Kluwer Arbitration Blog

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Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Sunday, February 23rd, 2025

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The ITA Board of Reporters have reported on the following court decisions.

Macquarie Bank Limited v. Wanda Holding Group Co., Ltd, Higher People's Court of Shanghai, (2021) Hu 74 Xie Wai Ren No. 1, 01 November 2021

Arthur X. Dong, JunHe LLP, ITA Reporter for China

There has been widespread discussion about how China's sanctions regime would impact international arbitration involving Chinese parties. In this case, when the prevailing party applied to the PRC court for recognition and enforcement of an SIAC award, the Respondent contended, among other things, that the application should be denied. Specifically, the Respondent argued that the award was issued by an arbitrator from a Chamber sanctioned by the Chinese government and that its enforcement is against the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Laws and Measures ("Rules on Counteracting"). The PRC court thoroughly analyzed the facts and found that the mere fact that the arbitrator's affiliated Chamber is sanctioned by the Chinese government does not necessarily fall within the scope of Article V of the New York Convention. The PRC court further found that the Rules on Counteracting were not relevant in the present case. Therefore, the PRC Court recognized the SIAC award.

National Joint Stock Company Naftogaz of Ukraine et al. v. The Russian Federation, District Court of Helsinki, Case diary T 706/2024/6305, decision number 1019 2864, 13 August 2024

Anna-Maria Tamminen & Viktor Saavola, Hannes Snellman Attorneys, ITA Reporters for Finland

The District Court of Helsinki ordered the confiscation of Russian assets in Finland in favor of the national joint stock company Naftogaz of Ukraine and its affiliates in connection with the enforcement of an arbitral award.

Athletic Club B ry v. A, Supreme Court of Finland, Case No. S2022/592, Decision No. 2024:36, 07 June 2024

Anna-Maria Tamminen & Viktor Saavola, Hannes Snellman Attorneys, ITA Reporters for Finland

The Supreme Court evaluated the enforceability of an arbitration clause included in the employment contract between a football coach and an athletic club.

Sociétés Opportunity et autres v. Société Telecom Italia S.P.A et autre, Court of Appeal of Paris, 02 May 2024

Nataliya Barysheva, Valentine Chessa & Yoshie Concha Takeshita, MCL Arbitration, ITA Reporters for France

In line with the objective approach to independence and impartiality of arbitrators in set-aside proceedings, the Paris Court of Appeal set aside an arbitral award rendered by an arbitral tribunal presided by an arbitrator whose firm assisted a major shareholder of one of the parties.

BGH – I ZB 34/23, Federal Court of Justice of Germany, I ZB 34/23, 11 July 2024

Berta Boknik, Cleary Gottlieb Steen & Hamilton LLP, and Harry Nettlau, Willkie Farr & Gallagher LLP, ITA Reporters for Germany

Pursuant to Sec. 1054(1) sentence 2 of the German Code of Civil Procedure, it is sufficient for the existence of an arbitral award that can be the subject of set-aside proceedings if the majority of the arbitrators signs the arbitral award, provided that the reason for a missing signature is stated. The German Federal Court of Justice ruled that a mere note “signature could not be obtained” sufficiently indicates a reason for the absence of the signature and therefore fulfils the requirements of the provision.

BayObLG – 101 Sch 146/23 e, Highest Regional Court of Bavaria, 101 Sch 146/23 e, 13 September 2024

Berta Boknik, Cleary Gottlieb Steen & Hamilton LLP, and Harry Nettlau, Willkie Farr & Gallagher LLP, ITA Reporters for Germany

The enforcement of an arbitral award which is based on an arbitration clause that is contrary to EU

law within the meaning of the Achmea decision of the Court of Justice of the European Union (judgment of March 6, 2018, Case C-284/16) must be refused because of the absence of a valid arbitration agreement. This also applies to enforcement proceedings that concern only a decision on costs in an arbitral award that dismisses the claim on the merits.

AAB v. BBA and BBC [2024] HKCFI 699, High Court of Hong Kong, Court of First Instance, HCCT 63/2023, 08 March 2024

Edward Taylor, Shearman & Sterling LLP, ITA Reporter for Hong Kong

The Hong Kong Court of First Instance refused to set aside a partial final award based on complaints of: (i) lack of reasoning in the award; (ii) lack of due process in the arbitration; and (iii) failure to deal with an issue. However, the Court did remit the award to the Tribunal for having failed to deal with an issue.

The Court decided that where an award is wholly unreasoned (as opposed to having skeletal reasons), it may be subject to set aside. Further, an award may also be set aside where the Court is satisfied that an issue put to the tribunal has not been dealt with either expressly or impliedly, and that such a failure would cause substantial injustice.

On the facts, the Court decided that the award was not unreasoned. The Court also dismissed the applicant's due process objection, based on an alleged lack of a reasonable opportunity to present its case, since it had not raised this complaint during the arbitration. Accordingly, it had waived its right to make such a complaint.

However, the Court found that the Tribunal had failed to decide an important issue put by the parties. Rather than setting aside the award (since this would be an extreme remedy), and in circumstances where the Court was satisfied that the Tribunal was not unfit to continue the arbitration (which was still ongoing), the Court instead stayed the set-aside proceedings for three months and remitted the award back to the Tribunal to take such action as it considered necessary with respect to the undecided issue. The Court considered this to be the most practical step to take.

M/S. Arif Azim Co. Ltd. v, M/S. Aptech Ltd., Supreme Court of India, Arbitration Petition No. 29 of 2023, 01 March 2024

Aditya Singh, White & Case LLP, ITA Reporter for India

The limitation period for filing an application for appointment of an arbitral tribunal under Section 11(6) of Arbitration and Conciliation Act 1996 is three years and it commences from the date a valid notice invoking arbitration has been issued. If an application under Section 11(6) is filed within the limitation period, courts would then *prima facie* examine the claims sought to be arbitrated and reject the application only in rare circumstances where those claims are found to be manifestly and *ex facie* non-arbitrable or time-barred as on the date of commencement of arbitration.

