Legal Update

Adjudication Decisions and Winding-Up Proceedings: Court of Appeal Clarifies the Relationship Between CIPAA and Companies Act in VKPT Sdn Bhd v LLC Infra Sdn Bhd

1. Introduction

For over a decade, the construction industry in Malaysia has grappled with a recurring legal question: Can an adjudication decision under the *Construction Industry Payment and Adjudication Act 2012* ("**CIPAA**") form the basis of a winding-up petition even though the adjudication decision remains only "temporarily final"?

The Court of Appeal of Malaysia has now provided significant guidance in *VKPT Sdn Bhd v LLC Infra Sdn Bhd* (Appeal No. W-02(NCC)(A)-171-02/2025, decided on 7 July 2026), a decision that reconciles several seemingly inconsistent authorities and establishes a coherent legal framework governing the interaction between adjudication decisions and winding-up proceedings.

2. Background

The parties to the case, VKPT Sdn Bhd ("**Appellant**") and Infra Sdn Bhd ("**Respondent**"), were in a dispute that arose from a sub-subcontract relating to the LRT3 Project for the Trackwork and Power Conductor Rail Installation Works, Package 2A Mainline Installation Works from GS05 to GS10. Following disputes between the parties over payment, the Appellant commenced adjudication under the CIPAA against the Respondent. The adjudicator dismissed the claim entirely and awarded adjudication costs of RM98,300 in favour of the Respondent.

Subsequently, the Respondent issued a statutory demand under section 466 of the Companies Act 2016; and thereafter presented a winding-up petition founded primarily on the unpaid adjudication costs.

Importantly, however, the adjudication decision had not been registered as a judgment under section 28 of the CIPAA. The Appellant had commenced court proceedings seeking a final determination of the underlying contractual disputes and contended that the adjudicated debt remained genuinely disputed.

The High Court of Malaysia nevertheless granted the winding-up order. The matter proceeded on appeal.

3. The central legal question

The central issue in dispute during the case is whether the temporary finality of an adjudication decision automatically renders the debt indisputable for purposes of winding-up proceedings. Closely connected with this issue are several important subsidiary issues as follows:

a) Is registration under section 28 of the CIPAA merely procedural?
b) Can an unregistered adjudication decision still be disputed?
c) What effect does a pending section 15 or section 16 of the CIPAA application have?
d) What is the correct test where the debt arises from an adjudication decision?

A. Temporary finality is not the same as indisputability

The Court of Appeal began by explaining the underlying philosophy of the CIPAA. Adjudication exists to preserve cash flow in the construction industry through the familiar principle of "*pay now, argue later.*" An adjudication decision is binding immediately upon delivery.

However, section 13 of the CIPAA expressly provides that such decisions remain binding unless the following has occurred:

a) the decision is set aside;
b) the dispute is finally determined by arbitration or litigation; or
c) the dispute is settled.

Accordingly, temporary finality does not mean permanent conclusiveness. Rather, it merely preserves cash flow pending ultimate determination of parties' substantive rights.

[57] *The temporary finality of an adjudication decision is the quality conferred upon it by s. 13 of CIPAA. An adjudication decision is binding on the parties from the moment of its delivery, but it is binding only provisionally. Its binding force is conditional upon none of the three extinguishing events in s. 13 having occurred: (1) set-aside under s. 15, (2) settlement in writing, or (3) final determination by court or arbitration under s. 13(c). The temporary finality of an adjudication decision is therefore anchored on, and its termination is triggered* *by, the final determination of the underlying substantive disputes in the appropriate forum. It is the availability and exercise of that right of final determination that gives the adjudication decision its provisional and temporary character.*

[58] Thus, the temporary character of an adjudication decision is what makes it disputable for winding-up proceedings. Because the adjudication decision may be reversed, varied or superseded by a final determination, the debt it represents is not conclusively established as a matter of substantive right. The losing party at adjudication retains the statutory right to pursue a different outcome through court proceedings or arbitration. *The existence of that right, and in particular the filing of court proceedings for final determination of the underlying disputes, is precisely the kind of genuine and substantial challenge to the petition debt that the law recognises as a basis for resisting a winding-up petition [See: Sian and V Medical Services]. On this analysis, we hold that an unregistered adjudication decision, against which a court action for final determination has been filed, is a disputable debt for the purposes of a winding-up petition.*

B. Registration under section 28 is the legal watershed

Perhaps the most important aspect of the judgment in the case concerns section 28 of the CIPAA. The Court of Appeal drew an important distinction between two separate questions:

a) Is registration under section 28 of the CIPAA necessary before commencing a winding-up petition?
b) Does registration affect whether the debt is legally indisputable?

