

Hi-Amp Engineering Pte Ltd v Technicdelta Electrical Engineering Pte Ltd
[2003] SGHC 316

Case Number : Suit 972/2002/M
Decision Date : 31 December 2003
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Raymond Lye and Jacintha Voon (Tay Lye and Ngaw Partnership) for plaintiff;
Lim Shack Keong (Peter Moe and Partners) for defendant
Parties : Hi-Amp Engineering Pte Ltd — Technicdelta Electrical Engineering Pte Ltd

31 December
2003

Judgment reserved.

MPH Rubin J:

1 Hi-Amp Engineering Pte Ltd, the plaintiffs in this action, are a company incorporated in Singapore. Their business activities include electrical installation, construction and providing ancillary engineering services. The defendants, Technicdelta Electrical Engineering Pte Ltd, for their part, are also engaged in electrical engineering contracting business.

Background facts and pleadings

2 The dispute between the parties revolves around payment obligations towards each other, arising from a supply of labour contract for electrical installation works at the Boon Keng and Potong Pasir Mass Rapid Transit ('MRT') stations. The circumstances which gave rise to the dispute could be briefly stated as follows.

3 On or about 1 August 2000, a business entity known as AMEC NEL Consortium ('AMEC'), the main contractors for a major MRT project, awarded a sub-contract ('the AMEC contract') to the defendants to provide electrical installation services for four MRT stations on the North-East Line, namely, Boon Keng, Potong Pasir, Serangoon and Woodleigh, for a sum of \$2,780,000.00. The defendants, in turn, engaged one GYG Engineering Contractors Pte Ltd ('GYG') to carry out the works in relation to two of the said four stations, namely, Boon Keng and Potong Pasir MRT stations. However, for some reason, GYG either failed or did not wish to proceed with the project. The defendants then appointed the plaintiffs to carry out the work. In essence, the contract between the plaintiffs and the defendants ('the Hi-Amp contract') was for the supply of manpower for the completion of electrical services work at the Boon Keng and Potong Pasir MRT stations. It should be mentioned at this stage, that under the AMEC contract, AMEC agreed to pay the defendants a sum of \$1,368,337.00 for the said two MRT stations, (\$658,075.00 for Boon Keng and \$710,262.00 for Potong Pasir). However, under the Hi-Amp contract, terms and conditions of which were spelt out in the defendants' letter of award dated 13 October 2000, the plaintiffs agreed to carry out the works for a fixed sum of \$762,984.00. Insofar as is material, the significant features of the said letter of award read as follows:

13th Oct' 2000

...

Ms. Hi-Amp Engineering Pte Ltd

...

RE: MRT NORTH EAST LINE PROJECT CONTRACT ELECTRICAL SERVICES C775 – ELECTRICAL SERVICES FOR SECTOR 2 POTONG PASIR AND BOON KENG STATIONS – LABOUR SUPPLY SUB-CONTRACT – LETTER OF AWARD

We refer to the above via our letter ref : 05/TD/MRT7/y/GYG/L0010 address to Ms. GYG Engineering Contractors Pte Ltd dated 13th October 2000 transfer to your Company.

As requested, we are pleased to issue an award letter to you for Labour Supply Sub-Contract (SUB-CONTRACT) for the installation of AMEC NEL Consortium's Electrical Services Contract C775 for Sector 2 Potong Pasir and Boon Keng Stations (MAIN CONTRACT) to MS. HI-AMP ENGINEERING PTE LTD (SUB-CONTRACTOR).

The terms and conditions of the SUB-CONTRACT are as follows:-

1) SCOPE OF WORKS

- a) To supply Safety Supervisors, Foremen, Skilled Electrical Workers, Unskilled Workers and all necessary manpower for the timely and satisfactory completion of the electrical Services Contract C775 for Sector 2 Potong Pasir and Boon Keng Stations by AMEC NEL Consortium (MAIN CONTRACTOR).
- b) All parties have agreed that TECHNICDELTA and the SUB-CONTRACTOR shall each bear 50% of the material painting cost.
- c) Supply of direct material shall be made by TECHNICDELTA on SUB-CONTRACTOR's request, but shall not be in excess of what is reasonably required on site.
- d) Manpower supplied by SUB-CONTRACTOR shall be equipped, at SUB-CONTRACTOR's cost with safety helmets, safety shoes, belts, reflector vests, tools and all necessary safety accessories called for in the MAIN CONTRACT.

2) SUB-CONTRACT SUM

The SUB-CONTRACTOR shall execute the installation of the SUB-CONTRACT works with a fixed lump sum price of S\$762,984.00 (Singapore Dollars: Seven Hundred Sixty Two Thousand and Nine Hundred Eighty Four Only) The duration of the SUB-CONTRACT is 17 months according to the Base Line Program.

Attach to our letter ref: 02TD/MRT7/y/HA/L0010 dated 13/10/2000

3) SUB-CONTRACT DOCUMENTS

The following shall, mutatis mutandis, form an integral part of SUB-CONTRACT documents:-

- a) This Letter of Award.

b) AMEC NEL Consortium's Electrical Services Contract C775 for Sector 2 Potong Pasir and Boon Keng Stations (MAIN CONTRACT) and all corresponding drawings, specifications and schedules.

4) TERMS AND CONDITIONS OF SUB-CONTRACT

Other than the variation in MAIN CONTRACT sum and BQ pricing, all terms and conditions of the MAIN CONTRACT shall apply, mutatis mutandis, to the SUB-CONTRACT.

5) TERMS OF PAYMENT

The SUB-CONTRACTOR shall be paid an Advance of 5% (Five Percent) of the Sub-contract sum and shall be deducted from the Interim Payments in 5 equal instalments. Progress payment will be made under normal monthly interim valuations through the MAIN CONTRACTOR in accordance with the conditions of MAIN CONTRACT. The SUB-CONTRACTOR shall submit progress claims to TECHNICDELTA before 2nd of each calendar month.

...

15) MATERIAL REQUISITION

The SUB-CONTRACTOR shall diligently plan the requisition of Free issue Material, Bulk Free Issue Material and material/equipment necessary for the completion of the works called for the MAIN CONTRACT. SUB-CONTRACTOR shall be fully responsible for any disruptions due to failure on SUB-CONTRACTOR's part to requisite material in reasonable advance. SUB-CONTRACTOR shall be in full control for material flow and shall be responsible for the material received. SUB-CONTRACTOR shall bear the cost of excessive wastage on re-measurement of completed installation.

...

ACCEPTANCE OF SUB-CONTRACT AWARD

I/We, the undersigned, accept the Letter of Award dated 13th October 2000, ref: 02/TD/MRT7/y/HA/L0010, copy of which has been retained and hereby confirm that the content of the said Letter of Award are fully agreeable by us.

Technicdelta Electrical Engineering P/L HI-AMP Engineering Pte Ltd

(signed)

(signed)

.....

.....

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

...

The claim and the counterclaim

4 The plaintiffs admittedly commenced work on the project from about October 2000 and

stopped sometime in May 2002. They alleged that although they had duly supplied labour and discharged their obligations under the contract, the defendants had breached their payment of obligations. Their claim against the defendants, after many revisions, as appears in their re-re-amended statement of claim (para 12), was for the following sums:

- (a) \$155,235.47 as being the sum due in respect of the progress claims, inclusive of retention sums;
- (b) \$281,640.39 in respect of supply of labour during extended period; and
- (c) \$438,302.07 for variations and additional works; or
- (d) alternatively quantum meruit.

5 It should be noted here that the plaintiffs' initial claim was for a sum of \$1,331,504.94 but the final pleaded claim by them was for a total of \$875,177.93. However, in the synopsis provided by plaintiffs' counsel during the trial on 12 August 2003, the claim was further reduced to \$626,590.01. The breakdown provided reads as follows.