Avitel Post Studioz Limited and others v. HSBC PI Holdings (Mauritius) Limited (previously named HPEIF Holdings 1 Limited), Supreme Court of India, Civil Appeal Nos. 3835-3836 of 2024, 04 March 2024

Aditya Singh, White & Case LLP, ITA Reporter for India

Bona fide challenges to arbitral appointments must be made in a timely manner instead of being used strategically to delay the enforcement process. In deciding objections to enforcement of foreign awards made under the New York Convention 1958 on the ground of bias, Indian courts should refuse enforcement only in exceptional circumstances when the most basic notions of morality or justice are violated, that is when the conscience of the court is shocked by infraction of fundamental notions or principles of justice.

Delhi Metro Rail Corporation Ltd. (DMRC) v. Delhi Airport Metro Express Pvt. Ltd. (DAMEPL), Supreme Court of India, Curative Petition (C) Nos.108-109 of 2022, 10 April 2024

Aditya Singh, White & Case LLP, ITA Reporter for India

Although it is not possible to exhaustively enumerate the grounds for entertaining a curative petition, the Supreme Court may exercise its curative jurisdiction under Article 142 of the Constitution of India to prevent the abuse of its process and to cure a gross miscarriage of justice. In the context of an application to set aside a domestic award, such jurisdiction may be exercised where the award is found to be perverse, or so irrational that no fair or reasonable person would have arrived at it.

Honasa Consumer Limited v. RSM General Trading LLC, High Court of Delhi, O.M.P.(I) (COMM.) 214 of 2024I.A. 32362 of 2024, I.A. 32363 of 2024, I.A. 35026 of 2024, 20 August 2024

Aditya Singh, White & Case LLP, ITA Reporter for India

Where proceedings in a foreign court, or any order or decree passed by a foreign court, threatens to prejudice or derail the arbitral process which may competently be instituted in India, Section 9 of Arbitration and Conciliation Act 1996 empowers Indian courts to injunct the party who has instituted the foreign proceedings from proceeding further, or from enforcing the potentially threatening order or decree passed in those proceedings.

X v. Kabushiki Kaisha TOKIO, District Court of Fukuoka, Reiwa 5 (WA) 3198, 21 June 2024

Akiko Inoue & Koki Yanagisawa, Nagashima, Ohno & Tsunematsu, ITA Reporters for Japan

Enforceability of an arbitration agreement – Fukuoka District Court held that the individual plaintiff is entitled to terminate an arbitration agreement with a company as a ‘consumer’ in accordance with the Arbitration Act.

This case involves a dispute between the parties over the rental of a property owned by X. X filed a lawsuit with the court bringing a claim for (i) compensation for damage or (ii) payment of rent that Y allegedly received from a third party without legal authorization. Y counterargued that there is an arbitration agreement between the parties and therefore the claim filed with the court should be dismissed. X challenged the validity of the agreement, arguing that X is entitled to terminate the arbitration agreement with a business operator as a "consumer" pursuant to the Arbitration Act. The court held that the arbitration agreement was validly executed but terminated by the plaintiff pursuant to Article 3 of the Supplementary Provisions of the Arbitration Act.

Party A v. Party B, Fourth Collegiate Court in Civil Matters of the First Circuit, 306/2022, 01 December 2022

Cecilia Flores Rueda, Flores Rueda Abogados, ITA Reporter for Mexico

The Fourth Collegiate Court on Civil Matters in Mexico City determined that courts must calculate the deadlines in Special Proceedings on Commercial Transactions and Arbitration using business days.

Paragon Relocation Holdings v. DSP Relocations Korea, Supreme Court of Korea, 2017Da238837, 22 December 2017

Kay-Jannes Wegner, Mayer Brown, and Byung-Woo Im, Kim & Chang, ITA Reporters for South Korea

The Defendant applied to set aside an arbitral award arguing that the award should be set aside because it was not notified of the appointment of the arbitrator and thus could not participate in appointing the arbitrator. The court rejected the application, holding that Defendant *de facto* waived its right to raise objections when it did not timely object to the non-notification promptly but participated in subsequent arbitral procedures.

Korea Rail Network Authority v. Samsung Engineering Co., Ltd., Supreme Court of Korea, 2005Da12452, 27 May 2005

Byung-Woo Im, Kim & Chang, and Kay-Jannes Wegner, Mayer Brown, ITA Reporters for South Korea

The Korean Supreme Court dismissed an application to set aside an arbitration award on the basis that the Defendants had filed the Request for Arbitration under a dispute resolution clause providing for arbitration as an option, and the Plaintiff did not dispute the existence of an arbitration agreement between the parties until after the filing of its Answer.

Consus Asset Management Co., Ltd. v. (Unknown), Supreme Court of Korea, 2018Da240387, 13 December 2018

Byung-Woo Im, Kim & Chang, and Kay-Jannes Wegner, Mayer Brown, ITA Reporters for South Korea

The Supreme Court dismissed an appeal against the High Court's refusal to set aside an arbitral award. It was held that Article 36(2)1.(d) of the Korean Arbitration Act only applied in cases where the procedural rights of the parties were severely infringed to the extent that it is deemed unacceptable and not to cases where the tribunal merely violated an agreement or non-mandatory provisions. The Supreme Court further held that the phrase "[t]he award is in conflict with the good morals and other forms of social order of the Republic of Korea" stipulated in Article 36(2)2.(b) of the Korean Arbitration Act did not refer to all cases where the award errs in the recognition of facts or violates relevant legal provisions

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