

Worldwide Freezing Orders in Support of Foreign-Seated Arbitrations – Court of Appeal Upholds US\$330m Mareva Injunction

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Introduction

In *KBP Biosciences Pte Ltd and another v Novo Nordisk A/S* [2026] SGCA(I) 2, the Singapore Court of Appeal upheld a worldwide freezing order granted by the Singapore International Commercial Court ("**SICC**") under section 12A of the International Arbitration Act 1994 (2020 Rev Ed) ("**IAA**") in support of a New York-seated International Chamber of Commerce ("**ICC**") arbitration. The appeal raised important questions concerning the Singapore courts' power to grant interim relief in aid of foreign-seated arbitrations and the law on Mareva injunctions in Singapore.

In this update, we highlight the key points of the Court of Appeal's decision and its implications for applicants seeking interim relief in support of international arbitrations.

Brief Facts

KBP Biosciences Pte Ltd ("**KBP**"), a company founded by one Dr Huang, developed Ocedurenone, a potential new drug to control blood pressure and provide kidney protection. The development involved clinical trials conducted in phases at test sites around the world.

Novo Nordisk A/S ("**Novo**") became interested in acquiring Ocedurenone. KBP set up a data room comprising information concerning Ocedurenone, including the relevant clinical trial data, for Novo to

conduct due diligence. The parties executed an Asset Purchase Agreement ("**APA**"), with Novo paying US\$700m to KBP and depositing US\$100m in escrow.

Post-closing, Phase 3 trial results revealed that Ocedurenone lacked efficacy and fulfilled the criteria set for futility. Novo then announced the failure of Phase 3 trials and an impairment loss of over US\$800m. Investigations by Novo revealed data anomalies, particularly at the Bulgarian test site.

Of the US\$700m paid to KBP on acquisition, the majority was rapidly transferred from KBP to its holding company. Substantial sums were routed to external lenders, consultants, and employees. US\$30m was paid directly to Dr Huang as bonus, and approximately US\$300m was paid through Dr Huang's corporate vehicles to his personal accounts.

Pursuant to section 12A of the IAA, Novo filed an *ex parte* application and succeeded in obtaining a worldwide freezing order against KBP and Dr Huang, in support of a New York-seated ICC arbitration against the appellants.

Issues Before the Court of Appeal

The SICC granted Novo's *ex parte* application for the worldwide freezing order against KBP and Dr Huang. KBP's subsequent application to set aside the freezing order was dismissed, and KBP filed the present appeal to the Court of Appeal.

The Court of Appeal had to determine whether the SICC judge's reasoning to uphold the worldwide freezing order was valid on the following grounds:

1. Whether there was a good arguable case against KBP and Dr Huang;
2. Whether there was a real risk of dissipation of assets;
3. Whether Novo satisfied the requirement of full and frank disclosure for *ex parte* orders; and
4. Whether section 12A of the IAA empowered the Singapore Courts to order interim relief in support of the parties' New York-seated arbitration.

Decision of the Court of Appeal

The Court of Appeal dismissed KBP's appeal against the worldwide freezing order on all four grounds raised. In doing so, and as shall be elaborated further below, the Court of Appeal provided important guidance on the following:

1. The standard of "*good arguable case*" for a freezing order requires only that allegations are substantiated and have substance.
2. An allegation of dishonesty does not automatically equate to a risk of dissipation; the alleged dishonesty must bear on the risk of dissipation.
3. Failure to make full and frank disclosure does not automatically result in discharge of a freezing order if it is not sufficiently material.

4. Section 12A of the IAA empowers the Singapore courts to grant interim relief in support of foreign-seated arbitrations where the case is one of urgency and the arbitral tribunal is unable to act effectively for the time being.

Good Arguable Case

The Court of Appeal affirmed that a "*good arguable case*", which an applicant for an interim freezing order must demonstrate, does not require a certainty of success, but rather a case that is "*substantial*" and more than barely capable of serious argument. All that Novo had to show about its allegations that KBP had fraudulently failed to disclose material information about Ocedurenone in breach of the APA was that they were substantiated and had substance.

The Court of Appeal rejected KBP's primary defence that it had disclosed sufficient raw data in the data room for Novo to discover the anomalies for itself, finding that simply supplying raw data without highlighting concerns about the Bulgarian site did not amount to full transparency. KBP's failure to disclose the Bulgarian site anomalies, along with related analysis results, plainly established a good arguable case that KBP and Dr Huang deliberately withheld objectively material information.

Importantly, the Court of Appeal clarified that there is no rule of law which prevents a court from reaching a conclusion that there is a good arguable case as to fraud merely because the allegation is contested. The merits of Novo's claims remain for final adjudication in the arbitration, independent of and unaffected by the Court's findings on the interlocutory standard.

