

Adjudication Application Number: SOP/AA06 of 2006

**IN THE MATTER OF
THE BUILDING AND CONSTRUCTION INDUSTRY
SECURITY OF PAYMENT ACT 2004**

And

IN THE MATTER OF AN ADJUDICATION

Between

AR PTE LTD

... Claimants

And

AS CORPORATION

(Business Registration No 198400591K)

... Respondents

ADJUDICATION DETERMINATION

RAYMOND CHAN
Adjudicator

29 June 2006

DETERMINATION

1. This is a determination made on 29 June 2006 under the Building and Construction Industry Security of Payment Act 2004 (No. 57 of 2004) (hereinafter “the Act”).
2. The Claimants are **AR Pte Ltd** (hereinafter “the Claimants”) and the Respondents are **AS Corporation** (hereinafter “the Respondents”).
3. I determine that:
 - 3.1. The Respondents shall pay to the Claimants the sum of **S\$209,640.54**. This is hereby recorded as the Adjudicated Amount of this determination.
 - 3.2. The date on which the Adjudicated Amount shall become due is **10 July 2006**. This is hereby recorded as the Due Date for Payment of the Adjudicated Amount.
 - 3.3. The rate of interest payable is 6% per annum compounded on an annual basis payable from **15 June 2006**.
 - 3.4. The Respondents shall bear 100% of the fees of the Adjudication Nomination Authority and that of the Adjudicator.

RECORD

The Parties

4. The Claimants are a company incorporated in the Republic of Singapore and are specialist contractors for geotechnical works.
5. The Respondents are the Main Contractors for the development for AT College at YYY. (hereinafter "the Project").

The Construction Contract

6. By a Letter of Award dated 13 October 2005 (hereinafter "the Construction Contract"), the Claimants were engaged by the Respondents as their Sub Contractors for the Supply and Installation of Chemical Grouting Work (hereinafter "the Works") for the Project.
7. The Claimants alleged that they were instructed by the Respondents to carry out variations to the Works (hereinafter "the Variations") under two Variations Orders – V.O. 1 and V.O. 2 and that these variations are valued at S\$186,115.74.
8. The Claimants also allege that they have carried out the Works valued at \$144,000.00.
9. On 25 May 2006, the Claimants served a Payment Claim on the Respondents for a sum of S\$209,640.54, the breakdown of which is as follows:

S/No.	Head of Claim	Amount Claimed (S\$)
9.1.	Value of works carried out	144,000.00
9.2.	Variations under VO 1 and V 0 2	186,115.74
9.3.	<u>LESS</u> : Deductions by Respondents	1,475.20
9.4.	<u>LESS</u> : Payment Received	119,000.00
9.5.		
	Total (S\$):	209,640.54

10. In accordance with section 11(1) of the Act, the Respondents (who are the person named in the Payment Claim) must respond to the Payment Claim by providing a payment response to the Claimants. However the Respondents have failed to do so.

11. On 8 June 2006, the Claimants notified the Respondents of their intention to apply for adjudication in respect of the Payment Claim.

12. On 15 June 2006, the Claimants lodged their Adjudication Application with the Singapore Mediation Centre (hereinafter "SMC"). SMC is the Authorised Nominating Body under the Act.

13. On 16 June 2006, SMC served on the Respondents by courier the Adjudication Application together with the related annexes and the Adjudication Response Form. The Respondents duly acknowledged receipt of these documents.

14. On 19 June 2006, SMC invited me, RAYMOND CHAN to be the adjudicator. On 19 June 2006, I accepted the appointment as adjudicator and informed SMC accordingly. SMC served on the parties a copy of my notice of acceptance of appointment as adjudicator on the same day.
15. In accordance with section 15(1) of the Act, the Respondents are required within 7 days after receipt of a copy of an Adjudication Application to lodge with SMC a response to the Adjudication Application. The Respondents had up to 23 June 2006 (i.e. 16 June 2006 plus 7 days) to lodge their adjudication response with the SMC.
16. On 23 June 2006, I was informed by SMC that as at 4:00pm on 23 June 2006, no adjudication response had been lodged by the Respondents. In accordance with section 15(1) of the Act, the time for lodgement of the adjudication response had expired.
17. In accordance with section 16(1) of the Act, the adjudication commenced immediately (i.e. on 23 June 2006) upon the expiry of the period within which the Respondents may lodge an adjudication response.

