Welcome Guidance from the Singapore Court of Appeal on the Applicable Principles in Determining whether to Grant Anti-suit Injunctions Based on Arbitration Agreements

By Dedi Affandi Ahmad, Partner,
Shipping & International Trade, Rajah & Tann

1. When choosing to arbitrate, parties often draft their arbitration agreement in broad terms with the aim of having any disputes heard together in one forum. In such cases, the arbitration agreement will usually state that any dispute "*arising out of or in connection with [the underlying contract]*" is to be resolved by arbitration.

2. On its face, the phrase is widely worded and would ordinarily be expected to be interpreted broadly. However, what are the limits on the expansive scope intended by this phrase? Would the phrase, if present in a bill of lading contract, embrace a claim in tort brought by a berth operator against a shipowner for damage to its berth in circumstances where the berth operator was also the shipper under the bill of lading?

3. In *COSCO Shipping Specialized Carriers Co., Ltd. v PT OKI Pulp & Paper Mills* [2024] SGCA 50, the Singapore Court of Appeal applied a two-stage test to answer this question. It emphasised that the key inquiry was to ascertain the nature of the competing claims and defences raised, but without determining the substantive merits of either claim or defence. Ultimately, it found that the tortious claim was covered by the arbitration agreements.

Background

4. The appellant ("**CSSC**") was the owner of the vessel "LE LI" ("**Vessel**"). CSSC issued various bills of lading (the "**BLs**") to the first respondent ("**POPPM**") as shippers in respect of wood pulp cargo (the "**Cargo**"). The contracts of carriage evidenced by the BLs incorporated arbitration agreements stating that "*any dispute arising out of or in connection with this Contract … shall be referred to and finally resolved by arbitration in Singapore*" (the "**arbitration agreements**").

5. Following the loading of the Cargo, the Vessel allided with a trestle bridge owned by POPPM during its departure from her berth, causing part of the bridge to collapse (the "**Incident**"). POPPM, advancing a claim in tort for damage to its berth ("**Claim**"), commenced proceedings against CSSC in Indonesia for losses arising out of the Incident (the "**Indonesian Proceedings**"). In response, CSSC applied in the Singapore Court for an anti-suit injunction ("**ASI**") to restrain POPPM from continuing with the Indonesian Proceedings on the basis that the Claim fell within the scope of the arbitration agreements. CSSC also commenced arbitration against POPPM, claiming that POPPM had breached a safe port warranty under the BLs and that even if the master was negligent, it would fall within the "negligent navigation" exception in the BLs.

6. At first instance, the General Division of the High Court in [2024] SGHC 92 declined to grant the ASI, finding that the Claim fell outside the scope of the arbitration agreements. CSSC appealed against the decision below. Therefore, the Court of Appeal had to consider whether the Claim in the Indonesian Proceedings fell within the scope of the arbitration agreements.

Principles outlined by the Court of Appeal

7. The Court of Appeal found that in cases involving an arbitration agreement, it would suffice to show that there was a breach of such agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to, so long as such relief is sought promptly and before the foreign proceedings are too far advanced. In determining the key question of the scope of the phrase "*arising out of or in connection with*", the Court of Appeal applied a two-stage test:

   (a) First, the court should determine what are the "matters" or "disputes" which the parties have raised (or foreseeably will raise) in the foreign court proceedings.

   (b) Second, it should ascertain whether such "matters" or "disputes" fall within the scope and ambit of the arbitration agreement.

8. In considering these issues, the Court of Appeal set out the following principles:

(a) In identifying the "matters" or "disputes" which the parties have raised or foreseeably will raise in the foreign court proceedings, the court must ascertain the substance of the dispute or disputes between the parties. This also involves a consideration of the defences and all reasonably foreseeable defences to the claim or part of the claim. The court is not constrained to examining only the pleadings, which it cautioned may be aimed at artificially avoiding a reference to arbitration.

(b) The inquiry as to whether a "matter" or "dispute" fell within the scope of an arbitration clause does not start with the oft-cited presumption that parties must have intended for all disputes to be heard together. If the examination of the text of the agreement and the nature of the competing claims indicate that a claim is not within its ambit, then the courts should not steer away from the resulting outcome of forum fragmentation.

(c) Further, although various tests have been developed to assist the courts in considering whether a dispute fell within the scope of an arbitration clause, they were not intended to be applied in a formulaic manner. They could only be helpful to the extent that they illustrated how the courts approach the "connection" inquiry, *i.e.,* the arbitration agreement should be construed with common sense and in a manner consistent with rational businessmen. Indeed, there could be no universal test since the ascertainment of the relevant "connection" would invariably be a highly fact-specific inquiry.

Application to the Present Facts

9. The Court of Appeal observed that POPPM's Claim in tort, CSSC's contractual defence of negligent navigation and its cross-claim for breach of the safe port warranty all shared a common connection – namely, what was the cause of the Incident? The answer to the question of causation had a direct impact on the competing claims and defence.

10. The Court of Appeal found that the parties must have contemplated that a pure tort claim for damage to the trestle bridge, caused during the performance of the contracts of carriage between the parties and where the foreseeable lines of defence included recourse to the provisions of those contracts, should be subject to the arbitration agreements:

(a) The loading at the jetty with the trestle bridge was not just contemplated, it was contractually provided for in the charterparty incorporated into the BLs.

(b) Further, the allocation of risk for loss caused by negligent navigation was also contractually provided for in the contractual defence of "errors of navigation".

(c) Notably, the common "connection" between POPPM's tortious claim in Indonesia, CSSC's contractual defence of "errors of navigation" under the BLs and its counterclaim for breach of the safe port warranty ultimately related to the cause of the Incident. In other words, the competing claims and defence arose out of the very same facts leading to the Incident. Consequently, it was clear that the parties' dispute arose out of or were in connection with the underlying contracts of carriage.

(d) Further, the Court of Appeal also found that the merits of the competing claims and defence were generally irrelevant to the inquiry, and that it was unnecessary to examine whether they satisfied the *prima facie* standard.

11. In the circumstances, having found that the Claim in the Indonesian Proceedings fell within the scope of the arbitration agreements, the Court of Appeal granted the ASI.

Takeaways

12. This decision highlights the width of arbitration clauses. It does not matter that a claimant makes its claim in tort *qua* property owner. Instead, the Court will look past these fine distinctions to the substance of the dispute, to determine whether the dispute in question falls within the scope of the arbitration agreement. The Court will not be drawn in by arguments on the merits (or otherwise) of the competing claims or defences at the jurisdiction stage, rightly reserving the question of merits to the arbitral tribunal. Hence, it is a welcome addition to the jurisprudence on arbitration in Singapore and in other jurisdictions.

Dedi Ahmad