M.O.P.S Sdn Bhd **... Plaintiff**

AND

Salvin Far East Ltd **... Defendant**

(High Court of Brunei Darussalam)
(Originating Summons No. 71 of 2025)

Muhammed Faisal Bin PDJLD Kol(B) DSP Haji Kefli, J.C.
Date of Ruling: 22nd June, 2026.

Headnotes: Arbitration – Foreign arbitral award – Recognition and enforcement – Whether prior registration required before reliance on award in insolvency proceedings – Insolvency – Winding-up – Statutory demand – Whether unregistered foreign arbitral award can constitute evidence of debt – Distinction between enforcement and proof of debt

Mr. Czar Calabazaron of Messrs Rudi Lee, Annie Kon & Associates for the Plaintiff.
Mr Calvin Lim Boon Khai of Messrs Raed Lim Advocates and Solicitors for the Defendant.

Cases cited:
Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213
Hong Leong Finance Bhd v Low Thiam Hoe & Ors [2016] 1 MLJ 301
Ketteman & Ors v Hansel Properties Ltd & Ors [1987] AC 189
BIBD v Bofone Sdn Bhd & 2 Ors [HCCS 79 of 2014]

Statutes:
Section 9 of the Limitation Act (Cap. 14)
Section 40 of the Contracts Act CAP 106
Order 20 rule 5(1) of the Rules of the Supreme Court

RULING

Muhammed Faisal, J.C.:

I Introduction and Background

1. This matter arises from an application by the Applicant to restrain and challenge the Respondent's reliance on certain foreign arbitral awards as the basis for insolvency proceedings commenced against the Applicant.

2. The dispute between the parties has its origins in a commercial relationship, the details of which need not be recited at length for present purposes. It suffices to note that disagreements arose between the parties, which ultimately led to earlier court proceedings and, thereafter, to arbitration.

3. On 11 May 2023, pursuant to an application by the Applicant, the dispute was stayed and referred to arbitration in accordance with the applicable arbitration agreement. The arbitration was conducted in Singapore, which was the agreed seat of arbitration. In this context, the "seat of arbitration" refers to the legal jurisdiction whose courts exercise supervisory authority over the arbitration.

4. Following the conclusion of the arbitral proceedings, the tribunal issued two awards in favour of the Respondent, dated 26 September 2025 and 15 October 2025 respectively. It is not disputed that no application was made by the Applicant to set aside or otherwise challenge the said awards before the courts of the seat of arbitration within the prescribed time.

5. Subsequent to the issuance of the awards, the Respondent took steps to enforce its rights arising therefrom. On or about 31 October 2025, the Respondent filed an application in this jurisdiction seeking leave to enforce the arbitral awards. That application was heard on an ex parte basis, and leave to enforce the awards was granted on 16 January 2026. As at the date of the present application, the formal order granting leave had not yet been extracted and served.

6. Prior to the grant of leave to enforce, and on 18 November 2025, the Respondent issued a statutory demand to the Applicant, demanding payment of the sums due under the arbitral awards. The Applicant did not comply with the statutory demand within the prescribed period.

7. Thereafter, the Respondent took steps in furtherance of winding-up proceedings against the Applicant, relying on the said statutory demand as evidence of the Applicant's inability to pay its debts.

8. In response, the Applicant commenced the present proceedings by way of this Originating Summons, seeking, inter alia, to restrain the Respondent from proceeding with the winding-up and to challenge the validity of the statutory demand.

II The Parties' Positions

9. The Applicant and the Respondent adopt fundamentally different positions as to the legal effect of the arbitral awards and whether such awards may be relied upon in the absence of prior registration or recognition within this jurisdiction.

10. The Applicant contends that a foreign arbitral award has no operative legal effect in Brunei Darussalam unless and until it has been formally recognised or registered pursuant to the applicable statutory framework. In particular, reliance is placed on the Reciprocal Enforcement of Foreign Judgments Act CAP.177 (REFJA), under which arbitral awards are said to fall within the definition of "judgment"[1], and which

[1] S.2(1) *REFJA* "judgment" means -
(a) a judgment or order given or made by a court in any civil proceedings;
(b) ... or;

provides that no proceedings may be entertained upon such a judgment unless it has first been registered2.

