

Legal Update

When Does Temporary Finality of a CIPAA Adjudication Decision Ends? The Court of Appeal Provides Clarity.

1. Overview

The temporary finality of adjudication decisions under the *Construction Industry Payment and Adjudication Act 2012* ("**CIPAA**") is well established: an adjudication decision binds the parties in the interim, pending the final determination of their dispute by arbitration or the court. What had not previously been determined in Malaysian Courts was however *when* that temporary finality comes to an end under section 13(c) CIPAA, particularly where dispute has been finally decided at first instance but an appeal remains pending in the courts.

That question came before the Court of Appeal of Malaysia recently in the case of *YS Chong Enterprise Sdn Bhd (In Liquidation) v Perkasa Jauhari Sdn Bhd (In Liquidation) and another appeal* [2026] 8 CLJ 473 ("**YS Chong**"). On 7 July 2026, the Court of Appeal had delivered its judgment and held that a final first-instance judgment on the merits is sufficient to engage section 13(c) CIPAA. The parties need not wait until the appellate process has been exhausted.

The significance of **YS Chong** also lies in its clarification of the effect of that final determination on an enforcement order obtained under section 28 CIPAA. While an adjudication decision remains temporarily binding, an enforcement order operates as an indisputable High Court judgment for execution and winding up purposes.

The section 28 CIPAA enforcement order, however, does not have an independent life of its own. Once section 13(c) CIPAA is engaged, the adjudication decision ceases to bind and the judgment effect of the enforcement order falls away. That extinguishment operates prospectively and does not invalidate steps already taken while the adjudication decision and enforcement order remained binding.

Against that backdrop, this article shall analyse how YS Chong clarified the operation of sections 13 and 28 CIPAA, what remains unresolved, and the practical consequences for the relevant parties.

2. Salient facts

The interaction between sections 13(c) and 28 CIPAA arose against an unusual procedural background. The adjudication decision had been enforced and relied upon in winding-up proceedings, before the underlying dispute was subsequently determined differently by the High Court.

YS Chong Enterprise Sdn Bhd (“**YS Chong**”) was engaged by Perkasa Jauhari Sdn Bhd (“**Perkasa**”) as a subcontractor for works on the MRT Sungai Buloh Kajang project. A payment dispute subsequently arose, involving YS Chong's claim for additional payment and Perkasa's claim for liquidated ascertained damages. That dispute was then referred to adjudication under CIPAA.

In August 2018, YS Chong succeeded in adjudication, with the adjudicator allowing its payment claim and dismissing Perkasa's claim for liquidated ascertained damages. YS Chong subsequently obtained an order under section 28 CIPAA to enforce the adjudication decision as if it were a High Court judgment and relied on that order to wind up Perkasa in August 2019.

As the adjudication did not finally determine the parties' substantive rights, the underlying payment dispute was also pursued in the High Court. The action concerned substantially the same claims that had been referred to adjudication. Following trial, on 21 July 2020, the High Court reached the opposite conclusion on the merits and allowed Perkasa's claim, including its claim for liquidated ascertained damages, and dismissing YS Chong's counterclaim. That judgment was subsequently upheld on appeal.

Perkasa later served a statutory demand on YS Chong for sums due under the High Court judgment and related costs. YS Chong maintained that RM2,599,443.65 remained due to it under the earlier adjudication decision and enforcement order and sought to set that amount off against the RM3,600,325.18 due to Perkasa under the High Court judgment, relying on section 526 of the *Companies Act 2016*. It also relied on the earlier winding-up order against Perkasa in support of its position that the adjudicated debt remained subsisting.

The High Court nevertheless wound up YS Chong in March 2025 and appointed a private liquidator. Dissatisfied, YS Chong appealed against both the winding-up order and the appointment of the liquidator. The appeals therefore required the Court of Appeal to

determine whether the earlier adjudicated sum could continue to subsist as a debt and remain available for set off, after the High Court had finally determined the same dispute on its merits.

3. Court of Appeal's decision

A. Section 13(c) CIPAA is engaged at first instance

The Court first considered when a dispute is “*finally decided by arbitration or the court*” for the purposes of section 13(c) CIPAA. At [28], the Court identified two possible interpretations:

- i. That Section 13(c) CIPAA would only be engaged once all avenues of appeal had been exhausted, abandoned or had lapsed.
- ii. That the phrase describes the nature of the decision itself, namely a final decision on the merits as opposed to an interim or interlocutory decision, such that section 13(c) CIPAA is engaged when the court of first instance delivers judgment or the arbitral tribunal renders its award.

