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When Is a “Final” Award Truly Final? The Case of *Voltas Ltd v York International Pte Ltd*

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The judgment of the Singapore Court of Appeal (“Court”) in *Voltas Ltd v York International Pte Ltd* [2024] SGCA 12 (“*Voltas v York*”) helpfully settles the question of whether or not an arbitrator is able to impliedly reserve his or her jurisdiction after rendering a final award as a matter of Singapore law. Additionally, the Court’s decision indicates several best practices that arbitrators should adopt when making conditional awards.

Background Facts

In 2014, an arbitrator rendered an award, entitled “Final Award”, holding York International Pte Ltd (“York”) liable to Voltas Limited (“Voltas”) for sums amounting “up to a maximum of” SGD 1,132,439.46 (“2014 Award”). However, the 2014 Award conditioned York’s liability on Voltas having paid these sums to a third party, which would have caused Voltas to suffer a corresponding loss which could be claimed against York. When Voltas eventually demanded payment from York pursuant to the 2014 Award, York refused to make payment, contending that there was insufficient evidence that the sum was paid to the third party. In 2020, Voltas sought a further award from the arbitrator on whether this sum was payable. In 2021, the arbitrator held that he was not *functus officio* and that he could in fact determine whether the conditions set out in the 2014 Award had been satisfied (“2021 Ruling”).

York applied to the General Division of the Singapore High Court (“High Court”) seeking an order that the arbitrator did not have jurisdiction to make a further award. The High Court allowed the application at first instance. On appeal, the key issues were:

1. Whether the 2014 Award, being a conditional award, constituted a final award; and
2. If so, whether the arbitrator had reserved his jurisdiction to issue a further award.

The 2014 Award Was a Final Award

The Court noted that there was “no reason for thinking that a conditional award may not constitute a final award”. In fact, the key inquiry was whether the conditions in such an award make it necessary for the tribunal to reopen the matter. Accordingly, the Court found that a conditional

award may constitute a final award if it disposes of all outstanding claims and if an enforcement court would be able to assess whether the conditions in the award have been satisfied.

On the facts, the Court held that the 2014 Award was a final award as it disposed of the substantive issues in the dispute and the arbitrator did not contemplate that there were any other issues left to be decided. In coming to this conclusion, the Court made three observations:

1. The substance of the dispute had been decided in the 2014 Award;
2. The costs of the arbitration and their allocation had been decided in the 2014 Award; and
3. The arbitrator himself had recognised in the 2021 Ruling that the 2014 Award was *res judicata* and noted that he was *functus officio* in respect of the matters decided in the 2014 Award. The Court observed that the arbitrator did not intend to keep the question of York's liability open as it had already been decided in the 2014 Award. Instead, the arbitrator intended to leave it to Voltas to show at the appropriate time that the requisite condition for payment had been fulfilled.

The Arbitrator Could Not Impliedly Reserve His Jurisdiction

The Court held that as a matter of law, an arbitral tribunal is *functus officio* once it renders an award – that is, it has completed its mandate. Nonetheless, the Court recognised that under [s 43 of Singapore's domestic Arbitration Act 2001](#) (“AA”) concerning the correction or interpretation of awards and additional awards (which is based on s 33 of the UNCITRAL Model Law), there are three limited exceptions to the termination of a tribunal's mandate:

1. To correct arithmetical mistakes in calculation or typographical errors in the award;
2. To provide interpretation on a specific point or portion of an award so as to provide greater clarity; or
3. To make an additional award dealing with claims which were presented during the arbitral proceedings, but which were omitted for some reason from the actual award.

However, a tribunal would not be entitled to “re-visit issues canvassed and decided or to re-consider any part of the decisions consciously made”. To reserve its jurisdiction to revisit a point, a tribunal would need to “take steps to indicate that the award is not a final award, such as by designating the award as a partial award, to avoid a situation where the tribunal is rendered *functus officio* following the publication of the award”. Applying this principle, the Court reasoned that any reservation of jurisdiction would have to be expressly made. Where an arbitrator has issued a final award, “there is simply no room to imply” a reservation of jurisdiction. The notion of an implied reservation of jurisdiction was held to be inconsistent with s 43(4) of the AA which sets out limited statutory exceptions to the termination of the tribunal's mandate following the issuance of a final award. Furthermore, allowing for an implied reservation of jurisdiction would be inconsistent with the principle of finality and expedition in arbitration.

