HCCT 47/2015

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS

NO 47 OF 2015

IN THE MATTER of Enforcement of Arbitration Award dated 3 February 2015

and

IN THE MATTER of Section 87 of the Arbitration Ordinance (Cap 609)

and

IN THE MATTER of Order 73 rule 10(1) of the Rules of the High Court (Cap 4A)

BETWEEN

DANA SHIPPING AND TRADING SA Applicant

and

SINO CHANNEL ASIA LTD Respondent

AND

HCMP 1676/2016

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO 1676 OF 2016

IN THE MATTER of an application for interim relief pursuant to section 21M of the High Court Ordinance (Cap 4) and section 45 of the Arbitration Ordinance (Cap 609)

BETWEEN

DANA SHIPPING AND TRADING SA Plaintiff

and

SINO CHANNEL ASIA LTD Defendant

(Heard Together)

Before: Hon Mimmie Chan J in Chambers (open to public)

Date of Hearing: 7 July 2016

Date of Decision: 28 July 2016

D E C I S I O N

Background

1. The facts of this case are rather unusual and unfortunate. On 16 November 2015, I granted leave to Dana Shipping and Trading SA ("**Dana**") to enforce as a judgment of this court an arbitral award dated 3 February 2015 ("**Award**"), whereby Sino Channel Asia Ltd ("**Sino**") was ordered to pay to Dana the principal sum awarded of US$1.68 million, interest, and costs of the arbitration. The Award was made in an arbitration in London ("**Arbitration**") in respect of a dispute under a contract of affreightment between Dana and Sino as charterer. The Order of 16 November 2015 ("**Enforcement Order**") was, in the usual course, granted on Dana's ex parte application, with the usual provision that Sino may apply to set aside the Enforcement Order within 14 days after service of the Enforcement Order upon it.

2. On 27 November 2015, Sino applied to this court to set aside the Enforcement Order, on the ground that Sino had not been given proper notice of the appointment of the arbitrator or of the arbitral proceedings, and/or was unable to present its case.

3. On 8 January 2016, Dana applied for security to be furnished by Sino, pursuant to s 89 (5) of the Arbitration Ordinance Cap 609 ("**Ordinance**") and Order 73 rule 10A RHC, as a condition of the further conduct of Sino's setting aside application. The hearing of the security application took place on 8 March 2016.

4. In the interim of Sino's application to set aside the Enforcement Order, and the hearing of Dana's application for security,

Sino applied to the English court, being the supervisory court of the Arbitration proceedings, in January 2016 to appeal against and to set aside the Award, notwithstanding that the time period for such an application to be made had by then already expired and was approximately 6 months out of time. At the time of the hearing of the security application in Hong Kong, no explanation had been furnished by Sino in respect of the 6 months' delay, no date had been fixed for the hearing of Sino's setting aside application in London, and it was unknown when an outcome of the setting aside application was expected. Sino argued at the hearing of the security application in March 2016 that Dana's security application and Sino's application to set aside the Enforcement Order should simply be adjourned, pending the outcome of Sino's setting aside proceedings in the supervisory court.

5. In a Decision handed down on 14 March 2016, this court adjourned Sino's application to set aside the Enforcement Order for a period of 3 months, on condition that security should be provided by Sino, by payment into court of 60% of the amount of the Award within 21 days of handing down the Decision. This court further ordered that in the event that security was not duly provided within the period of 21 days, Sino's application to set aside the Enforcement Order was to be dismissed, and Dana was given liberty to enter judgment in terms of the Award ("**Security Orde**r"). The Security Order was duly drawn up and was sealed on 20 April 2016.

6. In short, Sino failed to make payment into court of the security ordered within the period of 21 days, which expired on 4 April

2016. As a result, the sanction imposed by the Security Order took effect, and Sino's application to set aside the Enforcement Order was dismissed. By way of enforcement pursuant to the Enforcement Order, Dana obtained from the court, inter alia, a Mareva injunction against Sino on 8 April 2016 ("**Mareva**").

7. On 1 April 2016, Sino applied for an extension of 21 days to put up security.

8. The hearing of Sino's application to set aside the Award took place in London on 20 April 2016. Judgment was reserved by the English court.

9. The application of Sino's application for extension of time to provide security pursuant to the Security Order was heard on 28 April 2016 (by which time the period of 21 days within which Sino had been ordered to make payment into court of the security required had expired). The order made by the court on Sino's application was to stay enforcement of the Enforcement Order up to 26 May 2016, for Sino to provide security ("**Stay Order**").