The Court answered these differently.

Registration is not required before filing a winding-up petition. The Court of Appeal reaffirmed Likas Bay, holding that section 28 registration is not a procedural precondition before a statutory demand or winding-up petition may be presented.

Accordingly, a creditor may still commence winding-up proceedings without first registering the adjudication decision. However, registration fundamentally changes the legal character of the debt.

While registration is not procedurally necessary, the Court of Appeal held that it has profound substantive consequences.

Once registered, the adjudication decision becomes enforceable "*as if it were a judgment*" of the High Court, the adjudicated debt becomes a judgment debt and liability becomes indisputable in the same manner as any court judgment. Before registration, however, the adjudication decision remains merely an adjudicated debt which is not yet clothed with the conclusive legal status of a judgment.

The Court of Appeal described section 28 registration as "*the legal watershed*" separating a disputable adjudicated debt from an indisputable judgment debt.

[60] *The indisputability of an adjudication decision is a qualitatively different legal status that is conferred by, and only by, registration under s. 28 of CIPAA. Section 28 provides that the adjudication decision shall be enforceable as if it were a judgment of the High Court. That statutory fiction, the "as if' formulation, is the mechanism by which the temporarily-final adjudication decision acquires the attributes of a court judgment for enforcement purposes.* ***Once registered under s. 28, the adjudicated debt is treated in law as a judgment debt. A judgment debt is, absent appeal or stay, indisputable****. The party against whom judgment is entered cannot deny liability for it in collateral proceedings, including a winding-up petition.* ***The s. 28 registration is therefore the legal watershed that converts a disputable adjudicated debt into an indisputable judgment debt.*** *Without it, the adjudication decision retains its temporary finality and disputable character. With it, the adjudicated debt acquires the conclusive and indisputable character of a court judgment.*

[61] *Temporary finality and indisputability therefore operate on entirely separate axes. The former is anchored on s. 13 and the right of final determination. It is extinguished by the final determination under s. 13(c) or by set-aside under s. 15. The latter is anchored on s. 28 and the act of registration as a judgment. It is conferred by the court's enforcement order and removed only by the setting aside of that order or by the supervening extinguishment of the underlying adjudication decision upon final determination. An adjudication decision that has not been registered remains disputable even though it is temporarily binding. This means that any party with a genuine and substantial basis for challenging the debt may resist a winding-up petition founded upon it. An adjudication decision that has been registered becomes indisputable as a judgment debt, and the only avenue left open to the respondent to a winding-up petition is a cross-claim on substantial grounds equalling or exceeding the registered sum*.

C. The two-tier framework

The Court of Appeal has synthesised previous authorities and provided a two-tier framework as follows:

First category: pre-registration of adjudication decisions

Where the adjudication decision has not been registered:

a) the debt remains disputable;
b) the debtor may resist winding-up by demonstrating a genuine dispute on substantial grounds; and
c) filing proceedings for final determination of the underlying dispute may constitute such a genuine dispute.

Accordingly, an unregistered adjudication decision does not automatically become an indisputable debt merely because the adjudicator has decided the matter.

Second category: registered adjudication decisions

Where the adjudication decision has been registered under section 28:

a) the debt becomes a judgment debt;
b) liability may no longer be reopened; and
c) the debtor's only available defence is to establish a *bona fide* cross-claim or set-off equal to or exceeding the judgment debt.

The Court of Appeal held that this position accords with ordinary principles applicable to judgment debts generally.

D. Clarifying Bludream

The Court of Appeal devoted considerable attention to explaining *Bludream City Development Sdn Bhd v Pembinaan Bina Bumi Sdn Bhd [2024] 4 MLJ 67*.

Some earlier decisions had interpreted Bludream as establishing a broad principle that every adjudication decision automatically creates an indisputable debt for winding-up purposes.

