

Sanjay Mohan

Kuala Lumpur Malaysia

Overview

Sanjay specializes in construction and commercial dispute resolution. He has been involved in over 50 arbitrations both domestically and internationally. He regularly appears in the High Court of Malaya, the Court of Appeal and the Federal Court dealing particularly with construction related issues. Since the introduction of the Construction Industry and Payment Adjudication Act he has been involved in more than 30 adjudications.

Sanjay was called to the Malaysian Bar in 1995 after graduating from the University of Warwick with a second class upper degree in law. After completing the Malaysian Bar examinations, Sanjay worked in a number of leading law firms in Malaysia until 1.1.2019 when he set up a boutique litigation and arbitration law firm.

Reported decisions

Sanjay has been involved in a number of landmark decisions. Recent examples include:-

- *Exceljade Sdn Bhd v Bauer (M) Sdn Bhd* which addressed the issue of the test on which an appeal pursuant to Section 42 of the Arbitration Act 2005 can be pursued;
- *Kejuruteraan Bintai Kindenko Sdn Bhd v Nam Fatt Construction Sdn Bhd* where the Court of Appeal accepted unconscionable conduct as a ground for granting an injunction in relation to a demand on a performance bond;
- *UDA Holdings Bhd v Bisraya Construction Sdn Bhd* which dealt with the retrospective application of the Construction Industry Payment Adjudication Act 2015;
- *Pertama Makmur Sdn Bhd v Hong Leong MSIG Takaful Sdn Bhd* which addressed the refusal of an insurance company to make payment to a construction company for damages arising from a collapse.

Arbitration

Sanjay has significant experience in arbitration and has appeared as counsel in more than 50 arbitrations. In addition to the numerous domestic arbitrations, he has represented parties in ICC arbitrations in Singapore, Dubai, Bangkok and Kuala Lumpur, acted as counsel in more than 10 arbitrations in Singapore involving the SIAC rules and in ad hoc arbitrations in Australia and London.

The issues that Sanjay had to deal with are extremely wide ranging, and have had to work with experts on delay, costs, financial issues and technical issues.

General civil and commercial litigation

In addition to his arbitration practice, Sanjay regularly appears in the High Court and the Appellant Courts. He is appointed as counsel in complicated disputes pertaining to trust, wills and general commercial disputes.

Sanjay is currently acting on a number of significant land and environmental law disputes. He recently successfully defended and pursued a claim for trespass and breach of environmental law regulations for a subsidiary of Khazanah Holdings. He is also currently acting for MBSB in a dispute in excess of RM 1 billion concerning a piece of land in Johor Baru and breach of a joint venture agreement. In this case, there have been various allegations of fraud and conspiracy to defraud.

Specialization - Construction

Sanjay's recent appointments include representing the main contractor in the KLIA2 airport dispute, 2 power plant disputes and 4 disputes involving the mass rapid transport project. He has significant experience in relation to construction disputes ranging from airports to power plants.

Airports

Represented the main contractor involved in the construction of the KLIA2 airport in a successful mediation where our client recovered a significant amount of monies for work done, variations and prolongation costs.

Hospitals

Sanjay is currently representing a joint venture party in a number of disputes they have with their main contractor and subcontractors. The disputes relate to issues of value engineering, failure on the part of consultants to properly manage the project, costs overruns and potential delay claims.

He had also acted for the main contractor in a dispute in relation to the construction of the Price Court Hospital, Kuala Lumpur. Sanjay represented the main contractor in order to secure an injunction for the performance bond and subsequently in the ensuing mediation.

Boiler and Urea Plants

Sanjay represented a Malaysian company in a claim for RM 80 million in an ICC arbitration held in Singapore and Bangkok. The dispute concerned the construction and supply of a boiler for a plant located in Thailand. This highly complex dispute required the involvement of Thai law and experts in relation to construction of boilers.

He also was involved in 2 separate arbitrations concerning the construction of a urea plant located in Sarawak, Malaysia. Sanjay represented a subsidiary of Petronas in order to defend claims brought against them arising for issues of delay caused by a landslide and the discovery of hard rock on the site.

Power Plants

Successfully defended a subsidiary of TNB in a RM 50 million in a suit filed in the High Court in relation to a power plant project located in Malaysia. He is currently representing TNB in 2 power plant disputes where the amount in dispute in each case is in excess of RM 100 million.

Mass Rapid Transport

Sanjay successfully represented the contractor in a dispute in relation to the construction of the mass rapid transport project in order to prepare a claim to recover acceleration cost, loss and expense as well as variations amounting to sums in excess of RM 100 million.

He is currently acting for a nominated subcontractor to pursue claims in excess of RM 200 million against the main contractor in relation to the mass rapid transport project in Kuala Lumpur arising from delays to the project caused by delayed access to the site.

Buildings

Sanjay represented an international French Contractor in an international arbitration in Singapore. The dispute pertained to the failure of the main contractor to make payment to the subcontractor for work done in relation to a high rise tower building located in Kuala Lumpur.

He is currently representing a subsidiary of GLC in a dispute in relation to the construction of a university in Malaysia. An interesting feature in this dispute is the allegation of bribery made by the contractor against the consultant and the issue of wrongful termination.

He is currently defending a claim for over RM 35 million arising from the construction of a university campus in Malaysia. The dispute relates to failure on the part of the main contractor to carry out and complete the work timeously resulting in significant costs overrun.

Highway

He is currently representing a Malaysian contractor in a claim in excess of RM 40 million against the Government of Malaysia. The dispute is in relation to the construction of a highway located in the east coast of Malaysia. The fundamental issue in this dispute relates to the application of the price fluctuation mechanism found in the contract and the acts of prevention by the Government.

Port

Represented the owner of a port located in Sabah in a claim brought by the main contractor for the sum of RM 40 million. The dispute involves technical issues pertaining to the reclamation of land in order to construct the port facilities and further claims for variation and prolongation costs. The sums awarded to the main contractor in arbitration was a substantially less than the amount claimed.

Bridges

Sanjay acted for the main contractor in a series of 3 arbitrations in claims brought by the subcontractor for a total sum of RM 87 million. The dispute pertained to the construction of the Penang Bridge. The issue related to the use of marine piles and whether the piles had been driven to suitable lengths.

General

Sanjay is also on the KLRC panel of arbitrators and he regularly speaks on issues of construction law and arbitration.

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