Kluwer Arbitration Blog

Enforcement of a judgment debt in the face of an arbitration agreement

Darius Chan (Norton Rose Fulbright) · Wednesday, May 23rd, 2012 · YSIAC

A party who wishes to circumvent an arbitration agreement may sometimes proceed to obtain default judgment from a friendly court and then seek to enforce that judgment, under the common law, as a debt in the courts of the country where the counterparty is located. A recent Singapore decision, *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2012] SGHCR 2, illustrates such a scenario. From a reverse perspective, it showcases how a party may find itself subject to a proceeding to enforce a debt arising out of a foreign court judgment that had been secured from a friendly court in spite of an arbitration agreement.

In *Giant Light Metal*, the plaintiff, Giant Light Metal, was the buyer of two generator sets from Aksa, the defendant. The contract for the sale and purchase of the generator sets contained an arbitration agreement. Giant Light Metal subsequently alleged that the defendant had committed various breaches of contract. Instead of commencing arbitration proceedings, Giant Light Metal commenced court proceedings in the Suzhou Intermediate Court, Jiangsu Province, in the People's Republic of China (PRC). Giant Legal Metal served the papers relating to the PRC claim on Aksa at the latter's registered address in Singapore.

Aksa chose not to participate in the proceedings before the PRC court. The PRC court granted judgment in favour of Giant Light Metal. The Chinese judgment was served on Aksa in Singapore. Aksa did not appeal the decision.

Subsequently, Giant Light Metal requested Aksa to pay the PRC judgment sum. Because Aksa refused to pay, Giant Light Metal commenced proceedings before the Singapore High Court to recover the debt arising from the PRC judgment. Aksa responded by applying for a stay of proceedings in favour of arbitration.

The Assistant Registrar denied Aksa's stay application. He rightly held that a stay of proceedings under the International Arbitration Act can only be granted if the proceedings instituted fall within the terms of the arbitration agreement. The arbitration agreement in the instant case only covered "any dispute or controversy arising out of or relating to the contract between the parties during performance . . ." The last two words made it easy for the court to hold that an action to recover a debt arising out of a foreign court judgment was not a dispute arising *during performance*

of the contract. Even if those two words were not in the arbitration agreement, it is suggested here that the stay application should arguably still be denied. That is because the proceedings commenced by Giant Light Metal does not arise out of the contract *per se*. Giant Light Metal's (alleged) entitlement to be paid arises out of the foreign court judgment; there was no need for Giant Light Metal to rely on the contract any more.

That however does not mean that a party in Aksa's shoes is necessarily doomed. In order to enforce a foreign court judgment as a debt under the common law, the Assistant Registrar stated that:

> "Foreign judgments *in personam* may be enforced by a claim in proceedings … if the foreign judgment is a money judgment of a court of competent jurisdiction, and that the judgment pronounced by the foreign court is final and conclusive as between the parties."

Astute readers would have already picked out the two key words in this proposition of law. The foreign court must be one of "competent jurisdiction". Under the common law, a foreign court has competent jurisdiction either if (i) the defendant was "present" in the foreign jurisdiction when proceedings were instituted, or (ii) the defendant had submitted to the jurisdiction of the foreign court. If a party like Aksa can show that neither of these conditions have been satisfied, there is a good arguable case it will be able to resist the attempt by its opponent to enforce a foreign judgment as a debt under the common law.

The difficulty arises if a party like Aksa has a PRC "presence". Consequently, practitioners should be alive to the possibility of such manoeuvres to circumvent an arbitration agreement, and the risks it poses to clients with international presences.

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