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Dubai Court of Cassation further consolidates pro-NYC enforcement practice

Gordon Blanke (Blanke Arbitration LLC) · Tuesday, April 14th, 2015

The Dubai Court of Cassation stays firmly on course in its enforcement of foreign arbitration awards under the 1958 New York Convention for the recognition and enforcement of foreign arbitral awards (NYC) and hence keeps consolidating its pro-NYC enforcement practice. This has most recently been demonstrated by the Court's pro-Convention approach in Case No. 434/2014 (*Al Reyami Group LLC v. BTI Befestigungstechnik GmbH & Co KG*, ruling of the Dubai Court of Cassation of 23rd November 2014), in which the Court embraced the terms of the NYC *à la lettre* and confirmed in their wording the previous enforcement rulings of the Dubai Court of Appeal (see Case No. 1/2013, ruling of the Dubai Court of Appeal of 9 July 2013, on which I reported in a [previous blog](#)) and the Dubai Court of First Instance (see Case No. 681/2012) in the same matter.

By way of reminder, this case deals with the ratification and enforcement of an ICC award rendered by a sole arbitrator in ICC Case No. 15977/JHN in Stuttgart, Germany, and awarding the award creditor, BTI Befestigungstechnik, a German company that specializes in the production and distribution of roofing systems and power tools, an amount of EUR 300,000 in compensation for violation by Al Riyami Group, a UAE incorporated company, of an agency agreement concluded between the parties for the exclusive distribution in the UAE of BTI's products. The Dubai Court of Cassation was emphatic in its endorsement of the pro-Convention approach previously taken by the Court of First Instance and the Court of Appeal. The Court of Cassation was satisfied that the terms of the NYC found application to the enforcement of the underlying award without reservation. In doing so, the Court emphasized in reliance on Article 238 of the UAE Civil Procedures Code, which gives precedence to the application of international enforcement instruments over the principles of reciprocity otherwise applicable to the enforcement of foreign judgments, and Article 125 of the UAE Constitution, which give domestic force of law to international conventions binding on the UAE, that the Convention formed part of domestic UAE law by virtue of Federal Decree No. 43 of 2006, which implemented the provisions of the Convention at the municipal level. Having satisfied itself that Germany, the jurisdictional origin of the award subject to enforcement, qualified as another Convention country, the Court of Cassation confirmed the overall restrictive grounds of challenge admissible under Article V of the Convention and the corresponding provisions of Article 5 of the Federal Decree No. 43 of 2006.

The Dubai Court of Cassation rejected all the award debtor's attempts at challenging the award on procedural grounds. More specifically, the Court did not entertain any challenges of public order on the ground of the purported non-arbitrability of exclusive distribution agreements, challenges on the basis of the chosen venue of the arbitration being France (despite the arbitral seat being

Stuttgart, Germany), challenges of the improper administrative processing of the arbitration by the ICC International Court of Arbitration in Paris. The Court fully endorsed the findings of the Dubai Court of First Instance, quoting from that Court's ruling in relevant part:

“[The arbitration] has fulfilled all legal requirements in general and formal terms; it observed the principle of adversarial proceedings between litigants; it did not violate the rights of defense; it did not defeat any previously given award between the same parties; and it did not infringe the public order or public morals. Hence, it fulfilled all requirements and must be ratified.” (my translation)

The Court further confirmed the submission of a duly authenticated copy of the foreign arbitral award and the exclusive distribution agreement, including the arbitration agreement, and emphasized a supervisory court's obligations of review in the following terms:

“Whereas the judicial supervision of such court over the foreign arbitral award, when considering the request for recognition of a foreign award, is limited to ensuring that the award does not violate the provisions of Federal Decree No. 43 of 2006 and fulfills the formal and substantive elements of an arbitral award prescribed in Articles 4 and 5 of that Decree [corresponding to Articles IV and V of the NYC], as the arbitral award, subject matter of the action, is duly authenticated.” (my translation)

By way of conclusion, the straightforward approach taken by the Dubai Court of Cassation to the application of the terms of the NYC to the enforcement of foreign awards, even against a UAE national award debtor, is an encouraging development, which deserves unreserved support from local arbitration practitioners and the international arbitration community more generally. Slowly but surely, the Dubai courts are building a credible track record of NYC enforcement, which no doubt will continue to encourage the inflow of foreign investment into the UAE economy and the Emirate of Dubai more specifically in years to come.

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