The Submissions

18. Apart from their Adjudication Application and the related annexes the Claimants have not made any other submissions. In their Adjudication Application, the Claimants submitted copies of the following documents:
 - 18.1. The Respondents' Letter of Award of the Sub Contract dated 13 October 2005
 - 18.2. The Claimants' Payment Claim together with related supporting documents;

18.3. The Claimants' notice of intention to apply for adjudication dated 8 June 2006 to the Respondents;

19. Other than submitting the above documents, the Claimants did not provide further grounds on their entitlement to their claim for the said sum of S\$ 209,640.54

REASONS

20. The basis of the Claimants' claim is that they have not been paid by the Respondents for the variations ordered in V.O 1 and V. O. 2 and that there is a balance sum of money due to them in respect of the Works.

21. The Payment Claim makes reference to their claim for \$186,115.74 under Variation Orders (V.O.) No 1 and No. 2. The Claimants have in the documents annexed to their Payment Claim included a breakdown of costs for V.O. 1 and V.O. 2. In this breakdown of costs, in respect of the variations claim, there are details of the rates and quantities for the variations carried out. The breakdown of costs document also includes details of services carried out for the Works. The Claimants have also included in the documents annexed to the Payment Claim, a summary of the chemical grouting and drilling through concrete records and the Respondents' invoices for reimbursement claims made against them.

22. From my perusal of the Payment Claim and the related documents, the Claimants have on the face of these documents provided a basis for their claim of S\$ 209,640.54. I have not been provided with the schedule of rates for the original sub contract works or the variations ordered. In the absence of any payment response or adjudication response from the Respondents, I have no grounds to reject the rates adopted by the Claimants in their variation claims and in their claim for the Works as deviating from the terms of the Sub Contract. Further, for the same reason, I have no basis to reject the quantum of work alleged to have been carried out by the Claimants for the Works and the variations as being incorrect.

23. As such, I accept that the costs breakdown as set out by the Claimants in support of their claim for \$209,640.54 in the Payment Claim. Based on the materials, information and evidence before me, I find no reason to reject the Claimants' Payment Claim for the purposes of the Act. Further,

in the absence of any payment response or adjudication response, there is nothing to suggest that the Payment Claim does not comply with sections 10(2) and (3) of the Act.

Adjudicated Amount

24. In the circumstances, it is my determination that, the Claimants have succeeded in their total claim of **S\$ 209,640.54 (Dollars Two Hundred and Nine Thousand and Six Hundred and Forty only)** made up as follows:

S/No.	Head of Claim	Amount Claimed (S\$)
24.1.	Value of works carried out	144,000.00
24.2.	Variations under VO 1 and V 0 2	186,115.74
24.3.	<u>LESS</u> : Deductions by Respondents	1,475.20
24.4.	<u>LESS</u> : Payment Received	119,000.00
24.5.		
	Total (S\$):	209,640.54

Due Dates for Payment

25. The sum of S\$209,640.54 as determined by me shall be due to the Claimants on 10 July 2006.

Interest

26. Under section 17(2)(c) of the Act, the Claimants are entitled to interest on the due payment amounts. No evidence has been adduced on whether the Construction Contract provides for any rate of interest to be applied.
27. In fixing the rate of interest, I have considered the rate as prescribed in the Rules of Court. Under the Rules of Court, the court may award interest at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate as the court directs. I adopt this rate for the Adjudicated Amount.
28. Accordingly, I hold that interest on the Adjudicated Amount of S\$209,640.54 shall run at the rate of 6% per annum from the date of the lodgement of the Adjudication Application, i.e. 15 June 2006.

Adjudication Fee

29. Taking into account the fact that the Claimants have succeeded in their claim, I determine that the Adjudication Nomination Authority's Fee and Adjudicator's Fee shall be fully borne by the Respondents.

Place of Adjudication: Singapore

Date: 29 June 2006

Signature:



RAYMOND CHAN
ADJUDICATOR