11. On this basis, the Applicant argues that the statutory demand issued by the Respondent was invalid, as it was founded upon arbitral awards which had not yet been registered or recognised in this jurisdiction at the material time. It is further submitted that the Respondent's reliance on the insolvency regime amounts to an indirect or "backdoor" means of enforcing the awards, thereby circumventing the statutory safeguards inherent in the recognition and enforcement process. In support of these submissions, reliance is placed on authorities including *Service Terminal LLC v Drelle*[3] and *Mobikom Sdn Bhd v Inmiss Communications Sdn Bhd*[4].

12. The position, as discussed in *Servis-Terminal LLC v Drelle*[5], is that a foreign judgment does not possess direct operative effect within the jurisdiction absent recognition or enforcement by the local court. The Court of Appeal reaffirmed that the that a foreign judgment is not self-executing and cannot, without more, be enforced by direct execution. Rather, a judgment creditor must either bring proceedings upon the foreign judgment at common law or proceed pursuant to the applicable statutory regime governing recognition and enforcement.

13. At the same time, the Court recognised an important distinction between enforcement of a foreign judgment and reliance upon such judgment for other juridical purposes. It was observed that, notwithstanding the absence of formal recognition, a foreign judgment may nevertheless possess evidential or determinative value in certain contexts, including as proof of particular issues or liabilities. In that sense, a foreign judgment may operate as a "shield", even if it cannot yet be deployed as a "sword" for coercive enforcement purposes.[6]

14. Ultimately, the Court in *Servis-Terminal LLC v Drelle*[7] concluded that bankruptcy proceedings, being coercive in nature and invoking the authority of the court against a debtor, could not be founded upon an unrecognized foreign judgment. The decision reflects the traditional common law concern that the coercive machinery of the forum court should not be engaged directly upon the basis of a foreign sovereign act unless and until that act has first been recognized within the jurisdiction.

(c) ***an award in proceedings on an arbitration.***

[2] S.4(1) *REFJA* "A person, being a judgment creditor under a ***judgment*** to which this Act applies, may apply to the High Court..., to have the ***judgment registered*** in the High Court, and on any such application the court shall, subject to proof of the prescribed matters..., order the judgment to be registered."

[3] *Servis-Terminal LLC v Drelle* [2025] EWCA Civ 62

[4] *Mobikom Sdn Bhd v Inmiss Communications Sdn Bhd* [2007] 3 MLJ 316

[5] Supra at no.3 at [12]

[6] Supra at no.3 at [39] & [40]

[7] Supra no.3 at [55]

15. The Applicant also places reliance on *Mobikom Sdn Bhd v Inmiss Communications Sdn Bhd*[8], contending that the decision underscores the principle that insolvency proceedings should not be utilized as a means of circumventing the statutory framework governing the recognition and enforcement of foreign arbitral awards. In particular, the Applicant submits that the case demonstrates the need for caution where a creditor seeks to invoke the winding-up jurisdiction on the basis of a foreign award which has not yet been formally recognised within the jurisdiction, and that absent such recognition, the award cannot properly constitute a debt capable of sustaining a statutory demand or winding-up proceedings.

16. Both parties relied upon *Mobikom*. However, upon closer examination, the decision appears to lend greater support to the Respondent's position. In that case, the Malaysian Court recognised the distinction between the enforcement of a foreign arbitral award and the reliance upon such an award as evidence of indebtedness. The Court accepted that while a foreign award may require recognition or registration before enforcement measures can be taken against a debtor's assets, this does not necessarily preclude the award from being relied upon in insolvency proceedings where the issue before the court is whether the debt is genuinely disputed.

17. The Court in *Mobikom* emphasized the established insolvency principle that winding-up proceedings are not intended to function as a mechanism for debt enforcement where the debt itself remains subject to a bona fide dispute on substantial grounds. In that context, the foreign arbitral award was treated not merely as an instrument of enforcement, but as material relevant to proof of liability and indebtedness. The focus of the inquiry remained whether there existed a genuine dispute as to the debt, rather than whether the award had already been converted into a locally enforceable judgment.

18. At the same time, the decision reflects a recognition that insolvency proceedings should not be used oppressively or as a means of bypassing the statutory safeguards relating to the recognition and enforcement of foreign awards. The Court therefore approached the matter through the lens of insolvency principles, balancing the need to respect the statutory framework governing foreign awards with the fact that a debtor equally cannot resist insolvency proceedings merely by relying on technical objections where no substantive dispute as to the debt exists.