- (a) \$150,714.05 in respect of progress claims and retention sums;
- (b) \$156,496.39 in respect of labour during extended period; and
- (c) \$319,379.57 for variations and additional works.

6 Then, in the final submission by plaintiffs' counsel, the figures underwent yet another change. The claim figure for item (a) above was increased to \$155,235.47 and the result was that the very latest claim figure of the plaintiffs was \$631,111.43 (paras 64, 148 and 165 of the plaintiffs' final submission).

7 The defendants maintained that the plaintiffs' claims were unfounded and that the plaintiffs had in fact been overpaid by a sum of \$314,484.03. Alleging that the plaintiffs were in breach of their several obligations under the Hi-Amp contract, the defendants counterclaimed a sum of \$314,484.03. It should be mentioned at this stage, that the defendants were also found to be lopping and chopping their pleadings many times. Their initial counterclaim was for a sum of \$603,329.42. This figure was soon increased to \$802,474.42. It was then cut down to \$558,418.00. Later, the figure was further scaled down to \$314,484.03 (para 13 of the re-re-amended defence and counterclaim). Very much later, after forwarding their written submissions, the defendants wanted to have another revision, this time to an upward figure of \$441,688.01, but this was rejected by the court on the ground that any amendment at such a late stage would have obligated the court to re-hear evidence all over again.

8 The pleaded case of the defendants was that the Hi-Amp contract was a fixed lump sum contract for \$762,984; it contained a 17-month "base line program" (from July 2000 to December 2001); the said contract as comprised in the letter of award was subject to the AMEC contract; and that all the terms and conditions of the AMEC contract applied to the Hi-Amp contract.

9 The defendants averred in their re-re-amended defence and counterclaim (further amplified by their counsel in his opening statement) that the plaintiffs had been overpaid; they had overdrawn materials which were supplied free and known as free issue materials ('FIM'); the plaintiffs were not entitled to claim for variation works as the said works were within the scope of the contract between them; the plaintiffs were entitled to payment only after the defendants had been paid by AMEC; as

regards the claim for extended period, there was no contractual entitlement, and at any rate, the delay in completion of work was caused by the plaintiffs. The defendants also contended that the plaintiffs' omission in bringing certain switch boards to the site resulted in the reduction of their monthly valuation for February 2002 from \$689,483.54 to \$651,588.34. The defendants' purported counterclaim was said to straddle four main components, namely, overdrawn FIM by the plaintiffs; additional labour provided and salaries paid by the defendants owing to the default of the plaintiffs; advance payments by the defendants to the plaintiffs; and miscellaneous expenses incurred by the defendants on behalf of the plaintiffs.

10 The details of the claim by the plaintiffs and the sums counterclaimed by the defendants under various items are set out below in a synopsis provided to the court by counsel. The said synopsis is annexed hereto as 'Annexure A'

Evidence

11 The principal witness for the plaintiffs was Mr Toh Kok Seng ('TKS'), one of the directors of the plaintiffs. His evidence could be summarised as follows.

12 TKS denied that the terms of the Hi-Amp contract were 'back-to-back' with the AMEC contract. He claimed that the defendants did not, until very well into the contract period, make any reference to the plaintiffs' need to comply with the AMEC contract. Reference to the back-to-back allegation surfaced only at the end of the original contract period in December 2001. In any event, a copy of the AMEC contract was supplied to the plaintiffs only on or about 6 February 2002.

13 TKS claimed that when the plaintiffs embarked on the project (sometime in October 2000), they were given only the tender drawings, work packs and the breakdown of the said work packs, nothing else. He pointed out that the scope of work under cl 1(a) of the Hi-Amp contract was to supply safety supervisors, foremen, skilled electrical workers and unskilled workers. This according to him was much narrower in scope than that of the defendants who were required under the AMEC contract for the supply, delivery, storage, protection, installation, painting, labelling, co-ordination, supervision, testing, commissioning and handing over of the electrical services of the project including maintaining the electrical services during the defects liability period. TKS further claimed that cl 4 of the Hi-Amp contract which read that "other than the variation in MAIN CONTRACT sum and BQ pricing, all terms and conditions of the MAIN CONTRACT shall apply, *mutandis mutandis*, to the SUB-CONTRACT" did not make the Hi-Amp contract to be read back-to-back with the AMEC contract.

14 TKS also highlighted the aspect that under cl 15 of the Hi-Amp contract, the plaintiffs were only required to bear the costs of excessive wastage on re-measurement of the completed installation whereas the obligations of the defendants under the AMEC contract were for 'any extra quantity of the material required in excess or extra over and above the stipulated quantity'. He suggested that by any view, the defendants could not impose the terms and conditions of the AMEC contract on the plaintiffs, especially when the defendants had failed to supply the plaintiffs with a copy of the same until February 2002.

Claim for progress claims and advance payments

15 On the issue of progress claims and advance payments, TKS, averred that at the outset of the negotiations for the Hi-Amp contract, the plaintiffs were assured by the defendants that the plaintiffs would be paid for all additional and variation works carried out by them. He said that the defendants' present allegation of over-payment to the defendants was ill-founded. In this regard, he mentioned that the main contractor ie, AMEC divided the work to be done into modules known as

work packs and the value of each work pack was specified in the breakdown in the main contract. The sum total of all the value of the work pack made up the total contract price. However, the values of each work pack were worked out during the pre-award stage and had very little actual correlation to the work eventually required to be done on site. For example, some work packs might be under-valued and some over-valued, but when added up, they amounted to the contract price. As such, so long as the works specified in the plaintiffs' scope were completed, they should be paid the price as agreed. He denied the allegation by the defendants of overpayment to the plaintiffs. He said that whatever advances made to the defendants by the plaintiffs were all offset in the payments for progress claims due to them.

16 TKS said that the plaintiffs were not aware of the manner of payment prescribed in the main contract until they finally had sight of the main contract on 6 February 2002. Despite numerous previous requests by the plaintiffs for a copy of the main contract, the defendants only furnished to them a copy of the same, well after the expiry of the original contract period in February 2002.

17 He then set out in a table (at para 34 of his affidavit of evidence-in-chief) the respective dates when the defendants made some 'advance payments' and how these 'advances' were offset in the subsequent progress claims.

April 2001	S\$15,000.00	deducted in Progress Claim 8 dated 6 June 2001
May 2001	S\$47,584.33	deducted in Progress Claim 10 dated 6 August 2001
July 2001	S\$28,000.00	deducted in Progress Claim 10 dated 6 August 2001
August 2001	S\$60,000.00	deducted in Progress Claim 11 dated 7 September 2001
September 2001	S\$48,195.01	deducted in Progress Claim 12 dated 9 October 2001
October 2001	S\$27,375.68	deducted in Progress Claim 13 dated 6 November 2001
November 2001	S\$40,000.00	deducted in Progress Claim 14 dated 7 December 2001
December 2001	S\$30,000.00	deducted in Progress Claim 15 dated 9 January 2002
January 2002	S\$25,000.00	not deducted from Progress Claim 16 as work done in January 2002 was not paid
April 2002	S\$35,000.00	not an "advance payment" please see below
April 2002	S\$15,000.00	not an "advance payment" please see below

18 TKS averred that from the above table, it could be seen that the "advance payments" paid by the defendants from April 2001 to December 2001 had already been deducted from the plaintiffs' monthly progress claims. The "advance payment" in January 2002 was not deducted from subsequent progress claims since the plaintiffs were not paid for their work done in for the months of January 2002 to March 2002. As for the payments of \$35,000.00 and \$15,000.00 in April 2002, these were not advance payments but part payments of the sum of \$100,000.00 which the defendants agreed to pay the plaintiffs for their work at the Temporary Occupation Permit stage (TOP).