The Court of Appeal rejected earlier interpretations. Instead, Bludream was confined to its own facts. In Bludream:

a) the adjudication decision had already been registered;
b) enforcement proceedings had been concluded; and
c) applications to set aside and stay had failed.

Accordingly, the debt had already acquired the legal status of a judgment debt.

Bludream therefore does not stand for the proposition that every unregistered adjudication decision is automatically indisputable.

E. The significance of final determination proceedings

An interesting feature of the appeal was that the debtor had commenced court proceedings seeking final determination of the underlying contractual disputes. The Court of Appeal held that this was highly significant. Section 13(c) of the CIPAA expressly contemplates that parties may pursue litigation or arbitration after adjudication.

Accordingly, where a party genuinely invokes that statutory right, the existence of those proceedings may itself demonstrate that the adjudicated debt remains genuinely disputed. The Court of Appeal nevertheless cautioned that this is not an automatic right. The court responsible for initiating winding-up proceedings must still determine whether the subsequent proceedings are genuine or merely tactical attempts to delay payment. Relevant considerations may include the timing, previous conduct, whether the proceedings merely replicate rejected arguments without fresh basis, and whether there exists a genuine intention to pursue final determination.

[64] *However, whether the Appellant has in fact demonstrated a genuine and substantial dispute on the specific facts of this case, as opposed to merely invoking the right of final determination as a tactical device to resist payment, remains a question that the court must examine on the merits of the underlying claim.*

[66] *Applying the foregoing framework to the facts of the present appeal, we are satisfied that there is, on the face of the record, a prima facie genuine and substantial dispute over the Adjudication Costs order that formed the basis of the Petition. Two features of the present case, taken together, compel this conclusion. First, the Respondent did not register AD 4939 as a judgment under s. 28 of CIPAA. As we have held at [30]-[36] above, registration is the legal watershed that converts a disputable adjudicated debt into an indisputable judgment debt. In the absence of registration, the Adjudication Costs order retains the temporarily-final and disputable character that attaches to all unregistered adjudication decisions. Second, the Appellant has filed Suit 81 in the High Court for the final determination of the underlying construction disputes between the parties, which are the very disputes that were the subject of Adj 4939 and that the adjudicator dismissed with costs.* ***The filing of that Suit 81 invokes the s. 13(c) right of final determination which is the defining feature of the temporary finality of an adjudication decision. A party who exercises that right does not merely dispute the adjudicated sum in the abstract, it triggers the statutory mechanism that is specifically designed to supersede the adjudication decision upon a final determination. That is precisely the kind of genuine and substantial challenge to the petition debt that the law recognises as sufficient to resist a winding-up petition founded on an unregistered adjudication decision****.*

4. Practical considerations

The decision in VKPT Sdn Bhd v LLC Infra Sdn Bhd offers several important practical considerations for companies to consider.

A successful adjudication creditor should carefully consider registering the adjudication decision under section 28 before commencing winding-up proceedings, as registration significantly strengthens the creditor’s position by converting the adjudicated sum into an enforceable judgment debt.

Debtors should recognise that the commencement of genuine court or arbitral proceedings seeking a final determination may demonstrate the existence of a substantial dispute. However, proceedings commenced at the eleventh hour without genuine merit may not be sufficient, as the courts will carefully scrutinise whether they have been brought in good faith and with merit.

5. Conclusion

The Court of Appeal in this case has produced a principled and practical framework governing the relationship between adjudication decisions and winding-up proceedings.

The judgment reinforces that while the CIPAA promotes immediate cash flow through temporary finality, it does not automatically elevate every adjudication decision into an indisputable debt. Rather, registration under section 28 is the critical legal step that transforms an adjudicated debt into a judgment debt for winding-up purposes.

Equally important, the decision preserves the long-established insolvency principle that winding-up proceedings should not be used as a debt collection mechanism where the debt is genuinely disputed on substantial grounds.

This landmark decision therefore strikes a careful balance between preserving the effectiveness of CIPAA's "pay now, argue later" regime and safeguarding the insolvency jurisdiction from being invoked in respect of genuinely disputed claims. It is likely to serve as the leading authority on the interplay between CIPAA adjudication and winding-up proceedings for years to come.

Further information

Should you have any questions on how the judgement in this case may affect the construction industry, please contact the team at TSL Legal:

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