The Court ultimately preferred the second interpretation at [29] to [32]:

- i. First, as a matter of ordinary language, the Court distinguished between a dispute being “*finally decided*” and a decision becoming incapable of further challenge.
- ii. Secondly, the same phrase in section 13(c) CIPAA applies to both arbitration and court proceedings. The Court considered it inconsistent for an arbitral award to engage section 13(c) CIPAA upon delivery, while a court judgment would only do so after the entire appellate process had been exhausted.
- iii. Thirdly, that interpretation was consistent with the temporary function of adjudication under CIPAA. Once the underlying dispute has been fully determined on the merits, the purpose served by the adjudication decision has come to an end. As the Court put it at [32], “*the bridge has been crossed*”.

The Court also expressly recognised at [34] that no reported Malaysian decision had previously determined when a dispute is “*finally decided*” for the purposes of section 13(c) CIPAA. Its conclusion was therefore reached as a matter of statutory construction, having regard to the language and structure of section 13(c) CIPAA and the policy underlying CIPAA.

Applying that construction, the Court held at [35] that the High Court judgment delivered on 21 July 2020 constituted the final determination of the same dispute that had been referred to adjudication. It was not necessary for the court proceedings to have been framed as an application to set aside the adjudication decision. The adjudication decision therefore ceased to bind on 21 July 2020, and not when YS Chong's appellate avenues were ultimately exhausted on 31 October 2022.

B. Section 28 CIPAA judgment is indisputable while it subsists, but not permanent

The next question was what happened to the enforcement order once the adjudication decision ceased to bind.

The Court explained at [25] and [26] that an order under section 28 CIPAA gives an adjudication decision the procedural status of a High Court judgment for the purposes of execution. It does not, however, alter the circumstances prescribed by section 13 CIPAA in which the adjudication decision itself ceases to bind.

This brought the Court to the differing approaches in **ASM Development (KL) Sdn Bhd v Econpile (M) Sdn Bhd** [2021] 8 MLJ 99 and **Maju Holdings Sdn Bhd v Spring Energy Sdn Bhd** [2021] 8 MLJ 275, which the Court examined at [42] to [46]:

- i. At [42], the Court noted that **ASM Development** treated an adjudication decision, even after enforcement under section 28 CIPAA, as remaining disputable because section 28 CIPAA permits enforcement “as if” the decision were a judgment, rather than converting the adjudication decision itself into a judgment.
- ii. By contrast, **Maju Holdings** held that a section 28 CIPAA judgment could not logically be treated as an undisputed judgment debt for execution but as a disputed debt merely because the creditor elected to pursue winding-up proceedings.
- iii. The Court of Appeal in **YS Chong** expressly adopted **Maju Holdings**' central reasoning at [45]. It held that, as regards the indisputability of the debt while the judgment subsists, there is no material distinction between a judgment under section 28 CIPAA and one entered under section 38 of the *Arbitration Act 2005*.
- iv. The Court, however, identified an important qualification at [46]. Unlike a judgment entered on an arbitral award under section 38 of the *Arbitration Act 2005*, a section 28 CIPAA enforcement order remains subject to the operation of section 13 CIPAA. Once section 13(c) CIPAA is engaged and the adjudication decision ceases to bind, the judgment effect conferred by section 28 CIPAA also falls away. Its enforceability

therefore depends upon the underlying adjudication decision continuing to bind.

- v. The consequence for the enforcement order itself was stated directly at [36]:

"[36] ... The Enforcement Order does not survive as an independent judgment debt divorced from the Adjudication Decision which it merely enforced. In other words, its juridical life is parasitic upon, and coextensive with, the binding force of the Adjudication Decision under s. 13."

YS Chong adopts the central reasoning in **Maju Holdings** as to the status of the debt while the judgment subsists, but qualifies it as to what happens once section 13(c) CIPAA is engaged.

The Court's construction above gives section 13(c) CIPAA a clear point of operation in **YS Chong**. On the facts, section 13(c) CIPAA was engaged on 21 July 2020, when the High Court delivered its judgment on the underlying dispute. The subsequent appeals did not postpone its operation, nor was it necessary for the High Court proceedings to have been framed as an application to set aside the adjudication decision. The adjudication decision therefore ceased to bind from 21 July 2020.