10. On 13 May 2016, the English court handed down its decision ("**English Judgment**"), whereby the Award was set aside under s 72 (1) of the English Arbitration Act 1996 ("**Act**") on the ground that the Award was made without jurisdiction and is of no effect. The English court pointed out in the judgment that although Sino's application was issued 11 months after the date of the Award, and was well beyond the statutory

time limit of 28 days for any application under s 67 (to challenge the Award on substantive jurisdiction) and/or s 68 (to challenge the Award for serious irregularity) of the Act, no time limit is stipulated under the Act for an application under s 72 (1), by a person alleged to be a party to arbitral proceedings but who has taken no part in the proceedings.

11. In purported reliance on the English Judgment, Sino applied to this court on 24 May 2016 for the following relief:

(1) to set aside the Enforcement Order;

(2) to set aside the Mareva;

(3) to set aside the Stay Order; and

(4) to seek the withdrawal of other enforcement proceedings issued by Dana, including garnishee proceedings and a statutory demand issued on 4 May 2016.

12. Dana opposes Sino's application. In gist, Dana's case is that Sino's application to set aside the Enforcement Order was already dismissed by this Court by the Security Order, and Sino is not entitled simply to make a second application to set aside the Award, when its application by Originating Summons issued on 27 November 2015 was already determined, and dismissed. The Hong Kong court retains a discretion in any event to enforce the Award, notwithstanding that the English court has set it aside. Dana claims that Sino is not acting in good faith and its application on 24 May 2016 is an abuse of process.

No automatic right to refusal of enforcement

13. Dana is correct, in its submission that Sino has no automatic right to resist enforcement of the Award, merely by virtue of the fact that the Award has, since the Enforcement Order, been set aside by the English Court.

14. As counsel for Dana also highlighted, it is indisputable that even where a ground is made out within the terms of s 89 of the Ordinance (including the ground under s 89(2) (f) (ii), that the award has been set aside by a competent authority of the country in which it was made), enforcement of the Award *may* (and not shall) be refused by the Hong Kong Court. The Hong Kong Court as the court of enforcement has a residual discretion to permit enforcement, although such discretion has to be exercised on recognized legal principles (*Hebei Import & Export Corp v Polytek Engineering Co Ltd* (1999) 2 HKCFAR 111). The enforcing court applies its own law in deciding whether or not to enforce the Award.

15. *Yukos Capiral Sarl v OJSC Oil Co Rosneft* [2014] 2 CLC 162 is clear authority that there is no principle of *ex nihilo nil fit* under English law. In *Yukos*, the awards made by arbitral tribunals with a Russian seat were annulled by the relevant supervisory court in Moscow. The claimant under the awards sought to enforce them in England and in Holland, where the defendant had assets. The defendant pleads that as a consequence of the set aside decisions made by the Russian supervisory court, the awards no longer exist in a legal sense (under the principle "nothing comes of nothing" or *ex nihilo nil fit*) and that the claimant is

precluded from asserting that the awards are valid and binding on the parties. The English court held that there is no *ex nihilo nil fit* principle which precludes the enforcement of the awards, and the court has power to enforce the awards at common law notwithstanding the decisions of the Russian courts to set aside the awards.

16. As the English court pointed out in *Yukos*, the awards are prima facie enforceable at common law, and the defence is based on the fact that the awards are not enforceable as a result of the set aside decisions made by the Russian courts. At paragraph 12 of his judgment, Simon J observed:

> "However, it is open to the claimant to argue that no effect should be given to the decisions of the Russian courts, based on conventional English conflict of law principles, for example on the basis that the judgments were obtained by fraud, that it would be contrary to public policy to enforce the judgments, or that the judgments were obtained in breach of the rules of natural justice, see for example Dicey Rules 50-52. The editors of Dicey (at para 16-148) suggest that this is the right analysis, albeit in the context of the New York Convention.
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> > 'In the absence of authority in England it is suggested that where [an award] has been set aside in the court of the seat, an arbitral award should be enforced only if recognition of the order setting aside the award would be impeachable for fraud or as being contrary to natural justice, or otherwise contrary to public policy, in accordance with Rules 50 to 52.'"

