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Case Law Update

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Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) [2024] SGHC 244

Introduction

Recourse to the Singapore Courts for the setting aside of an arbitration award pursuant to s 24(b) of the International Arbitration Act 1994 (the "**IAA**") and/or Arts 34(2)(a)(ii) and (iii) of the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**") can be a complex and intricate matter. Under Singapore law, the General Division of the High Court may set aside the award of an arbitral tribunal if there has been a breach of natural justice.

The twin pillars of natural justice are the rule against bias and the fair hearing rule. A breach of the fair hearing rule could possibly arise from the chain of reasoning that an arbitral tribunal adopts in its award, as the chain of reasoning must be one which the parties had reasonable notice of and which has sufficient nexus to the parties' arguments. In the case where an arbitral tribunal's chain of reasoning departs from the cases of both parties, the High Court in *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2024] SGHC 244 provides valuable insight into the nuances on the remission and setting aside of arbitral awards.

Relevant Background

The respondent, Vietnam Oil and Gas Group ("**PVN**"), was the owner of a thermal power plant project located in Vietnam (the "**Project**"). The applicant, Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport) ("**PM**"), was the leading member of the consortium that undertook the construction of the power plant (the "**Consortium**").

PVN and the Consortium had entered into a contract relating to the Project (the "**Contract**"), which comprised multiple documents, including the Conditions of Contract (the "**Conditions**"). The Conditions provided that the Contract was governed by the law of the Socialist Republic of Vietnam (Clause 1.4) and an arbitration agreement to refer disputes to arbitration in Singapore (Clause 20.3).

The Project commenced in January 2015 and PM subcontracted part of the works to various subcontractors. However, on 26 January 2018, the United States Department of the Treasury's Office of Foreign Assets Control placed PM on the United States Sanctions list, which prohibited all US persons from engaging in transactions involving PM. This further resulted in many of PM's subcontractors suspending their obligations under the subcontracts.

On 28 January 2019, PM issued a notice of termination on the grounds that the US sanctions constituted a *force majeure* event. The notice stated the Contract was to terminate on 18 February 2019 (the "**First Notice of Termination**"). On 8 February 2019, PM issued a second notice of termination on the grounds that PVN had defaulted in making certain payments to PM. This notice stated the Contract was to terminate on 22 February 2019 (the "**Second Notice of Termination**").

The Arbitration

PM issued a Notice of Arbitration on 23 August 2019. The arbitration was conducted under the Arbitration Rules of the Singapore International Arbitration Centre.

PM's case in the arbitration, in so far as relevant to the proceedings before the Court, was as follows:

- The US sanctions constituted a *force majeure* event and the Contract was deemed to have terminated by reason of *force majeure* on 18 February 2019;

- In the alternative, the Contract was deemed to have been terminated by non-payment on 22 February 2019.

In response, PVN argued that:

- The First Notice of Termination was a wrongful termination as the US sanctions did not amount to a *force majeure* event under the Contract;

- The Second Notice of Termination was not valid as PM had previously wrongfully repudiated the Contract by the First Notice of Termination and abandoned the works.

The relevant findings by the arbitral tribunal were as follows:

- PM could not rely on *force majeure* to exercise the right of termination under Clause 19.6 of the Conditions, and the purported termination of the Contract under the First Notice of Termination was ineffective;

- As a matter of Vietnamese law, a notice of termination without basis was sufficient to terminate a contract, and the effective notice of termination would be the date regulated by the notice of termination;

- The effective date of termination under the First Notice of Termination was 18 February 2019, therefore at the time the Second Notice of Termination was issued on 8 February 2019, the Contract was still effective, and the valid Second Notice of Termination issued would supersede the ineffective First Notice of Termination;

- The tribunal found that by issuing a Second Notice prior to the First Notice taking effect, PM must have intended the Second Notice to replace or supplement the First Notice;

- As such, PM had validly terminated the contract on 22 February 2019 by way of the Second Notice of Termination and was entitled to payments under Clause 19.6(a) of the Conditions.

The Court Proceedings

PVN challenged the arbitral tribunal's final award on the basis that the tribunal had breached s24(b) of the IAA and Arts 34(2)(a)(ii) and (iii) of the Model Law. PVN argued that the tribunal had breached the rules of natural justice which prejudiced PVN's rights.

Under s24(b) of the IAA, PVN argued that the tribunal breached the fair hearing rule, as the tribunal's chain of reasoning had no nexus to the parties' arguments.

Under Art 34(2)(a)(ii) of the Model Law, PVN argued that it was unable to present its case as the tribunal's findings dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contained decisions on matters beyond the scope of the submission to arbitration.

The Court's Decision

The Honourable Justice Chua Lee Ming held that the tribunal's chain of reasoning in the final award had departed from, and had no nexus to, both PM's and PVN's cases. PM had not made it a part of its case that the Second Notice of Termination amended or withdrew the First Notice of Termination.

The tribunal would have had to give both parties the opportunity to be heard on the approach that it was considering should they have contemplated a different approach from the parties' argued cases.

However, the Court chose not to set aside the final award but exercised its discretion to remit the matter to the tribunal.

Key Takeaways

This decision shows that an arbitrator has to be careful to allow parties to submit arguments on an intended chain of reasoning where that did not arise out of the parties' pleaded cases. It is a natural aspect of the right to be heard which underpins the fair hearing rule. In this case the matter was remitted to the tribunal in order to give the tribunal the opportunity to remedy the breach of the fair hearing rule and therefore eliminate the grounds for the setting aside application.

This case is a reminder that when reviewing arbitral awards it is useful to consider whether the tribunal's chain of reasoning has arisen out of either or both parties' case as this could form the basis to challenge the award in court.

Written with the assistance of Hillary Cheah.

How DennisMathiew can help

Our lawyers have extensive experience in dealing with commercial arbitration matters and are well placed to advice on whether there are grounds to set aside an arbitral award.

If you have any queries on this article or require legal advice on similar issues you may be facing, please click here: https://www.dennismathiew.com/contact/ to get in touch with our team.

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