The consequence for the section 28 CIPAA enforcement order followed. As the Court held at [37], once the adjudication decision ceased to bind, the judgment effect conferred by section 28 CIPAA was extinguished with it. The enforcement order could therefore no longer sustain the adjudicated sum as an independent judgment debt.

C. The earlier winding-up order did not preserve the debt

YS Chong nevertheless argued that the 2019 winding-up order against Perkasa had crystallised the adjudicated sum into a debt which could no longer be challenged. The Court rejected that argument at [38] to [41]:

- i. At [39], the Court held that a winding-up court does not adjudicate upon the merits of the underlying payment dispute. Its task is to simply determine whether the statutory requirements for winding up are satisfied, including whether there is a genuine and substantial dispute as to the debt. The 2019 winding-up order therefore did not finally determine whether YS Chong's payment claim or Perkasa's claim for liquidated ascertained damages was ultimately correct.

"[39] With respect, we do not accept this submission. A winding-up order made under s. 218 of the (former) Companies Act 1965, or under the equivalent provisions of the

CA 2016, is not an adjudication on the merits of the underlying debt in the sense required to found res judicata (cause of action estoppel) or issue estoppel. The function of the winding-up court, on a petition founded on an enforced adjudication decision (or any other judgment for that matter), is to determine whether the statutory preconditions to winding-up, namely, a valid demand, the requisite sum, and the company's deemed or actual inability to pay, are satisfied, and whether any genuine, substantial dispute as to the debt has been raised. It is not the function of the winding-up court to try, or finally determine, the merits of the underlying dispute giving rise to the debt. Indeed, it is well established that a winding up petition is not the appropriate vehicle for resolving substantial disputes of fact going to the existence of the debt, which are better tried by writ action."

- ii. It followed at **[41]** that the winding-up order gave rise to no res judicata or issue estoppel as to the continued validity or binding effect of the adjudication decision. Nor did Perkasa's later withdrawal of its appeal against the winding-up order preserve or revive a debt which had already ceased to exist by operation of section 13(c) CIPAA.

"[41] It follows that the YS Chong Winding-Up Order, not being an adjudication of the merits of the underlying dispute, does not give rise to any res judicata or issue estoppel as against the validity, finality, or continued binding effect of the Adjudication Decision. The withdrawal of Perkasa's appeal against that order on 2.3.2021 likewise has no such effect. It left standing only the winding-up order itself (and any private rights as between Perkasa and its own creditors flowing from the fact of that winding-up), and did not, and could not, operate to immunise the Adjudication Decision from the operation of s. 13(c) of CIPAA. Indeed, on the chronology as we have found above, the point is, if anything, a fortiori in Perkasa's favour. The Final Determination occurred on 21.7.2020, with the consequence that the Adjudication Decision had already ceased to be binding under s. 13(c) by the time Perkasa withdrew its appeal against the YS Chong Winding-Up Order on 2.3.2021. By that later date, there was therefore no longer any binding Adjudication Decision capable of being "left standing" or insulated by the withdrawal. Perkasa's decision not to pursue that appeal cannot be read as an affirmation or revival of a debt which, in law, no longer existed. The chronological priority of the YS Chong Winding-Up Order (5.8.2019) over the Final Determination (21.7.2020) is, for this reason, immaterial, and indeed cuts the other way. Section 13(c) operates by reference to the finality of the court's determination of the underlying dispute, not by reference to the date of any winding-up order made, on the strength of an adjudication decision whose continued validity that very dispute was, at the relevant time, in the course of being tried. Since the Final Determination preceded the withdrawal (2.3.2021), the Adjudication Decision had already ceased to

bind by the time Perkasa declined to pursue its appeal. In effect, the withdrawal of the appeal against the YS Chong Winding Up Order is a non-event.”

The Court, however, drew an important distinction between the continued existence of the adjudicated debt and the validity of steps already taken while the adjudication decision remained binding. Section 13(c) CIPAA operated prospectively. It did not, retrospectively invalidate the enforcement or winding-up proceedings which had already taken place. At [47], the Court explained:

"[47] ... the extinguishment of the s. 28 CIPAA judgment operates prospectively from the moment of the s. 13(c) Final Determination, and does not retrospectively impugn anything done in reliance on the Enforcement Order before that moment."