17. Both Dana and Sino seek to rely on *Astro Nusantara International BV & Ors v PT Ayunda Prima Mitra & Ors* HCCT 45/2010, 17 February 2015. As I have indicated in the course of the hearing, that decision is distinguishable from the present case. First, the arbitral awards in *Astro* were not set aside by the supervisory court in Singapore.

Rather, the Singapore court, as the enforcement court, refused enforcement of the awards on the ground that there was no valid arbitration agreement. The arbitral awards were never set aside by the Singapore court as the supervisory court, and they remained valid and created legally binding obligations on the defendant debtor to satisfy the awards. This distinction was highlighted in paragraph 129(3) of the decision of Chow J.

18. Secondly, the defendant in *Astro* sought extension of time, after a delay of 14 months, to set aside the orders granted by the Hong Kong court to enforce the awards. This application was heard for the first time by Chow J after the Singapore court refused enforcement. Prior to the setting aside of the awards, the defendant in *Astro* had never made any application to the Hong Kong court to resist enforcement. By contrast, Sino first applied to set aside the Enforcement Order in November 2015, which application was dismissed by the Security Order on 14 March 2016, before the second application to set aside the Enforcement Order was made in May 2016.

19. In *Yukos,* the English court pointed out that the key question was whether a foreign decision setting aside an award should be recognized in accordance with ordinary principles applying to the recognition of foreign judgments (the principles as set out in Rules 42 to 45 of Dicey). For example, a foreign judgment is impeachable on the ground that its recognition would be contrary to public policy, or if it is impeachable for fraud.

20. The *Yukos* approach was followed in *Malicorp Ltd v Government of the Arab Republic of Egypt* [2015] EWHC 361 (Comm), where Walker J succinctly summarized (para 21 of his judgment):

> "For present purposes I proceed on two assumptions. They are:
>
> (1) that the word "may" in s 103(2) of the 1996 Act confers a discretion on this court to enforce an award even though the award has been set aside by a decision ("the set aside decision") of a court constituting a competent authority within s 103(2)(f); and
>
> (2) it would not be right to exercise that discretion if, applying general principles of English private international law, the set aside decision was one which the court would give effect to."

21. Whereas most academic authorities agree with the general proposition that awards may be recognized outside the arbitral seat even if they have been annulled there, views differ as to the circumstances in which recognition of an annulled award is appropriate. In Professor Gary Born's *International Commercial Arbitration* (2nd edition), the analytical approaches were summarized as follows (at p 3636):

> "First, some commentators urge that an annulled award may, and should, be recognized if it was annulled based upon the arbitral seat's local standards....
>
> Second, some commentators have reasoned that an annulled award should be recognized based simply on the criteria of Article V (1)'s first four paragraphs, without regard to the award's annulment in the arbitral seat....
>
> Third, some commentators have suggested that the decisions of the courts of the arbitral seat should be treated like some other foreign judgments, given effect when they satisfy standards for recognition of foreign judgments. Under this analysis, an annulled award would be denied recognition if the annulment decision was itself entitled to recognition (or, alternatively, if

> the court in the enforcement forum independently found one of the Article V grounds satisfied).
>
> Fourth, other commentators have suggested that annulled awards should be denied recognition except where the parties have agreed to waive any judicial review of the award (or, in some authorities' view, where the judicial proceedings in the arbitral seat were procedurally flawed)...."

22. At page 3638, Professor Born considered that the better view can be identified, "based on effectuating the parties' agreement to arbitrate and the Convention's requirement that such agreements be recognized":

> "Under this approach, Contracting States should deny effect to annulment decisions in the arbitral seat: (a) which are based on local public policies or non-arbitrability rules in the annulment forum, (b) which are based on judicial review of the merits of the arbitrators' substantive decision or on other grounds not included in Articles V (1) (a) to (d) of the Convention, or (c) which failed to satisfy generally-applicable standards for recognition of foreign judgments (eg procedurally-fair, regular procedures before an impartial decision-maker). Where an annulment decision is not given effect, the recognition court should independently apply the first four subparagraphs of Article V (1) (eg Articles V (1) (a) to (d) to determine whether or not to recognize the underlying award."

23. In *Dallah Co v Ministry of Religious Affairs of Pakistan* [2011] 1 AC 763, Lord Mance made the following observation on Article V (1) of the Convention (at paragraph 67 of his judgment):

> "In *Dardana Ltd v Yukos Oil Co* [2002] 1 All ER (Comm) 819 I suggested that the word "may" could not have a purely discretionary force and must in this context have been designed to enable the court to consider other circumstances, which might on some recognizable legal principle affect the prima facie right to have enforcement or recognition refused... I also suggested as possible examples of such circumstances another agreement or estoppel."

