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When Not to Enforce: Status of Enforcing Foreign Emergency Awards in Singapore

Yasaschandra Devarakonda · Tuesday, December 6th, 2022

On 7 October 2022, the High Court of the Republic of Singapore ("High Court") delivered a landmark decision on the enforceability of foreign emergency arbitration awards in *CVG v CVH*. The High Court rejected the enforceability of the emergency award on the ground of procedural irregularity, reinforcing the importance of due process even in cases where urgent interim relief is sought by the parties. Since the advent of accelerated resolution in complex international disputes, many commercial parties have begun favoring emergency arbitration as a viable form of recourse to obtain interim relief. Numerous jurisdictions, including India, the United States, the United Kingdom, Germany, China, and arbitral institutions such as the ICC and Stockholm Chamber of Commerce, have consequently amended their national laws to include within their scope newer and more efficient forms of dispute redressal. In the context of legislative changes on emergency arbitrations, however, two crucial aspects remain unexplored and have constrained parties to opt for emergency arbitrations. The first is the hurdle of enforcement of emergency arbitration awards and the second is the efficacy of such an arbitration vis-à-vis protection of the interest of the parties.

In 2012, Singapore amended its International Arbitration Act ("Act") and included 'emergency arbitrator', among others, within the definition of 'arbitral tribunal' in Section 2(1) of the Act. But the same amendment did not apply to Part 3 of the Act, which deals with 'foreign awards' and includes provisions on recognition and enforcement of foreign awards. As such, the issue of whether foreign emergency arbitration awards are enforceable in Singapore had remained in doubt and had been a subject of debate. Now, *CVG v CVH* has answered the issue in the affirmative while also reminding parties that they should not take such enforceability for granted as foreign emergency arbitration awards are still subject to the same requirements as other awards.

Background

The parties in *CVG v CVH* were in a franchise business, with the Defendant being the Claimant's franchisee in Singapore, Malaysia, Taiwan, and the Philippines. The contractual relationships among the parties are governed by four different Franchise Agreements ("Agreements"). After change in the management of the Claimant's company pursuant to a successful bankruptcy protection action filed by the Claimant under Chapter 11 of the United States Bankruptcy Code, disputes arose with respect to certain alleged breaches of the Agreements. The Defendant had

thereafter terminated the Agreements alleging anticipatory repudiation and material breach and consequently disassociated themselves from the Claimant's corporate group. The Claimant, in response, denied access to its corporate group in Singapore, which was treated by the Defendant as acceptance of the termination of their Agreements.

The Claimant then filed an arbitration with the International Centre for Dispute Resolution (ICDR). The arbitration was seated in the US state of Pennsylvania and Pennsylvanian law governed the proceedings. The Claimant also sought emergency measures. During the emergency measures hearing, the Claimant argued in favor of application of the agreed post-termination provisions in the Agreements. Significantly, in the post-hearing submissions, the Claimant took the position that it did not consider the Agreements to have been terminated yet.

The emergency arbitrator issued an award granting status quo of parties to the position before the termination of the Agreement on the basis that the Claimant did not treat the Agreements as terminated. The Claimant filed an application to enforce the award in the High Court in Singapore, to which the Respondent objected. It was this High Court case that gave rise to the decision.

The Outcome of *CVG v CVH*

The High Court took a purposive interpretation of the legislative intent and scheme of the International Arbitration Act and found that the definition of 'arbitral tribunal' in Section 2(1) of the Act would extend to Part 3 of the Act in Section 27(1).

The High Court, however, was quick to object to the enforcement of this emergency award on the ground that it violated principles of natural justice since the Respondent was unable to present its case in the context of certain submissions made by the Claimant in its post-hearing submissions. During the emergency arbitration hearing, the arbitral tribunal had enquired about the alternative submissions of the Claimant, in the event, the requested emergency measure was not granted. The tribunal had also raised this question in the list of issues given to the parties based on which they were required to make the post-hearing submissions.

In considering Section 31(2) of the Act, which regulates refusal of enforcement of foreign arbitral awards, the High Court held that while it was within the contemplation of the parties and their submissions that the decision on the matter would be with respect to the new case of the Claimant regarding its treatment of the status of the Agreement – thus satisfying the requirements under Section 31(2)(c) of the Act – the award was made on the alternative submission of the Claimant in the post-hearing submission stage. The High Court also ruled that the Claimant's submission significantly deviated from its earlier position during the hearing stage.

The Future of Foreign Emergency Arbitral Awards in Singapore

The decision of the High Court comes at the height of an uproar in favor of accelerated arbitral procedures such as emergency arbitrations. By untangling the interplay between Section 2(1) of the Act and Part 3 of the Act, the High Court adopted a pro-arbitration approach to ensure enforceability of foreign emergency arbitrations in Singapore (in the absence of other reasons not to enforce as illustrated by the High Court in this case). Still, the preference for emergency

arbitration as an alternative to seeking interim measures may have some negative ramifications so long as differential judicial interpretations exist of whether emergency arbitral awards are enforceable across various jurisdictions. Additionally, there is an absence of any guidance to govern the matter in the UNCITRAL Model Law and a lack of uniform guidelines and approaches in soft law instruments.

This situation highlights the need for arbitral institutions, arbitration practitioners and other stakeholders to collaborate on establishing the appropriate judicial frameworks to make enforcement of foreign emergency arbitral awards more uniform. It is important to recognize that the ultimate power to recognize and enforce such emergency arbitral awards lies with the national courts only. Therefore, for the success of exigence of accelerated arbitral process, it is pivotal to recognize the importance of judicial jurisprudence around the legality of such processes synchronous with legislative amendments and amendments to the rules of major arbitral institutions. The Indian illustration of *Amazon.com NV Investment Holdings Inc. v. Future Retail Ltd* (covered in another post here), is a useful reference in this regard. In this case, the Supreme Court of India upheld the validity of a SIAC emergency arbitrator award despite the absence of an express legislative provision in favor of emergency arbitral awards in the Indian Arbitration Act of 1996, purposively applying the pro-arbitration principles and recommendations of the Law Commission Reports.

The decision of the High Court also serves as an important reminder to parties and arbitrators that the fundamentals of arbitral procedure are not to be compromised despite the urgency with which emergency measures are typically sought. It may be reassuring for risk-averse parties to know that the dawn of emergency arbitrations through which parties seek emergency measures are not at the cost of procedural efficacy and in the best interest of the parties. However, as the procedural history in this case ends with this decision of the High Court, it remains to be seen how these decisions motivate national legislatures to proactively approach the subject of emergency arbitrations and the enforceability of the awards issued therefrom positively.

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