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## Appellate Division of the High Court Affirms that a Claimant has 8 days to lodge an Adjudication Application under section 13(3)(a) of the Building Construction Industry Security for Payment Act 2004

In a milestone decision, the Appellate Division of the High Court of Singapore (“Appellate Division”) in *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2024] SGHC(A) 5 has affirmed that a claimant has 8 days to lodge an adjudication application from the end of the dispute settlement period.

Shook Lin & Bok Partners Joseph Tay and Shirin Swah, assisted by Associate Claire Tan successfully acted for the Defendant before the General Division and also successfully defended the appeal before the Appellate Division.

### Background

In a previous Client Update in November 2023, Shook Lin & Bok had reported the important decision of the General Division of the High Court (“**General Division**”) in *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2023] SGHC 298. The key issue before the General Division was the interpretation of s 13(3)(a) SOPA - whether the time period within an adjudication application can be made commences from the day immediately after the last day of the dispute settlement period, or after the day that the entitlement to make an adjudication first arises. The latter would in effect, give a claimant a total of 8 days to lodge an adjudication application.

The General Division had held that the entitlement to make an adjudication application arises the day after the dispute settlement period ends. In the context of the case, the last day of the dispute settlement period was 27 June 2023, and the entitlement to lodge an adjudication application therefore first arose on the 28 June 2023. The General Division in interpreting “within 7 days after the entitlement... first arises” as read together with s 50(a) Interpretation Act 1965 (“**IA**”), found that the 7-day period should only commence *after* the day that the entitlement first arises such that the first day is excluded from the calculation of the period of 7 days. On this basis, it was calculated that 7 days after 28 June 2023 (excluding the public holiday on 29 June 2023) is 6 July 2023. As the adjudication application was filed on 6 July 2023, it was therefore not filed out of time.

### The Appeal

In November 2023, the Appellant, H P Construction & Engineering Pte Ltd brought an appeal against the decision of the General Division that the adjudication application was not filed out of time. This appeal has since been dismissed by the Appellate Division in *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2024] SGHC(A) 5.

The Appellate Division confirmed that the General Division had correctly interpreted s 13(3)(a) SOPA based on the plain application of s 50(a) IA. The Appellate Division, after hearing the arguments on appeal, upheld the decision of the General Division.

In doing so, the Appellate Division did not prefer the Appellant’s case that the window within which the adjudication application must be confined strictly to a 7-day window commencing immediately after the end of the dispute settlement period. The Appellate Division held that the critical question was from when the calculation of the 7-day period begins to run and further held that the said 7-day period only commences after the first day that the entitlement to file an adjudication application arises. Accordingly, a claimant has 8 days from the end of the dispute settlement period to file an adjudication application.

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## Significance

Prior to *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2023] SGHC 298 and *H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2024] SGHC(A) 5, there was no clear and determinative decision on how the 7-day time period under s 13(3)(a) SOPA ought to be calculated. Adjudicators had therefore adopted different approaches in deciding whether an adjudication application lodged under s 13(3)(a) SOPA was filed within or out of time. It was common for adjudicators to determine that the 7-day period for which an adjudication application is to be lodged commences on the day immediately after the end of the dispute settlement period. This was also the approach in guidelines issued by various agencies involved in the construction industry and/or adjudication under the SOPA.

However, the decisions by the General Division and the Appellate Division have now put to rest any debate and confusion as to how the 7-day period ought to be calculated. The 7-day period under s 13(3)(a) for which an adjudication application is to be filed commences only *after* the day that the entitlement first arises, such that the first day is excluded from the calculation of the period of 7 days. As a claimant is entitled to file an adjudication from the day the entitlement first arises, a claimant has a total of 8 days to lodge an adjudication application. These decisions therefore provide much-welcomed clarity and guidance to all involved in adjudication under the SOPA moving forward.

This article was authored by Joseph Tay (Partner), Shirin Swah (Partner) and Claire Tan (Associate).

For more information, please contact:

**Joseph Tay**

Partner

T: +65 6439 0621

E: joseph.tay@shooklin.com

**Shirin Swah**

Partner

T: +65 6439 0628

E: shirin.swah@shooklin.com

**Shook Lin & Bok LLP**

1 Robinson Road #18-00 AIA Tower Singapore 048542 T +65 6535 1944 F +65 6535 8577 E slb@shooklin.com W www.shooklin.com

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