

SOUNDBITES – VARIOUS DECISIONS ON ARBITRATION AND MARITIME ISSUES

1. What happens to arbitral proceedings after an award has been set aside – *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] SGHC 264

The Court held the status of arbitral proceedings after an award has been set aside is dependent on:

1. Whether the award was made within power or beyond power, and;
2. The extent to which the arbitral tribunal is conferred jurisdiction over the dispute by the arbitration agreement.

Arbitral award made “within power”

The tribunal would have performed its duties with respect to the issues covered in that award. Thus, arbitral proceedings have to be recommenced before a newly constituted tribunal, assuming the underlying arbitration agreement is still valid and there is no time bar.

Arbitral award made “beyond power”

1. If the arbitral tribunal lacks jurisdiction, then it would not be vested with jurisdiction to deal with the matter merely because the award has been set aside. This is because the arbitral tribunal was not vested with jurisdiction in the first place when it made the award. Depending on the reason why the tribunal lacked jurisdiction, parties may be able to recommence arbitral proceedings. For example, if the initial tribunal was improperly appointed, then parties may reappoint a newly constituted tribunal in accordance with the arbitration agreement and recommence proceedings.

2. If the tribunal did not have power to issue the award in the form that it did, but nevertheless had jurisdiction under the arbitration agreement to decide the issues, then the same tribunal can determine those issues in a subsequent award. Arbitral proceedings would not have to be recommenced before a newly constituted tribunal because the original tribunal did not complete its mandate to decide all the issues between the parties in the first place. Such situations can be expected to be rare and would be an exception rather than the norm.

Note

This matter went on to the Court of Appeal and the appeal was dismissed.

2. Whether the court can order a party to be joined to an arbitration - *The “Titan Unity” (No 2)* [2014] SGHCR 04

The Court concluded that the consent of the parties to the existing arbitration and the party seeking to join or to be joined to the arbitration was a necessary condition for there to be joinder. To determine this consent, the Court has to give regard to “the context and the objective circumstances” to ascertain the parties’ objective intentions.

In this case, the Court found that the parties in this case did indeed impliedly consent to have the dispute resolved in arbitration. However, it declined to join the non-party to the arbitration. The Court took the position that such joinder should be decided by the arbitral tribunal instead.

This case illustrates the importance of consent and that in the absence of consent, it might not be possible to consolidate two arbitrations or join a party to an existing arbitration even where the facts and issues of the respective claims overlap.

3. Anti-Suit Injunctions in aid of Arbitration – *R1 International Pte Ltd v Lonstroff AG* [2014] SGHC 69

An anti-suit injunction is an order by the Court that restrains a party from commencing or continuing with proceedings in a foreign country. In this decision, the Singapore High Court considered the extent of its powers to grant anti-suit injunctions in support of an international arbitration (“IA”).

Brief Facts

The defendants, a Swiss company commenced proceedings against the plaintiffs, a Singapore company, in the Swiss Courts. The plaintiffs alleged this was in breach of an arbitration agreement which designated arbitration in Singapore. The defendants on their part disputed that there was any arbitration agreement.

The Plaintiffs were granted an interim anti-suit injunction in aid of arbitration by the Singapore Courts. This prevented the defendants from continuing their action in Switzerland. The defendants applied to discharge the injunction, while the plaintiffs applied for the injunction to be made permanent.

In its judgment, the High Court found that the arbitration agreement relied on by the plaintiff was invalid. Accordingly, the plaintiff was precluded from relying on the arbitration agreement. Prakash J thus discharged the interim anti-suit injunction and consequently dismissed the plaintiff’s application for a permanent anti-suit injunction.

Nevertheless, Prakash J went on to consider whether the courts can grant permanent anti-suit injunctions to aid IAs.

Can the Singapore Courts grant permanent anti-suit injunctions to aid IAs in Singapore?

Prakash J observed that Section 12 read with Section 12A of the Singapore International Arbitration Act (IAA) clearly provides for interim injunctions in aid of IAs in and outside Singapore. However, the court’s powers under the IAA do not extend to granting permanent anti-suit injunctions. This power is conferred by Section 4 (10) of the Singapore Civil Law Act (CLA).