The earlier winding-up order against Perkasa therefore remained valid, notwithstanding that the adjudicated debt on which it had been founded later ceased to subsist. This is because Section 13(c) CIPAA does not retrospectively undermine that basis but merely operates to bring Perkasa's adjudicated debt to YS Chong from that point onward.

That distinction disposed of YS Chong's proposed set off. As the Court held at [48], section 526 of the Companies Act 2016 applies only to mutual debts subsisting at the commencement of the winding up. By the time Perkasa presented its winding-up petition, no subsisting debt remained owing by Perkasa under either the adjudication decision or the section 28 CIPAA enforcement order. There was therefore no debt capable of being set off against Perkasa's judgment debt.

The result avoids both extremes. Section 28 CIPAA is not diminished by the temporary nature of adjudication. Equally, it cannot preserve an adjudicated debt once section 13(c) CIPAA has brought the binding effect of the adjudication decision to an end.

4. YS Chong and VKPT: The lifecycle of an adjudicated debt

YS Chong is particularly useful when read with **VKPT Sdn Bhd v LLC Infra Sdn Bhd** [2026] CLJU 2298 ("**VKPT**"), which was decided by the same Court of Appeal panel on the same day. While **VKPT** addresses when an adjudicated debt becomes an indisputable judgment debt, YS Chong identifies when that status comes to an end.

Read together, the cases trace the lifecycle of an adjudicated debt:

- i. First, before section 28 CIPAA enforcement, an adjudication decision remains temporarily binding but does not yet carry the conclusive character of a High Court

judgment for winding-up purposes. *VKPT* confirms that the debtor may still show that the adjudicated debt is genuinely disputed on substantial grounds.

- ii. Second, once section 28 CIPAA enforcement is obtained, the debt takes on the character of an indisputable High Court judgment while it subsists. That is the position reflected in *Maju Holdings*, *VKPT* and now *YS Chong*.
- iii. Third, once the same dispute is finally determined on the merits within section 13(c) CIPAA, the adjudication decision ceases to bind and the judgment effect of the section 28 CIPAA order is extinguished.

Interestingly, the Court of Appeal in *YS Chong* nevertheless left one issue open at [33]: what happens if the first-instance judgment is later reversed on appeal?

"[33] Whether, and if so how, a reversal on appeal might affect the position as between the parties is a question that does not arise on the facts of this appeal."

The Court of Appeal expressly declined to decide what the position would be if the first instance judgment which triggered section 13(c) CIPAA were subsequently reversed on appeal. That question did not arise because the High Court judgment in *YS Chong* was ultimately affirmed.

5. Practical implications

To conclude, the decision in *YS Chong* underscores that the timing of enforcement under section 28 CIPAA must be considered alongside the progress of the underlying court or arbitration proceedings. Obtaining an enforcement order is not the end of the inquiry, as a subsequent final determination under section 13(c) CIPAA may bring the binding and enforceable effect of the adjudicated sum to an end.

- i. For the successful party in an adjudication, a section 28 CIPAA order remains a powerful enforcement tool, including for statutory demands and winding-up proceedings. But it should not be treated as a permanently enforceable debt where the same dispute remains before the court or an arbitral tribunal. An adverse final determination at first instance can bring the adjudication decision's binding effect to an end from the date of that judgment, notwithstanding a pending appeal.
- ii. For the unsuccessful party in an adjudication, hope is not all lost. A favourable final determination on the merits may bring the continuing effect of the section 28 CIPAA judgment to an end without a separate application to set aside the adjudication

decision. However, this does not undo enforcement steps validly taken before section 13(c) CIPAA operated, as the Court made clear that the extinguishment operates prospectively.

- iii. For insolvency proceedings, an earlier winding-up order founded on a debt which was then binding remains valid but does not preserve the adjudicated sum as a continuing debt after section 13(c) CIPAA has operated. Read with **VKPT, YS Chong** therefore reinforces that CIPAA's temporary cash flow regime operates within, and does not displace, the insolvency framework.¹

Further information

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¹ See also **KTCC Mall Sdn Bhd v TCS Construction Sdn Bhd & Another Appeal** [2026] 8 CLJ 266, where the Court of Appeal held, in the context of section 30 CIPAA, that the statutory direct payment mechanism could not be used to circumvent the insolvency regime.