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Winding Up Application Premised on Disputed Arbitration Award Blocked by Singapore Court Injunction

In the very recently delivered decision of *Fastfreight Pte Ltd v Bulk Trident Shipping Ltd [2022] SGHC 210*, the Singapore High Court held that where a disputed debt or a cross-claim is subject to an arbitration agreement, parties to the agreement are not allowed to bypass the arbitration agreement by presenting a winding-up application in an attempt to get the court to resolve their disputes.

The parties had entered into a time charterparty for the carriage of bulk cargo from India to China, which provided for disputes to be arbitrated in London. There was a dispute in relation to the issue of hire and the Owners commenced arbitration in London against the Charterers who also brought a counterclaim.

The arbitral tribunal found that the Charterers were liable to pay the Owners an amount awarded under a partial final award (the "PFA Sum" and the "PFA" respectively). The Charterers, however, did not make payment. Instead, they amended their counterclaim to include a claim for the PFA Sum and obtained leave to appeal against the PFA in the English Courts. The Charterers also arrested the Owners' vessel in Singapore to obtain security for their cross-claim.

In the meantime, the Owners served a statutory demand on the Charterers demanding for payment of the PFA Sum within 21 days and threatening the commencement of winding up proceedings if payment was not made. The Charterers thus sought an urgent injunction to restrain the Owners from filing any winding up application.

In applying the principles in the landmark decision of the Singapore Court of Appeal in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co) [2020] 1 SLR 1158*, the Singapore High Court held that the PFA Sum was both a disputed issue as well as a larger cross-claim within the scope of the parties' arbitration agreement. Therefore, determining the merits of the Charterers' cross-claim in the present Singapore court proceedings would usurp the role of the arbitral tribunal. It would also undermine the agreement between the parties that their disputes are to be decided in arbitration and not in court. Accordingly, the Court granted the injunction sought.

This decision provides useful guidance to lawyers in the arbitration space. The Singapore High Court has made it clear that any winding-up application premised on arbitration awards that are subject to a genuine dispute or cross-claim will not be entertained pending the final determination of the arbitral tribunal.

Kelly Yap and his Senior Associates, Gregory Toh and KarLuis Quek, represented the Charterers who successfully obtained the injunction against the Owners. Gregory and KarLuis were the first and second chair respectively at the oral hearing before the High Court Judge. The Owners have since filed an appeal against the High Court's decision.

If you have enquiries or require assistance in any shipping and arbitration related matters, please do not hesitate to contact:



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