
Kluwer Arbitration Blog

Recent Dubai Court of Cassation Judgments: Is Arbitration an Exceptional Means of Resolving Disputes?

Dr Hassan Arab, Hend Al Mehairi (Al Tamimi & Company) · Tuesday, February 13th, 2024

The United Arab Emirates (“UAE”) courts have traditionally held that arbitration is an exceptional means of resolving disputes. However, in recent years, there has been a significant shift in the UAE courts’ approach with decisions confirming that arbitration is not merely an exceptional means of resolving parties’ disputes, but an equal alternative to litigation.

In this post, we examine this shift in the UAE courts’ perception of arbitration by reference to two judgments of the Dubai Court of Cassation (“CoC”), namely, [Case No. 993 of 2017](#) of 4 February 2018, which held that arbitration is an equally valid dispute resolution forum as litigation and [Case No. 1444 of 2022](#) of 6 July 2023, which underlined the importance of respecting party autonomy in upholding arbitration agreements.

Dubai CoC Case No. 993 of 2017

The Appellant, a distributor, and the Respondent, a foreign distributor, entered into an agreement on the distribution of a specific range of sports products in various territories. Some territories were designated as exclusive distribution areas, while other territories were considered to be non-exclusive. The Respondent subsequently issued a notice to the Appellant of its intention not to renew, and to terminate, the exclusive distribution agreement. The Appellant initiated legal action against the Respondent before the Dubai courts to claim damages for the wrongful termination of their distribution agreement and the amount of AED 183,439,129, in addition to interest.

Court of First Instance and the Court of Appeal Decisions

In the proceedings before the Court of First Instance, the Respondent raised a jurisdictional challenge on the basis of the arbitration clause. This was dismissed for lack of jurisdiction due to the arbitration clause.

The Appellant appealed to the Court of Appeal, which upheld the decision of the Court of First Instance, affirming that the action was inadmissible due to the court’s lack of jurisdiction because of the arbitration clause.

CoC Decision

Not satisfied with the outcome, the Appellant appealed to the CoC, seeking a reversal of the lower courts' decisions based on three main grounds set out below.

Authority to Arbitrate

First, the Appellant challenged the authority of the Respondent's signatory to bind the Respondent to the arbitration clause. It argued that the person who granted the power of attorney to the Respondent's lawyers did not possess the authority to arbitrate. This lack of authority, the Appellant contended, extended to the lawyers appointed by the Respondent.

The CoC rejected this argument and upheld the findings of the Court of Appeal, emphasising the established legal principle that the capacity and authority of the signatory to an arbitration clause are within the purview of the trial court to decide. The CoC concluded that the trial court's determinations that the person who signed the arbitration clause (the Respondent's CEO) held the necessary authority to agree to arbitration by virtue of his position as an officer of the company, were made on valid grounds and supporting documents. The CoC reiterated that the lawyers did not require a specific authorisation to challenge the courts' jurisdiction based on an arbitration clause, as this fell within the scope of their power of attorney.

Functional Jurisdiction of the Competent Court

The Appellant's second challenge concerned the interpretation and application of Article 226 of the UAE Federal Law No. 18 of 1993 Concerning The Commercial Transaction Law ("Civil Procedures Law").¹⁾

The Appellant argued that the Court of Appeal misapplied this provision and failed to recognise its broader scope. According to the Appellant, Article 226 encompasses that the UAE courts have not only territorial jurisdiction but also functional jurisdiction, including over disputes arising from agency agreements that are subject to arbitration. It contended that the legislator intended that Article 226 allowed the UAE courts to exercise jurisdiction over disputes even if the contractual agreements contained an arbitration clause.

In dismissing this challenge, the CoC held that Article 226 primarily addresses territorial (or geographical) jurisdiction. Article 226's primary objective is to determine the competent court to hear disputes arising from contractual agency agreements. The CoC reiterated that Article 226 does not delve into the allocation of functional jurisdiction between courts and arbitral tribunals. Functional jurisdiction in arbitration thus is derived from the parties' agreement to arbitrate, not from the default recourse to the competent courts.

Validity of the Arbitration Agreement

Third, the Appellant also challenged the validity of the arbitration clause in the distribution agreement. It contended that this clause amounted to a contract of adhesion with arbitrary terms. Specifically, the Appellant argued that the arbitration clause forced them to irrevocably waive their rights to local courts and provided the Respondent with unilateral termination power. Additionally, the Appellant also relied on certain clauses within the distribution agreement, which it argued granted the Respondent excessive authority to terminate the agreement without facing legal consequences.

The CoC dismissed this argument, reiterating the principle of *pacta sunt servanda*. It explained that in typical contract negotiations, once the parties' proposed terms are accepted, a binding contract is formed. However, in the case of adhesion contracts, one party presents non-negotiable terms, which the other party can either accept or reject in its entirety. Importantly, the CoC clarified that an arbitration clause, which allows a supplier to compel a distributor to arbitrate their disputes, does not constitute an oppressive term. This is because arbitration serves as an alternative or parallel process to litigation before state courts.

While the Appellant also argued that the contract forced them into arbitration unfairly, the CoC dismissed this claim stating that choosing arbitration as an alternative to court in an agreement does not constitute an adhesion contract. Even agreeing to a foreign arbitration seat was not deemed to be unfair, as enforcing the award would still follow established legal procedures under the relevant laws and treaties. While recognising the concept of protecting weaker parties through adhesion contracts, the CoC did not find that the specific terms, in this case, fall under that category.