Thus, on the facts, the Court found that the arbitrator had no implied jurisdiction to issue a further award.

Commentary

The Court in *Voltas v York* adopts a strict yet clear approach as to the manner in which a tribunal may reserve its jurisdiction.

The Court's holding that a reservation of jurisdiction must be expressly made is undoubtedly correct. Allowing for an implied reservation of jurisdiction would sit uneasily with the principle of finality in arbitration and would open the door for parties to re-arbitrate disputes. The Court's position in *Voltas v York* also establishes that where a tribunal expressly reserves its jurisdiction, any award issued by that tribunal will not be a final one. The Court noted the need for a tribunal to "take steps to indicate that the award is not a final award, such as by designating the award as a partial award" in order to reserve its jurisdiction.

However, the Court did not comment on whether an express reservation of jurisdiction can be established in an award that is labelled as a "Final Award". In our view, a substance over form approach is preferable, and this approach is consistent with the Court's definition of a final award in *Voltas v York*. An express reservation of jurisdiction is established where there is a deliberate and articulated decision by an arbitrator not to deal with all the issues which are within their mandate. In such a case, the award would not likely be considered a final one, even if labelled as such.

This is the position adopted in the Supreme Court of Victoria's decision in *Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd* [2017] VSC 97 ("*Lysaght*"), which also dealt with the issue of whether a tribunal was *functus officio*. In that case, the parties had resolved part of their dispute before the Supreme Court and agreed to resolve the rest of the issues through arbitration. One of the outstanding issues left to be decided by the arbitrator was the question of the costs of the Supreme Court proceeding. In a self-styled "Final Award", the arbitrator expressly declined to resolve this issue because he did not have "sufficient information to enable [him] to do so". In his award, the arbitrator stated that "the issue of the payment of costs of the Supreme Court proceedings...is not decided". Even though the award was rendered in the form of a "Final Award", the Court held that the arbitrator was not *functus officio* in respect of the Supreme Court costs issue because "the arbitrator did decide, expressly, not to decide this claim". In other words, an express decision by an arbitrator to leave undecided a claim which is within their arbitral mandate will constitute an express reservation of jurisdiction. Accordingly, the reasoning in *Lysaght* is consistent with the Court's definition of a final award in *Voltas v York*, in which the Court defined a final award as an award "that disposes of all remaining claims". An award in which the arbitrator expressly decides not to decide a particular claim cannot be final since it does not dispose of all remaining claims.

Another point of discussion between the *Lysaght* case and *Voltas v York* is in the outcome of the cases. In *Voltas v York*, the arbitrator in his 2014 Award held York liable to pay Voltas "up to a maximum" of SGD 1,132,439.46 in total. Although the arbitrator decided the maximum extent of York's liability, he did not address the precise quantum of damages owed since this would depend on the sum Voltas paid to the third party. The arbitrator in his 2021 Ruling explained his reasoning as to why he was not *functus officio* over the issue of the precise quantum in the following terms:

"the issue of the quantum of damages that [York] is liable to [Voltas] for, is within my jurisdiction to decide, but was not decided in the [2014] Award because at that point, [the third party] had not pursued [its claims] against [Voltas]".

Had the arbitrator expressed this reasoning in the 2014 Award itself, it would have arguably constituted an express decision to leave the claim undecided, like in the case of *Lysaght*. As it transpired, however, the arbitrator's reasoning was only given in the 2021 Ruling and was thus correctly rejected by the Court.

However, one caveat is that unlike *Voltas v York*, the decision in *Lysaght* was not concerned with a conditional award. Arguably, it is unlikely that the arbitrator in *Lysaght* would have chosen to leave an issue undecided without expressly reserving his jurisdiction over the issue, since this may have constituted grounds for challenging the award or requesting an additional award. This is not the case for a conditional award, where any outstanding issue as to whether the conditions have been met can be decided by the enforcement court.

Therefore, to reserve jurisdiction over outstanding issues, tribunals should expressly articulate any decision not to deal with all the issues referred to arbitration. As a matter of good order, the arbitrator should expressly indicate which issues are left to be determined and provide reasons why the issues were not decided. This is consistent with the [SIAC Award Checklist](#) (effective 31 March 2023), which enjoins tribunals to ensure that "any claims reserved for future awards are identified". In any event, tribunals should also render their decision in the form of a partial award instead of a final award to eliminate any possible doubt.

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