SOPA Payment Claims: When Can One Make an Adjudication Application

Introduction

The Building and Construction Industry Security of Payment Act (the “Act”) sets out a structured payment claim system to enable the recovery of regular payments during construction projects. As the efficiency of payments is a key objective, the timeline of the claim system is of vital importance.

In Newcon Builders Pte Ltd v Sino New Steel Pte Ltd [2015] SGHC 226, the Singapore High Court considered when an application for adjudication should be made following a payment claim, and the effect of a failure to comply with the timeline provided in the Act.

Timeline for Claims

The procedure for a payment claim is fairly simple. The claimant serves a payment claim on the respondent for work done, and the respondent replies with a payment response. If there is a dispute over payment, the claimant can apply for adjudication.

In this judgment, the court clarified the timeline for which the various steps must be taken.

(i) Payment claim – Payment claims are to be served at such time as specified in the contract. Where the contract does not specify, payment claims must be served by the last day of each month.

(ii) Payment response – Payment responses are to be provided by such time as specified in the contract, or within 21 days after the service of the payment claim, whichever is earlier. Where the contract does not specify, payment responses must be provided within 7 days after the service of the payment claim.

(iii) Dispute settlement period – There is a mandatory dispute settlement period of 7 days after the date on which the payment response is to be provided. During this period, no adjudication application may be made.

(iv) Adjudication application – If there has been no settlement or payment response after the dispute settlement period, the claimant may make an adjudication application in relation to the payment claim. However, the adjudication application must be made within 7 days after the entitlement to make the adjudication application first arises.

The main issue of this case was whether an adjudication application may be made during the dispute settlement period. The court held that such an application would be premature and thus invalid. The court would then be entitled to set aside the resulting adjudication determination.

Although the purpose of the payment claim system is to provide for efficient progress payments, it is also meant to encourage settlement. The dispute settlement period as set out in the Act was specifically crafted to allow enough time for the possibility of settlement, and for the respondent to provide or amend its payment response. Claimants are thus obliged to respect the dispute settlement period, and cannot make adjudication applications in disregard of it.
Brief Facts

In this case, the Plaintiff contractor had entered into a sub-contract with the Defendant sub-contractor for a certain project. Under the sub-contract, payment claims would be made by the last day of each month. The Plaintiff successfully argued that the sub-contract incorporated a provision from the main contract allowing the Plaintiff 14 days to make a payment response.

Here, the relevant payment claim had been served on 31 December 2014, meaning the payment response had to be made by 14 January 2015. The dispute settlement period thus ran from 15 January 2015 to 21 January 2015.

However, the Defendant filed its adjudication application on 21 January 2015. As this fell within the dispute settlement period, the application was invalid, and the court set aside the adjudication determination.

Concluding Words

Parties wishing to utilise the payment claim system under the Act must ensure that they comply with the timelines as set out in the contract and in the provisions of the Act. As demonstrated, failure to do so may result in drastic consequences, such as the entire adjudication determination being set aside.

Compliance with the timelines is strictly mandatory. In this case, the adjudication application was made only 1 day early, but was still found to be invalid. The court also cited a case where an adjudication response was disregarded as it was filed merely 2 minutes late. The court need not consider whether there is any prejudice suffered as a result of the non-compliance.

Parties wishing to consult on payment claims or other issues in construction and projects may contact our team below.
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By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com/.
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