

Interim Award In Multi-Tier Dispute Resolution Clauses

The Singapore's Court of Appeal has recently ruled on the enforceability of Interim Awards in multi-tier dispute resolution clauses.

The Court in *PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation [2015] SGCA 30* considered whether or not:

- i. To set aside an interim arbitral award rendered on 22nd May, 2013 which ordered the Appellant to pay the Respondent a sum of US\$17,298,834.
- ii. To set aside the order of the Court dated 2nd July, 2013 granting the Respondent leave to enforce the interim arbitral award rendered on 22nd May, 2013 in the same manner as a judgement of the Court.

Facts of the Case:

In 2006, the Appellant contracted with the Respondent to design, procure, install, test and pre-commission a pipeline to convey natural gas from South Sumatra to West Java. The parties' relationship was governed primarily by the standard provisions of the Conditions of Contract for Construction published by the **Fédération Internationale des Ingénieurs-Conseils ("FIDIC")**.

During the course of the project, disputes arose between the Parties over 13 Variation Order Proposals submitted by the Respondent for variation works. The disputes were referred to the **Dispute Adjudication Board (“DAB”)** in accordance with the dispute resolution mechanism set out in cl 20 of the Conditions of Contract. The important provisions of the clause are produced below:

20.7 Failure to Comply with Dispute Adjudication Board’s Decision In the event that:

- (a) Neither Party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 [Obtaining Dispute Adjudication Board’s Decision],
- (b) The DAB’s related decision (if any) has become final and binding, and
- (c) A Party fails to comply with this decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board’s Decision] and SubClause 20.5 [Amicable Settlement] shall not apply to this reference.

The Appellant accepted all the decisions rendered by the DAB, except one – DAB Decision No. 3 which required the Appellant to pay the Respondent a sum of US\$17,298,834. Upon the Appellant’s consistent failure to pay the adjudicated sum, the Respondent commenced arbitration under Clause 20.7 in 2009.

Contentions of the Parties:

The Appellant contended that (a) the DAB Decision No. 3 was not final and binding; (b) The Appellant was not obliged to pay the Respondent the Adjudicated Sum; and (c) the Appellant had not breached any of its obligations under the Conditions of Contract in

refusing to pay the Respondent that sum. The Tribunal, however, ruled in favour of the Respondent issuing a Final Award wherein they upheld the obligation of the Appellant to give prompt effect to the DAB Decision. This award was set aside.^[1] In appeal, the decision of the Court was confirmed on the grounds that the arbitrators “had exceeded their jurisdiction in failing to consider the merits of the parties’ Underlying Dispute before issuing the Final Award.”^[2] However, the Court observed that the Appellant was obliged to comply with the DAB’s decision and the same was enforceable as an interim or partial award.

Based on this observation, the Respondent again commenced arbitration in 2011, this time seeking an interim award that the Appellant was liable to comply with the DAB decision o. 3 and pay the adjudicated sum. The tribunal, vide a majority award held that the DAB Decision No. 3 should be enforceable as an interim award.

Once again, the Appellant sought to set aside the arbitral award on the grounds that the Interim award was not final as it would be varied when the final award was rendered on the merits of the dispute, and therefore, the interim award was in contravention to the Section 19B of the Singapore International Arbitration Act.^[3]

Decision of the Court:

¹ PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation [2010] 4 SLR 672

² CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK [2011] 4 SLR 305

³ Section 19B — Effect of award

(1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.

(2) Except as provided in Articles 33 and 34(4) of the Model Law [ie, the UNCITRAL Model Law on International Commercial Arbitration], upon an award being made, including an award made in accordance with section 19A, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with Article 31 of the Model Law.

(4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act and the Model Law.

The Court held that the interim award was enforceable as it disposed of a preliminary issue and made a final decision on the Appellant's obligations to pay the Respondent in accordance with the DAB's Decision No. 3^[4]. *"Regardless of how the parties' Underlying Dispute over the merits of DAB No 3 was finally resolved in the future, the Judge stated, it would never cease to be true that PGN had this contractual obligation and ought to have made the requisite payment to CRW promptly. In that sense, the Interim Award was final and binding."*

This decision was confirmed in appeal. The Court first elaborated on the different kinds of awards that may be rendered by an arbitral tribunal: A partial or an interim award is one which is rendered by an arbitral tribunal during the course of proceedings and which disposes off a preliminary issue or claim before the adjudication of all the other issue referred to arbitration.

A provisional award on the other hand, is an award issued by the Tribunal to protect a party from sustaining harm damage during the course of the proceedings. For example, an award to maintain the status quo, or to preserve assets or evidence etc.

The Court then confirmed that the Interim award only dealt with the Appellant's obligation to pay the adjudicated sum and comply with the DAB Decision No. 3 in accordance with the provisions of the contract. When, and more importantly, if the Final Award on merits in rendered in favour of the Appellant it would not alter the Interim Award or render it any less final despite the fact that it would alter the financial effects that flow the interim award. This had no implication upon the Appellant's rights to have the merits of the dispute reviewed in arbitration.

Comments

This judgment has great significant with respect to the efficacy of multi-tier dispute resolution mechanisms prescribed in a number of construction contracts now. It will have

⁴ PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation (Indonesia) and another matter [2014] SGHC 146

persuasive value in all Model Law jurisdictions, and even in those countries where the arbitration law is not based on the Model Law, the reasoning of the Court can be relied on.

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