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Early Dismissal of Claims and Defences under Rule 29 of the SIAC Rules

Introduction

Rule 29 of Singapore International Arbitration Centre Rules (the "SIAC Rules") empowers tribunals to short-circuit proceedings and dismiss claims and defences that are "manifestly without legal merit".

The case of DBO and others v DBP and others [2023] SGHC(I) 21 is the first reported decision where the Singapore Courts have had to deal with Rule 29 of the SIAC Rules since its introduction to the SIAC Rules in 2016

Background facts and Procedural History

The dispute was in relation to repayment of a loan under a Facility Agreement between DBP (the "Lender") and DBO (the "Borrower"). The Borrower argued that they were not obliged to repay the loan because the Facility Agreement had been frustrated in the context of the COVID-19 pandemic.

The Facility Agreement provided for arbitration in Singapore with the SIAC Rules to apply. The Lender commenced arbitration proceedings against the Borrower under the SIAC Rules on 6 December 2021.

On 18 October 2022, the Lender brought an early dismissal application under Rule 29.1 of the SIAC Rules, seeking an early dismissal of the Borrower's defence that the Facility Agreement had been discharged by frustration.
At the hearing of the early dismissal application, the Borrower sought to introduce a fresh pleading that there was a 'collateral contract' between the parties to the effect that the funds for repaying the loan would come only from certain specific income source.

The Tribunal permitted the Borrower to introduce the fresh point on the existence of a 'collateral contract' in their pleading, but ultimately found that the 'collateral contract' could not be made out on the facts. In the circumstances, the Tribunal found that the Facility Agreement had not been discharged by frustration and on 30 January 2023 issued a Partial Award in favour of the Lender.

On 20 March 2023, the Borrower applied to the Singapore High Court to have the Partial Award set aside. They alleged that the Tribunal had breached natural justice and deprived them of their right to present their case, by summarily dismissing their case when the existence of the collateral contract was a "critical disputed fact".

The decision of the Singapore International Commercial Court (SICC):

On 21 August 2023, the SICC upheld the decision of the Tribunal and dismissed the Borrower's application to set aside the Partial Award.

The Court reasoned that the Tribunal was not bound to assume the existence of the 'collateral contract' in an application for early dismissal under the SIAC Rules. The Tribunal only had to assume the existence of facts allegedly supporting the position that the 'collateral contract' existed. Further, the fact that the Borrower was not given the opportunity to make their submissions at a full evidentiary hearing was not a breach of natural justice because the Tribunal had proceeded on the grounds that the facts pleaded by the Borrower were true.

The Court also observed that even if the Tribunal was required to assume the existence of the 'collateral contract' to meet the "manifestly without legal merit" threshold under Rule 29.1 of the SIAC Rules, any failure on the Tribunal's part to do so would have amounted to an error of law and not a breach of natural justice.

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Key Takeaways

One of the main reasons for adopting international arbitration as a means of resolving disputes is the prospect of a streamlined and predictable enforcement process across jurisdictions. However, there remains a residual risk that the losing party will attempt to resist enforcement or set aside the award in the legal seat of the arbitration. In this case, it took three (3) months for the Tribunal to dispose of the early dismissal application and five (5) months for the Singapore Courts to dispose of the setting aside application.

The majority of challenges to arbitral awards in Singapore involve assertions of breach of natural justice. Not many of these challenges are successful.

While there are no official statistics on how many setting aside applications are filed each year and how many of them succeed in setting aside the award, we have managed to gather the following figures based on the reported cases:

- In 2022, there were 11 reported cases in the High Court or the Court of Appeal involving applications to set aside awards based on a breach of natural justice. Of the 11 cases, only four succeeded in setting aside the award, either in part or in full.
- In 2023, there were 17 reported cases in the High Court or the Court of Appeal involving applications to set aside awards on a breach of natural justice. None of them succeeded.
- If we look at the reported decisions over the past 20 years, approximately only 20% of applications to set aside arbitral awards have been allowed.

The above figures are unsurprising given the high threshold for setting aside an arbitral award for a breach of natural justice – it is only in "exceptional cases that a court will find threshold "crossed".

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