

SUPREME COURT OF SEYCHELLES

Reportable

MA 45/2025

(Arising in MC08/2020)

In the matter between:

ILE DU PORT HANDLING SERVICES LTD

(rep. by Frank Elizabeth)

Claimant/Applicant

and

VIJAY CONSTRUCTION (PROPRIETARY) LTD

(rep. by Bernard Georges)

Respondent

Neutral Citation: *IPHS v Vijay Construction (Proprietary) Ltd* (MA 45/2025) [2025] SCSC
(22 July 2025)

Before: Burhan J

Summary: Enforcement of award under the Commercial Code and Seychelles Code of Civil Procedure.

Heard: 03 July 2025

Delivered: 22 July 2025

ORDER

The application by IPHS to enter the Interim Award dated 25 July 2024 as a judgment of this Court under section 206 of the Seychelles Code of Civil Procedure is dismissed.

The Applicant is at liberty to pursue enforcement in accordance with Articles 132–139 of the Commercial Code of Seychelles. The award may only be enforced once duly registered in the manner prescribed by those provisions and subject to any challenge permitted therein.

Costs of this application are awarded to the Respondent.

RULING

BURHAN J

- [1] This matter arises from an application by Ile Du Port Handling Services Limited (“IPHS”) seeking to have an arbitral interim award dated 25 July 2024 (“Award”) entered as a judgment of this Court under section 206 of the Seychelles Code of Civil Procedure

(“SCCP”). The Respondent, Vijay Construction (Proprietary) Limited (“Vijay”), resists the application and contends that the arbitration in question was not court-annexed within the meaning of sections 205–207 of the SCCP, but a contract-based arbitration governed by Articles 132–139 of the Commercial Code of Seychelles (“CCS”).

- [2] Both parties filed extensive submissions. Having considered the pleadings, the submissions and the law, this Court will initially deal with the background and procedural history of the case.
- [3] The underlying dispute arises out of a construction contract between the parties. On 19 February 2020 Vijay petitioned this Court under Article 117 of the CCS for the appointment of an arbitrator pursuant to the arbitration clause in the contract (Clause 15.3). After initial confusion regarding the composition of the tribunal, this Court ultimately appointed Hon. Justice Francis MacGregor as sole arbitrator.
- [4] During the arbitration process, the arbitrator issued an interim award on 25 July 2024. This award was deposited in court on 14 February 2025. The Registrar duly notified the parties of the deposit on 4 March 2025. No objection was filed by the parties in respect of the notification.
- [5] On 14 May 2025, IPHS applied to this Court under section 206 of the SCCP to have the Award entered as a judgment of the Court.¹ Vijay opposed the application by submissions dated 15 May 2025 received by the Court on 26 May 2025. The main contention of Vijay was that the arbitration was not referred to the Court under section 205 of the SCCP, but rather commenced under the parties’ contract, and therefore enforcement must proceed through registration under Articles 132–139 of the CCS, and not under section 206 of the SCCP.

Issues for Determination

- [6] The issues before this Court are:

- i. Whether the arbitration in question was a court-annexed arbitration under SCCP sections 205–207 or a contract-based arbitration under the CCS Articles 110 onwards; and
- ii. Whether the Interim Award of 25 July 2024 may be entered as a judgment of this Court under SCCP section 206.

Analysis and Findings

- [7] On consideration of the submissions filed and oral submissions made by both parties on 3 July 2025, this Court is satisfied that sections 205–207 of the SCCP apply where a matter is already before the Court by plaint and, by consent of the parties or statutory mandate, the Court refers that suit to arbitration. Section 205 expressly contemplates “suit” being referred, and section 206 prescribes the procedure to convert an award into judgment where such referral has been made by the Court under section 205 of the SCCP.
- [8] The record pertaining to the application for the appointment of an arbitrator, MC 08 of 2020, indicates that the arbitration was initiated under Clause 15.3 of the contract agreement, and the application to appoint the arbitrator was made under Article 117 of the CCS as clarified by the submissions. Although the CCS is not mentioned in the application filed on the 19 February 2020, paragraph 5 of the application clearly indicates that the appointment was for a contract-based arbitration under the CCS and NOT a court-annexed arbitration arising from a civil suit under 205 of the SCCP. Accordingly, I find that this arbitration was not a referral of an existing suit under section 205 of the SCCP, but a contract-based arbitration conducted under the CCS, albeit with the Court’s assistance in appointing the arbitrator.
- [9] Accordingly, as the arbitration was not a court-annexed arbitration, sections 205–207 of the SCCP, on which learned Counsel Mr Elizabeth relies, do not govern its enforcement. These provisions cannot be invoked because the Court appointed an arbitrator under Article 117 of the CCS. Sections 205–207 of the SCCP presuppose a pending suit and a referral order under section 205 of the SCCP.

- [10] The argument advanced by IPHS that the Court “shall give judgment in accordance with the award” under section 206 of the SCCP therefore fails.
- [11] It is the considered view of this Court that the applicable enforcement regime is set out in Articles 132–139 of the CCS. Article 132(2) requires the arbitral tribunal to notify the parties and deposit the award with the Registry of the Supreme Court. Article 133 provides that upon deposit, the award acquires the force of *res judicata*. Article 138(2) provides that a party may then seek leave of the Court to register the award, after which it is enforced like a judgment. Article 139 allows one month from notice of registration for any appeal or challenge.
- [12] In the present case, IPHS has not sought leave to register the award under Article 138(2), nor has notice of registration been served as required by Article 139. Instead, IPHS has sought to bypass these statutory steps and obtain enforcement under section 206 of the SCCP. That approach is not available for contract-based arbitrations.
- [13] For all the aforementioned reasons this Court makes the following findings:
- i. The arbitration was not a court-annexed arbitration under SCCP sections 205–207, but a contract-based arbitration governed by the CCS.
 - ii. Section 206 of the SCCP does not apply to contract-based arbitrations commenced under Article 110 of the CCS.
 - iii. Enforcement must proceed under Articles 132–139 of the CCS through an application for leave to register the award.
- [14] For the foregoing reasons, the application by IPHS to enter the Interim Award dated 25 July 2024 as a judgment of this Court under section 206 of the SCCP is dismissed.
- [15] The Applicant is at liberty to pursue enforcement in accordance with Articles 132–139 of the CCS. The award may only be enforced once duly registered in the manner prescribed by those provisions and subject to any challenge permitted therein.

[16] Costs of this application are awarded to the Respondent.

Signed, dated and delivered at Ile du Port on 22 July 2025.

A handwritten signature in black ink, appearing to be 'M Burhan J', written over a horizontal line.

M Burhan J