Risk of Dissipation

The Court of Appeal affirmed that an allegation of commercial dishonesty does not automatically equate to a risk of asset dissipation. The applicant must establish not only a good arguable case of dishonesty, but also that the alleged dishonesty is of a nature that has a real or material bearing on the risk of dissipation.

The Court of Appeal found that the judge had properly relied on independent evidence of unjustified asset transfers, rather than merely inferring risk of dissipation from the allegation of dishonesty. The evidence on which the judge relied included:

1. Speed and scale of transfers of the US\$700m post-closing;
2. Payments to Dr Huang without contractual basis;
3. Anticipation of potential claims from Novo; and
4. The unjustified nature of transfers to Dr Huang, evidencing a risk that he might transfer assets to prevent recovery of claims.

Full and frank disclosure

The principles of full and frank disclosure require a claimant making an *ex parte* application to disclose all material facts to the court. However, failure to make full and frank disclosure does not automatically result in the termination of an order made by the Court. The Court retains a discretion to continue the order or impose new terms, having regard to matters such as the importance of the undisclosed fact, whether the non-disclosure was innocent, and the overall circumstances.

In this case, the SICC judge had considered the alleged non-disclosures and found that they were not material, including the allegations that Novo had failed to disclose: (i) that KBP had provided Novo with raw data of Phase 2 trials; (ii) KBP's position on efficacy at other test sites; and (iii) findings of no fraud at the Bulgarian site.

The Court of Appeal concluded that the judge was entitled to reach the conclusions he did on each of these heads. KBP had not shown that the judge's conclusions were wrong or unreasonable, and accordingly, the appeal on this ground failed.

Section 12A of the IAA

The Court of Appeal affirmed that section 12A of the IAA allows Singapore courts to offer a wide range of interim reliefs to support international arbitrations, regardless of where they are seated. Singapore courts can act without the arbitral tribunal's consent if an order is needed urgently to preserve assets or evidence, provided the arbitral tribunal is currently unable to act effectively (pursuant to section 12A(6) of the IAA).

On the question of urgency, the Court of Appeal agreed with the judge that a delay in filing does not necessarily negate urgency. The Court of Appeal held that the alleged delay in applying for the freezing order on the part of Novo could not be shown and that, more fundamentally, the combination of the risk of dissipation and the limitations on the powers of the emergency arbitrator justified the finding of urgency.

On the question of whether the arbitral tribunal was "*unable to act effectively*", the Court of Appeal held that section 12A may be invoked where: (i) a party seeks interim relief against a non-party to the arbitration agreement who will not clearly be bound by any order made by the emergency arbitrator (as was the case with Dr Huang, who was not a signatory to the APA); and (ii) interim relief is sought without giving prior notice to the respondent because that party may then act to defeat the purpose of the relief. Both conditions were present in this case. The ICC emergency arbitrator could not grant relief on an *ex parte* basis, and could not bind third parties such as banks.

Accordingly, the Court of Appeal held that the judge did not err in finding that he had jurisdiction to make orders under section 12A of the IAA. It was additionally a matter for his discretion whether to make the orders sought, and the appellants had not shown that his exercise of discretion was plainly wrong.

Concluding Remarks

The Court of Appeal's dismissal of KBP's appeal affirms the robustness of the Singapore courts' jurisdiction to grant worldwide freezing orders in support of foreign-seated arbitrations, and reinforces important principles governing the grant of such relief.

Of particular significance is the Court of Appeal's treatment of the risk of dissipation requirement, illustrating how the requirement that dishonesty must "*bear on*" the risk of dissipation is to be applied in practice. The Court of Appeal clarified that the judge had not inferred the risk of dissipation from the mere allegation of dishonesty, but had instead relied on independent evidence of unjustified transfers of the purchase consideration through layered corporate structures.

The decision underscores several practical points.

1. A lawful payment is not necessarily a justified one, and may still be characterised as dissipative where the surrounding circumstances suggest that the purpose of the transfer is to place assets beyond a claimant's reach.
2. A respondent's retention of substantial assets within the jurisdiction does not necessarily negate a finding of dissipation risk, since the court's focus is on unjustified dealings with assets and the potential for future dissipation.
3. The absence of any contractual obligation or commercial justification for transfers in question weighed heavily against the appellants.

For applicants seeking freezing orders in support of foreign-seated arbitrations, this decision also provides welcome clarity on the application of section 12A of the IAA and how it operates where the option of emergency arbitration may be available. The decision confirms that the critical question is whether the urgency of the situation justified the application, not whether the applicant acted at the earliest possible opportunity.

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