Claim for variation and additional works

19 As regards variation and additional works claims by the plaintiffs, TKS said that during the course of the Hi-Amp contract, various revisions and changes were made to the tender drawings and these changes were conveyed to the plaintiffs orally or in writing by either the representatives of the defendants or the main contractor. When oral instructions were given, the plaintiffs would confirm the same in writing with either the defendants or the main contractor.

Instructions for variation work

20 The defendants had always instructed the plaintiffs as well as the other contractors that they could claim, and that the defendants would pay the cost of all additional or abortive works so long as these changes were clearly documented and the necessary claims submitted to the defendants for processing.

21 According to TKS, all variation and additional works were carried out at the instructions of the defendants or their representatives (including the main contractor). Throughout the contract period and during the extended contract period, the defendants' executives namely, Mr Chai Kow, Mr Dennis Ng, Mr Andrew Hoe Huat Heng and/or Mr Khairilamri Atan, would instruct the plaintiffs either orally at the site or by the phone, or in writing via fax to effect the variation works. Where the instructions were oral, the defendants would forward the supporting site instructions received from the main contractor as confirmation. Upon the plaintiffs' implementation of these changes, the plaintiffs would record the changes made, obtain verification from the relevant station engineer and submit the plaintiffs' variation claims on man-hour basis (see para 38 of TKS affidavit of evidence-in-chief).

22 TKS also highlighted the fact that on or about the end of October 2001, the defendants' project manager, Mr Dennis Ng instructed the plaintiffs to obtain an endorsement from the station engineer or the site supervisor on the 'Certification of Work Done Form' which was to be submitted with the monthly variation claims.

23 TKS also invited the court's attention to the plaintiffs' letter addressed to the defendants dated 27 October 2001 to establish that variation claims were duly submitted by the plaintiffs. As for the additional works, the plaintiffs would normally submit a quotation as instructed by the defendants and commence work only upon receipt of the defendants' confirmation.

24 TKS further averred that the plaintiffs had submitted altogether ten variation claims to date to the defendants and at no time prior to the break-down of the relationship between the parties did the defendants question the validity or the basis of the said variation claims. TKS, in this regard, referred to the variation claims exhibited in the affidavit of Roger Tan Kia Hock, another witness for the plaintiffs and to the minutes of the management meeting No 25 and No 26 dated 20 June and 6 July 2001, where it was recorded that 'Mr Chai Kow [the defendants' director and principal witness] instructed all subcontractors to prepare records of variation works and submit to TDE [Technidelta] as soon as possible. TDE will be forwarding the records to AMEC for claiming'. TKS asserted that only after the relationship between the parties had soured, did the defendants choose to seek shelter behind the so-called main contract argument.

25 TKS maintained that from the commencement of the Hi-Amp contract, the work was fraught with delays due to the lack of installation data, unavailability of materials, the late delivery of cables, frequency of abortive and additional works required as well as the delay caused by the other contractors. In particular, the main contractor for the construction of the two stations was more than three months behind schedule. The installation of electrical works which was the last stage of the project could not commence until the stations were structurally complete. As the plaintiffs were

merely the sub-contractors for the supply of labour for the installation of electrical services, they were not in the position to direct or control the progress made by the other sub-contractors. According to TKS, the allegation that the plaintiffs were responsible for co-ordination with the other trades should be viewed with derision. He said that each sub-contractor had his own deadlines to worry about and would not oblige other sub-contractors for their allotted tasks.

26 TKS said that although the plaintiffs were engaged to commence work under the Hi-Amp contract only in October 2000, three months after the commencement of the baseline program in July 2000, the works were substantially completed by them by April or May 2002. While this was beyond the deadline initially agreed by the parties, it was absolutely untrue that the plaintiffs were responsible for the delay in the completion of the works. He claimed that it was baseless for the defendants to allege that the plaintiffs had provided insufficient manpower and that the high turnover of our labour force had resulted in the extensive rectification and abortive works.

27 TKS in this regard invited the court's attention to a fax from the defendants to the main contractor dated 19 December 2001 in which the defendants had expressly stated that the overall progress of the works was delayed due to the late delivery of the cables and unavailability of materials.

28 TKS added that the defendants requested that the plaintiffs extend their labour supply on site to complete the works. The defendants knew that the plaintiffs were not at fault and therefore requested the plaintiffs to propose a lumpsum figure for the extension of time rather than the agreed rates for variation works at \$15.00 per hour for skilled labour and \$8.00 per hour for general labour. The plaintiffs then proposed a lump sum figure of S\$208,000.00 to complete the list of outstanding works. Initially, the defendants agreed with the sum proposed and the defendants' project manager Mr Dennis Ng provided the plaintiffs with a draft letter to be sent on the plaintiffs' letterhead. However, no agreement on the lump sum was eventually concluded and hence the parties reverted to the ongoing agreement to pay \$15.00 per hour for skilled workers and \$8.00 per hour for general workers.

29 TKS said that the work at the Boon Keng station achieved TOP on 27 April 2002 save for some minor comments from the Main Contractor. Even at the TOP stage, the plaintiffs encountered critical material shortages and late instructions.

30 The severity of the delay on the part of the main contractor was reiterated by the defendants themselves in their letter to the main contractor dated 7 May 2002, where the defendants explained to the main contractor that the reasons *'for the setback in progress at the Potong Pasir station'* were *"the late and intermittent delivery of materials in which we have informed you through our correspondence, inaccurate and last minute installation confirmation and details from your site representatives ... this resulted in numerous abortive works on site and loss of time ..."* The letter also commented on many other problems impeding the works such as *'material shortages and the lack of instructions.'* While the letter addressed the problems hindering the progress at Potong Pasir station, the nature of delay experienced at this station was by and large encountered at Boon Keng station as well.

31 As a result of the extension of the Hi-Amp contract on or about the end of February 2002 during a site walk at Boon Keng station, the defendants requested and the plaintiffs agreed to continue to provide labour at the unit rate of \$15.00 per hour for skilled workers and \$8.00 for general works from January 2002 to May 2002.

Additional labour

32 TKS further said that, as the cause of the delay in the sub-contract was not due to the fault of the plaintiffs, they were rightfully entitled to claim for the additional labour supplied to the defendants.

Outstanding payment for original work done

33 On the issue of outstanding payment for original work done, TKS claimed that the defendants had unreasonably reduced the monthly valuation figure for the work done from S\$689,483.54 in Progress Claim 15 to S\$651,588.34. The defendants' purported explanation for this reduction at para 5 of the amended defence and counterclaim was that the plaintiffs had omitted to carry out certain works, namely, the task of bringing down the switchboards into the station and positioning them within the basement rooms.

34 TKS said that the transportation of the switchboards was originally part of the scope of the main contract and the sub-contract. However, this was not a task that could have been accomplished by manual labour alone. The transportation of the switchboards required a mobile crane, a duly certified rigger, a signal man and safety supervisor to oversee the move. Once the switchboards were hoisted, heavy equipment such as a forklift had to be used to deliver them into the basement switchrooms. Such switchboards were usually delivered to the specific locations by either the supplier of the switchboards or a specialist subcontractor. TKS complained that it was totally unjustifiable to treat this item of work as an omission when this aspect of work had been taken out of the scope of the main contract.

35 As regards the defendants' claim in respect of FIM, TKS said that the defendants had no valid basis to claim the share.