19. The Respondent thus, maintains that prior registration of the arbitral awards is not a necessary precondition to their use in insolvency proceedings. The Respondent draws a distinction between the enforcement of an arbitral award and the reliance

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[8] Supra no.4

upon such an award as evidence of a debt. It is submitted that registration is required only where a party seeks to enforce the award as a judgment, for example by way of execution against assets, but not where the award is relied upon to demonstrate the existence of a debt in insolvency proceedings.

20. The Respondent further emphasizes that the arbitral awards are final and binding, having not been challenged before the courts of the seat of arbitration. Under those circumstances, it is said that there is no bona fide dispute as to the debt, and that the Respondent is entitled to rely upon the awards as evidence of indebtedness for the purposes of issuing a statutory demand and invoking the Court's winding-up jurisdiction.

III The Issues Arising for Determination

21. The dispute gives rise to the following issues:

a) Whether a foreign arbitral award must be registered or recognised before it can have legal effect in this jurisdiction.

b) Whether there is a distinction between enforcement of an arbitral award and reliance on such an award as evidence of a debt.

c) Whether insolvency proceedings are, in substance, a form of enforcement.

d) Whether the absence of prior registration renders the statutory demand invalid.

e) Whether the debt relied upon is bona fide disputed on substantial grounds.

f) Whether the invocation of the insolvency process amounts to an abuse of process.

These issues are interrelated and turn on the proper characterisation of the arbitral awards and the nature of insolvency proceedings.

IV Analysis and Reasons

22. The central issue in this application is whether a foreign arbitral award, which has not yet been registered or enforced as a judgment in this jurisdiction, may nevertheless be relied upon to found a statutory demand and support the invocation of the Court's winding-up jurisdiction.

23. The Applicant's argument proceeds on a strict construction of the statutory framework governing the recognition and enforcement of foreign judgments and arbitral awards. It is contended that, by virtue of *REFJA*, and in particular section 7[9], no proceedings may be entertained upon a foreign judgment or award unless it has

[9] S.7 REFJA "No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Brunei Darussalam."

first been registered. On this footing, the arbitral awards in the present case, not having been registered at the material time, are said to be devoid of legal effect within the jurisdiction, with the consequence that the statutory demand founded upon them is invalid.

24. In their affidavit the Applicant emphasises, in particular, the sequence of events and the contention that the Respondent acted prematurely in issuing the statutory demand prior to obtaining recognition of the arbitral awards within this jurisdiction[10]. While that contention reinforces the Applicant's argument on the necessity of prior registration, it does not advance any substantive basis for disputing the underlying debt determined by the awards.

25. There is, at first sight, a certain attraction in the Applicant's submission. It promotes certainty and accords primacy to the statutory mechanism for recognition and enforcement. However, in my opinion, the argument rests upon an assumption which does not withstand closer scrutiny; namely, that any reliance upon a foreign arbitral award necessarily constitutes a proceeding "upon" that award within the meaning of the statutory regime.

26. In my view, a critical distinction must be drawn between, on the one hand, proceedings which seek to enforce or execute upon a foreign arbitral award, and on the other, proceedings in which such an award is relied upon as evidence of an underlying indebtedness. The statutory requirement of registration is properly directed at the former category. It ensures that before the powers of the Court are engaged to enforce a foreign award against a debtor's property, the award is first recognised within the jurisdiction in accordance with the prescribed safeguards.

27. Winding-up proceedings, however, are not, in their juridical nature, enforcement proceedings. They do not seek to compel payment of a debt by execution against assets. Rather, they are a collective process by which the Court determines whether a company is unable to pay its debts and, if so, administers its affairs for the benefit of creditors as a whole. While it is undeniable that the presentation of a winding-up petition may exert significant commercial pressure on a debtor, that consequence does not alter the essential character of the proceedings.

28. The distinction is not merely semantic but goes to the heart of the statutory scheme. Enforcement proceedings operate directly upon the debtor's property and require the Court to lend its authority to give effect to a foreign determination. Insolvency proceedings, by contrast, operate upon the status of the company and are concerned with its financial condition. Even where a specific unpaid debt is relied upon as the

[10] *See* Affidavit in Support by *Venkata S R Nadimpalli*, for the Applicant

basis for invoking the insolvency jurisdiction, this does not transform the proceedings into an action upon the judgment or award itself.

29. Once that distinction is appreciated, the operation of *section 7 REFJA* becomes clearer. The prohibition against entertaining proceedings unless the foreign judgment has been registered is directed at proceedings which seek to enforce or give direct effect to the judgment. It does not extend to proceedings in which the judgment or award is relied upon as evidence of a debt, the existence of which is relevant for some other juridical purpose, such as insolvency.