24. Lord Collins also made useful observations on the court's discretion, and how it should be exercised, in paragraphs 126 to 128 of his judgment:

> "The court before which recognition or enforcement is sought has a discretion to recognize or enforce even if the party resisting recognition or enforcement has proved that there was no valid arbitration agreement.... Article V (1) (a) of the New York Convention (and section 103 (2) (b) of the 1996 Act) provides: "Recognition and enforcement of the award may be refused..."...
>
> Since section 103 (2) (b) gives effect to an international convention, the discretion should be applied in a way which gives effect to the principles behind the Convention. One example suggested by van den Berg, op cit, p 265, is where the party resisting enforcement is estopped from challenge, which was adopted by Mance LJ in *Dardona Ltd v Yukos Oil* [2002] 2 Lloyd's Rep 326, para 8. But, as Mance LJ emphasized at para 18, there is no arbitrary discretion: the use of the word 'may' was designed to enable the court to consider other circumstances, which might on some recognizable legal principle affect the prima facie right to have an award set aside arising in the cases listed in section 103 (2). See also *Kanoria v Guinness* [2006] 1 Lloyd's Rep 701, para 25, per Lord Phillips CJ. Another possible example would be where there has been no prejudice to the party resisting enforcement: *China Agribusiness Development Corp v Balli Trading* [1998] 2 Lloyd's Rep 76. But it is not easy to see how that could apply to a case where a party had not aceded to an arbitration agreement.
>
> There may, of course, in theory be cases where the English court would refuse to apply a foreign law which makes the arbitration agreement invalid where the foreign law outrages its sense of justice or decency (Scarman J's phrase in *In the Estate of Fuld, decd (No 3)* [1968] P 675, 698), for example where it is discriminatory or arbitrary. The application of public policy in the New York Convention (article V (2) (b)) and the 1996 act (section 103 (3)) is limited to the non-recognition or enforcement of foreign awards. But the combination of (a) the use of public policy to refuse to recognize the application of the foreign law and (b) the discretion to recognize or enforce an award even if the arbitration agreement is invalid under the applicable law could be used to avoid the application of a foreign law which is contrary to the court' s sense of justice."

25. In *China Nanhai Oil Joined Service Corporation Shenzhen Brunch v Gee Tai Holdings Co Ltd* [1995] 2 HKLR 215, the Hong Kong court enforced an arbitral award notwithstanding the court's finding that the tribunal did not have jurisdiction. Referring to the enforcing court's residual discretion, Kaplan J observed:

> "I think there is much force in Dr van den Berg's point that even if a ground of opposition is proved, there is still a residual discretion left in the enforcing court to enforce nonetheless. This shows that the grounds of opposition are not to be inflexibly applied. The residual discretion enables the enforcing court to achieve a just result in all the circumstances although I accept that in many cases where a ground of opposition is established, the discretion is unlikely to be exercised in favor of enforcement. If the enforcing court was obliged to refuse enforcement in the event of the establishing of a ground of opposition, I believe that it would be far harder to import the doctrine of estoppel." (Emphasis added)

26. In each of the cases of *China Nanhai* and *Hebei Import & Export Corp v Polytech Engineering Co Ltd*, the Hong Kong court exercised its discretion to enforce the arbitral awards, on the ground that the defendant had not acted in accordance with its obligation of good faith.

27. The English court set aside the Award under s 72 (1) of the Act, on the ground that the arbitral tribunal was not properly constituted and the Award was made without jurisdiction, as notice of arbitration had not been served on anyone who had the authority to receive the notice of arbitration on behalf of Sino. This is, in essence, equivalent to the ground set out in Article V (1) (d) of the Convention (the composition of the arbitral authority not in accordance with the agreement of the parties or the law of the country where the arbitration took place). There is no

evidence or suggestion that the setting aside proceedings in the English court were in any way procedurally unfair, or irregular, or that the decision maker was not impartial, or that it would in any way be contrary to the court's sense of justice or public policy to recognize the English Judgment, which should be given recognition. The fact that Dana is seeking leave to appeal against the English Judgment does not render it ineffective.

28. Having considered the relevant authorities, I conclude that the English Judgment is a decision to which this court should give effect.

Can the court entertain a 2nd application to set aside the Enforcement Order?