Prakash J was of the view that the Court’s general injunctive power under the CLA is the power which the Court generally exercises to grant permanent anti-suit injunctions in aid of local proceedings. Since no “clear language” exists in the IAA to circumscribe this general jurisdiction of the court to grant injunctive relief, the general injunctive powers under the CLA remain available to the Court. Accordingly, there is no reason why such power cannot be exercised to grant permanent anti-suit injunctions in aid of IAs in Singapore.

Can/Should the Singapore courts grant a permanent anti-suit injunction, to aid IAs outside Singapore?

Prakash J reasoned that the Courts already have power under the IAA to grant interim injunctions in aid of IAs outside Singapore. Thus, it would be “logical and consistent” for the Court to have general injunctive power under the wider-ranging legislation in Section 4 (10) CLA to grant permanent anti-suit injunctions in aid of IAs outside Singapore. However, she cautioned that “logic alone may not be a sufficient basis, to extend the court’s powers beyond what is in the IAA to parties who have agreed to arbitrate abroad” and that “strong reasons” must be present to justify intervention by the Singapore courts to support foreign IAs. Prakash J however declined to express a concluded opinion on the issue.

Significance of the decision

The case is relevant to parties faced with litigation commenced in breach of an arbitration clause. While the Court's observations on anti-suit injunctions were made in passing, they remain persuasive and do provide clarification of the Court's power to grant such injunctions in aid of international arbitrations in Singapore.

With regard to anti-suit injunctions in aid of international arbitrations outside Singapore, while the Court did not express a concluded opinion, the Judge's reasoning does provide a legal basis for seeking such injunctions.

Note

This matter went on to the Court of Appeal. The appeal did not focus on the power of the Court to grant an anti-suit injunction in support of arbitration. Instead the appeal turned on whether the terms containing the agreement to arbitrate in Singapore was incorporated as part of the contract. The terms containing the agreement to arbitrate was contained in the International Rubber Association Contract (IRAC).

The CA allowed the appeal and found that the agreement to arbitrate was incorporated into the contract. This was because the Court accepted that there was a practice in the international rubber commodities market for parties to contract on the basis of standard terms. Further, the Court found it improbable that parties would contract purely on the bare bones of email confirmations as these confirmations were silent on a number of important matters, which were matters dealt with by the IRAC terms. The Court also took into account parties' conduct throughout the course of five transactions which showed that both parties contemplated that the contract would be supplemented by standard terms.

4. ALTERING PRIORITIES BETWEEN MARITIME CLAIMANTS - THE "POSIDON" [2017] SGHC 138

Piraeus Bank, one of the largest banks in Greece, commenced two mortgagee actions in Singapore and effected a double arrest on the vessels "Posidon" and "Pegasus", flowing from the ship-owners' default of a loan agreement. The vessels were subsequently sold pursuant to a judicial sale.

Subsequently, World Fuel Services, who had (via various companies) supplied bunkers to the vessels on credit, intervened in both actions. World Fuel Services claimed that the usual order of priorities, in terms of entitlement to the vessels' sale proceeds, should be altered so as to elevate their claim for unpaid bunkers above the Bank's claim as mortgagees (the Bank would ordinarily enjoy a higher priority). A number of different grounds were asserted by World Fuel Services in support of their claim.

Justice Belinda Ang in a written Judgment held that the Court did have the power to alter priorities between maritime claimants provided that exceptional circumstances were shown. This is the first local decision on the point as prior local cases had only ruled that the Court had the power to allow certain claims to be treated as Sheriff's expenses and thereby enjoy a higher priority.

Nonetheless, applying the above principle, Justice Belinda Ang declined to alter priorities as World Fuel Services were unable to show exceptional circumstances. Justice Belinda Ang found that World Fuel Services had not even raised a prima facie case to support their claim for an alteration of priorities and further, that the extension of credit by World Fuel Services to the ship-owners was a business risk assumed in the course of business.

Note

World Fuel Services appealed against this decision to the Singapore Court of Appeal. The appeal was heard in January 2018. The Court of Appeal upheld Justice Belinda Ang's decision and dismissed the appeal.

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