30. The Applicant's submission that the Respondent is seeking to achieve, through the insolvency regime, what it cannot do directly without registration, namely, to enforce the arbitral award, raises a legitimate concern as to the potential for circumvention of statutory safeguards. That concern must be addressed, but it does not, in my view, compel the conclusion advanced by the Applicant.

31. The answer lies in recognising that the insolvency jurisdiction is not engaged merely upon proof of a debt, but upon proof of a debt which is not bona fide disputed on substantial grounds. The Court retains a supervisory role to ensure that the insolvency process is not abused as a means of exerting improper pressure or bypassing legitimate avenues of challenge. Where a debtor can demonstrate a genuine dispute as to liability, or a credible basis for resisting the underlying obligation, the Court will not permit the winding-up process to be used oppressively.

32. In the present case, however, no such dispute has been established. The arbitral awards have not been challenged before the courts of the seat of arbitration, within the prescribed time. They are therefore final and binding as between the parties. Significantly, the Applicant has not, whether in the said affidavit or otherwise, advanced any substantive grounds which would call into question the validity of the awards or the liability thereby determined. In those circumstances, the awards constitute cogent and compelling evidence of indebtedness.

33. The Applicant further contends that permitting reliance on an unregistered award in this manner undermines the statutory safeguards inherent in the recognition process, including the opportunity to challenge the award upon enforcement. I am unable to accept that this concern is determinative in the present context. The availability of the enforcement process, and the right to challenge recognition at that stage, remains intact. The fact that the Respondent has, in parallel, taken steps to obtain leave to enforce the awards underscores that the statutory process has not been disregarded.

34. More fundamentally, the insolvency process does not deprive the Applicant of the opportunity to raise any genuine challenge to the debt. Such a challenge may be

advanced in the context of an application to set aside the statutory demand or to oppose any winding-up petition. What is not permissible is for the Applicant to rely on the absence of formal registration, in and of itself, as a basis for resisting a debt which is otherwise undisputed.

35. I should also address the apparent asymmetry identified in the course of submissions, namely that enforcement measures such as garnishee proceedings require prior registration, whereas winding-up proceedings, which may have more far-reaching consequences, do not. This asymmetry is, in my opinion, more apparent than real. It reflects the fundamentally different nature of the remedies in question. Enforcement proceedings directly affect proprietary rights and therefore require formal recognition of the foreign award before such rights may be interfered with. Insolvency proceedings, by contrast, engage the Court's jurisdiction over the status of the company and the collective interests of creditors. The differing procedural requirements are a function of these distinct juridical purposes.

36. Drawing these strands together, I am satisfied that the absence of prior registration of the arbitral awards does not preclude the Respondent from relying upon them as evidence of a debt for the purposes of issuing a statutory demand and invoking the winding-up jurisdiction of the Court. The decisive question remains whether the debt is bona fide disputed on substantial grounds. On the facts of this case, it is not.

V Conclusion and Decision

37. Upon careful consideration of the evidence and the prevailing laws, I am unable to accept the Applicant's contention that the arbitral awards, in the absence of prior registration or recognition, are incapable of founding a statutory demand or supporting winding-up proceedings.

38. The Applicant's argument, while coherent, proceeds on a conflation of two distinct concepts; namely, the enforcement of an arbitral award and the reliance upon such an award as evidence of a debt. The statutory framework governing registration is directed at the former. It does not, in my judgment, operate as an absolute bar to the Court taking cognizance of a final and binding arbitral award in determining whether a debt exists for the purposes of insolvency.

39. In the present case, the arbitral awards have not been challenged before the courts of the seat of arbitration and are therefore final and binding as between the parties. No bona fide dispute on substantial grounds has been demonstrated. In those circumstances, the Respondent was entitled to rely upon the awards as evidence of indebtedness and to issue the statutory demand.

40. I am further satisfied that the Respondent's recourse to the insolvency regime does not amount to an abuse of process. The Court's supervisory jurisdiction remains available to prevent misuse, but no basis for such intervention has been made out on the facts of this case.

41. Accordingly, the Applicant has failed to establish any sufficient ground for the relief sought. The challenge to the statutory demand must therefore fail, and there is no basis upon which the Respondent should be restrained from proceeding with the winding-up process.

42. The Originating Summons is dismissed.

VI Orders

43. The Originating Summons is dismissed.

44. Any interim orders are hereby discharged.

45. The Applicant shall pay the Respondent's costs, to be taxed if not agreed.

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