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THE JONATHAN YOON MIARB DEBATE SERIES

THURSDAY, 28 JUNE 2018

6.00 PM

SEMINAR ROOM, AIAC

DEBATE MOTION:

“This House believes that the continuing duty of disclosure of an arbitrator under section 14(2) of the Arbitration Act 2005 (as interpreted in MMC Engineering Group Bhd. v. Wayss & Freytag (M) Sdn. Bhd. [2015] MLJU 477) is too limited.”



MR RANJIT SINGH

&

**MR NAHENDRAN NAVARATNAM
(FOR THE MOTION)**

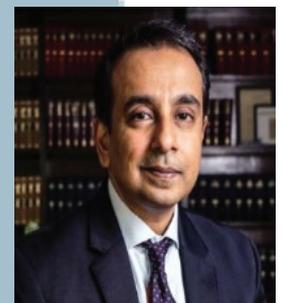


VS.

MR YATISWARA RAMACHANDRAN

&

**DATO' MALIK IMTIAZ SARWAR
(AGAINST THE MOTION)**



*Cocktail Reception from 7.30 pm following the Debate

BACKGROUND OF THE DEBATE MOTION

- SECTION 14(2) OF THE ARBITRATION ACT 2005 (“THE ACT”) PROVIDES THAT “*AN ARBITRATOR SHALL, WITHOUT DELAY, FROM THE TIME OF APPOINTMENT AND THROUGHOUT THE ARBITRAL PROCEEDINGS, DISCLOSE ANY CIRCUMSTANCES REFERRED TO IN SUBSECTION (1) TO THE PARTIES UNLESS THE PARTIES HAVE ALREADY BEEN INFORMED OF SUCH CIRCUMSTANCES BY THE ARBITRATOR.*”
- SECTION 14(1) OF THE ACT REQUIRES AN ARBITRATOR TO “*DISCLOSE ANY CIRCUMSTANCES LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO THAT PERSON’S IMPARTIALITY OR INDEPENDENCE*”.
- AN ARBITRATOR’S DUTY OF DISCLOSURE UNDER SECTION 14(2) WAS IN ISSUE IN THE HIGH COURT CASE OF *MMC ENGINEERING GROUP BHD. vs. WAYSS & FREYTAG (M) SDN. BHD. [2015] MLJU 777.*
- THE CASE CONCERNED AN APPLICATION TO SET ASIDE AN ARBITRAL AWARD UNDER SECTION 37(1)(B)(II) AND 37(2)(A) OF THE ACT. THE IMPUGNED AWARD WAS CHALLENGED ON THE GROUNDS THAT IT WAS IN CONFLICT WITH PUBLIC POLICY. THE COMPLAINTS WERE AGAINST ONE OF THE ARBITRATORS WHO SAT IN THE THREE-MEMBER PANEL. IT WAS ARGUED THAT THE ARBITRATOR HAD IMPROPERLY FAILED TO DISCLOSE THAT ALLEGATIONS OF CORRUPT PRACTICES HAD BEEN PROFFERED AGAINST HIM IN RESPECT OF SEPARATE ARBITRAL PROCEEDINGS.
- THE HIGH COURT DISMISSED THE SECTION 37 APPLICATION. IT WAS HELD THAT THE ALLEGATIONS OF CORRUPTION AGAINST THE ARBITRATOR WERE NOT PART OF THE MATTERS THAT WARRANTED DISCLOSURE UNDER SECTION 14. FURTHER, THE LEARNED JUDGE FOUND THERE TO BE NO CAUSAL LINK BETWEEN THE ARBITRATOR’S NON – DISCLOSURE AND HIS ABILITY TO PERFORM HIS DUTIES IMPARTIALLY AND INDEPENDENTLY IN THE ARBITRATION.

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CPD POINTS

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5.30 pm – 6.00 pm

Registration

6.00 pm – 6.10 pm

Opening Remarks by

Gregory Das

Vice President of the Malaysian Institute of Arbitrators

6.10 pm – 7.00 pm

Debate

"This House believes that the continuing duty of disclosure of an arbitrator under section 14(2) of the Arbitration Act 2005 (as interpreted in MMC Engineering Group Bhd. v. Wayss & Freytag (M) Sdn. Bhd. [2015] MLJU 477) is too limited."

7.00 pm – 7.05 pm

Closing Remarks

7.30 pm onwards

Evening Cocktails

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