36 After making reference to cl 15 of the Hi-Amp contract and the relevant clause in the AMEC contract (vide para 14 infra), TKS contended that the plaintiffs, in compliance with cl 15 of the Hi-Amp contract, utilised the FIM allocated to them efficiently and responsibly. According to him, the plaintiffs were not expressly required under the subcontract to oversee the defendants' responsibilities in relation to material control and co-ordination. It was for the defendants to control the requisition since the FIM were also needed for internal transfers to other stations by the defendants, the occurrence of which was beyond the plaintiffs' knowledge and control.

37 TKS added that the plaintiffs were expressly required under the Hi-Amp contract to provide only labour; and that inventory control was not within their scope of work. They had no direct access to these franchise materials (FIM), the requisition of which had to be made in draw-down forms specifying the quantity of materials required and their location of use. These forms had to be approved by the Station Engineer of the main contractor who would then fax the request to the head office of the main contractor. The main contractor had the final discretion on the amount of FIM, (if any) to be released to the plaintiffs. Given the procedure, it was unreasonable for the defendants to look to the plaintiffs for any compensation.

Other amounts claimed by the defendants

38 TKS questioned the legitimacy of the defendants' claim for a sum of S\$26,132.32 purportedly spent on materials, equipment and levy charges incurred on behalf of the plaintiffs during the course of the work. While the defendants had enclosed invoices to prove the same, the plaintiffs had on several occasions requested from them further documents to prove that such materials and equipment were in fact received by the plaintiffs but the delivery orders provided by the defendants did not seem to bear the signature of the plaintiffs' employees.

39 With reference to the defendants' invoice No 6070/01 dated 26 December 2001 (costs of scaffold), TKS expressed surprise that the defendants saw fit to include this item in their defence and counterclaim. He said that on or about 2 December 2001, the defendants had agreed with the plaintiffs that the said invoice was issued only for record purposes and that the defendants would not be charging the plaintiffs for the same. In this regard, the court's attention was drawn to the plaintiffs' letter dated 2 December 2001 recording the said agreement.

40 TKS also questioned the defendants' other invoices. As for the defendants' invoice Nos 6099/02, 6114/02 and 6129/02, he said that these were in respect of a worker Anwar Hossain Taher Khalasi who did not work for the plaintiffs; the same can be said of the defendants' invoice Nos 6138/02 and 6156/02, as these claims were also in respect of a worker who did not work for the plaintiffs.

41 The plaintiffs also denied that they were liable to the defendants for invoice No 6093/02, for accessories allegedly purchased for the plaintiffs' use since the defendants had yet to furnish the plaintiffs with the delivery order bearing the acknowledgement of receipt by the plaintiffs' staff.

42 TKS maintained that it was never the scope of the plaintiffs' work to provide materials for the project.

43 Referring to para 9(vi) of the Amended Defence and Counterclaim, TKS averred that the plaintiffs were not liable to pay the defendants the costs of supervisors provided since it was the responsibility of the defendants to provide the supervisors and not the plaintiffs. TKS claimed that it was ironical that the defendants should be claiming from the plaintiffs the costs for providing supervisors at the stations when the defendants owed the plaintiffs \$17,000.00 for the plaintiffs' service as the Site Supervisor for Potong Pasir station from September 2000 to February 2002. He said that the defendants had in fact requested TKS to work as the Site Supervisor at the rate of \$1,000.00 per day. In this connection, he referred to the plaintiffs' letter to the defendants dated 24 August 2001 and the letter from the defendants to the plaintiffs dated 20 September 2001 confirming this agreement.

44 On the issue of additional labour and supervisor purportedly provided by the defendants, as pleaded in para 9(vi) of the Amended Defence and Counterclaim, TKS referred to the notes of the meeting which they had with the defendants on 14 December 2001 where Chai Kow appeared to have agreed that the plaintiffs had done 'almost 100% of the contract works as well as almost 100% of the Variation/Additional works but have not been paid for the variation works done.' The defendants further agreed 'to put in labours for the additional and variation works so that Hi-Amp can concentrate on the contract works ... For this, TDE will not back-charge all the expenses to Hi-Amp and any profit arising from the variation, will return to Hi-Amp.'

45 In the affidavit of evidence-in-chief of TKS, he made reference to several documents to confirm the plaintiffs' position. Significant amongst them were:

(a) Minutes of Meeting No. 25 under the letter head of the defendants - Item 12.0. (confirmation of instruction by Mr Chai Kow to prepare record of variation works and submit to the defendants for onward transmission to AMEC for payment (pages 65 and 66, TKS's AEIC);

(b) A letter from the plaintiffs dated 12 November 2001 addressed to the defendants, relating to rates to be charged by the plaintiffs for skilled workers and general workers to perform general amendment and rectification works at Boon Keng and Potong Pasir stations. The agreement was admittedly confirmed and accepted by one the defendants' executives - (page

111, TKS's AEIC);

(c) The defendants' letter dated 19 December 2001 addressed to AMEC blaming the latter for late delivery of cables and unavailability of materials on site which had reportedly affected the overall progress of work and operational costs (page 157, TKS's AEIC); and

(d) The defendants' letter dated 7 May 2002 to AMEC (pages 294 and 295, TKS's AEIC). The material parts of the letter reads as follows:

7th May 2002

...

Ms AMEC NEL Consortium

...

Dear Sirs

Re: North East Line Sub-Contract C775 (Electrical Services) – Sector 2 – Potong Pasir And Boon Keng Station

Kindly note of the following:

Boon Keng station

- Our site personnel have reported that Boon Keng station has achieved T.O.P on 27th April 2002 with minor comments. Please confirm.
- Note that we are unable to install the trunking covers at the DB rooms, as the trunking installed is undersize. As you are aware, we have worked as per the construction drawings details and seek your urgent advise on the matter.

Potong Pasir station

- We were informed that T.O.P for Potong Pasir station has been postponed to a later date. Kindly advise us on the actual date for our monitoring of progress.
- There are still four areas pending for C705 hacking works, in order for us to proceed with our concealed installation works. Kindly advise.
- We are unable to install the earth red point as the cable detection report that was given to us was found to be inaccurate. We were instructed to hold all works pending Power Grid personnel coordination results with your station engineer on the actual location of the cable. Please advise.

You will understand that we have, within our best means, performed our obligations for completion of works in the station, although, as you are aware, the initial baseline program of 17 months is exceeded and we are at present running into critical financial constraints. However, kindly note of the following reasons for the setback in progress at Potong Pasir station.

- We have been experiencing late and intermittent delivery of materials, in which we have

informed you through our correspondences.

Attached to our letter ref: 236/TD/MRT7/am/L0205

- We have experience inaccurate and last minute installation confirmation and details from your site representatives. As you are aware, this resulted in numerous abortive works on site and loss of time.
- All the lights installed have been according to your construction drawings and site instructions. However, the locations of the installation are commented by L.T.A during the inspection and had to be re-located.
- We are unable to install the light fitting at ground level as the wall finishing have yet to be complete by civil.
- Underground trench completed but we are unable to proceed further due to material shortages. Please advise.
- Final sub circuit at Telecom Riser has been completed. However, we have not received the light fitting for installation.
- Telecom cable installation completed. No termination details to all risers.
- Some of the light fittings installed were not working due to defective gears and starters.
- Earthing for conduit pipe and trunking/tray at MCT were only commented during the R.L inspection, in which we do not have such instructions prior to this.
- Extra MCT required at concourse level was never advised to us earlier, but only after we have completed the installation of the existing work requirement.
- Kindly arrange with C705 on the installation of FCU at lift pit and advise us on any further action.

You will understand that the above matters seek your urgent attention to resolve in order for us to proceed further in completion of our works at the stations.

As such, we shall not be responsible for any installation delay and cost liabilities due to late confirmation of the above.

...

Technicdelta Elect Engrg P/L

(signed)

f Project Manager

Dennis Ng

the defendants did not have any valid defence against the plaintiffs. He further asserted that the defendants' counterclaim was a frivolous attempt to deny what was rightly due to the plaintiffs.

