

SINGAPORE COURT UPHOLDS ARBITRAL AWARD ISSUED 19 MONTHS AFTER PARTIES' FINAL CLOSING SUBMISSIONS

Introduction

1. In the recent decision of Coal & Oil Co LLC v GHCL Ltd [2015] SGHC 65, the Singapore High Court upheld an international arbitral award, which was issued 19 months after the parties' final closing submissions.
2. In the Court's view, the interval of 19 months did not violate public policy, and did not amount to a breach of natural justice.
3. The Tribunal also did not declare the arbitral proceedings closed before issuing the award. The Court decided that the Tribunal had no obligation or duty to declare the arbitral proceedings closed, in context to the old 2007 Singapore International Arbitration Centre Rules ("SIAC Rules").

Brief Facts

4. The Plaintiff and the Defendant had entered into an agreement for the Plaintiff to supply coal to the Defendant. When a dispute arose between the two parties, the parties referred the dispute to the Singapore International Arbitration Centre ("SIAC"), with the 2007 SIAC Rules governing the dispute at that time.
5. The Tribunal issued an award in favor of the Defendant, and the Plaintiff applied to the Singapore Court to set aside the award. The award was issued one year and seven months (i.e. 19 months) after the parties had made their final reply submissions.

Breach of Rule 27.1 of the 2007 SIAC Rules

6. The central legal issue revolved around the proper interpretation of rule 27.1 of 2007 SIAC Rules. Rule 27.1 provides that the "Tribunal shall submit the draft award to the Registrar within 45 days from the date on which the Tribunal declares the proceedings closed".
7. The issue was whether the Tribunal is obliged, or was merely empowered, to declare the closure of proceedings.

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8. The Court decided that rule 27.1 only conferred a power on the Tribunal (as opposed to imposing an obligation on the Tribunal) to declare the arbitral proceedings closed. There was therefore no breach of rule 27.1 when the Tribunal elected – as it was entitled to under the wide case-management powers it is afforded under the 2007 SIAC Rules – not to issue a declaration of closure of the proceeding before releasing the award.
9. The Court approached the interpretation of rule 27.1 purposively (as rule 27.1 had been incorporated into the parties’ contract). The Court viewed the interpretation of the institutional rules of an arbitral institution as requiring a consideration of the drafting history of the rules, in a manner akin to an examination of the legislative history of an Act of Parliament.
10. After a detailed examination of the drafting history of rule 27.1, the Court discerned a clear trajectory – there has been a gradual shift toward imposition of stricter time lines for the release of arbitral awards, through a decrease in tribunal autonomy and a concomitant increase in the supervisory role of the Registrar and the parties.
11. The Court preferred the interpretation that rule 27.1 only conferred a power (and did not impose an obligation) on the Tribunal to declare the arbitral proceedings closed, for the following reasons, among others:
 - (a) First, it was material to the Court that the 2007 SIAC Rules did not impose a duty on the Tribunal to first consult with parties before declaring the arbitral proceedings closed. In the Court’s view, it was unsafe to interpret rule 27.1 as imposing a duty on tribunals to issue a declaration of closure without a predicate duty to consult with the parties. (Such a predicate duty to consult is present in the 2010 and current 2013 SIAC Rules).
 - (b) Secondly, the Court viewed the declaration of closure as a “case-management tool”; and not a condition precedent for the release of an award.
 - (c) Thirdly, the Court did not see why the requirement of a declaration of closure should be so critical, when it did not add anything substantive to the arbitration process.

The Interval of 19 Months

12. The Court went on to consider whether the interval of 19 months from the date of the parties' final submissions and the release of the award justified the setting aside of the award. The Court also, for the sake of completeness, also considered whether the award should be set aside even if there had been a breach of rule 27.1.
13. First, the Court again emphasized that the Plaintiff did not show why the event of the declaration of closure was of such critical importance, to the extent that non-compliance justifies setting aside the award. In this particular case, it could not be seriously argued that the award was rendered out of time, in a way that affected the Tribunal's mandate. The Court decided that the issuance of the award in this case, was not tainted by the breach of any procedure agreed upon by the parties under the 2007 SIAC Rules.
14. The Court also rejected the Plaintiff's argument that there had been a conflict with public policy of Singapore. In the Court's view, while the delay in the release of an arbitral award might not necessarily be in the public interest, it cannot, in itself without more, constitute a violation of public policy.
15. The Court also pointed out that if one party was genuinely of the opinion that a tribunal's delay was truly intolerable, that party ought to apply for the mandate of the tribunal to be terminated before the award was released.
16. The Court also found that there was no breach of natural justice. The Tribunal was not obligated to invite submissions on why the award should not be released, before releasing the award.