

ARBITRATION – Arbitration award – Foreign award – Recognition and enforcement of award –
 Registration of award – Dispositive portion set out the decision and reliefs granted –
 Whether the entire arbitration award ought to be registered for recognition and enforcement of an award –
 Arbitration Act 2005, section 38

Siemens Industry Software GMBH & Co. KG (Germany) v Jacob and Toralf Consulting Sdn Bhd & Others
 [2020] 1 LNS 249, Federal Court

BACKGROUND The appellant, a Germany-based company incorporated under the German laws entered into a settlement agreement with the five respondents in this suit. They had agreed to submit any disputes in relation to the settlement agreement for arbitration. Notwithstanding such agreement to arbitrate, the respondents filed a suit before the High Court alleging that there was fraudulent misrepresentation by the appellant and/or its representative to induce the respondents to enter into the settlement agreement. However, the suit before the High Court was stayed pursuant to s.10 of the Arbitration Act 2005 (“AA”) due to the existence of the arbitration agreement. The appellant then commenced arbitration in Singapore. An arbitration award (“Award”) was delivered by the arbitral tribunal accordingly, where the orders and reliefs were set out in the dispositive portion.

All respondents, except the fifth respondent, filed an Originating Summons (“OS”) in the High Court of Malaya at Kuala Lumpur to register the entire Award pursuant to s.38 of the AA to enforce the Award. The appellant proceeded to oppose the OS on the ground that only the dispositive portion of the Award was capable of being registered as a High Court judgment without filing a setting aside application in accordance with s.39 of the AA. The respondents, on the other hand, argued that s.39 of the AA was the only ground to challenge the registration and no exceptions were found in s.39 of the AA to permit the registration of the dispositive portion of the Award as a High Court judgment.

At the High Court, the Judicial Commissioner agreed with the appellant and held that only the dispositive portion of the Award was capable of being registered and enforced as a High Court judgment. However, the High Court decision was overturned by the Court of Appeal subsequently. Aggrieved, the appellant appealed to the Federal Court.

ISSUE The question of law was whether the recognition and enforcement of an arbitration award by way of entry as a High Court judgment ought to relate only to the disposition of the said award and not the entire award for the purposes of an application made under s.38 of AA and Order 69 rule 8 of the Rules of Court 2012.

DECISION In allowing the appeal unanimously and answering the question of law in affirmative, the Federal Court held only the dispositive portion, which contains the decision delivered by the arbitral tribunal need to be registered for purposes of recognition and enforcement of the Award as a High Court judgment, after considering the definition of ‘award’ in s.2 of AA read together with s.38 of AA.

The Federal Court allowed the appeal on, *inter alia*, the following grounds:

- (a) The operative word in s.38 of AA, which is “in terms of the award” indicates not the entire award but the dispositive portion that contains the decision of an award only. Hence, the material part of the award which is capable of being registered to be recognised and enforced as a judgment is the dispositive portion of the award on its own.
- (b) The law and practice for enforcement of judgment delivered by civil courts only require the successful party in litigation to file order or judgment which covers only the reliefs or orders granted. A similar approach is adopted for the enforcement of judgment delivered by foreign courts pursuant to the Reciprocal Enforcement of Judgments Act 1958.
- (c) The confidentiality of the arbitration proceedings would be undermined if the entire award is registered.