Sophia Road #04-06, Peace Centre, Singapore 228149, the adjudicator appointed by the Singapore Mediation Centre, the Authorised Nominating Body, under the Building and Construction Industry Security of Payment Act 2004 (hereinafter "the Act") to determine a payment dispute between *AL Pte Ltd* (hereinafter the "Claimant") and *AM Pte Ltd* (hereinafter the "Respondent").
2. I determine that:
 - 2.1. The Respondent shall pay the Claimant, the sum of S\$236,465.91, hereby recorded as the Adjudicated Amount.
 - 2.2. The date on which the Adjudicated Amount becomes due is 31 May 2006, hereby recorded as the Due Date for Payment of the Adjudicated Amount.
 - 2.3. The rate of interest payable is 6% per annum from the Due Date for Payment.
 - 2.4. The cost of these adjudication proceedings shall be borne by the Respondent.

The Contract

2. By a Letter of Acceptance dated 29 July 2005, AN, (hereinafter the "Owner") awarded the contract for the upgrading of YYY Road (Part) and YYY Road to Semi-Expressway (hereinafter the "Project") to AO Ltd Singapore Branch (hereinafter the "Main Contractor"). By an Agreement made on 12 August 2005, the Main Contractor appointed the Respondent as a Sub-Contractor of the Project. On 12 September 2005, by a Works Order No. XXX, the Respondent appointed the Claimant as Sub-Sub-Contractor for the cast in-situ works, precast segments and retaining wall works of the viaduct in consideration for a sum of \$263,340.00 (including 5% GST) (hereinafter the "Sub-Sub-Contract Works").

Chronology of Events

3. On 27 March 2006, the Claimant served on the Respondent Progress Claim No. 8 for a sum of \$286,465.92 (inclusive of variations and GST).
4. On 3 April 2006, the Claimant served on the Respondent Revised Progress Claim No. 8 for a sum of \$287,702.82 (inclusive of variations and GST).
5. On 13 April 2006, the Claimant received the sum of \$50,000.00 from the Respondent as part payment in respect of Progress Claim No. 7.
6. On 18 April 2006, the Claimant wrote to the Respondent for the overdue balance for Progress Claim No. 7 and that the Claimant will be expecting the Payment Response in respect of Progress Claim No. 8 on or before 24 April 2006.
7. On 26 April 2006, the Claimant wrote and informed the Respondent that they have not received any Payment Response within the required 21 days provided under s12(2) of the Act and that if they do not receive the Respondent's Payment Response within the dispute settlement period, the Claimant shall proceed with adjudication application.
8. On 2 May 2006, the Respondent replied to the Claimant's letter of 26 April 2006, that with regards to the Progress Claim No. 7, the work done has been resolved except for the backcharges from the Main Contractor and with regards with Progress Claim No. 8, the Respondent has not received the certificate for work done from the Main Contractor and is finalising the backcharges on the subcontract work.
9. By a letter dated 4 May 2006, the Claimant served on the Respondent the Notice of Intention to Apply for Adjudication.
10. On 8 May 2006, the Claimant lodged with the Singapore Mediation Centre (SMC), an Adjudication Application. The SMC served the Adjudication Application and the related annexes on the Respondent on 9 May 2006.
11. On 10 May 2006, SMC nominated me to be the adjudicator. I accepted the appointment on 11 May 2006 and on the same day, SMC also served on the parties my acceptance of the appointment.

The Proceedings

12. On 15 May 2006, I directed parties to attend an adjudication conference before me fixed for 18 May 2006.
13. On 18 May 2006, before the commencement of the adjudication conference, I received a letter from the SMC informing me that as at 4.00pm on 17 May 2006 (the expiry for the

lodgment of the Adjudication Response), the Respondent had not lodge an Adjudication Response.

14. Parties appeared before me as directed for the adjudication conference. At the adjudication conference, I sought clarification on the following:
 - 16.1. the date when the Main Contract for the Project was made between the Owner and the Main Contractor;
 - 16.2. the date when the Sub-Contract for the Project was made between the Main Contractor and the Respondent; and
 - 16.3. the itemised breakdown for Progress Payment Claim No. 8, Revised Progress Claim No. 8 and the reason for the revision.
17. The Respondent admitted that they had not filed a Payment Response within the prescribed time under the Act. As at the time of the adjudication conference, the Respondent had not filed the Payment Response or Adjudication Response.