47 Mr Andrew Hoe Huat Heng ('Hoe'), a former project manager of the defendants, testified on behalf of the plaintiffs in this action. He averred in his affidavit that he left the defendants' employ on his own accord as he wanted a change in his working environment and had come forward to tell the truth. He told the court that he had no axe to grind with the defendants. Insofar as is material, his evidence can be summarised as follows.

48 Hoe had been in the construction industry since 1966. He joined the defendants on or about 16 May 2000, initially on a part-time basis and later as the defendants' full-time executive project manager. He was the person in-charge of the installation of electrical services for the projects under reference and was frequently consulted by the defendants' managing director Chai Kow even before the defendants were awarded contracts by AMEC on or about 4 August 2000.

49 He said that Chai Kow fully appreciated the significance of providing greater flexibility to the sub-contractors. According to him, Chai Kow verbally assured the sub-contractors that they should not worry about the main contract and that the defendants would not apply the main contract terms in relation to payments due to the sub-contractors. He said that the contract awarded to the plaintiffs was for \$762,984.00, which amounted to about 55.75% of the contract price due to the defendants from the main contractor, in relation to Potong Pasir and Boon Keng MRT stations.

50 As far as the defendants were concerned, the provisions of the main contract applied to the sub-contracts only in relation to works as specified in the technical drawings and the manner in which documents should be submitted for progress claims. Further, according to him up to the time he left the defendants' employ in September 2001, the plaintiffs had no access to the main contract documents, apart from the work packs, their price breakdown, the tender drawings and installation details.

51 As regards the variation claims, Hoe affirmed that Chai Kow did indeed re-assure the plaintiffs and other sub-contractors that they would be duly paid for any variation and additional works. He said that revisions and changes to the tender drawings by the main contractor or the defendants were regular features and the plaintiffs were required to respond to the changes by carrying out additional works and aborting work in train. In particular, he made reference to a major variation work involving the installation of control cables. He also confirmed that at management meetings No 25, 26 and 27 dated 20 June, 6 July and 18 July 2001, Chai Kow issued instructions to the sub-contractors to submit their variation claims as soon as possible.

52 He next dealt with the issue concerning FIM. He said that FIM referred to materials supplied by the main contractor for electrical works to be carried out in the project.

53 He said that the management and control of the use of FIM were outside the scope of the subcontract. Firstly, the use of FIM was determined by the specifications provided to the plaintiffs in the site drawings and the prevailing site conditions. Secondly, the plaintiffs had to fill up a draw-down form stating the amount of material required and location of use. Thirdly, the plaintiffs must notify the main contractors' station engineer for the requisition of any material. Once approved, the station engineer would then forward the request to the main contractor who would decide whether the request should be approved and the quantum of material to be released.

54 In the sub-contract, the plaintiffs were required to plan ahead and requisition all the materials including the FIM which were necessary for the due completion of the work. Upon receipt of

the materials, the plaintiffs would be responsible for the care and usage of the same. Thus, the sub-contract provided that the plaintiffs would have to bear the cost of excessive wastage on re-measurement of the completed installation.

55 He remarked that the quantities of FIM allocated to the main contract were based on theoretical calculations at the pre-contractual stage which had little correlation with the site conditions. Thus, some of the FIM allocated to the main contract were unrealistic and inadequate for the reasonable completion of the main contract. After work commenced on site, the defendants highlighted this problem to the main contractor, who insisted that parties continue with the FIM allocations and kept record of all material wastage.

56 He mentioned that the complete avoidance of material wastage was virtually impossible as ancillary wastage inevitably would occur during usage and the implementation of the original or additional and abortive works.

57 As far as he could recall, there was never any issue as to the plaintiffs' wasting or excessively drawing FIM. He was also not aware of the plaintiffs' obligation to pay for any wastage of materials used. Given the background, he was of the view that the defendants' claim on account of FIM was unreasonable and not justified.

58 He mentioned that there were several causes of delay to the sub-contract work but in his opinion they were not attributable to the plaintiffs. He added that from the start, the progress of the sub-contract was hampered by the repeated lack of installation data and materials from the main contractor, the changes and revisions made by them as well as delays by other contractors with whom the plaintiffs had to co-ordinate their work.

59 Referring to the defendants' attempt to claim a substantial sum (initially by way of a deduction of a sum of \$37,895.52 in progress claim 16) on account of the plaintiffs' alleged failure to bring some switchboards into the station and positioning within the switch rooms at the basement, he said that the transportation of the switchboards was originally part of the scope of the main as well as the sub-contract. However, since the transportation of the switchboards required a mobile crane and a host of other ancillary services and support, he discussed the problems involved with the contract manager of the main contractor and the result was that the said scope of work was omitted from the main contract with a price reduction of \$18,000 per station. He therefore expressed his surprise as to how the defendants came to claim a sum of \$37,895.52 from the plaintiffs, particularly in view of the fact that the plaintiffs' contract with the defendants was a lump sum contract, amounting only to 55.75% of the sums to be paid to the defendants by the main contractor.

60 As regards the defendants' claim for the costs of providing a supervisor at the Boon Keng station from October 2000 to April 2002, he said that he was equally surprised by this claim because site supervision and co-ordination came under the scope of the defendants' responsibilities and for this purpose the defendants had all along been providing their management staff, project manager, site supervisors and engineers for the sub-contract work. He then underscored the aspect that TKS of the plaintiffs was engaged by the defendants to perform the duties of the site supervisor and was paid \$1,000 per month.

61 The next witness for the plaintiffs was Mr Roger Tan Kia Hock, a quantity surveyor. He said that he had been engaged by the plaintiffs to assess their claim in relation to variation works done by them, their loss and expenses incurred as a result of the extension period from January 2002 to May 2002 as well as to evaluate the defendants' counterclaim. A summary of his views appear from pages 24 to 31 of his report. At page 31 of his report, he said that in his assessment the plaintiffs would be

entitled to claim a total of \$851,336.51 for work done, variations and extension of time excluding Goods and Services Tax to be levied on the said sum. The said sum also excluded the plaintiffs' two other invoices amounting to \$4,530 and \$14,790 for workers supplied to the defendants for works carried out at the MRT tunnels through verbal instructions. As regards the counterclaim of the defendants, his evaluation (as set out at pages 28 to 30 of his report), was that the claims put forth by the defendants were unclear, unsubstantiated and unsustainable.

Defendants' evidence

62 The main witness for the defendants was their managing director Chai Kow. His evidence can be summarised as follows.

63 The defendants were awarded the contract by AMEC on 4 August 2000 in relation to the project under scrutiny. Initially, the defendants engaged GYG as their sub-contractors. The plaintiffs were the sub-contractors for GYG. However, GYG withdrew from their engagement and consequently, the defendants appointed the plaintiffs as their sub-contractors. The said sub-contract between them was evidenced by the letter of award dated 13 October 2000.

64 At the outset itself, Chai Kow told TKS of the plaintiffs that the defendants would only be prepared to award the sub-contract to the plaintiffs, if the terms of the AMEC contract applied to the sub-contract. He made it clear to TKS that the plaintiffs would be paid only when the defendants received payment from AMEC. Chai Kow also at that stage pointed out to TKS that according to the baseline program, the work was to commence from August 2000. He asked TKS whether the defendants would be able to complete the works by December 2001, in line with the baseline program, should they be awarded the sub-contract in October 2000. TKS assured him that they would as they were already familiar with the works.

65 The plaintiffs were, however, not qualified to apply for work permits for foreign workers. To assist the plaintiffs, the defendants agreed to apply for the requisite work permits in consideration of the plaintiffs paying a sum of \$150.00 per month for each skilled worker, being the defendants' administrative charges and foreign worker levy.

