

**ARBITRATION: FINALITY OF ARBITRAL DECISION  
AND MINIMAL INTERVENTION BY COURT**

***BLC and others v BLB and another [2014] SGCA 40***

**In Summary**

The Court of Appeal in its decision of 30 July 2014, reiterated finality in proceedings for arbitral decisions; the principle of minimal judicial (curial) intervention and would exercise its power of intervention sparingly; the Court will only set aside an award in meritorious cases where statutorily prescribed grounds for setting aside an award have been established.

**Facts**

The dispute arose out of a failed commercial joint venture between parties. The Appellants commenced arbitration proceedings against the Respondents alleging that the Respondents, amongst other things, breached clause 4.1 of a Licence Agreement by manufacturing defective goods that were not of the applicable quality standards.

The Respondents counterclaimed, *inter alia*, for the sums of goods delivered.

The Arbitrator found in favour of some of the Appellants' claim but dismissed the Respondents' counterclaim.

The Respondents applied to set aside the entire Award on the Arbitrator's purported failure to deal with the disputed counterclaim in extensively adopting the Appellants' list of issues over the Respondents' list, thereby breaching the rules of natural justice contrary to Section 24(b) of the *International Arbitration Act* ("IAA") (Cap 143A, 2002 Rev Ed) of the *UNCITRAL Model Law for International Commercial Arbitration 1985*.



Section 24(b) of IAA states:

*Court may set aside award*

*24. Notwithstanding Article 34(1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34(2) of the Model law, set aside the award of the arbitral tribunal if –*

....

*(b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.*

#### **Holding of the High Court**

The High Court allowed the appeal, setting aside part of the award for breach of rules of natural justice on its finding that the Arbitrator in extensively adopting the Appellants' list of issues failed to deal with the counterclaim - an entirely discrete head of claim that needed to be dealt with independently from the findings of other issues. In overlooking an entire and discrete head of claim, there was a possibility of there being a material difference in the award given and it being made in favour of the Respondent.

#### **Issue in the appeal before the Judge of the Court of Appeal**

Whether the sole Arbitrator had failed to deal with an essential issue of the dispute by not addressing his mind to one of the Respondent's counterclaims.

#### **Holding of the Court of Appeal**

The Court of Appeal allowed the appeal and reversed the High Court's decision to set aside the award on the following grounds:-

- (a) the Arbitrator did in fact address his mind to the counterclaim and did render a decision in respect of that counterclaim, and so there was no breach of natural justice;
- (b) the Appellants' claim that the Arbitrator had wholly relied on the Respondents' list of issues without considering the Appellants' was erroneous for a closer analysis of all the lists clearly showed that the Arbitrator had read and carefully considered both sets of lists;
- (c) that the Arbitrator did not have to expressly identify the legal basis of the counterclaim since he took the view that the question of responsibility for the alleged defects in the goods in general was directly linked to the issue of payment for any goods delivered, and so in finding that the Respondent breached clause 4.1 of the Licence Agreement, he had also simultaneously determined the Respondent's counterclaim on its own case; and



(d) In *obiter dicta* (the judge's observation) even if the Arbitrator had failed to deal with the counterclaim, the appeal would have not succeeded, notwithstanding that it maybe a serious error of law and/or fact, since the error alleged merely went to the substantive merits of the Arbitrator's decision in him conflating issues of law and/or facts, such that he misunderstood the arguments presented to him and wrongly disregarded the counterclaim as an independent claim.

### **Minimal Curial Intervention**

The Court of Appeal unequivocally reiterated the principle of minimal curial intervention in arbitral proceedings, and so emphasising the need for finality in arbitral proceedings where parties are deemed to have accepted the risks of having a limited right of recourse to the court such that the substantive merits of arbitral proceedings are beyond the remit of the courts even if an error of law and/or fact was made.

The CA also dealt with *Article 33(3)* of the *Model Law* -- a mechanism to seek redress from the Arbitrator (to make an additional award) before turning to the courts when there is a claim in the arbitral proceedings that was not addressed in the arbitral award.

The Court also noted that the clear language of *Article 34(4)* of the *Model Law* (power of remission) did not grant the court the power to remit an award (without more) to a newly constituted tribunal. The scope of *Article 34(4)* gave the court a course of action to remit the award back to the same arbitral tribunal for reconsideration whose mandate terminates on the issuance of the final award, subject only to the provisions of *Article 33* and *Article 34(4)*, unless the Arbitrator chooses to withdraw.

### **Concluding Views**

The decision from the Court of Appeal clearly signifies the Singapore Courts' commitment to the principle of minimal curial interference and reluctance to interfere with an Award rendered by an arbitral tribunal during proceedings. It is only in the most exceptional cases whereby the Singapore Courts are willing to interfere with the tribunal's decision, and errors of law and/or fact going to the merits of the decision is not one of them. This unwillingness to interfere is unlike in several other countries (e.g. India) that are not as arbitration-friendly.

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