Dubai CoC No. 1444 of 2022

The dispute in this case concerned various purchase orders issued by the Respondent to the Appellant for the installation of safety equipment and materials for multiple projects. The Appellant delivered the contracted works and issued invoices that were not paid. The Appellant commenced legal action against the Respondent, seeking judgment for unpaid invoices in the amount of AED 370,024.171.

The crux of the dispute revolved around an arbitration clause contained within one of the contracts, which the Respondent relied on to argue that the courts lacked jurisdiction. More specifically, the appellant's argument focused on the validity and enforceability of an arbitration agreement due to issues related to authenticity surrounding the documents including the clarity of the clause and the authority of the signatory.

Court of First Instance and Court of Appeal Decisions

The Court of First Instance ruled that the claim in relation to this contract was subject to arbitration due to the presence of the arbitration clause and appointed an engineering expert to assess the claims in the remaining disputes. This decision was upheld by the Court of Appeal.

CoC Decision

The Appellant appealed this decision before the CoC on various legal and procedural grounds, including challenges to the authenticity of the contract copy, the authority of the signatory to agree to arbitration, and the enforceability of the arbitration clause in multiple related contracts. The CoC dismissed the appeal, and in doing so, clarified several key legal principles.

Authenticity of Contract Copy

The CoC clarified that alleging the inauthenticity of the contract copy did not, in itself, obligate it to take any action unless there was evidence demonstrating the copy's inauthenticity. In this case, the appellant provided no such evidence.

Authority of the Signatory to Agree to Arbitration

In rejecting this argument, the CoC reaffirmed that the manager of a limited liability company had the legal capacity to make dispositions over the rights relating to its activities, including agreeing to arbitration in contracts with third parties, as long as there were no restrictions in the company's memorandum of association.

Validity of the Arbitration Clause

The Appellant's challenge to the arbitration clause based on the alleged lack of authority of its manager to agree to the arbitration clause was rejected by the CoC for two reasons.

- **Absence of Restrictive Documentation:** The Appellant failed to adduce any evidence demonstrating that its manager's authority was expressly restricted by the memorandum of association or any other pertinent legal documentation. As such, the manager's act of agreeing to the arbitration clause fell within the ostensibly legitimate exercise of its managerial powers.
- **Estoppel Principle:** Even if the manager had demonstrably exceeded its actual authority, the Appellant would still be estopped from contesting the validity of the arbitration clause under Article 70 of the Civil Procedures Law. This principle, akin to the legal concept of estoppel, aims to prevent parties from adopting contradictory positions that prejudice others and undermine the overarching requirement of good faith in contractual engagements. By entering into the contract containing the arbitration clause, the Appellant effectively conceded to the manager's apparent authority, thereby precluding it from subsequently challenging the arbitration agreement.

Enforceability of the Arbitration Clause

The CoC dismissed the Appellant's attempt to frame the seven agreements into a single transaction. The Court of Appeal, based on its review of the record, found the agreements to be "separate and unrelated", each pertaining to distinct projects. The Appellant's argument against

fragmentation on the basis of there being a singular underlying transaction across the agreements was deemed unconvincing and incapable of transforming the distinct agreements into a unified transaction.

Further, the CoC clarified that the Appellant's contentions amounted to a substantive challenge to the factual findings conducted by the trial court. This fell outside the purview of the CoC, which primarily focuses on the review of legal errors.

Conclusion

The two CoC judgments underline the commitment of the Dubai courts to uphold and enforce arbitration clauses in commercial disputes. This is a transformation from the Dubai courts' former view of arbitration being an exceptional method of dispute resolution to a contemporary perception of arbitration as the mainstream method of dispute resolution, particularly for international commercial disputes.

As the UAE's legal landscape continues to evolve, these judgments are a reminder that arbitration, as a consensual, legitimate, and effective means of resolving disputes within the realm of international commercial contracts, provides parties with a well-defined framework to resolve disputes with the utmost confidence that the Dubai courts will uphold their agreement as valid and binding, in the absence of any compelling evidence to the contrary.

The recent decisions reinforce the principle that challenging arbitration agreements is an uphill battle with a high threshold, requiring solid and irrefutable evidence. The Dubai courts would only look into allegations if concrete evidence is provided. While parties retain the right to initiate challenges, the burden of proof rests heavily on them, requiring concrete evidence that goes beyond mere doubt. Therefore, navigating an arbitration challenge in the UAE requires a well-prepared and substantiated case, ensuring the threshold for court intervention is truly met. This approach serves to uphold the sanctity of arbitration as a preferred dispute resolution method, preventing frivolous challenges that could delay and derail proceedings.

Considering the Dubai courts' commitment to uphold the parties' agreement to arbitration, these recent decisions highlight the importance for parties to carefully review and comprehend all relevant contractual provisions before entering into arbitration agreements.

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References

?1 Article 226 of the UAE Civil Procedures Law provides: “As an exception to the rules of jurisdiction set out in the UAE Civil Procedures Law, the court in whose jurisdiction a contractual agency agreement was executed shall have jurisdiction to adjudicate all disputes arising out of such agreement.”

This entry was posted on Tuesday, February 13th, 2024 at 8:05 am and is filed under [Dubai](#), [MENA](#), [United Arab Emirates](#)

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