66 Sometime in December 2000, Chai Kow was concerned that their former project manager, Hoe Huat Heng often went drinking with TKS and other sub-contractors. In order to maintain orderly housekeeping, he informed the plaintiffs through his contract manager, Ang Chin Hen, that in future all amendments to the contract were subject to the approval of the defendants' contract manager and managing director. In the event, Hoe left the defendants' employment in unhappy circumstances.

67 Pursuant to the sub-contract, the defendants made an advance of 5% of the contract sum upon the execution of the contract. Thereafter, the defendants paid the plaintiffs the monthly valuations after certain deductions until April 2001.

68 Sometime in April 2001, TKS told Chai Kow that the plaintiffs had serious cash flow problems and would not be able to continue with the work unless the defendants could make some advance payments to them. In order not to risk the defendants' performance bond being called up by AMEC, the defendants reluctantly agreed to assist the plaintiffs by arranging some advance payments on the understanding that these payments would be deducted or offset against future payments due to the plaintiffs. However, what was supposed to be a one-off advance payment soon became a regular feature. The plaintiffs were unable to overcome their cash flow problems and the defendants had to accede to the plaintiffs' requests since the former did not wish to be penalised by AMEC. All in, the defendants made 11 advance payments to the plaintiffs, amounting to \$379,375.68 over the period

April 2001 to April 2002.

69 Chai Kow lamented that, unfortunately, the works were not carried out by the defendants in accordance with the baseline program.

70 Dealing with the plaintiffs' claims, Chai Kow commented as follows.

71 As regards the plaintiffs' allegation that the defendants had wrongfully reduced their monthly valuation from \$689,483.54 in January 2002 to \$651,588.34 in February 2002, the reduction was justified by the plaintiffs' omission to bring down the switchboards into the station and positioning them within the rooms since that work was within the scope of the sub-contract.

72 In regard to the plaintiffs' claims for variation and additional works, in order to succeed in the said claims, the plaintiffs had to produce written directions or instructions from AMEC, and in the absence of any such directions or instructions, the plaintiffs' claim could not be sustained. In any event, the works referred to in the said claims were all within the original scope of works.

73 Touching upon the plaintiffs' original claim of \$636,192.38 for extension of time claims for the 5½ months after the original completion date of December 2001, the said claim could not be sustained because (a) there was no provision for such extension claims in the sub-contract; (b) the delay in the completion of works was due to the plaintiffs' poor planning and co-ordination as well as insufficient manpower provided by them; (c) the plaintiffs were fully aware that the baseline programme was subject to revision without any price adjustment under the AMEC contract; and (d) in any case, the plaintiffs' extension of time claim had been grossly inflated.

74 Chai Kow next dealt with the defendants' counterclaim.

75 The defendants' claim was for a sum of \$458,999.35 in respect of the overdrawn FIM. At the time the sub-contract was awarded, the plaintiffs had agreed to the quantities of FIM specified in the AMEC Contract which were required to complete the works. Under cl 15 of the sub-contract, the plaintiffs undertook the responsibility to:

- (a) diligently plan and order in advance the FIM necessary to complete the works;
- (b) take delivery of the FIM and be responsible for the same;
- (c) bear the loss due to disruptions should they fail to plan for and order the FIM in advance; and
- (d) bear the cost of excessive wastage of FIM upon the re-measurement of the works when the same is completed.

76 In breach of cl 15 of the said sub-contract, the plaintiffs had failed to properly and diligently plan and order in advance the FIM which resulted in the works being delayed. The plaintiffs were also wasteful in their handling of the FIM and had overdrawn the same by excessive amounts. AMEC had informed the defendants that the FIM had been overdrawn by the sum of \$606,688.00. The overdrawn FIM in this instance were FSC cables and conduits and accessories, which were overdrawn by \$422,725.67 and \$36,273.68 respectively.

77 After stating that the plaintiffs would have to account to the defendants for a host of items, Chai Kow averred that the defendants' project account showed that the defendants had in fact over-

paid the plaintiffs a sum of \$802,474.42 (sic) (para 30 of his AEIC). The items listed by him under said para 30, however, showed a total of \$804,796.08 and it reads as follows:

30. Based on the above, the Defendant's Project Account shows that the Defendants have actually overpaid the Plaintiffs by a sum of \$802,474.42:-

i.	Advances made by the Defendants	\$371,155.02
ii.	Contra charges for materials, equipment, levy charges paid by the Defendants on behalf of Plaintiffs	\$ 26,132.32
iii.	Costs of supervisors provided to Plaintiffs by Defendants	\$ 48,024.00
iv.	Overdrawn Free Issue Materials	\$458,999.35
v.	Amount paid to Plaintiffs under deposit and progress claims, but excluding advance payments	\$285,826.97
vi.	Labour and supervisor provided by Defendants to Plaintiffs to make up for shortfall for December 2001; May 2002 to August 2002	\$201,087.93

		\$1,391,225.59

Less:-

i.	Amount certified due to Plaintiffs to-date as at 4/2/2002 under Certificate No 16 (less 10% retention sum)	\$586,429.51

Excess	\$804,796.08
	=====

78 In conclusion, he claimed that the plaintiffs' claim against the defendants was entirely devoid of merit and that the defendants' counterclaim was genuine and should be allowed.

79 The defendants' next witness was their project engineer, Mr Khairilamri bin Atan ('Khairil'). His evidence was to the following effect.

80 He was the defendants' project engineer in respect of the contract under scrutiny. His duties, according to him, included assisting the plaintiffs if they encountered any difficulties in co-ordinating the works with the other sub-contractors working on site at the material time. He had to also ensure that the works were progressing according to the baseline program. He was the person who conveyed AMEC's instructions to the plaintiffs and arranged for delivery of materials supplied by the defendants to the plaintiffs.

81 He said that in the beginning when the plaintiffs took over the contract from GYG, their performance was satisfactory. At that time, TKS, the plaintiffs' supervisor was always present on site to plan, co-ordinate and supervise the plaintiffs' activities. However, around April 2001, he stopped coming to the site and thereafter the defendants' performance deteriorated.

82 The defendants also failed to properly plan and co-ordinate their activities with the other sub-contractors on site at that time. They were supposed to check the co-ordination drawings on site and liaise with AMEC before they began any new installation which they failed to do. As a result, much of their work had to be removed and re-installed or adjusted. All the abortive works arose from such poor co-ordination or failure to follow specifications.

83 The defendants also failed to fulfil their obligations in relation to FIM. The quantities of FIM required to complete the works were all agreed on beforehand in the AMEC contract, and issued free of charge. The plaintiffs were responsible for planning and ordering in advance such FIM and ensuring that the drawing of FIM would not disrupt the works.

84 Around November, 2000, the plaintiffs reported that the progress of the works had been impeded because AMEC were slow in providing them with FIM. Upon enquiry, the defendants were informed by AMEC that the delay was due to re-stocking resulting from excessive overdraw of FIM by the plaintiffs. Khairil also complained that materials on site such as switch socket outlets and switches were found to be missing after they had been installed by the plaintiffs. Due to mismanagement by the plaintiffs, lack of control over materials and the resultant loss of such materials, there were delays and the works were constantly behind schedule. From April 2001, the number of men supplied by the plaintiffs was also reduced drastically. The defendants repeatedly requested the plaintiffs to increase the manpower but the plaintiffs failed to do so. Left with little choice, the defendants had to deploy their personnel on site to make up for the insufficient manpower.

85 Finally, in June 2002, the plaintiffs stopped supplying any personnel. As a result, the defendants had to take over the outstanding jobs. After the defendants took over the works, they discovered that many items were sub-standard and had to be rectified. Khairil, like Chai Kow, asserted that the plaintiffs' claim in this suit had no merit and that the defendants should be allowed their counterclaim.