The Submissions

18. The submissions by the Claimant in the Adjudication Application included the following:
 - 18.1. Relevant Contractual Terms and Conditions
 - 18.2. Revised Progress Claim No. 8 dated 3 April 2006 with attachments
 - 18.3. Notice of intention to apply for adjudication
 - 18.4. Correspondence concerning Payment Claim No. 8
 - 18.5. Payment Claims No. 7 and No. 8 with annotation by Respondent's staff confirming work done by Claimant
 - 18.6. Previous Progress Claims for January, February and March 2006
19. The Respondent did not make an Adjudication Response within prescribed time (ie 17 May 2006). The Respondent sought to submit the Adjudication Response at the adjudication conference. The Act does not empower me to accept an Adjudication Response filed out of time and accordingly I rejected the Respondent's request to submit the Adjudication Response.

Findings and Reasons

Relevant provisions in the Act and the Works Order

20. By s11(1)(a) of the Act, the Respondent shall respond to the payment claim by providing or causing to be provided, a payment response to the Claimant by the date as specified in or determined in accordance with the terms of the construction contract, or within 21 days after the payment claim is served under s10, whichever is the earlier.
21. By s15(3)(a) of the Act, the Respondent shall not include in the Adjudication Response, and the adjudicator shall not consider, any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off unless where the adjudication relates to a construction contract, the reason was included in the relevant payment response provided by the Respondent to the Claimant.

22. By paragraph l of the Works Order, the Claimant shall submit monthly interim progress claim "by the last day of each month complete with all proper records of the work done".
23. By paragraph m of the Works Order, "any late submission of the monthly interim progress claim by the due date will not be entertained and will only be certified in the next progress certification date".
24. By paragraph n of the Works Order, "interim monthly certificate will be issued to the Sub-Contractor within 21 days of receiving the Sub-Contractor's progress claim and payment to be made 35 days from the date of certification". It was not disputed that for the purpose of the Works Order, the referred certification shall serve as the payment response under the Act.

Adjudicated Amount

25. The Revised Progress Claim No. 8 was served on 3 April 2006. However, it was clarified at the adjudication conference that this arose from an error in measurement in item B for the parapet wall. For the purpose of paragraph m of the Works Order, the Progress Claim No. 8 was submitted on 27 March 2007 and the amendment was only to make a correction for an error in measurement of the parapet wall amounting to a difference of S\$1,240.00. In any event, I do not need to address this point, as the Respondent had not submitted a Payment Response or an Adjudication Response. Further, by agreement of the parties at the adjudication conference, that for the purpose of this Adjudication Application, I was asked to look at the 27 March 2006, Progress Claim No. 8.
26. At the adjudication conference, I asked the Claimant to take me through the computation of the claim and I am satisfied that there are no obvious arithmetical and/or computational errors in the claim and that the claim is accompanied by sufficient details and documents in support of the claim. Accordingly, I found the claim submitted under Progress Claim No. 8 for the sum of S\$286,465.92 in order. Further, I note that the sum of S\$50,000.00 was paid to the Claimant on 13 April 2006. Hence, the outstanding amount claimed under this adjudication application is S\$236,465.91 (being S\$286,465.92 less S\$50,000.00). As provided for under s15(3), in the absence of a Payment Response, I find no reason to withhold any amount under the Payment Claim. I therefore determine that the Claimant succeeds in the Claim and the Adjudicated Amount is S\$236,465.91.

Due Date of Payment

27. By paragraph n of Works Order, the due date of payment shall be 35 days from the date of certification. It was not in dispute that for the purpose of the Act, the certification shall serve as the Payment Response. In the Adjudication Application, the Claimant thus submitted that the Due Date for Payment of the sum claimed was 31 May 2006. The Respondent did not submit an Adjudication Response and did not challenge the due date at the adjudication conference. I therefore determine the due date for payment to be 31 May 2006.

Interest

28. The Works Order did not provide for any specified rate of interest on the unpaid amount of a progress claim that has become due and payable. In the absence of any provision, and in accordance with s5(b) of the Act, I, therefore, determine interest on the Adjudicated Amount to be at the rate of 6% per annum from the Due Date for Payment.

Adjudication Fee

29. Taking into account the Respondent's failure to serve a Payment Response and to lodge an Adjudication Response and that the Claimant succeeds in their claim, I determine that the costs of these adjudication proceedings be borne by the Respondents.

Dated this 18th day of May 2006

Johnny Tan Cheng Hye
Adjudicator