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STAY OF ARBITRAL PROCEEDINGS UNDER SECTION 10(9)(A) OF THE INTERNATIONAL ARBITRATION ACT – AYY V. AYZ AND ANOR [2015] SGHCR 22

Pursuant to the International Arbitration (Amendment) Act 2012 (No. 12 of 2012), section 10 of the International Arbitration Act (Cap. 143A) (the “IAA”) was amended to clarify the process of appealing to the High Court of Singapore on the issue of an arbitral tribunal’s ruling of its jurisdiction (or lack thereof) at any stage of the arbitral proceedings. In particular, such an appeal does not operate as a stay of the arbitral proceedings unless ordered otherwise by the High Court.

The relevant portions of section 10 of the IAA are reproduced as follows:

“Appeal on ruling of jurisdiction

10.—(1) *This section shall have effect notwithstanding Article 16(3) of the Model Law.*

(2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings.

(3) If the arbitral tribunal rules —

(a) on a plea as a preliminary question that it has jurisdiction; or

(b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the High Court to decide the matter.

...

(7) In making a ruling or decision under this section that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

...

(9) Where an application is made pursuant to Article 16(3) of the Model Law or this section —

(a) such application shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise; ...”

However, since then, there has been an “apparent dearth of published case authorities relating to applications taken out under section 10(9)(a) of the [IAA]”. As such, in a Note of Oral Judgment dated 16 December 2015 and published under ***AYY v. AYZ and anor [2015] SGHCR 22***, the learned Assistant Registrar Colin Seow endeavoured “to sow some jurisprudential seeds” to provide guidance for future stay applications.

Whether a Singapore Court will order a stay of arbitration pending an appeal of an arbitral tribunal’s jurisdiction is based on established principles that apply generally to the stay of execution of court judgments pending appeals. When hearing an application under section 10(9)(a) of the IAA, the Court “ought to see that [a] party’s challenge against the arbitral tribunal’s jurisdictional ruling, if successful, would not be incapable of providing a full and consummate redress” to the said party.

The Learned Registrar went on to explain that “[in] other words, a stay of arbitration will generally be ordered if an applicant is able to demonstrate with reasonable and credible substantiation that a refusal of stay would result in detriment in respect of which the applicant could not later be adequately restituted” in terms of an award or order of costs under section 10(7) of the IAA. In the instant case, the applicant was unable to show any detriment or prejudice that could not be adequately compensated by costs, and the Court accordingly declined to exercise its discretion to stay the arbitration proceedings.

Notwithstanding the outcome in the instant case, it would appear that the Singapore Court has a fair amount of flexibility and discretion under section 10(9)(a) of the IAA to take into account the facts and circumstances of each case, including those which do not pertain to the substantive merits of the case. As such, this case provides useful guidance for future applications for a stay of arbitral proceedings pending an appeal on a tribunal’s jurisdictional ruling.



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