86 The last witness for the defendants was Mr Ng Boon Cheng ('Ng'), a quantity surveyor. His evidence, insofar as is material, can be summed up as follows.

87 Dealing with the plaintiffs' claim of \$155,235.47, as being the alleged wrongful reduction in

the monthly valuation in February 2001, Ng said that the said claim was untenable. Touching upon the issue relating to the delivery of the switch gear, he said that it was part of the main contract and since this item had been omitted subsequently with a consequent reduction in the main contract price, the deduction of \$37,875.20 was justified.

88 As regards the plaintiffs' variation claims (which was \$354,928.87 at one stage), Ng opined that in the absence of any written direction or instruction from AMEC (there was none in this case), the said claims were equally unsustainable. In any case, according to Ng the variation claims submitted by the plaintiffs were all within the scope of the works to be carried out by them.

89 Commenting on the plaintiffs' extension of time claim (which was initially for a sum of \$636,192.38), Ng said that the contract between the parties did not provide for such claims. Ng's conclusion was that in his professional opinion the plaintiffs' entire claim was without any merit. Ng's affidavit of evidence-in-chief, however, was strangely silent as to the defendants' counterclaim.

Issues and conclusion

90 The issues raised by counsel in relation to the dispute before the court, in the main, seemed to revolve around the following questions:

- (a) Is the sub-contract entered into between the parties 'back-to-back' with the defendants' contract with AMEC, as being claimed by the defendants?
- (b) Are the defendants liable to the plaintiffs for the retention sum, outstanding progress claims and the alleged wrongful deductions?
- (c) Are the plaintiffs entitled to the sum claimed in respect of the alleged variation and additional works?
- (d) Are the plaintiffs entitled to the sum claimed for the alleged extension of time?
- (e) Are the defendants entitled to claim from the plaintiffs for the alleged over-payments and/or advance payments?
- (f) Are the defendants entitled to claim from the plaintiffs for the alleged losses in respect of the FIM?
- (g) Finally, what would be the reasonable sum to be awarded, in the event the court were to find that the sum claimed by either party has not been satisfactorily proven?

91 In relation to issue (a) concerning the construction of the agreement entered into between the parties, the contention by defendants' counsel was that the Hi-Amp contract was back-to-back with the AMEC contract. The defendants in this regard relied on cl 4 of the letter of award (which reads: "[other] than the variation in MAIN CONTRACT sum and BQ pricing, all terms and conditions of the MAIN CONTRACT shall apply *mutatis mutandis* to the SUBCONTRACT") expressly provides that except in relation to the contract sum and bill of quantity pricing, all the provisions of the AMEC contract shall apply to the parties, with the necessary changes.

92 In this regard, defendants' counsel invited my attention to the case of **Jurong Engineering Ltd v Paccan Building Technology Pte Ltd** [1999] 3 SLR 667 (CA). In that case, the court of appeal was concerned with a somewhat similar problem. The issue in that case was whether the General

Conditions of the Main Contract ('Gencon') were incorporated as part of the sub-contract. Insofar as is relevant to the issue at hand, the background facts of the **Jurong Engineering** case were as follows.

93 In September 1993, while preparing their tender to be submitted to the Public Utilities Board ('Board'), the appellants (main contractors) invited the respondents (sub-contractors) to submit their quotation for the building works. After some negotiation, it was finally agreed on 25 November 1993 that the respondents would carry out the building works for \$8,510,000 if the appellants' tender was accepted by the Board. The building works comprised a main office, a substation and a guard house.

94 Factoring in the respondents' quotation, their profit and their own costs for carrying out the M&E works, the appellants submitted their tender to the Board. In the event, they were successful and were awarded the main contract for the contract sum of \$13,899,000 sometime in or about early February 1994.

95 On being awarded the main contract, the appellants pursuant to their earlier agreement with the respondents awarded the sub-contract to the respondents on 15 February 1994. So far as relevant, the letter of award stated:

1 We are pleased to inform you that JEL has accepted your offer for the construction and completion of the Main Office Building and Ancillary Works of the Senoko Gasworks Development submitted on 25 November 1993 subject to the Conditions of Tendering, General Conditions and Special Conditions of Contract, the Specifications, Schedules, Form of Tender, Form of Contract Agreement and this letter as clarified and modified in your subsequent series of correspondence at an estimated sum of S\$8,510,000 (Singapore Dollars Eight Million Five Hundred and Ten Thousand Only) as per Appendix 1.

...

4 The dates of commencement/completion of work shall be in accordance with the Schedules of Timings as shown in the Tender Document.

...

96 The form of contract agreement consisted of three pages. Clause 4 read:

It is hereby agreed and understood that except as expressly varied herein the provisions of the main contract shall apply in full force and effect in every way as if the same are set out in this agreement and agreed to and confirmed by both parties.

97 Given the express phraseology of cl 4 of the letter of award in the **Jurong Engineering** case, there apparently being no dispute as to whether the main contract and its terms were provided to the respondents/sub-contractors, the Court of Appeal had little difficulty in concluding that the General Conditions ('Gencon') of the main contract were incorporated as part of the sub-contract.

98 In the case before me, leaving aside the ambiguous and not so precise phraseology of cl 4 of the letter of award from the defendants, there is a raging dispute as to whether the plaintiffs had sight of the main contract at all until 6 February 2002. If what the plaintiffs contended were true, then it would be unreasonable to conclude that the conditions of the main contract were incorporated as part of the Hi-Amp contract. In this connection, the evidence of TKS and Hoe appeared to me to be more cogent than that of what was painted by the defendants. In relation to this particular issue,

I am inclined to accept their evidence that the defendants, for reasons known to them, did not furnish the plaintiffs with the AMEC contract documents except for some in dribs and drabs. Inasmuch as the defendants chose not to provide the AMEC contract to the plaintiffs, I am of the view that the defendants' present contention that the Hi-Amp contract was to be qualified by the terms of the AMEC contract, was without merit.

99 Moving on to issue (b) concerning the retention sum and outstanding progress claims by the plaintiffs, this was the only claim in which the plaintiffs' original figure remained unchanged: a constant \$155,235.47. I must add here that although plaintiffs' counsel at one stage revised the above figure to 150,714.05, the original figure was subsequently restored.

100 The defendants' arguments as to why the above claim should not be allowed, appeared to be grounded on poor reasoning. Defendants' counsel argued (paras 82 to 85 of their revised submissions) that no payment could be made to the plaintiffs until receipt of payments by the defendants from AMEC. In this regard, they seemed to rely on cl 7 of the Hi-Amp contract which reads: "PERIOD OF INTERIM PAYMENT: 14 days after receiving payment from MAIN CONTRACTOR". However, the defendants had not provided to the court any satisfactory evidence that payments had indeed been withheld by the main contractor on works completed thus far. Furthermore, apart from some equivocal utterances, there was also no satisfactory evidence from the defendants to evince to the court that they had not been fully paid up by AMEC to-date. In any case, progress payment certificate No 17 (the last certificate issued by the defendants) dated 6 March 2002 clearly states that the value of work done by the plaintiffs as of that date was already \$686,685.60 out of the total of \$762,984.00. Additionally, the plaintiffs' progress claim No 20A for the month of May 2002 as contained in their letter dated 15 August 2002 for \$155,235.47 (reportedly for 98.75% of work carried out in Boon Keng station and 99.61% for Potong Pasir station) did not seem to have been adequately addressed by any credible response or explanation by the defendants, save for the present 'will pay when paid' response.