29. The further ground raised by Dana in opposing Sino's application to set aside the Enforcement Order is that this court had already determined, and dismissed, Sino's application to set aside the Enforcement Order. Counsel for Dana argued that there are no grounds established which would entitle Sino to reopen the issue of whether the Enforcement Order should be set aside, such that Sino's application on 24 May 2016 is an abuse of process, and should be dismissed on that basis.

30. Counsel for Dana referred to the decision of DHCJ Marlene Ng in *Wong Pak Sum v Hong Kong Furniture & Decoration Trade Association Limited* HCMP 2946/2013, on *res judicata* and issue estoppel raised in interlocutory decisions. In that case, the learned judge referred

to *Chu Hung Ching v Chan Kam Ming & Ors* [2001] HKC 396, and set out a summary of the Court of Appeal's decision:

> "In *Chu Hung Ching v Chan Kam Ming & Ors*, the Court of Appeal accepted that the rules relating to *res judicata* and issue estoppel in interlocutory matters are less stringent than those generally applicable in that when the same issue is raised in a subsequent interlocutory application in the same action, it will not be unjust and unreasonable to allow the second application to be heard, for what is involved is not re-litigation of an identical issue of law or fact:
>
> (a) if the ruling of the first application was not based on the merits of the issue but on a technical objection;
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> (b) if upon the first application the applicant had failed to prove essential facts from mistake or inadvertence;
>
> (c) if there is new evidence that seriously justifies reconsideration of the issue;
>
> (d) if there is a material change of circumstances of a non-evidentiary nature."

31. It is also helpful to bear in mind the observations made by Kwan J (as Her Ladyship then was) in *Re Chime Corp Ltd (No 2)* [2003] 2 HKLRD 945, where she highlighted in paragraph 23 of the judgment:

> "I do not find it particularly helpful to categorize the determination as interlocutory or procedural. Whether the determination on an interlocutory application is capable of giving rise to issue estoppel would depend on the nature and substance of the ruling."

Earlier on in her judgment, Her Ladyship further pointed out (in paragraph 18) that:

> "An issue estoppel arises in the situation where a party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. The other conditions are the same as in a cause of action estoppel, regarding the identity of parties and the finality of the judicial

> decision said to create the estoppel (see Halsbury's Laws of England (4th ed) Vol 16, para 977)." (Emphasis added)

32. The Enforcement Order was first made ex parte, without the issue of the constitution of the tribunal or the alleged lack of notice on Sino, having been raised. Sino's application to set aside the Enforcement Order was dismissed, as a result of the sanction imposed in the Security Order. The Security Order determined the merits of Dana's application for security, as a condition for Sino's further conduct of its application to set aside the Enforcement Order. In ordering security to be furnished, the court determined, on a preliminary basis, the merits of Sino's application to set aside the Enforcement Order. It was not a final determination of the application to set aside the Enforcement Order. I do not consider that *issue estoppel* or res judicata applies in relation to the dismissal of Sino's application to set aside the Enforcement Order.

33. In any event, I accept that the English Judgment constitutes a material change of circumstance and/or new evidence which seriously justifies reconsideration of the Enforcement Decision by the Hong Kong court.

34. On behalf of Dana, Mr Alder argued that Sino's application to the English court to set aside the Award was nothing new, as it had been envisaged by the time of the hearing before this court, on 8 March 2016, of Dana's application for security.

35. Sino's application to the English court may not have been new evidence or any change of circumstance, but the making/handing

down of the English Judgment in May 2016 was a new development and a material change of circumstance. As DHCJ Marlene Ng pointed out in *Wong Pak Sum v Hong Kong Furniture & Decoration Trade Association Limited*, the touchstone for the application of the doctrine of *res judicata* or issue estoppel in the context of interlocutory applications is "what is just and reasonable". In my view, it is just and reasonable to reconsider the question of whether Sino should have leave to set aside the Enforcement Order, and whether the Award should be enforced, when the supervisory court in England has decided to set aside the Award on the ground that the Tribunal was not properly constituted and had no jurisdiction under English law, which is the law of the country where the arbitration took place.

Should the court enforce the Award?

36. Having decided that this court has a discretion whether to enforce the Award, and that the court can reconsider the Enforcement Order notwithstanding its earlier Security Order which embodies the sanction to dismiss Sino's application to set aside the Enforcement Order, the key question is whether this court should exercise its discretion to enforce the Award, or set the Enforcement Order aside, in the circumstances of this case.

