

BETWEEN

**SUTERA ENERGY SDN BHD
(BRUNEI COMPANY NO. RC200001510)**

... Petitioner

AND

**1. APPSMITHS SUTERA SDN BHD
(REG NO. RC20005106)**

... 1st Respondent

**2. APPSMITHS SDN BHD
(MALAYSIA CPMPANY NO. 1204988-X)**

... 2nd Respondent

**In the matter of APPSMITHS SUTERA
SDN BHD (REG NO. RC20005106)**

AND

In the matter of Section 99(1)(g) of the Insolvency Act, Cap 247.

**(High Court of Brunei Darussalam)
(Companies Winding Up No. 4 of 2025)**

Muhammed Faisal Bin PDJLD Kol(B) DSP Hj Kefli, J.C

Date of Ruling: 6th December, 2025.

Headnote: Winding-up – Stay pending appeal – Leave to appeal – Arbitration agreement – Derment arbitration.

Miss Too Shu Vun of Messrs LZ Hussain & Co for the Petitioner.

Mr Andrew Jonathan Nyi Tsun Wong of Messrs CCW & Partners for the Respondents.

Case cited:

Tomolugen Holdings

RULING

Muhammed Faisal, J.C.:

I Introduction

1. This is the 2nd Respondent's application for (i) leave to appeal against my decision dated 30 September 2025 refusing a stay of winding-up proceedings pending arbitration; (ii) an extension of time to file and serve the Notice of Appeal; and (iii) a stay of the winding-up proceedings pending the determination of that appeal.
2. The Petitioner opposes all parts of the application.

3. Having considered the affidavits, the written submissions and the helpful oral submissions of both counsels, I am satisfied that the 2nd Respondent has crossed the statutory threshold for leave to appeal and that it is in the interests of justice to grant a limited extension of time and a stay pending appeal.
4. My reasons are as follows.

II Background

5. The background to this matter has been extensively traversed in my earlier decision and again in this round of affidavits. I will not repeat the full chronology but highlight only what is necessary.
6. The 2nd Respondent previously applied for a stay of these winding-up proceedings on the ground that the parties had agreed to resolve their disputes by arbitration. That application was dismissed on the basis that, although the arbitration agreement was valid, the agreement had become inoperative or incapable of being performed in the circumstances of this case.
7. The 2nd Respondent now seeks leave to appeal that ruling. It is contended that the decision raises matters of law of sufficient general importance, or at least matters attended with sufficient doubt, that they warrant further appellate scrutiny. A refusal of leave would also result in substantial injustice because the company would be wound up before an appeal could be heard, effectively extinguishing any possibility for the contractual arbitration to take place.
8. The Petitioner argues that the decision turned on factual findings which do not attract appellate intervention, and that no legal question arises. It further contends that there is no injustice because the 2nd Respondent, by its own conduct, abandoned the arbitration and is now seeking to revive it only to delay the winding-up.

III The Test for Leave to Appeal

9. The applicable principles are well settled.
A party must show either:
 - i. that the decision below is attended with sufficient doubt to justify its reconsideration by the appellate court, or
 - ii. that refusal of leave would cause substantial injustice.
10. These limbs are not mutually exclusive, and in a suitable case either may be sufficient.
11. The inquiry is not whether the appeal will succeed, but whether the matters raised merit the attention of an appellate tribunal.

IV Whether the Issues Raised Warrant Appellate Consideration

12. Having considered the grounds advanced, I am satisfied that the 2nd Respondent has identified arguable questions of law, or at the very least mixed questions of law and fact, on which reasonable minds may differ.

(i) Application of the third limb of Tomolugen Holdings

13. The 2nd Respondent argues that the “*inoperability*” analysis under *Tomolugen* may have been applied too strictly, or without sufficient consideration of the relatively low *prima facie* threshold ordinarily applicable to stay applications involving arbitration agreements.

14. While I remain satisfied with my earlier reasoning and findings, I accept that the proper threshold under *Tomolugen’s* third limb, and the extent to which prolonged inactivity, non-payment of deposits, or a refund request result in inoperability, are issues of legal significance that merit clarification by the Court of Appeal in the Brunei context.

(ii) Distinction between “inactive” and “inoperative” arbitration

15. The 2nd Respondent argues that the arbitration was “*inactive*” but not “*terminated*”, that no formal withdrawal took place, and that the law does not treat administrative dormancy as legal inoperability.

16. Although I concluded otherwise on the facts, I accept that this distinction is capable of legal debate and that the Court of Appeal ought to have the opportunity to consider whether this Court’s treatment of the conduct of the parties was correct in principle.

(iii) Interplay between arbitration agreements and winding-up jurisdiction

17. This court’s refusal of stay involved consideration of how arbitration and insolvency intersect, an area not extensively litigated in Brunei. Whether a winding-up petition may proceed despite an arbitration clause, and the circumstances in which an arbitration agreement becomes incapable of being performed, are matters of wider importance.

18. These are matters that justify appellate scrutiny.

V Conclusion on Leave

19. For these reasons, I find that the decision raises issues that reasonably require further consideration by the Court of Appeal. Leave to appeal is therefore granted.

VI Substantial Injustice

20. I also find that the 2nd Respondent has demonstrated that substantial injustice may arise if leave is refused.

21. If the winding-up proceeds, any subsequent appeal, be it successful or otherwise, would be rendered nugatory. The company would enter liquidation and the contractual machinery under the JVA, including any right to arbitrate, would

effectively be extinguished. That consequence is not merely procedural; it is substantive.

22. This satisfies the second limb of the test.

VII Extension of Time

23. There is no real prejudice to the Petitioner in granting a brief extension of time. Once leave to appeal is granted, it is appropriate that the parties be afforded the opportunity to regularise the appeal documents. I therefore grant a limited extension of time for the filing and service of the Notice of Appeal. The dates are to be addressed administratively.

VIII Stay Pending Appeal

24. The principles applicable to a stay pending appeal are well known: the court considers (i) whether the appeal raises a serious question; (ii) whether the appeal would be rendered nugatory without a stay; and (iii) the balance of justice.

25. Having found that the appeal raises issues of legal significance, and that winding-up prior to the appeal would effectively defeat it, I am satisfied that a limited stay should be granted.

26. The Petitioner has not demonstrated any real or pressing prejudice arising from the continuation of the status quo for a short period pending the disposal of the appeal. The company is presently dormant and there are no identified urgent creditor claims.

27. A stay pending appeal is therefore appropriate.

Order

28. For the reasons above, I make the following orders:

1. Leave to appeal against this Court's decision dated 30 September 2025 is granted.
2. An extension of time is granted to the 2nd Respondent to file and serve the Notice of Appeal.
3. The winding-up proceedings (including advertisement requirements) are stayed pending the determination of the appeal.
4. Liberty to apply.
5. Costs of this application shall be costs in the appeal.

MUHAMMED FAISAL BIN PDJLD KOL(B) DSP HJ KEFLI
Judicial Commissioner