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SINGAPORE COURT OF APPEAL AFFIRMS SUPPORT FOR ARBITRATION WITH DECISION CONFIRMING PRIMA FACIE STANDARD OF REVIEW TO BE APPLIED IN AN APPLICATION FOR STAY UNDER SECTION 6 OF THE INTERNATIONAL ARBITRATION ACT (CAP 143A)

Introduction

In the recent decision of Tomolugen Holdings Ltd and Anor vs Silica Investors Ltd and other appeals [2015] SGCA 57, the Singapore Court of Appeal has had the opportunity to consider, and has in its decision confirmed that the standard of review to be applied when considering an application for a stay under section 6 of the International Arbitration Act (Cap 143A), is a “prima facie standard of review”.

The Plaintiff in the originating action, Silica Investors Ltd, had commenced action for minority oppression against the Defendants. The Plaintiff had entered into a Share Sale Agreement with the 2nd Defendant, in relation to the Plaintiff’s purchase of shares in the 8th Defendant. This Share Sale Agreement contained an arbitration clause, providing that:-

“Without prejudice to any right of the Parties to apply to any competent court for injunctive relief, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (‘SIAC’) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The tribunal shall consist of one arbitrator to be appointed by the chairman of the SIAC. The language of the arbitration shall be English.”

On the basis of this arbitration clause, the 2nd Defendant filed an application for a stay of proceedings pursuant to section 6(1) of the International Arbitration Act and/or under the inherent jurisdiction of the court. The 1st Defendant, 3rd Defendant, 5th Defendant, and 8th Defendant also filed applications to stay the proceedings under the inherent jurisdiction of the court. There were three applications in total, and these were heard at first instance by the Assistant Registrar in the High Court who dismissed the applications. Appeals were made to the High Court which also dismissed the applications, and thereafter the matter went before the Court of Appeal.

Court of Appeal’s Thoughts on the Standard of Review to be Applied under Section 6 of the International Arbitration Act

In analyzing the suite of issues canvassed during the appeals, the Court of Appeal considered, as a threshold question, the standard of review to be applied in a stay application under the International Arbitration Act.

Having considered the matter in great detail, the Court of Appeal took the view the applicable standard of review under section 6 of the International Arbitration Act was a prima facie standard of review and that insofar as an applicant was able to “establish a prima facie case that:

- a) There is a valid arbitration agreement between the parties to the court proceedings;

- b) The dispute in the court proceedings (or any part thereof) falls within the scope of the arbitration agreement; and
- c) The arbitration agreement is not null and void, inoperative or incapable of being performed” then the court should grant a stay in favor of arbitration.

The Court of Appeal also noted that upon this prima facie standard having been met, the court will only refuse a stay “when it is clear on the evidence placed before it that one or more of the above three requirements have not been satisfied”.

Conclusion

The practical implication of the Court of Appeal’s remarks on this issue appear to be that not only should parties think twice before attempting to commence proceedings in court in the face of a clear and binding arbitration agreement between them; but that there should be greater care taken prior to entry into contractual arrangements. Parties should not be too quick to adopt boilerplate clauses or model clauses offered by arbitration and instead should now consider early on (at the contracting stage) the potential limitations which are inherent in the arbitration process, and whether they wish to specially tailor their arbitration clauses to account for such potential limitations or whether litigation is in the prevailing circumstances preferred.

This update is for general information only and is not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



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