37. For the reasons set out in paragraph 32 above, I do not consider that Sino's application made in May 2016, to set aside the Enforcement Order, is an abuse of process by virtue of its being an application made after the Security Order and the sanction taking effect

thereunder. Sino's said application also seeks to set aside the Security Order, and this is reasonably arguable and not without basis, if the Enforcement Order is to be set aside and enforcement of the Award refused.

38. It is true that the grounds for the setting aside application were not set out in Sino's Summons issued on 24 May 2016. This court held in *KB v S* HCCT 13/2015, 15 September 2015 that this constitutes an abuse of process. The precise grounds have not been clearly identified by Sino in the course of the submissions made by counsel at the hearing. The application was simply made on the basis that as the English Judgment was issued, the Enforcement Order and all subsequent orders should be set aside. For the reasons referred to in the preceding paragraphs of this Decision, there is no automatic right, and no principle of *ex nihilo nil fit.*

39. On behalf of Dana, Mr Alder argued that Sino had totally ignored the Security Order and the time imposed thereunder for Sino to provide security, and had failed to give any satisfactory explanation as to why it could not provide such security, whilst at the same time being able to fund the proceedings before the English court. It was argued that this constitutes contempt of the orders made by this court, and that Sino was clearly not acting in good faith. Dana claims that Sino's application to extend time for providing security was continuation of the delaying tactics employed from its initial application to set aside the Enforcement Order.

40. The only explanation offered by Sino was in the 12th affidavit of Mr Jung made on 26 April 2016, and filed in support of Sino's application for an extension of time to put up security. Jung claimed that apart from trying to recover the amount due by Beijing XCty to Sino, he had contacted several business partners, trying to raise funds for the purposes of putting up security. By then, the 21 days specified in the Security Order had expired, and the hearing had taken place before the English court.

41. Whilst I agree that Sino was in breach of the Security Order, in all the circumstances of this case, including the amount of the security ordered, the timing of the English proceedings, the grounds on which the English court set aside the Award (which affirmed that Sino did not have valid notice of the Arbitration), I am unable to say that Sino's conduct in these proceedings is sufficiently egregious to demonstrate bad faith, to justify the court's exercise of its discretion to enforce the Award notwithstanding the English Judgment (which I have concluded is one to which this court should give effect).

42. I will however consider Sino's conduct as relevant to the question of costs. In the initial application to set aside the Enforcement Order, Sino never explained in detail the basis of its application to the English court or the precise grounds relied upon by it. Nor did it ever address the question of its delay in its application to the English court, and the claim that such application was out of time. This was notwithstanding the fact that the merits of its application to the supervisory court to set aside the Award was relevant to the Hong Kong

court's determination of Dana's application for security, and Sino's own application to set aside the Enforcement Order. The matters set out in paragraph 38 are also taken into account. In my view, Sino's overall conduct justifies the exercise of my discretion to decline to award in its favor the costs of these proceedings to set aside the Enforcement Order, notwithstanding my decision to refuse enforcement of the Award.

Orders made

43. I accede to Sino's application to set aside the Enforcement Order, and decline to enforce the Award. Since the Award is not to be enforced, it follows that the Mareva and the Security Order will be set aside. I also grant Sino's application (paragraphs 5 and 6 of its summons of 24 May 2016), that the statutory demand and the garnishee proceedings be withdrawn.

44. The English Judgment stands as a binding decision unless and until it is set aside on appeal. I decline to further adjourn the application to set aside the Enforcement Order pending the outcome of Dana's application for leave to appeal against the English Judgment. The status of an award should not be left uncertain indefinitely, pending challenges in the court.

45. I order that each party is to bear its own costs of Sino's application by its summons of 24 May 2016 and by its summons of 25 May 2016 for stay of execution, and the costs of the entire proceedings, including the costs of the earlier summons of 27 November 2015 and the

costs reserved at the hearing on 2 June 2016. The earlier costs orders made are varied to such extent only.

46. A separate decision will be handed down in relation to Dana's application for a new Mareva injunction in aid of its intended arbitration to be commenced afresh.

(Mimmie Chan)
Judge of the Court of First Instance
High Court

Mr Edward Alder, instructed by Tsui & Co, for the applicant
(in HCCT 47/2015) & for the plaintiff (in HCMP 1676/2016)

Mr Minju Kim, instructed by Bryan Cave, for the respondent
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