101 It was mentioned during the trial the plaintiffs left the project sometime at the end of April 2002 and the plaintiffs took over the project effective May 2002. Be that as it may, the documents (AB-2065 to 2068) produced by the parties, in relation to inspections conducted by the Building Control Unit on 26 and 29 April 2002 respectively for the Boon Keng and Potong Pasir stations, seemed to confirm that save for some minor details, the rest of the works appeared in order.

102 Having regard to all the evidence and the arguments presented before me, I am of the view that the plaintiffs have satisfactorily established their claim for the sum of \$155,235.47. The defendants' evidence, on the other hand, was found by me to lack the requisite cogency.

103 Dealing now with issue (c) concerning variation and additional works, the evidence and the figures submitted by the parties on this were less than satisfactory. The primary argument by the defendants in connection with this issue was that the claim was not payable because the Hi-Amp contract was to be read back-to-back with the AMEC contract and that any variation claim must have written instructions or directions from AMEC. I have already dealt with issue (a) and concluded that the defendants' said argument lacked cogency and reason. The facts presented showed that almost all the variations had been underpinned by some form of written instructions or directions from the defendants to the plaintiffs. In cases where there were no written instructions from the defendants, the plaintiffs seemed to have filled the gap by their contemporaneous written confirmation addressed to the defendants. In my determination, the defendants, having issued numerous instructions and having themselves submitted the variation claims to AMEC, could not now run away from their liability and seek shelter from the argument that AMEC's written instructions were a pre-requisite to payment, considering the fact that Hi-Amp's contract was only about 55% of the

sums to be received by the defendants from AMEC for the two stations.

104 The only issue, however, was in relation to quantum. In this, the plaintiffs' claim figures appeared to me to be somewhat bloated. The claim figure changed three times in the course of these proceedings, from \$540,077.09 to \$420,005.27 and subsequently to the present \$438,302.07. Why the claim had drifted down to \$438,302.07 from \$540,077.09 had not been satisfactorily addressed by the plaintiffs' expert. In my opinion, the claim under this head for \$438,302.07 had not been satisfactorily made out. However, there was one document, a letter dated 3 April 2002 from the defendants to AMEC, that seemed to assist the plaintiffs' claim in part. The said letter forwarded by the defendants to AMEC contained the defendants' claim for claim for \$539,673.65 for variation works carried out on all four stations, including Boon Keng and Potong Pasir. The claim submitted for Potong Pasir was for \$104,938.65 and for Boon Keng \$101,734.00. The total for the two stations was \$206,672.65. Having themselves made a claim for variation works, the defendants could not possibly now contend that there could not be any variation claims without the written instructions of AMEC. Considering the fact that one of the plaintiffs' prayers for relief was based on quantum meruit or for a reasonable sum, taking the defendants' own figures as of April 2002, an award of \$206,672.65 for the variation claims appears fair and reasonable.

105 As regards issue (d) concerning extension of time claim by the plaintiffs, it must also be mentioned presently that the claim by the plaintiffs underwent several metamorphoses, from \$636,192.38 to \$420,005.27 and then to \$281,640.39. In my evaluation, the basis of this claim was not satisfactorily established by the defendants. Having argued that the contract entered into was for a fixed lump sum contract, the plaintiffs could not now be heard to say that they were entitled to charge for extension of time without any written confirmation from the defendants. In any event, and there was none in this case. Bearing in mind the 17-month baseline program applicable to the project and having regard to the fact the plaintiffs appeared to have been engaged in this project from late October 2000 till April 2002 (about 18 months all in), I found their original claim for a staggering sum of \$636,192.38 to be redolent of greed. At any rate, the manner in which the plaintiffs had been slicing up their claim figures did not speak well for them. In my determination, the claim for extension of time ought to fail.

106 Next comes the defendants' counterclaim. Here again, it should be remarked that the defendants' counterclaim underwent substantial changes not only in respect of claim figures but also the tenor and substance of the pleadings. The claim was once for a total of \$603,329.42. After three changes, they arrived at the present claim for \$314,484.03. Their claim is substantially for an alleged overpayment to the plaintiffs and for damages. The details of the defendants' claim could be found at para 106 of their closing submission which reads as follows:

The defendants (TDE) that on the totality of the evidence, and on the basis of the above submissions, Hi Amp is not entitled to payment for their claims herein, and in fact owes TDE the sum of \$314,484.03, derived as follows:

i Advances made by TDE (see Annex

A of Re-re-amended Defence &

Counterclaim) \$379,375.68 PB,p111, para 9B(i)

ii Contra charges for materials,
equipment, levy charges paid

	by TDE on behalf of Hi Amp		
	(see Annex B of Re-re-amended		
	Defence & Counterclaim)	\$ 26,132.32	PB,p111,para 9B(ii)
iii	Costs of supervisors provided		
	to Hi Amp by TDE (see Annex C of		
	Re-re-amended Defence &		
	Counterclaim)	\$ 48,024.00	PB,p111,para 9B(iii)
iv	Overdrawn Free Issue		
	Materials (see Annex D of		
	Re-re-amended Defence &		
	Counterclaim)	\$106,835.52	PB,p111,para 9B(iv)
v.	Amount paid to Hi Amp under		
	progress claims (see Annex		
	E of Re-re-amended Defence		
	& Counterclaim)	\$285,826.97	PB, p111,para 9B(v)
vi	Labour & supervisor provided by		
	TDE to Hi Amp to make up for		
	Shortfall for December 2001; May		
	2002 to August 2002	\$201,087.93	PB,p111,para 9B(vi)
	Sub-total		\$1,047,282.42
	<u>Less:-</u>		
i	Amount certified due to Hi Amp		
	as at 27/2/02 under Certificate No.		
	17 (less 10% retention sum) [File		
	7, p228]	(\$618,017.04)	PB, p111,para 9(B)(i)
ii	Balance of unpaid Contract		

	Sum	(\$97,781.35)	PB,p111,para 9(B)(ii)
iii	Agreed supervisor fees as		
	incentive to Hi Amp	(\$17,000.00)	PB,p111,para 9(B)(iii)
	Sub-total		(\$732,798.39)
	Excess		\$314,484.03

107 Reviewing the evidence, it was strange that the defendants' expert, Ng did not make bold to venture any opinion on the defendants' counterclaim, save for the defendants' alleged entitlement to a sum of \$7,068.62 and \$11,385.16. Other evidence offered by the defendants through Chai Kow and Khairil was also in my view inadequate to make a finding in favour on any part of the defendants' counterclaim. Dealing specifically with the FIM, the defendants' evidence was nothing more than a jumble of allegations and hearsay. They did not call any one from AMEC to substantiate the wastage of FIM; nor had they placed before the court any credible evidence pointing to any monetary claim from AMEC against the defendants for any loss. In my view, the defendants had not, on balance established any part of their counterclaim. As for the switchgear aspect, here again I must observe that in view of the lump sum nature of the Hi-Amp contract, any adjustment in contract price could not be done unilaterally. The defendants' claim for a sum of \$37,895.52 is, in my determination, unsustainable. Overall, the defendants' counterclaim from the high of \$802,474.42 to the low of \$314,484.03 appeared to me to be more of a guessing game than based on any proper evaluation. Little wonder that the defendants' own expert Cheng did not see fit to add anything useful on it in his report.

108 In the premises, for the reasons I have given, there shall be judgment in favour of the plaintiffs in the sum of \$155,235.47 under para 12 (a) and a sum of \$206,672.65 under para 12 (c) of the re-re-amended of the statement of claim, with interest at the rate of 6% per annum from the date of writ ie, 20 August 2002 until date of this judgment and statutory interest thereafter.

109 The defendants' counterclaim is dismissed. In view of the manner in which the claim was presented and prosecuted, I award the plaintiffs only 50% of the costs.

Order accordingly