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Dubai Issues Judgment in Support of International Arbitration

Hassan Arab (Al Tamimi & Company) and Dalal Al Houti · Monday, April 13th, 2015

In the Dubai Court of Cassation Case No. 434/2014 (Al Reyami Group LLC v. BTI Befestigungstechnik GmbH & Co KG) judgment issued on 23 November 2014, the Dubai Court of Cassation confirmed the Court of Appeal's decision and, inter alia, granted recognition of a foreign arbitral award pursuant to the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Summary of facts

In summary of the facts, the dispute arose out of and in connection with a distribution agreement concluded between Claimant (German Company) and Respondent (UAE Company) providing for arbitration under the auspices of the ICC. The seat of arbitration was Stuttgart, Germany.

The Claimant successfully filed a claim before the Dubai Court of First Instance seeking the recognition of a *foreign arbitral award rendered in Stuttgart, Germany*. The Respondent subsequently appealed to the Dubai Court of Appeal, which upheld the decision of the Court of First Instance. The Respondent challenged the appeal court's decision before the Dubai Court of Cassation.

The Dubai Court of Cassation

On 23 November 2014, the Dubai Court of Cassation upheld the decision of the Dubai Court of Appeal and addressed three different elements to the appeal worth highlighting. These are as follows:

- 1) Arbitrability of distribution agreements
- 2) Distinction between 'venue' and 'seat' of arbitration
- 3) Applicability of the NY Convention in the UAE

Arbitrability of distribution agreements

The UAE Civil Procedures Law expressly excludes certain types of disputes as being non-arbitrable as a matter of UAE law, disallowing arbitration 'in matters where no conciliation may be reached'. Disputes may be deemed non-arbitrable either by existing legislation or as a matter of public policy by the courts. The UAE courts, by law, have a duty to intervene and investigate the

irregularity even if such irregularity is not one of the grounds for setting aside the arbitral award under Article 216 of the Civil Procedures Law. As public policy, by definition, governs issues that are of fundamental concern to society and the basis for the social, political, economic or ethical laws of the State and therefore any contravention to the status quo must be determined by the courts. Hence, the list is essentially non-inclusive. However, matters that have been deemed non-arbitrable in the past include disputes arising out of commercial agency, distributorship, labour agreements, bankruptcy and issues such as forgery and criminal activity.

In its ruling, the Court of Cassation however rejected, among other things, the argument that distribution agreements are non-arbitrable according to the UAE laws and denied that the arbitrability of such dispute is a matter of public policy. However, the fact that there is no doctrine of binding precedent in the UAE makes it difficult to predict with certainty the scope of its public policy application in the future and whether distributorship remains arbitrable.

Seat of Arbitration

It is well established that the seat of an arbitration is a crucial factor. It directly influences a number of issues, such as but not limited to the determination of the *lex arbitri*, arbitrability of the dispute, determination of the place of the annulment proceedings of the arbitral awards and the courts with supervisory jurisdiction over the arbitral process.

The Dubai Court of Cassation in this instance recognized the difference between ‘venue’ and ‘seat’ of arbitration. The Court, in conformity with modern standards, held that convening the hearing in Paris did not change the legal seat of arbitration which remained Stuttgart, Germany.

Applicability of NY Convention in the UAE

Since the UAE ratified the New York Convention in 2006, the provisions for recognition set out in the Convention have become mandatory laws of the state notwithstanding its contradiction to previous laws (including Articles 235-238 of the Civil Procedures law). However, in the past, the local courts have applied provisions of the UAE Civil Procedures Law instead of the New York Convention.

The Court explained that since its ratification, the New York Convention is deemed an ‘applicable domestic law’ in the UAE and the judiciary should apply the provisions of the Convention to any and all disputes relating to the execution of foreign awards. It was therefore held that the provisions of the New York Convention were applicable to the dispute in question.

What is more, the Court held that the first few articles of the New York Convention constitute a positive obligation for a contracting state to recognize and enforce foreign arbitral awards, i.e. arbitral awards made in the territory of another State. A party seeking enforcement of a foreign award needs to supply to the court (a) the arbitral award and (b) the arbitration agreement (Article IV).

The Court recognized the objection of a party against whom enforcement of a foreign award is sought be limited to one of the grounds for refusal of enforcement which are set out in Article V(1) of the New York Convention. The award was thus recognized by the Dubai Court of Cassation.

Conclusion

There is no doubt that the above ruling is a positive step towards solidifying the UAE's commitment to the New York Convention, and arbitration more generally.

This judgment is of particular significance as it represents a reconfirmation of the position found in the previous line of judgments which held that the recognition of foreign arbitral awards in the UAE is subject to the New York Convention and suggests strongly that the 2013 judgment whereby a foreign award was denied recognition was an exception of this standard approach.

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